

**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 14487893 CANADA INC., 11368, LLC, 12175592 CANADA INC., DRAG MARKETING LLC, JUST SOLAR HOLDINGS CORP., JUST ENERGY CONNECTICUT CORP., AND JUST ENERGY (FINANCE) HUNGARY ZRT. (each, an "**Applicant**", and collectively, the "**Applicants**")

(each, an "**Applicant**", and collectively, the "**Applicants**")

**MOTION RECORD OF HAIDAR OMARALI IN HIS CAPACITY AS REPRESENTATIVE PLAINTIFF IN *OMARALI V. JUST ENERGY***

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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(each, an “**Applicant**”, and collectively, the “**Applicants**”)

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Court File No. CV-21-00658423-00CL

**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 14487893 CANADA INC., 11368, LLC, 12175592 CANADA INC., DRAG  
MARKETING LLC, JUST SOLAR HOLDINGS CORP., JUST ENERGY  
CONNECTICUT CORP., AND JUST ENERGY (FINANCE) HUNGARY ZRT.  
(each, an "**Applicant**", and collectively, the "**Applicants**")

(each, an "**Applicant**", and collectively, the "**Applicants**")

**NOTICE OF MOTION**

**THE MOVING PARTY**, Haidar Omarali in his capacity as representative plaintiff of the certified class (the "**Class**" or the "**Class Members**") in *Omarali v. Just Energy* (the "**Class Action**"), will make a motion before the Honourable Justice Cavanagh at a date and time to be set at a case conference.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference.

**THE MOTION IS FOR:**

1. With respect to the certified Common Issues (as that term is defined below), a declaration that:
  - a. Class Members are "employees" of Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario L.P. (collectively, "**Just Energy**") pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("**ESA**");
  - b. Class Members are not exempt from Parts VII, VIII, IX, X and XI of the ESA

because the Class Members are "route salespersons" pursuant to section 2(1)(h) of O. Reg. 285/0;

- c. minimum requirements of the ESA with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay are express or implied terms of the contracts with the Class Members;
  - d. Just Energy failed to make the prescribed employer CPP or EI contributions on behalf of Class Members;
2. A declaration that:
- a. all CPP and EI payments that Just Energy failed to make on the wages actually paid to Class Members is an unpaid debt for services performed for the corporation owed to Class;
  - b. all employment expenses paid by Class Members in the course of their employment, which were not reimbursed by Just Energy is an unpaid debt for services performed for the corporation owed to Class;
  - c. the unpaid minimum wage, overtime pay, vacation and public holiday and premium pay for the hours the Class Members worked is an unpaid debt for services performed for the corporation owed to the Class; and
  - d. the CPP and EI contributions on the wages owed to the Class are an unpaid debt for services performed for the corporation owed to the Class.
3. An aggregate determination of the amount of damages on account of minimum wage,



overtime pay, vacation pay, public holiday pay, and premium pay owed to the Class in an amount that this Court deems appropriate, to be distributed to Class Members on an average or proportional basis in accordance with s. 24 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6;

4. A declaration that the average or proportionate amount to be paid to each Class Member determined in paragraph 3 is a debt owed to each Class Member within the meaning of section 131 of the *Business Corporations Act*, R.S.O. 1990, c. B. 16 ("**OBCA**") and section 119 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ("**CBCA**");
5. A declaration that the average or proportionate amounts determined in paragraph 3 and referenced in paragraph 4 are a loss covered under the Insurance Policies (as that term is defined below);
6. To the extent necessary, an order that the Insurers (as that term is defined below) are a necessary and proper party to this motion and proceeding;
7. An order directing the Insurers to pay the amounts owed under the Insurance Policies described in paragraph 4, pursuant to and in accordance with the coverage and deductibles set out in the Insurance Policies;
8. To the extent necessary, relief from forfeiture pursuant to the *Insurance Act* R.S.Q. 1990, c. I.8 and/or the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, should the Court find imperfect compliance with the terms of the Insurance Policies;
9. To the extent necessary, to determine any claim related to any of the relief contained in paragraph 1 to 8 within the CCAA Proceedings (as that term is defined below); and

10. Such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THIS MOTION ARE:**

**A. Just Energy Misclassified Thousands of Employees**

1. On July 27, 2016, this Court certified this Class Action. The Court appointed Mr. Omarali as the Representative Plaintiff and Koskie Minsky LLP as counsel for the Class. The then-current directors and officers of Just Energy were not named as parties to the Class Action.
2. This certified Class Action concerns Just Energy's misclassification of 7,723 employees as "independent contractors". There were 13 certified common issues, set out in Appendix A (the "**Common Issues**").
3. Just Energy is an independent energy retailer. Rather than distributing or producing gas or electricity, it buys it and resells it to consumers at a markup. To recruit customers, Just Energy relied on door-to-door marketers whom it referred to as "Sales Agents".
4. Just Energy misclassified these Sales Agents as "independent contractors" despite the true nature of the engagement. In doing so, Just Energy denied Sales Agents minimum wage, overtime pay, vacation pay, holiday pay and minimum working hours and conditions.
5. The structure that Just Energy imposed on its Sales Agents was fundamentally inconsistent with an independent contractor relationship because Just Energy:
  - a. controlled when, where, and how Class Members worked, down to verbatim scripts;

- b. required Class Members to work out of its branded offices in branded clothing, exclusively for its benefit;
- c. required Class Members to market exclusively for it;
- d. required Class Members to undergo extensive standardized training created by it and administer by its employees or agents;
- e. retained supervisors who monitored class members "on the clock" in real- time – including using iPads and text messaging;
- f. centrally recruited Class Members through workers it conceded were its employees;
- g. limited Class Members to fixed commissions it could unilaterally change and "claw back" at any time;
- h. established a pyramidal commission structure that incentivised control and direction from supervisors retained by Just Energy;
- i. had an extensive department devoted to supervision and discipline of Class Member performance through a uniform Compliance Matrix;
- j. retained supervisors who directed on where Class Members were to market by driving the Class Members to the assigned locations in vans, providing maps of territory to market, monitoring locations through iPads and providing direction by text messages; and

- k. directly handled all customer complaints and unilaterally determined to accept to reject customer contracts.
6. These misclassified Sales Agents were fundamental to the business of Just Energy – signing up Just Energy's customers.
7. On November 28, 2016, shortly after this Class Action was certified, Just Energy formally reclassified its Sales Agents from "independent contractors" to employees.
8. Former "Sales Agents" are now called "Energy Advisors", doing the same job but now being paid hourly wages. Just Energy did not compensate Class Members for minimum wage, overtime, holiday pay and vacation pay that was not paid prior to Just Energy's internal reclassification.

#### **B. Just Energy's CCAA Filing Stayed the Class Action**

9. On November 20, 2019, the Class Action was scheduled for a 20-day common issues trial starting on November 15, 2021 (the "**Common Issues Trial**"). The Common Issues trial never took place.
10. On March 9, 2021, the Applicants, including Just Energy, filed for protection from their creditors and obtained an order commencing these proceedings ("**CCAA Proceedings**").
11. In support of its filing, the Applicants stressed that "unprecedented and catastrophic" events resulted in over \$315 million dollars of losses, and making it impossible for Just Energy to pay its existing creditors.
12. Throughout the CCAA Proceedings, the Applicants emphasized that there was no prospect

of meaningful financial recovery for unsecured class members and that Just Energy had no funds and, significant to this motion, no ability to pay debts owing to employees.

### **C. Class Members Participate in Claims Process**

13. On September 15, 2021, Just Energy sought and received court approval for a claims' procedure order and process (the "**Claims Process**").
14. On September 21, 2021, Class Counsel wrote to Just Energy to advise that as a result of Just Energy's inability to pay its debts Class Members had valid claims for unpaid wages against Just Energy's directors and officers, and would be pursuing those claims.
15. On October 29, 2021, Class Counsel filed proof of claim forms on behalf of Class Members against Just Energy and their current directors and officers, who are statutorily liable for unpaid wage debts pursuant to the OBCA and CBCA (the "**Statutory Wage Claim**").
16. On February 2, 2022, Just Energy disallowed Class Members' claims, including claims against its current directors and officers. On February 24, 2022, Class Counsel filed a Notice of Dispute for all Class Members.

### **D. Insurance Proceeds Available to the Class**

17. On November 3, 2022, the Applicants sought and obtained an approval and vesting order (the "**Approval and Vesting Order**"), approving a restructuring transaction of all of the Applicants. Although the Approval and Vesting Order released claims against current directors and officers, the Statutory Wage claim was explicitly carved out with respect to seeking recovery against any applicable insurance policies:

...to the extent it is necessary with respect to maintaining any claims as against the insurance policies of the [Just Energy] that may be available to pay insured claims in respect of [Just Energy] or their current or former directors and officers...and, solely for the purpose of recovery against the Insurance Policies and, solely for the purpose of recovery against the Insurance Policies, such Class Action Claim shall be deemed not to be transferred...

18. The Approval and Vesting Order revised the Claims Process, permitting Class Members to pursue the Statutory Wage Claim in this CCAA Proceeding and, to the extent necessary, join any applicable insurers:

...any proceedings with respect to the Class Action Claim, including with respect to any recovery sought by the Class Action Claimants as against the Insurance Policies, may continue in these CCAA proceedings following the closing of the Transactions (notwithstanding the fact that the Acquired Entities will be released from the purview of these CCAA proceedings at that point in time pursuant to paragraph 5(f) hereof).

19. The Approval and Vesting Order also made clear that Just Energy would not incur any costs with respect to the litigation of the Statutory Wage Claim, other than "to the extent reasonably necessary to provide information or evidence reasonably necessary for the determination of such claim...".

#### **E. D&Os Indemnified for Statutory Wage Claims**

20. Just Energy Corp. is an OBCA company. Section 131 of the OBCA renders directors of a corporation to statutorily liable for all debts not exceeding six months wages and for vacation accrued to the corporation's employees:

#### **Directors' liability to employees for wages**

131 (1) The directors of a corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages that become payable while they are

directors for services performed for the corporation and for the vacation pay accrued while they are directors for not more than twelve months under the Employment Standards Act, and the regulations thereunder, or under any collective agreement made by the corporation.

21. Just Energy Group Inc. is a CBCA company. Section 119 of the CBCA renders directors of a corporation liable for all debts not exceeding six months wages to the corporation's employees:

**Liability of directors for wages**

119 (1) Directors of a corporation are jointly and severally, or solidarily, liable to employees of the corporation for all debts not exceeding six months wages payable to each such employee for services performed for the corporation while they are such directors respectively.

22. On March 9, 2021, the same day that Just Energy filed for creditor protection, XL Specialty Insurance Company issued insurance policy ELU173707-21 (the "**XL Policy**"). Excess coverage was issued by Tokio Marine HCC through Policy No. 21G196460101 (the "**TM Policy**") and by Hiscox through Policy No. B0146ERINT2100865 (the "**Hiscox Policy**", and collectively with the XL Policy and TM Policy, the "**Insurance Policies**").
23. The XL Policy indemnifies D&Os for liability for "salary, wages and related amounts such as vacation pay or holiday pay that are or were payable by [Just Energy] to an employee for services performed if [the D&O] has become personally liable to make such payment under any applicable federal, provincial, territorial or municipal statutory provision".
24. As excess insurance, the Hiscox Policy and the TM Policy mirrors the XL Policy coverage.
25. There is no applicable exclusion. In particular, any prior act or litigation exclusion would render nugatory coverage for the most obvious, and explicitly indemnified, risk for which

the Insurance Policies were issued: liability for debts prescribed by corporate statute.

#### **F. Class Entitled to Insurance Proceeds**

26. Class Members, who were misclassified as employees by Just Energy, are entitled to wages and benefits pursuant to section 119 of the CBCA and section 131 of the OBCA. Directors of Just Energy, in turn, are indemnified for such amounts pursuant to the Insurance Policies.
27. For that reason, XL Specialty Insurance Company, Tokio Marine HCC and Hiscox (collectively, "**Insurers**") are a necessary and proper party to the proceeding and motion.
28. The CCAA, as reinforced through the Approval and Vesting Order, is a flexible statute designed to facilitate creditors claims in a sensible and commercially sound manner. These purposes are best achieved through a single proceeding designed to determine the value of Class Members' claims, directors' statutory liability for these claims, and any Insurers' duty to indemnify the directors for those claims.

#### **G. Statutory and Other Grounds**

29. Rules 1.04, 1.05, 2.01, 5.03, 16.01, 22.01(2) of the *Rules of Civil Procedure*.
30. Sections 2, 6, 11, 18.6, 20 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36.
31. Section 131 of the *Business Corporations Act*, R.S.O. 1990, c. B. 16.
32. Section 119 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.
33. Sections 24, 25 and 26 of the *Class Proceedings Act*, 1992, S.O. 1992



34. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The orders and endorsements made in the CCAA Proceedings;
2. The Affidavit of Jamie Shilton, dated August 18, 2023;
3. The Motion Records and Transcripts filed in the motion heard June 11-12, 2019; and
4. Such further and other evidence as counsel may advise and as this Court may permit.

**August 25, 2023**

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*Omarali v. Just Energy***

**TO: CCAA SERVICE LIST**

## Appendix A – Certified Common Issues

### *Statutory Claim*

- (1) Are the Class Members "employees" of the Defendants pursuant to the *Employment Standards Act, 2000* ("ESA")?
- (2) If the answer to (1) is "yes", are the Class Members in "pensionable employment" of the Defendants pursuant to the *Canada Pension Plan* ("CPP")?
- (3) If the answer to (1) is "yes", are the Class Members in "insurable employment" of the Defendants pursuant to the *Employment Insurance Act* ("EI")?
- (4) If the answer to (1) is "yes", are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?
- (5) If the answers to (1) and (4) are "yes", do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?

### *Breach of Contract*

- (6) If the answers to questions (1) and (4) are "yes", do the Defendants owe contractual duties and/or a duty of good faith to:
  - a. Ensure that the Class Members were compensated with the minimum wage?
  - b. Ensure that the Class Members' hours of work were monitored and accurately recorded?
  - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
  - d. Ensure that the Class Members were compensated with vacation pay?

- e. Ensure that the Class Members were compensated with public holiday and premium pay?
- (7) Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
- (8) If the answers to (1) and (4) are "yes", did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?
- (9) If the answers to (2) and/or (3) are "yes", did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

### ***Negligence***

- (10) Alternatively, did the Defendants owe a duty of care to the Class Members to:
- a. ensure that Class Members are properly classified as employees;
  - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
  - c. ensure that the Class Members hours of work are monitored and accurately recorded; and
  - d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.
- (11) Did the Defendants breach any of the duties of care found to exist above? If so, how?

### ***Unjust Enrichment***

- (12) Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

*Limitation Period Issue*

- (13) Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

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

Court File No. CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST  
ENERGY GROUP INC., *et al.*

*Applicants*

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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**Counsel for Haidar Omarali in his  
capacity as Representative Plaintiff  
*Omarali v. Just Energy***

Court File No.: CV-21-00658423-00CL

**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 14487893 CANADA INC., 11368, LLC, 12175592 CANADA INC., DRAG MARKETING LLC, JUST SOLAR HOLDINGS CORP., JUST ENERGY CONNECTICUT CORP., AND JUST ENERGY (FINANCE) HUNGARY ZRT. (each, an "**Applicant**", and collectively, the "**Applicants**")

Applicants

**AFFIDAVIT OF JAMIE SHILTON  
(Affirmed August 18, 2023)**

I, Jamie Shilton, of the City of Toronto, in the Province of Ontario, AFFIRM and say:

1. I am a lawyer with Koskie Minsky LLP, Class Counsel in the class proceeding styled *Omarali v Just Energy* bearing Court File No. CV-15-527493-00CP (the "**Omarali Action**") and, as such, I have knowledge of the matters hereinafter deposed. I have also been provided information by David Rosenfeld, the lawyer with primary carriage of the Omarali Action, and James Harnum, a lawyer with Koskie Minsky LLP involved in this proceeding, which I believe to be true.

**A. Nature of the Omarali Action**

2. The Omarali Action was commenced by Statement of Claim against Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario LP (collectively, "**Just Energy**") on May 4, 2015. The Statement of Claim was amended on November 13, 2015. A copy of the Amended Statement of Claim is attached as **Exhibit "A"**.

3. As set out in the Amended Statement of Claim, the Omarali Action concerns Just Energy's misclassification of just over 7,700 employees as "independent contractors", and its failure to comply with the minimum protections of the *Employment Standards Act, 2000* ("ESA") – including minimum wage, overtime pay, vacation pay, public holiday and premium pay.

**B. Summary of the basis of the Class Members' claims**

4. This section provides a summary description of the evidence submitted by the Representative Plaintiff in support of the proofs of claim filed in this proceeding on behalf of all Class Members (defined below) in the Omarali Action.

5. In support of the proofs of claim, Class Counsel provided: (i) the Amended Statement of Claim; (ii) the Representative Plaintiff's motion record in support of his summary judgment motion hearing in June 2019 ("**Summary Judgment Motion**"); (iii) the transcript brief filed in support of the Summary Judgment Motion; and (iv) the Representative Plaintiff's moving factum for the Summary Judgment Motion. Copies of the supporting documents have been provided to Just Energy and the Monitor, and I reviewed those documents prior to affirming this affidavit.

6. The Representative Plaintiff's moving factum on the Summary Judgment Motion (a copy which is attached as **Exhibit "B"**) summarizes the extensive evidence submitted by the Plaintiff in support of the proofs of claim relating to the historical business practices of Just Energy, including the following:

- (a) Just Energy does not produce or distribute gas and electricity – rather it buys and resells it to consumers and profits on the difference;<sup>1</sup>

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<sup>1</sup> Representative Plaintiff's moving factum at para. 7.



- (b) To get customers to sign these contracts, Just Energy sends an army of marketers door-to-door seeking to get customers to sign Just Energy contracts – called "Sales Agents";<sup>2</sup>
- (c) To organize this army of marketers, Just Energy set up a hierarchical sales division:
  - (i) Just Energy owns or leases regional offices;
  - (ii) The regional offices have Just Energy signs on the front, Just Energy signs inside, and maintain only Just Energy promotional materials;
  - (iii) These offices are partly staffed by Just Energy "employees" (as deemed by Just Energy) and run by "independent contractors" called "National" or "Regional Distributors";
  - (iv) Regional Distributors operate the Just Energy offices and manage the "independent contractors" at that office on behalf of Just Energy (including "Crew Coordinators" and Sales Agents);
  - (v) Crew Coordinators help supervise Sales Agents and take direction from Regional Distributors; and
  - (vi) All Sales Agents must operate out of a Just Energy office;<sup>3</sup>
- (d) Just Energy imposes a commission-based compensation structure for this sales channel:
  - (i) Sales Agents only get paid fixed commission for contracts they originate;
  - (ii) Crew Coordinators get paid on commission on contracts they originate and receive commissions on contracts originated by Sales Agents they supervise; and
  - (iii) National/Regional Distributors receive commissions on contracts originated by all Sales Agents and Crew Coordinators out of their offices;<sup>4</sup>
- (e) Just Energy centrally recruit[s] Sales Agents using employees (as deemed by Just Energy) whose job it is to recruit Sales Agents on a daily basis. Those responding [to the recruiters] speak to Just Energy and are directed to a particular Just Energy office. Then, Just Energy recruiters at each office (employees as deemed by Just Energy) conduct "interviews" and sign the Independent Contractor Agreements ("**ICA**") with the Sales Agents;<sup>5</sup>

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<sup>2</sup> Representative Plaintiff's moving factum at para. 8.

<sup>3</sup> Representative Plaintiff's moving factum at paras. 10-11.

<sup>4</sup> Representative Plaintiff's moving factum at para. 12.

<sup>5</sup> Representative Plaintiff's moving factum at para. 13.

- (f) The ICA provides:
- (i) Sales Agents were to "market" and "solicit" contracts for the benefit of Just Energy LP;<sup>6</sup>
  - (ii) Sales Agents had to agree to abide by the terms and conditions delivered by Just Energy;<sup>7</sup>
  - (iii) Sales Agents were forbidden from working with any other company that competes with Just Energy during the course of the contract and for three years following termination;<sup>8</sup>
  - (iv) Sales Agents were compensated by way of a commission schedule<sup>9</sup> that Just Energy can unilaterally change in their sole discretion without advanced notice;<sup>10</sup>
  - (v) Just Energy unilaterally "claw backs" Sales Agents' commission when a consumer cancels or Just Energy deems the contract to be not "Effective";<sup>11</sup>
  - (vi) Just Energy had an unfettered and unilateral right to amend the contract at any time by posting the amended contract at the office where the Sales Agent's commissions are received.<sup>12</sup>
- (g) Sales Agents take part in an orientation process [that is] standard and dictated by Just Energy:
- (i) After signing the ICA, Regional Distributors or recruiters administer Just Energy's training through its 5-module training program;
  - (ii) Sales Agents are also provided with an Ontario Energy Board ("**OEB**") training module and have to pass an OEB examination;
  - (iii) Then Sales Agents are provided with their badge and sent into the field for more direct training and to market for Just Energy.<sup>13</sup>
- (h) Just Energy's centralized training directs Sales Agents on how to do their job for Just Energy including: when and how long to market; how to dress; how to approach customers; how to explain Just Energy products; how to handle questions; and how to explain and sign a contract;<sup>14</sup>

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<sup>6</sup> Representative Plaintiff's moving factum at para. 18.

<sup>7</sup> Representative Plaintiff's moving factum at para. 18.

<sup>8</sup> Representative Plaintiff's moving factum at para. 18.

<sup>9</sup> Representative Plaintiff's moving factum at para. 18.

<sup>10</sup> Representative Plaintiff's moving factum at para. 25.

<sup>11</sup> Representative Plaintiff's moving factum at para. 27.

<sup>12</sup> Representative Plaintiff's moving factum at para. 18.

<sup>13</sup> Representative Plaintiff's moving factum at para. 14.

<sup>14</sup> Representative Plaintiff's moving factum at para. 16.

- (i) Just Energy provides direction on how Sales Agents perform their work:
  - (i) daily morning meetings are held where best practices are explained;
  - (ii) daily role playing i[s] conducted before heading to the field;
  - (iii) a "Sales Binder" provides direction to [Sales Agents] on how to perform their work, including sales scripts and objection handling scripts;
  - (iv) job shadowing is conducted in the field; and
  - (v) supervision and direction is provided by Crew Coordinators in the field;<sup>15</sup>
- (j) Just Energy also directs Sales Agents on when and where they should market:
  - (i) marketing locations are determined by the Regional Distributors and Crew Coordinators during daily morning meetings;
  - (ii) Sales Agents are then driven to the field in vans by Crew Coordinators;
  - (iii) iPads are used to monitor and track Sales Agents in real time and then direct resources accordingly;
  - (iv) Crew Coordinators or Sales Agents are threatened with termination if they don't market in the approved areas;<sup>16</sup>
- (k) Just Energy has an extensive system to monitor and track Sales Agents' performance and discipline non-compliance including: a dedicated department that monitors Sales Agents' compliance with their work requirements; and a "Compliance Matrix" directing the discipline to be imposed for various conduct, including suspensions, fines and termination.<sup>17</sup>
- (l) Sales Agents "have no contemporaneous or ongoing relationship with customers, the relationship is exclusive to Just Energy":
  - (i) all energy contracts are made between Just Energy and the consumer;
  - (ii) Just Energy performs finalization and confirmation of all contracts;
  - (iii) Just Energy has sole discretion on whether to accept or reject a potential contract;
  - (iv) Just Energy handles customer complaints;

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<sup>15</sup> Representative Plaintiff's moving factum at para. 19.

<sup>16</sup> Representative Plaintiff's moving factum at para. 20.

<sup>17</sup> Representative Plaintiff's moving factum at para. 21.

- (v) Just Energy addresses renewals of consumer contracts; and
- (vi) when a Sales Agent leaves Just Energy they get no residual commission from that consumer contract.<sup>18</sup>

**i. The Omarali Action is Certified**

7. On July 27, 2016, Justice Belobaba certified the Omarali Action as a class proceeding with 13 common issues. A copy of the certification decision and certification order ("**Certification Order**") are attached as **Exhibit "C"** and **Exhibit "D"** respectively.<sup>19</sup>

8. Mr. Omarali was appointed as the "Representative Plaintiff" and Koskie Minsky was appointed as "Class Counsel" for the following class of people certified in the Certification Order: "[a]ny person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement" (the "**Class**" or "**Class Members**").

9. In accordance with the Certification Order, Just Energy provided a list of all known Class Members and their contact information on February 28, 2017 ("**Class List**"). Just Energy identified 7,914 Class Members in the Class List.

10. The opt out deadline was June 20, 2017. A total of 191 Class Members opted out. As a result, the Class consists of 7,723 members.

**ii. Just Energy Reclassifies Sales Agents as Employees**

11. Through discovery it was confirmed that on November 28, 2016 Just Energy formally adjusted its own classification of its then current Sales Agents from "independent contractors" to employees. They called it the "Nov 28, 2016 Ontario Employee conversion". In oral discoveries it

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<sup>18</sup> Representative Plaintiff's moving factum at para. 23 and footnote 43.

<sup>19</sup> Just Energy's motion for leave to appeal the certification decision was dismissed by the Divisional Court on November 17, 2016.

was confirmed that the same formal adjustment of Just Energy's classification of Sales Agents from "independent contractors" to employees occurred in the United States. Through discovery it was confirmed that the new title for Sales Agents after the classification adjustment was "Energy Advisor". It was also confirmed that the Sales Agents whose classification was adjusted were to be paid "hourly wages with overtime..." The discovery evidence for the forgoing includes:

- (a) Role Description: Sales, Exhibit "12" of the Affidavit of Michelle Alexander sworn, September 5, 2018 ("**Alexander Affidavit**"), Plaintiff's Summary Judgment Motion Record ("**Plaintiff's MR**"), p. 724, a copy of which is attached as **Exhibit "E"**; and
- (b) Email exchange between Rosalba Gullo, Richard Teixeira and Ryan Parnell, Exhibit "13" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 728, a copy of which is attached as **Exhibit "F"**;
- (c) Transcripts of the examination for discovery of Ravi Maharaj on behalf of Just Energy Group Inc., January 25, 2018, Q. 1134-1138, 1190-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922-923, 927-928, a copy of which is attached as **Exhibit "G"**.

### iii. Discoveries and Summary Judgment

12. After certification the parties proceeded to exchange productions in summer 2017 and conducted examinations for discovery in late January 2018.

13. Thereafter the Representative Plaintiff moved for summary judgment on the 13 common issues certified in the Certification Order. The Representative Plaintiff served motion records including 7 volumes of evidence from 7 affiants. Just Energy responded by submitting evidence from 4 affiants. Cross-examinations of 8 affiants were conducted. Facta were exchanged. Copies of the Representative Plaintiff's motion record, the Transcript Brief and the Representative Plaintiff's factum were attached to the Representative Plaintiff's proofs of claim submitted on behalf of all 7,723 Class Members in this proceeding.

14. On June 21, 2019, Justice Belobaba directed that all 13 common issues shall proceed to trial and reserved the costs of the summary judgment motion to the trial judge. A copy of the summary judgment decision is attached as **Exhibit "H"**.

**iv. The Omarali Action was Set for Trial**

15. On November 20, 2019, Justice Chalmers scheduled the Omarali Action for a 20-day trial starting on November 15, 2021. A copy of the endorsement of Justice Chalmers is attached at **Exhibit "I"**.

**C. Impact of the CCAA Proceedings**

16. On March 9, 2021, the Applicants (including Just Energy) filed for protection from their creditors, and obtained an order from this Court (the "**Initial Order**") commencing these proceedings (the "**CCAA Proceedings**"). A copy of the Initial Order is attached at **Exhibit "J"**.

17. On September 8, 2021, Just Energy served its motion record in support of its motion seeking approval of a claims process. On September 10, 2021 Class Counsel wrote to counsel for Just Energy seeking confirmation that the claims process order sought by Just Energy would allow for the Representative Plaintiff to submit a single proof of claim on behalf of all Class Members instead of being required to file separate proofs of claim for each Class Member. A copy of the September 10, 2021 correspondence is attached as **Exhibit "K"**.

18. On September 15, 2021, this Court granted an order approving a claims process.

19. On September 21, 2021, Class Counsel wrote to Just Energy's insolvency counsel and the Monitor's counsel to address the impact of the CCAA Proceedings, as the trial scheduled for

November 2021 could not move ahead due to the stay of proceeding. A copy of the September 21, 2021 letter (without attachment) is attached at **Exhibit "L"**.

20. Class counsel stressed in its September 21, 2021 letter that class members have valid claims for unpaid wages against Just Energy's directors under the ESA, the *Business Corporation Act (Ontario)* ("**OBCA**") or the *Canada Business Corporation Act* ("**CBCA**") and that those claims would be asserted in the CCAA Proceedings as part of the claims process.

21. On October 29, 2021, Class Counsel submitted proof of claim forms against Just Energy and their directors on behalf of all Class Members.

22. On February 2, 2022, Just Energy, in consultation with the Monitor, disallowed all the Class Members' claims. On February 24, 2022, Class Counsel filed a Notice of Dispute on behalf of all Class Members in the Omarali Action.

**D. Just Energy Cannot Satisfy Debts Owed to the Class Members**

23. There were two grounds on which Just Energy justified its filing for creditor protection:

- (a) because its total liabilities are greater than its total assets, referred to as "balance sheet insolvency"; and
- (b) because it could not meet demand for payments as and when they fall due, referred to as "cash flow insolvency".

24. In its Pre-Filing Report dated March 9, 2021, the Monitor explained that Just Energy "faces a material and immediate risk to its ability to continue as a going concern, which is a direct consequence of the unprecedented and catastrophic effects of an extreme weather event that

crippled the Texas Energy system in February of [2021]." This included a payment owed to ERCOT [the **Electronic Reliability Council for Texas**] for an estimated \$250 million. The Monitor estimated Just Energy would "be in a negative liquidity position on March 9, 2021". For that reason, among others, the Monitor explained Just Energy was "urgently seeking the Court-ordered relief described [in the Pre-Filing Report] to avoid the near-certain demise of its operations." A copy of the Pre-Filing Report (attached as Appendix B of the Monitor's First Report) is attached as **Exhibit "M"**.

25. In the affidavit of Michael Carter, sworn March 9, 2021 (the "**First Carter Affidavit**"), submitted by Just Energy in support of the Initial Order, Just Energy explained that,

- (a) it is facing "severe short-term liquidity challenges due to the recent unprecedented and catastrophic winter storm in Texas";
- (b) it "may have incurred losses and additional costs currently totalling over \$315 million over a seven-day period as a result of the actions of PUCT [the "**Texas Public Utility Commission**"] and ERCOT and the winter storm";
- (c) on March 9 and 10, 2021, Just Energy had to pay several ERCOT invoices for \$96.24 million and \$18.86 million, which it "does not have enough liquidity to pay... without access to the DIP [ "**Debtor in Possession**" ] facility";
- (d) it is facing additional liquidity pressures because of "demands from certain of its bonding companies for more than \$30 million in additional collateral" including "\$20 million of additional collateral [that] has already been provided" with the balance "expected to be provided by March 17, 2021";



- (e) it has "significant liabilities coming due that it cannot pay" on March 22, 2021 ("approximately \$270 million owing to counterparties under the ISO Services Agreements") and on March 25, 2021 ("over \$75 million owing to Commodity Suppliers") and is "therefore insolvent"; and
- (f) the aggregate book value of its assets was approximately \$1.069 billion, and the aggregate book value of its liabilities was approximately \$1.28 billion as of December 20, 2020.

A copy of the First Carter Affidavit, without exhibits, is attached as **Exhibit "N"**.

26. In its Second Report dated May 21, 2021, the Monitor explained that Just Energy "received and paid invoices from ERCOT totalling more than US\$366 million relating to the weather event, of which approximately US\$48 million in resettlement invoices were received and paid after the date of the First Report." The Monitor also detailed a series of disputes with commodity suppliers relating to, among other things, amounts owed to Just Energy and the relative priority of security interests. Finally, the Monitor confirmed Just Energy had fully drawn down on the DIP Facility (which had totally US\$125 million). A copy of the Second Report, without appendixes, is attached as **Exhibit "O"**.

27. In its Second Report dated May 21, 2021, and its Third Report dated September 8, 2021, the Monitor also detailed a series of contract disclaimers by the Just Energy entities, which were stated to be done to have "benefited the Just Energy Entities and enhanced the prospect of a viable restructuring." A copy of the Third Report, without appendixes, is attached as **Exhibit "P"**.

28. In its Fourth Report dated November 5, 2021, the Monitor explained, among other things, that the Just Energy entities extended the DIP Facility maturity date to September 30, 2022. The DIP Facility amendment, among other things, also prohibited "the Just Energy Entities from... settling any Claims in an amount greater than \$15 million... without the prior consent of the DIP Lenders." A copy of the Fourth Report, without appendixes, is attached as **Exhibit "Q"**.

29. In its Fifth Report dated February 4, 2022, the Monitor provided an update on the Claims Procedure. The Monitor reported that, as of January 31, 2022, Just Energy received \$6.096 billion of unsecured claims (excluding estimated duplicated or erroneous claims). A copy of the Fifth Report, without appendixes, is attached as **Exhibit "R"**.

30. In its Seventh Report dated March 22, 2022, the Monitor provided a further update on the Claims Procedure. As of the date of the Tenth Report, the Monitor noted that the "Claims Pool" excluding "Duplicative Claims or Claim Value Reductions" totalled \$6.269 billion. A copy of the Seventh Report, without appendixes, is attached as **Exhibit "S"**.

31. On May 12, 2022, Just Energy sought, among other things, to call, hold and conduct a meeting of Just Energy's secured and unsecured creditors to vote on resolutions to approve a Plan of Compromise and Arrangement (the "**Plan**"). The supporting affidavit of Michael Carter, sworn May 12, 2022 (the "**Second Carter Affidavit**"), described the treatment of "General Unsecured Creditors", which included Class Members. General Unsecured Creditors would receive a *pro rata* share of the "General Unsecured Creditor Cash Pool", but only after "Convenience Creditors" were paid from it. A copy of the Second Carter Affidavit, without exhibits, is attached as **Exhibit "T"**.

32. In its Tenth Report dated May 19, 2022, the Monitor provided a further update on the Claims Procedure. As of the date of the Tenth Report, the Monitor noted that the "Claims Pool"

for "Unsecured Claims" excluding "Duplicative Claims or Claim Value Reductions" totalled \$5.395 billion. A copy of the Tenth Report, without appendixes, is attached as **Exhibit "U"**.

33. In its Eleventh Report dated August 13, 2022, the Monitor reported that the DIP Lenders (as Plan Sponsor) withdrew support for the Plan. The Monitor reported that,

The Just Energy Entities, in consultation with the Monitor, have engaged in extensive discussions with the Sponsor/DIP Lenders, Supporting Secured CF Lenders and Shell (each as defined in the SISP Support Agreement, as defined below), to discuss the terms upon which such parties would be willing to support the pursuit of a going concern solution for the Just Energy Entities. These discussions have culminated in the SISP, SISP Support Agreement and Stalking Horse Transaction Agreement, each as defined below.

A copy of the Eleventh Report, without appendixes, is attached as **Exhibit "V"**.

34. On August 18, 2022, the Court approved the Sale and Investment Solicitation Process ("**SISP**"). A handwritten copy of the endorsement, and the unofficial transcribed copy provided on the Monitor's case website, is attached as **Exhibit "W"**. With respect to recovery for unsecured creditors, including Class Members, the Court stated:

Currently, the only transaction before the Court is the Stalking Horse Transaction which would not result in any recoveries to general unsecured creditors...

I further accept the submissions of the Monitor that a valuation can be considered, if and when, a transaction is likely to provide recovery for unsecured creditors. Otherwise it is a costly distraction.

35. On October 17, 2022, Just Energy sought, among other things, an order approving a sale transaction resulting from the SISP (the "**Reverse Vesting Order**"). The supporting affidavit of Michael Carter, sworn October 17, 2022 (the "**Third Carter Affidavit**") reiterated the "acute and unforeseen liquidity challenge caused by the unprecedented winter storm in February 2021 in Texas and Texas regulatory response to same" and explained that "no recoveries will be available

for General Unsecured Creditors." A copy of the Third Carter Affidavit, without exhibits, is attached as **Exhibit "X"**.

36. In its Twelfth Report dated October 27, 2022, the Monitor reviewed the sale transaction and concluded that "[t]he Transaction does not provide for any recoveries for General Unsecured Creditors." A copy of the Twelfth Report, without appendixes, is attached as **Exhibit "Y"**.

**E. Just Energy and its Director and Officers' Insurance Coverage for Unpaid Wages**

37. On November 3, 2022, the Court approved the sale transaction and granted the Reverse Vesting Order. A copy of the Reverse Vesting Order is attached at **Exhibit "Z"**. The Reverse Vesting Order permits Class Members to pursue their claims against Just Energy, their current and former directors and officers, solely to the extent of their insurance policies. It also requires Just Energy "to provide information or evidence reasonably necessary for the determination of such claim":

**26. THIS COURT ORDERS** that...neither Just Energy, Just Energy Corp. nor Just Energy Ontario L.P. (collectively, the "Specified JE Entities"), nor any of their current or former officers and/or directors, shall be released from any claim or potential claim, whether at law or in equity, known or unknown, existing up to the Effective Time, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in the action commenced in the Ontario Superior Court of Justice on May 4, 2015 titled Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P., Court File No. CV-15-52749300 CP, against the Specified JE Entities or any of their current or former officers and/or directors, including, without limitation, the claims filed by Haidar Omarali, as representative plaintiff, in the Claims Process (as defined in the Claims Procedure Order) conducted by the Just Energy Entities in these CCAA proceedings, being (a) a Proof of Claim (as defined in the Claims Procedure Order) for CAD\$108,854,794.52 against the Specified JE Entities; and (b) a D&O Proof of Claim for CAD\$108,854,794.52 against the Directors (each as defined in the Claims Procedure Order) of Just Energy and Just Energy Corp. listed in schedules A and B to such D&O Proof of Claim (collectively, such claims, the "Class Action Claim"), solely to the extent it is necessary with respect to maintaining any claims as against the insurance policies of the Specified JE Entities that may be available to pay insured claims in respect of the Specified JE Entities or their current or

former directors and officers (such policies set forth in Schedule “D” hereto, the “Insurance Policies”) and, solely for the purpose of recovery against the Insurance Policies, such Class Action Claim shall be deemed not to be transferred to Residual Co. 1 or Residual Co. 2.

**27. THIS COURT ORDERS** that, from and after the Effective Time, any Person having a Class Action Claim (a “**Class Action Claimant**”) shall only be entitled to recover from proceeds under the Insurance Policies, to the extent available in respect of any such Class Action Claim, and the recovery of such Class Action Claimants shall be solely limited to such proceeds, without any additional rights of enforcement or recovery as against the Just Energy Entities (including, for certainty, the Acquired Entities) or the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities (or any of them) (in such capacities, collectively, the “**Protected JE Parties**”). The Specified JE Entities will not be required to incur any costs or expenses or to participate in the proceeding with respect to the Class Action Claim, except to the extent reasonably necessary to provide information or evidence reasonably necessary for the determination of such claim solely to seek recovery from proceeds under the Insurance Policies.

**28. THIS COURT ORDERS** that all Class Action Claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the Insurance Policies payable on behalf of the Specified JE Entities or their directors and officers in respect of any such Class Action Claim, and such Class Action Claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the Protected JE Parties in respect of any Class Action Claim, other than enforcing their rights to be paid from the proceeds of the applicable Insurance Policies available to the Specified JE Entities.

**29. THIS COURT ORDERS** that nothing contained in this Order prejudices, compromises, releases or otherwise affects (a) any right, defence or obligation of any insurer in respect of an Insurance Policy; or (b) any Class Action Claimant from recovering against the Specified JE Entities’ current and former directors and officers for any liabilities or claims attributable to any such director or officer’s fraud, wilful misconduct, criminal act or criminal omission, as determined by the final, non-appealable judgment of a court of competent jurisdiction; provided that, there shall be no claim over against any other Protected JE Party. Notwithstanding any other provision of this Order, nothing in this Order shall restrict, release or in any way compromise any Class Action Claim or recovery thereunder against any Person other than the Protected JE Parties.

**30. THIS COURT ORDERS** that any proceedings with respect to the Class Action Claim, including with respect to any recovery sought by the Class Action Claimants as against the Insurance Policies, may continue in these CCAA

proceedings following the closing of the Transactions (notwithstanding the fact that the Acquired Entities will be released from the purview of these CCAA proceedings at that point in time pursuant to paragraph 5(f) hereof).

**31. THIS COURT ORDERS** that any approval required, including pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (“CPA”), to give effect to the inclusion of provisions 26 to 30 hereto in this Order is hereby granted, and any notice that may be required pursuant to the CPA is dispensed with.

38. Just Energy had a series of insurance policies providing coverage for the policy periods April 1, 2020 to April 1, 2021 (the "**Pre-Filing Policies**") and March 9, 2021 to March 9, 2022 (the "**Post-Filing Policies**") as follows:

**Pre-Filing Policies – Policy Term April 1 2020 to April 1, 2021:**

- (a) XL Special Insurance Company – Policy No. B0146ERINT2000452
- (b) Hiscox – Policy No. B0146ERINT2000453
- (c) Sompo – Policy No. B0146ERINT2000454
- (d) AWAC & Starr – Policy No. B0146ERINT2000455
- (e) Tokio Marine – Policy No. 34-MGU-20-A49117/20G19646000
- (f) (Lloyd's Syndicate) – Policy No. B0146ERINT2000768
- (g) CNA Canada Continental Casualty Company – Policy No. MEX 665412022
- (h) Beazley – Policy No. B0146ERINT2000774
- (i) XL Catlin – Policy No. B0146ERINT2000775

**Post-Filing Policies – Policy Term March 9, 2021 to March 9, 2022:**

- (j) XL Special Insurance Company – Policy No. ELU173707-21
- (k) Tokio Marine HCC – Policy No. 21G196460101
- (l) Hiscox - Policy No. B0146ERINT2100865

39. Copies of the Pre-Filing and Post-Filing insurance policies are attached at **Exhibit "AA"** to **"LL"**.

40. On November 1, 2021, Just Energy provided notice to the XL Special Insurance Company, Tokio Marine HCC, and Hiscox as follows:

On October 8, 2021, Just Energy received correspondence from counsel for the representative plaintiff in the Class Action stating that the Proof of Claim to be filed on behalf of the class members will include claims on behalf of the class members against Just Energy's directors on the basis that the damages claimed in the Class Action constitute unpaid wages. Should the class members proceed to file a Proof of Claim against any directors of Just Energy on or prior to the Claims Bar Date we will supplement this notice at that time.

41. Copies of the letters from Just Energy to XL Special Insurance Company, Tokio Marine HCC, and Hiscox are attached at **Exhibits "MM"** and **"NN"**.

42. On December 16, 2021, XL Specialty Insurance Company provided a preliminary coverage position under Post-Filing Policy No. ELU173707-21 to Just Energy. A copy of the covering letter with respect to that coverage position is attached at **Exhibit "PP"**.

43. On December 23, 2021, Just Energy provided an update to its November 1, 2021 letters to its insurers, including the claims made by Class Members against Just Energy's directors and officers for unpaid wages. Copies of the letters are attached at **Exhibits "QQ"** and **"RR"**.

44. On June 15, 2022, XL Special Insurance Company provided its preliminary coverage position under Pre-Filing Policy No. B0146ERINT2000452. A copy of the covering letter with respect to that coverage position is attached at **Exhibit "SS"**. XL Special Insurance Company requested additional information to assess the asserted claims:

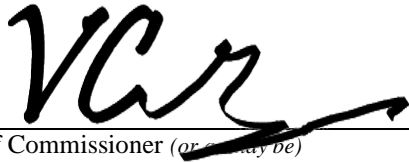
At this time, AXA XL does not have sufficient information to confirm which matters in the D&O Claims Notice the Insured believes may “may reasonably give rise to a Claim.” For each matter the Insured believes may reasonably give rise to a Claim, please provide us with: (1) the Proof of Claim; (2) the reasons why the Insured reasonably anticipates the Proof of Claim may give rise to a covered Claim under the AXA XL Policy, including “full particulars of the dates, acts, and persons involved.” AXA XL will review this information and provide you with its updated coverage position in due course.

45. To date, no insurance claims have been paid in connection with Class Members' claims against Just Energy and its current and former directors and officers for unpaid wages.

**AFFIRMED BEFORE ME:**  in person  by video conference

by Jamie Shilton at the City of Toronto, in the Province of Ontario, before me on August 18, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)



\_\_\_\_\_  
Signature of Commissioner (*or as may be*)



\_\_\_\_\_  
Signature of Deponent



**THIS IS EXHIBIT A REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Court FileNo.CV-15-52749300 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**KIA KORDESTANI Haidar Omarali**

Plaintiff

-and-

**JUST ENERGY GROUP INC., JUST ENERGY CORP.  
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

THE ORDER OF  
 L'ORDONNANCE DU  
 DATED / FAIT LE

AMENDED THIS  
 MODIFIÉ CE

RULES LA RÉGLE 26.02 (1)  
 POURSUANT TO  
 CONFORMEMENT A

NOV 17 / 15  
 Justice Belobaba

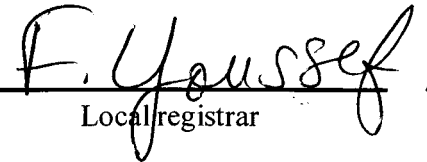
JUDGE  
 COUR SUPÉRIEURE DE JUSTICE

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$25,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 4, 2015

Issued by

  
Local registrar

Address of court office 393 University Avenue,  
10<sup>th</sup> Floor,  
Toronto, ON

TO: JUST ENERGY CORP.  
2630-100 King St. West  
Toronto, ON M5X 1E1

AND TO: JUST ENERGY GROUP INC.  
2630-100 King St. West  
Toronto, ON M5X 1E1

AND TO: JUST ENERGY ONTARIO L.P.  
2630-100 King St. West  
Toronto, ON M5X 1E1

**CLAIM**

1. The Plaintiff claims:
  - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class (defined below);
  - (b) \$100 million in ~~general~~ damages for the Class, or such other sum as this Honourable Court deems just;
  - (c) a declaration that the provisions of the *Employment Standards Act, 2000* (“*ESA*”), as applicable, are express or implied terms of the contracts of employment of the Class Members (defined below);
  - (d) a declaration that the Class Members are employees of the Defendants who are operating as a common employer, for the purposes of the *ESA*;
  - (e) a declaration that the Defendants violated the terms of the *ESA*, breached the Class Members’ contracts of employment and duty of good faith owed to the Class Members, and/or breached the duty of care owed to the Class Members by:
    - (i) failing to ensure that Class Members were properly classified as employees;
    - (ii) failing to advise class members of their entitlement to compensation equal to or above the minimum wage as stipulated by the *ESA* (the “Minimum Wage”);
    - (iii) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
    - (iv) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the *ESA* (the “Overtime Threshold”);

- (v) requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold (“Overtime Pay”);
  - (vi) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
  - (vii) failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the *ESA* (“Vacation Pay”);
  - (viii) failing to compensate Class Members for Vacation Pay;
  - (ix) failing to advise Class Members of their entitlement to public holiday pay and premium pay in accordance with the *ESA* (the “Public Holiday and Premium Pay”); and
  - (x) failing to compensate Class Members for Public Holiday and Premium Pay.
- (f) an interlocutory and a final mandatory order for specific performance directing that the Defendants comply with the *ESA* and/or the contracts of employment with the Class Members, in particular, to:
- (i) ensure that Class Members are properly classified as employees;
  - (ii) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay;
  - (iii) ensure that the Class Members’ hours of work are monitored and accurately recorded; and

- (iv) ensure that Class Members are appropriately compensated at a rate equal to or above the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.
- (g) a declaration that the provisions of any applicable independent contractor agreement which may purport to exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay are void and unenforceable;
- (h) a declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (i) a declaration that the Defendants are liable for any adverse tax liability sustained by the Class Members resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (j) a declaration that the Defendants are liable, and must reimburse Class Members, for any *Canada Pensions Plan* (“CPP”) or *Employment Insurance Act* (“EI”) contributions which may have been paid or are owed resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (k) a declaration that the Defendants were unjustly enriched, to the deprivation of the Class Members, in that they received the value of compensating class members at rates below the Minimum Wage, without paying Overtime Pay, without paying Vacation Pay and without paying Public Holiday and Premium Pay, and an order requiring the Defendants to disgorge to the Class Members all amounts withheld by them in respect of such unpaid hours and entitlements;
- (l) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;

- (m) an order directing the Defendant to preserve and disclose to the Plaintiff all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;
- (n) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
- (o) punitive, aggravated and exemplary damages in the amount of \$10 million, or such other amount as this Honourable Court deems just;
- (p) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (q) the costs of administering the plan of distribution of the recovery in this action; and
- (r) such further and other relief as this Honourable Court may deem just.

## THE PARTIES

~~2. The Plaintiff, Kia Kordestani (“Kordestani”), resides in Ontario. He was a “Sales Agent” retained by one or more of the Defendants (“Just Energy”) from June 2012 until June 2013. Kordestani worked as a Sales Agent at the Ottawa sales office of Just Energy.~~

2. The Plaintiff, Haidar Omarali (“Omarali”), resides in Ontario. He was a “Sales Agent” retained by Just Energy starting in August 2012 until September 2013. Omarali worked as a Sales Agent at the Dundas sales office of Just Energy.

3. Just Energy is one of the largest independent energy retailers in North America, and serves 21 markets across North America (6 Canadian provinces and 15 U.S. states) and the U.K. market, providing energy products to approximately 2 million homes and businesses. It annually generates revenues of hundreds of millions of dollars.

4. Within Ontario, Just Energy has 12 regional offices and approximately 130 Sales Agents at any given time. Sales Agents are employed by Just Energy to market Just Energy’s fixed price energy contracts and other energy products related to the supply of natural gas and

electricity in Ontario. Sales Agents market Just Energy contracts at designated times and at designated locations to residential and commercial customers by traveling door-to-door to the residences of energy consumers and potential customers.

5. The Defendants carry on business in common in respect of the hiring, training, supervision and control of the Class Members. The Defendants are headquartered at the same address and represent to the public and to Sales Agents as a single entity.

6. The marketing activities of Just Energy, and the activities of the Sales Agents, are provincially regulated and therefore governed by the *ESA*.

### **THE CLASS**

7. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of the following class of persons:

“Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.”

(the “Class” or “Class Members”)

### **EMPLOYMENT RELATIONSHIP**

8. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Just Energy creates an employment relationship with Just Energy. In particular:

- (a) Just Energy trains all the Class Members in their marketing duties;
- (b) Class Members are told how they can market Just Energy contracts, in the form of sales scripts, booklets, manuals and sales presentations;
- (c) Class Members were told where and when they can market Just Energy contracts;
- (d) Class Members are taken to specific locations and areas in which they could market door-to-door contracts and require permission to change any location;



- (e) Class Members all must wear Just Energy clothing and represent as working for Just Energy;
- (f) Class Members must use the tools of Just Energy in the form of brochures, contracts, informational sheets and mandatory Just Energy branded clothing;
- (g) All prices and Sales Agent commissions are fixed by Just Energy;
- (h) Class Members do not complete contract renewals or the finalization and confirmation of any contract with potential customers, which is all done directly by Just Energy through a Just Energy call centre after the Class Members' home marketing;
- (i) Just Energy maintains sole discretion whether to accept or reject any potential contract generated by the Class Members;
- (j) All potential contracts generated by Class Members must be reported to Just Energy on a daily basis;
- (k) Only Just Energy handles customer complaints about the Class Members;
- (l) Just Energy assumes responsibility for alleged misconduct of the Class Members while marketing of Just Energy contracts to the public;
- (m) As a result of the work demands and explicit working restrictions placed on Class Members by Just Energy, Class Members cannot work for any other business while also working for Just Energy;
- (n) Class Members cannot sub-contract or independently employ other individuals to market Just Energy contracts on the Class Members' behalf;
- (o) The contracts generated by the Class Members form a substantial amount of Just Energy's revenue; and
- (p) Class Members are paid directly by Just Energy.

**ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT**

9. The provisions of the *ESA* are implied terms, in fact or by law, as minimum terms of the contracts of employment of the Class Members.

10. Therefore, the contracts of employment of the Class Members expressly or impliedly provide that Class Members shall be compensated

- (a) at a rate equal to, or greater than, the Minimum Wage;
- (b) with Overtime Pay for hours worked in excess of the Overtime Threshold;
- (c) with Vacation Pay on all amounts paid; and
- (d) with Public Holiday and Premium Pay.

**CONTRACTUAL DUTIES OWED TO CLASS MEMBERS**

11. As low skilled employees under the direct control and supervision of the Defendants, the Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at, or above, the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. Just Energy is/was in a position of power and direct control over the Class Members and the Class members were in a vulnerable position *vis-a-vis* the Defendants.

12. The Defendants owe contractual duties to the Class Members, including its contractual duty of good faith, all of which required, and continue to require, the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay and Vacation Pay;

- (c) ensure that the Class Members' hours of work are monitored and accurately recorded; and
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay , for Vacation Pay and for Public Holiday and Premium Pay.

### **DUTY OF CARE**

13. Just Energy owed the Class Members a duty of care based upon the special relationship that developed between them as a consequence of Just Energy retaining the Class Members to perform marketing services on Just Energy's behalf.

14. Just Energy owed the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts.

15. The Defendants' duty of care required the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) ensure that the Class Members hours of work are monitored and accurately recorded; and
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay , for Vacation Pay and for Public Holiday and Premium Pay.

**RESPONSIBILITIES OF SALES AGENT AND TREATMENT BY JUST ENERGY**

16. ~~From June 2012 until June 2013, Kordestani worked for Just Energy as a Sales Agent out of a sales office located in Ottawa, Ontario. From August 2012 until September 2013,~~ Omarali worked for Just Energy as a Sales Agent out of the Dundas sales office.

17. ~~Kordestani's~~ Omarali's duties and responsibilities as a Sales Agent included:

- (a) attending the Just Energy regional sales office between 9:00 a.m. and 9:30 a.m. to start work;
- (b) collecting blank contracts and promotional material at the regional sales office;
- (c) from approximately 9:30 a.m. to 12:00 p.m. each day, attend a meeting with other Sales Agents and the Just Energy Regional Director at the regional sales office to review sales statistics, sales scripts, sales tactics, sales role playing, marketing locations and sales targets for the day;
- (d) being assigned to a crew coordinator by the Regional Director and taken by the crew coordinator, by van, to a location with other Sales Agents to begin door-to-door marketing of Just Energy contracts;
- (e) between approximately 1:00 p.m. to 9:00 p.m., market Just Energy contracts door-to-door in a designated area using materials provided by Just Energy;
- (f) report all potential contracts to the regional sales office and Regional Director;
- (g) obey the direction of the Regional Director if directed to change marketing locations and report to the Regional Director on present locations; and
- (h) conclude the day at 9:00 p.m. by reporting to the assigned crew coordinator, who picked him up from his assigned location and dropped him back off at the regional sales office.

18. The Defendants required ~~Kordestani~~ Omarali to work between 60-72 hours per week without receiving the Minimum Wage, contrary to his contractual terms.

19. ~~Kordestani~~ Omarali relied on the Defendants in good faith and was unaware while working for the Defendants or afterwards that he was an employee and entitled to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. At the time, ~~Kordestani~~ Omarali relied on the Defendants to properly classify him regarding his status as an employee and his entitlement to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday and Premium Pay and was misled by the Defendants that he was not an employee of the Defendants.

20. ~~Kordestani~~ Omarali did not become aware that he was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay because the Defendants had continually misrepresented to him his actual eligibility and entitlement to such pay.

21. ~~Kordestani's~~ Omarali's duties are consistent with the duties of all Sales Agents in the Class and the operations of Just Energy and the controls imposed by Just Energy on the Sales Agents.

22. The Defendants required explicitly, and/or implicitly, that ~~Kordestani~~ Omarali and the other Class Members work exclusively for Just Energy.

23. At all material times, ~~Kordestani,~~ Omarali and the other Class Members were explicitly directed how, where and when they could perform marketing duties for Just Energy.

24. The Defendants required that all Sales Agents attend at the regional sales office to begin work between 9:00 a.m. and 9:30 a.m. and perform marketing between 1:00 p.m. to 9:00 p.m., 5-6 days per week.

25. The Defendants required that Sales Agents travel to other cities during "Push Weeks" to market Just Energy contracts in new locations and that Sales Agents cover all costs related to travel, food and accommodation during those "Push Weeks".

26. As a Sales Agent, ~~Kordestani,~~ Omarali and all other Class Members worked between 60-72 hours per week including weekends. The Defendants were aware of, and encouraged ~~Kordestani,~~ Omarali and all other Class Members, to work those hours in excess of the

Overtime Threshold, which were necessary in order to comply with the enforced hours and structure of a Sales Agent workday. The Defendants required and/or permitted ~~Kordestani~~, Omarali and the other Class Members, to work hours in excess of the Overtime Threshold and failed or refused to provide them with Overtime Pay.

27. At all material times, ~~Kordestani~~, Omarali and the other Class Members were explicitly and incorrectly informed they were not employees of Just Energy.

28. The Defendants required ~~Kordestani~~, Omarali and the other Class Members to work hours in excess of the Overtime Threshold without Overtime Pay, contrary to their contractual terms.

29. The Defendants failed to compensate ~~Kordestani~~, Omarali and the other Class Members for Vacation Pay, contrary to their contractual terms.

30. The Defendants failed to compensate ~~Kordestani~~, Omarali and the other Class Members for Public Holiday and Premium Pay, contrary to their contractual terms.

#### **SYSTEMIC CLASSIFICATION AS “INDEPENDENT CONTRACTORS”**

31. The Defendants systemically classified all Sales Agents as “independent contractors” and required and/or permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay, under the misrepresentation from Just Energy that Sales Agents were independent contractors.

32. The Defendants were aware that the Class Members relied on the Defendants to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.

33. The Defendants exerted pervasive pressure on Class Members to work hours in excess of the Overtime Threshold. If Class Members did not work the overtime as required to

complete their employment responsibilities, such Class Members were terminated because the Defendants would “cancel” their “independent contractor” agreement.

#### **SYSTEMIC BREACH OF THE *ESA***

34. The Defendants have systemically breached the provisions of the *ESA* with respect to all Class Members by :

- (a) failing to ensure that Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
- (d) requiring and/or permitting the Class Members to work hours for which it failed to compensate at a rate equal to, or above, the Minimum Wage;
- (e) requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold but failing to ensure that Class Members were compensated for Overtime Pay;
- (f) failing to compensate Class Members for Vacation Pay; and
- (g) failing to compensate Class Member for Public Holiday and Premium Pay.

35. Just Energy’s misclassification of Sales Agents as purported independent contractors and denial of Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay to Class Members is in violation of the *ESA* and is unlawful.

36. To the extent that any contracts purport to designate the Class Members as independent contractors and exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay or any other minimum requirement of the *ESA*, such contracts and or provisions are void and unenforceable.

**SYSTEMIC BREACH OF CONTRACT AND BREACH OF DUTY OF GOOD FAITH**

37. The Defendant systemically breached the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

- (a) improperly and arbitrarily misclassifying the Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

38. There was no legitimate basis for the Defendants' arbitrary designation of the Class Members as independent contractors and ineligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, which was contrary to the employees' express or implied terms of contract with the Defendants. Such classification and exclusion is contrary to the terms of the *ESA*, which are incorporated as express or implied terms of the contracts.

39. Such breaches are ongoing and continuous in respect of the Class Members since at least 2012.

**SYSTEMIC NEGLIGENCE**

40. Just Energy owed ~~Kordestani~~, Omarali and the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts. Just Energy systemically breached that duty by:



- (a) improperly and arbitrarily misclassifying the Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

41. As a result of Just Energy's negligence in mischaracterizing the relationship between Just Energy and the Class Members, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors, all of which were reasonably foreseeable to Just Energy.

#### **UNJUST ENRICHMENT**

42. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members.

43. The Class Members have suffered a corresponding deprivation, in the form of the Minimum Wages, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay that is owed to them.

44. There is no juristic reason for the Defendants' unjust enrichment and the Class Members' corresponding deprivation. The systemic exclusion of the Class Members from their contractual and statutory entitlements is unlawful.

45. The Defendants' unjust enrichment has been continuous and ongoing since at least 2013.

### **DAMAGES**

46. As a result of the Defendants' breaches of the *ESA*, breaches of contract, negligence, and/or unjust enrichment, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors.

47. Furthermore, the Defendants' arbitrary and incorrect misclassification of the Class Members as independent contractors and exclusion from Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, coupled with the Defendants' requirement that the Class Members work hours in excess the Overtime Threshold, was high handed and callous. The Defendants were in a position of power over low skilled and vulnerable employees and owed them a duty of good faith, which the Defendants flagrantly breached to increase its profits at the expense of the Class Members. Such conduct warrants an award of punitive damages.

48. Moreover, the Defendants' arbitrary and incorrect misclassification of the Class Members as independent contractors caused the Class Members to erroneously pay the employer component of CPP and/or EI contributions on their income. Such employer contributions ought to have been made by Just Energy on their behalves, instead the Class Members paid those contributions directly. The Defendants' misclassification thereby caused compensable damages to the Class Members for which sufficient reimbursement should be awarded.

49. The Plaintiff pleads and relies on upon the following statutes and regulations:

- (a) *Employment Standards Act, 2000*, S.O. 2000, c. 41;
- (b) *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

- (c) Canada Pension Plan, R.S.C. 1985, c. C-8; and
  - (d) Employment Insurance Act, S.C. 1996, c. 23;
50. The Plaintiff proposes that this action be tried in Toronto.

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**PLAINTIFF**

and

**JUST ENERGY GROUP INC., ET AL**  
**DEFENDANTS**

Court File No: CV-15-52749300CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

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**THIS IS EXHIBIT B REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a horizontal line extending from the end of the signature to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Court File No.: CV-15-527493-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**Haidar Omarali**

Plaintiff

- and -

**JUST ENERGY GROUP INC., JUST ENERGY CORP.  
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**FACTUM OF THE MOVING PLAINTIFF  
(Summary Judgment Motion Returnable June 11-13, 2019)**

May 10, 2019

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Court File No.: CV-15-527493-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**Haidar Omarali**

Plaintiff

- and -

**JUST ENERGY GROUP INC., JUST ENERGY CORP.  
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**FACTUM OF THE MOVING PLAINTIFF  
(Summary Judgment Motion Returnable June 11-13, 2019)**

**PART I - OVERVIEW**

1. The proposition that 8,000 low-skilled workers without any previous marketing experience, who can only market one set of products, and who are directed on how, when and where to market such products, are operating 8,000 individual "independent" businesses and excluded from the minimum protections of the *Employment Standards Act, 2000* ("ESA"), is not fathomable.

2. This is what the Just Energy<sup>1</sup> has been asserting to the army of 8,000 vulnerable, low-skilled workers, of limited means, it sends out to market its products. As a result Just Energy has avoided the basic and decent responsibility of paying its workers a minimum wage and other mandated minimum requirements.

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<sup>1</sup> Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. together referred to herein as Just Energy.

3. The unilateral classification as "independent contractors" by Just Energy is contrary to the true nature of the relationship. The fundamental question to be determined in this case is: whose business is it? What is clear from the true nature of the relationship is that the business does not belong individually to 8,000 class members, it belongs to Just Energy.

4. In particular, Just Energy's sales structure and organization is entirely inconsistent with the existence of 8,000 independent "sales" businesses as Just Energy:

- (a) designed and implements a consistent hierarchical structure of regional offices;
- (b) centrally recruits class members for all regional offices;
- (c) provides uniform training and direction on how to market for Just Energy;
- (d) provides direction on when and where to market;
- (e) transports class members to their marketing locations;
- (f) provides direction on what to wear while marketing;
- (g) imposes a comprehensive compliance and discipline system on the class;
- (h) mandates that class members can only market Just Energy products; and
- (i) exclusively provides all the tools for class members' marketing.

5. As class members have no ability to change the price of any of Just Energy's products and are only paid a fixed commission, the class has no chance to profit other than being paid for their work. Finally, as Just Energy's business is the sale of the products marketed by the class, the class' work is not a secondary or complimentary component of Just Energy's business – it is Just Energy's business.

6. In these circumstances, the 8,000 members of the class cannot be said to be operating independent "sales" businesses. They are truly employees of Just Energy entitled to the minimum wage, overtime and other minimum requirements of the *ESA*, and otherwise. The fundamental

question of employment status should be determined in favour of the class and summary judgment should be granted on all of the certified common issues following that determination.

## PART II - STATEMENT OF FACTS

### A. Just Energy's business

7. Just Energy is one of the largest independent energy retailers in North America, operating in Canada, the United States and also the United Kingdom.<sup>2</sup> Just Energy is a retailer of gas and electricity contracts. Just Energy does not produce or distribute gas and electricity - rather it buys and resells it to consumers and profits on the difference.<sup>3</sup> Therefore Just Energy's business is in the gas and electricity contracts it enters into with consumers.<sup>4</sup>

### B. Just Energy's door-to-door sales channel

8. To get customers to sign these contracts, Just Energy sends an army of marketers door-to-door seeking to get customers to sign Just Energy contracts – called "Sales Agents". Between 2012 and 2016, Just Energy sent over 8,000 Sales Agents to knock on doors in Ontario.<sup>5</sup>

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<sup>2</sup> Affidavit of Richard Teixeira, sworn January 10, 2019 ["**Teixeira Affidavit**"], para. 5, Responding Motion Record ("**Responding MR**"), Tab 1A, p. 45. Just Energy Group Inc. is a publicly traded corporation with its headquarters in Ontario. Just Energy Corp. and Just Energy Ontario LP are entities wholly owned by Just Energy Group Inc. The Defendants carry on business in common, are headquarter in the same place and are represented to the public and the class as one entity: Just Energy. Throughout this factum the Defendants shall be referred to collectively as "Just Energy". At no time have the Defendants taken the position that any of the named Defendants are not liable or are improperly named.

<sup>3</sup> Excerpts from Transcript of Ravi Maharaj dated January 24, 2019 ("**JE Discovery Transcripts, January 24, 2018**"), Q. 1069-1072, Exhibit "15" to the Affidavit of Michelle Alexander sworn September 5, 2018 ("**Alexander Affidavit**"), Plaintiff's Motion Record ("**Plaintiff's MR**"), Vol. 2, Tab H15 at p. 907-908.

<sup>4</sup> JE Discovery Transcripts, January 24, 2018, Q. 1058-1064 Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15 at p. 905-906.

<sup>5</sup> Alexander Affidavit, para. 5, Plaintiff's MR, Vol. 1, Tab H, p. 91; Email exchange between David Rosenfeld and Paul Martin dated August 2019, Exhibit "20" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, Tab H 20, p. 1539.

9. This door-to-door marketing generates substantial revenue for Just Energy: In 2009, door-to-door marketing made up approximately 95% of Just Energy's sales revenue, in 2016 it was 21%.<sup>6</sup>

**i. Hierarchical structure**

10. To organize this army of marketers, Just Energy set up a hierarchical sales division.

11. Just Energy owns or leases regional offices.<sup>7</sup> The regional offices have Just Energy signs on the front, Just Energy signs inside, and maintain only Just Energy promotional materials.<sup>8</sup> These offices are partly staffed by Just Energy "employees" (as deemed by Just Energy) and run by "independent contractors" called "National" or "Regional Distributors."<sup>9</sup> Regional Distributors operate the Just Energy offices and manage the "independent contractors" at that office on behalf of Just Energy<sup>10</sup> including "Crew Coordinators" and Sales Agents. Crew Coordinators help supervise Sales Agents and take direction from Regional Distributors.<sup>11</sup> All

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<sup>6</sup> Exhibit "A" to the Teixeira Affidavit, sworn January 10, 2019, para. 8, Responding MR, Tab 1A, p. 46.

<sup>7</sup> JE Discovery Transcripts, January 24, 2018, Q. 269, 270, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, pp. 797.

<sup>8</sup> JE Discovery Transcripts, January 24, 2018, Q. 275-284, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 798, 789; Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381.

<sup>9</sup> JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15 at pp. 800, 805; Cross-Examination Transcript of Brian Marsellus ("**Marsellus Cross**"), dated March 6, 2019, Q. 14-16, 27-39 Responding MR, Tab 1, pp. 5, 7-9.

<sup>10</sup> Marsellus Cross, Q.27-39, Transcript Brief, p. 7-9; Teixeira Cross, Q. 221-223, Transcript Brief, Tab 2, pp 96-97; Affidavit of Katlyn Schwantz sworn August 29, 2018 ("**Schwantz Affidavit**") at paras.9-11, 15, Plaintiff's MR, Vol. 1, Tab B, pp. 14-15; Affidavit of Jennifer Borg sworn August 29, 2018 ("**Borg Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab C, pp. 56-58; Affidavit of Jamie Acton sworn August 29, 2018 ("**Acton Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Affidavit of Roland Lavigne sworn August 30, 2018 ("**Lavigne Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab E, pp. 70-71; Affidavit of Behram Nemati sworn August 30, 2018 ("**Nemati Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab F, pp. 77-78; Cross-Examination Transcript of Katlyn Schwantz Cross, March 21, 2019 ("**Schwantz Cross**"), Q. 97, Transcript Brief, pp. 178-179; Cross-Examination Transcript of Jennifer Borg, dated March 28, 2019 ("**Borg Cross**"), Q. 510-511, Transcript Brief, p. 713.

<sup>11</sup> Marsellus Cross, Q. 27-39, Responding MR, Tab 1, p. 7-9; JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, 359, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 800, 805, 817.

Sales Agents must operate out of a Just Energy office.<sup>12</sup>

12. Just Energy imposes a commission-based compensation structure for this sales channel:

- (a) Sales Agents only get paid fixed commission for contracts they originate;
- (b) Crew Coordinators get paid on commission on contracts they originate and receive commissions on contracts originated by Sales Agents they supervise; and
- (c) National/Regional Distributors receive commissions on contracts originated by all Sales Agents and Crew Coordinators out of their offices.<sup>13</sup>

**ii. Uniform recruitment, training and orientation dictated by Just Energy**

13. All Sales Agent are centrally recruited by Just Energy.<sup>14</sup> Just Energy has employees (as deemed by Just Energy) whose job it is to recruit Sales Agents on a daily basis.<sup>15</sup> Those responding speak to Just Energy and are directed to a particular Just Energy office.<sup>16</sup> Just Energy recruiters at each office (employees as deemed by Just Energy) conduct "interviews" and sign the Independent Contractor Agreements ("ICA") with the Sales Agents.<sup>17</sup>

14. The orientation process is standard and dictated by Just Energy.<sup>18</sup> After the ICA, Regional Distributors or recruiters administer Just Energy's training through its 5-module training program. Sales Agents are also provided with an Ontario Energy Board ("OEB")

<sup>12</sup> JE Discovery Transcripts, January 24, 2018, Q. 257, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 794.

<sup>13</sup> Teixeira Cross, Q. 66-70, Transcript Brief, p. 55-56; Marsellus Cross, Q. 52-53, Transcript Brief, p. 11.

<sup>14</sup> JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763.

<sup>15</sup> JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763; Teixeira Affidavit, paras. 29-31, Responding MR, Tab 1, pp. 9-10.

<sup>16</sup> Teixeira Affidavit, paras. 32-33, Responding MR, Tab 1, p. 10.

<sup>17</sup> JE Discovery Transcripts, January 24, 2018, Q. 387, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 822; Teixeira Affidavit, paras. 33-34, 38-39, Responding MR, Tab 1, pp. 10-12.

<sup>18</sup> Just Energy Ontario LP Door to Door Recruiting and Orientation Process, Exhibit "35" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, Tab H35, p. 2237; Ontario OEB Module/Orientation Process, Exhibit "79" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H79, pp. 2813-2815; Guidebook – Independent Contractor Orientation – Ontario – Part I, Exhibit "81" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H81, pp. 2820-2934; Guidebook – Independent Contractor Orientation – Ontario – Part 3, Exhibit "82" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H82, pp. 2936-2967.

training module and have to pass an OEB examination. Then Sales Agents are provided with their badge and sent into the field for more direct training and to market for Just Energy.<sup>19</sup>

15. The orientation and training process takes 1-2 days and is undertaken at every Just Energy office for every Sales Agent.<sup>20</sup>

16. This centralized training directs Sales Agents on how to do their job for Just Energy including: when and how long to market; how to dress; how to approach customers; how to explain Just Energy products; how to handle questions; and how to explain and sign a contract.<sup>21</sup>

### **iii. The "Independent Contractor" Agreement**

17. All Sales Agents are required to sign the ICA.<sup>22</sup> Sales Agents are not permitted to make changes to the ICA or negotiate terms, and signing the agreement is mandatory to start the job.<sup>23</sup>

18. The ICA provided as follows:

- (a) Sales Agents were to "market" and "solicit" contracts for the benefit of Just Energy LP;<sup>24</sup>
- (b) Sales Agents had to agree to abide by the terms and conditions delivered

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<sup>19</sup> Teixeira Affidavit, paras. 41-60, Responding MR, Tab 1, pp. 12-17; Schwantz Affidavit at paras. 4-8, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab E, p. 69; Nemati Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab F, pp. 76.

<sup>20</sup> JE Discovery Transcripts, January 24, 2018, Q. 1047, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 904; Schwantz Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab D, p. 62.

<sup>21</sup> Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2540, 2542; Training Module 5, Exhibit "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H69 at p. 2575, 2577, 2578.

<sup>22</sup> JE Discovery Transcripts, January 24, 2018, Q. 79-82, 387, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 136, at pp. 765-766, 822; Teixeira Affidavit, paras. 29-31, Responding MR, Tab 1, pp. 9-10.

<sup>23</sup> JE Discovery Transcripts, January 24, 2018, Q. 745, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, p. 870.

<sup>24</sup> Independent Contractor Agreement ("IC Agreement"), (Preamble and para. 1), – Answers arising from discovery related documents ("Responses to Undertakings"), Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

by Just Energy;<sup>25</sup>

- (c) Sales Agents were compensated by way of a commission schedule;<sup>26</sup>
- (d) Just Energy rather than Sales Agents had an unfettered and unilateral right to amend the contract at any time by posting the amended contract at the office where the Sales Agent's commissions are received;<sup>27</sup>
- (e) Sales Agents were forbidden from working with any other company that competes with Just Energy during the course of the contract and for three weeks following termination;<sup>28</sup>
- (f) Just Energy could compel a contractor to cease marketing and undergo retraining if concerns are raised regarding their performance.<sup>29</sup>

**iv. Direction on when, where and how to work**

19. Thereafter Just Energy's direction on how Sales Agents perform their work continues:

- (a) daily morning meetings are held where best practices are explained;<sup>30</sup>
- (b) daily role playing is conducted before heading to the field;<sup>31</sup>
- (c) a "Sales Binder" provides direction on how to perform their work, including sales scripts and objection handling scripts;<sup>32</sup>

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<sup>25</sup> IC Agreement (Preamble), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

<sup>26</sup> IC Agreement (Independent Contractor Commission Schedule for Effective Contracts) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

<sup>27</sup> IC Agreement (at para. 1) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

<sup>28</sup> IC Agreement (at paras. 7-8) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, pp. 1315-1316.

<sup>29</sup> IC Agreement (at para. 9) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p.

<sup>30</sup> Teixeira Affidavit, paras. 62-63, Responding MR Tab 1, p. 18; Affidavit of Brian Marsellus sworn January 11, 2019 ("**Marsellus Affidavit**") at paras. 45-47, Responding MR Tab 2, p. 854; Schwantz Affidavit at para. 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, pp. 78.

<sup>31</sup> Teixeira Affidavit, paras. 62-63, Responding MR, Tab 1, p. 18; Marsellus Affidavit, paras. 45-47, Responding MR, Tab 2, p. 854; Schwantz Affidavit at para. 14 and 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 77; Nemati Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 84.

<sup>32</sup> Including Marketing in Hot and Cold Weather Conditions, customer interaction scripts, objection handling scripts how to interact with disabled customers, and acceptable marketing practices: JE Discovery Transcripts, January 24, 2018, Q. 536-539, 542, 552-553, 560-563, 591-593, 607-609, 620, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at p. 841-842, 844, 846-847, 851-852, 854-855, 857; Marketing in Hot and Cold Weather Conditions, Exhibit "41" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 41, p. 2319; The



- (d) job shadowing is conducted in the field;<sup>33</sup> and
- (e) supervision and direction is provided by Crew Coordinators in the field.<sup>34</sup>

20. Just Energy also directs Sales Agents on when and where they should market. Marketing locations are determined by the Regional Distributors and Crew Coordinators during daily morning meetings.<sup>35</sup> Sales Agents are then driven to the field in vans by Crew Coordinators.<sup>36</sup> iPads are used to monitor and track Sales Agents in real time and then direct resources accordingly.<sup>37</sup> Crew Coordinators or Sales Agents are threatened with termination if they don't

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Customer Interaction, Exhibit "42" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab 42, p. 2324; Objection Handling Scripts – Ontario (JECF), Exhibit "44" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 47, p. 2364; What you need while marketing, Exhibit "46" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 46, p. 2362; Interacting with Customers with Disabilities, Exhibit "47" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 47, p. 2364; Acceptable Marketing Practice: Code of Compliance - Ontario, Exhibit "48" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 48, p. 2366.

<sup>33</sup> Teixeira Affidavit, para. 54, Responding MR, Tab 1, p. 16.

<sup>34</sup> Schwantz Affidavit at para. 12 and 15(j), Plaintiff's MR, Vol. 1, Tab B, p. 13, 15; Borg Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab C, p. 56, 57; Acton Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab D, p. 63, 64; Lavigne Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab E, p. 77, 78; Nemati Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab F, p. 84, 85.

<sup>35</sup> Locations are determined by the use of maps, do not solicit lists, availability of installation technicians, discussions with other crew coordinators. Marsellus Affidavit, paras. 61-65, Responding MR, Tab 2, p. 858-859; Schwantz Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 78; Cross-Examination Transcript of Bahram Nemati dated March 22, 2019 ("**Nemati Cross**"), Q. 15, 203, Transcript Brief, pp. 353, 402; Schwantz Cross, Q. 271-272, 669, Transcript Brief, pp. 221-222, 334.

<sup>36</sup> Teixeira Affidavit, para. 88, Responding MR Tab 1, p. 24; Affidavit of Daniel Gadoua sworn January 11, 2019 ("**Gadoua Affidavit**") at para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28; Schwantz Cross, Q. 128, Transcript Brief, Tab 4, pp. 185-186; Cross-Examination Transcript of Roland Lavigne, dated March 22, 2019 ("**Lavigne Cross**"), Q. 194-199, Transcript Brief, Tab 7, pp. 459-460; Cross-Examination Transcript of Jamie Acton, dated March 28, 2019 ("**Acton Cross**"), Q. 163-165, Transcript Brief, Tab 7, pp. 553-554; Borg Cross, Q. 368-374, 459-462, Transcript Brief, Tab 8, pp. 682-683, 700-701.

<sup>37</sup> Schwantz Cross, Q. 544-55, Transcript Brief, Tab 4, p. 299; Just Energy Mobile Presentation, Exhibit "118" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H118, pp. 4654-4700; Live Energy Application – iPad, Exhibit "130" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H130, pp. 4821-4839; Just Energy Mobile Management Portal – Presentation, Exhibit "122" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H122, pp. 4708-4735.

market in the approved areas.<sup>38</sup>

21. In addition, Just Energy has an extensive system to monitor and track Sales Agents' performance and discipline non-compliance including: a dedicated department that monitors Sales Agents' compliance with their work requirements;<sup>39</sup> and a "Compliance Matrix" directing the discipline to be imposed for various conduct, including suspensions, fines and termination.<sup>40</sup>

**v. Exclusivity to Just Energy**

22. Just Energy mandates in its ICAs that Sales Agents cannot market for other businesses "that compete directly with the business carried on by Just Energy corp. or its affiliates during the term of the Agreement and for a period of three (3) weeks following the termination of this Agreement".<sup>41</sup> In addition, given the extensive control exerted over Sales Agents, and the time commitment of six days per week, it is not possible for Sales Agents to work anywhere else.<sup>42</sup>

23. Sales Agents have no contemporaneous or ongoing relationship with customers, the relationship is exclusive to Just Energy.<sup>43</sup> The business at issue is Just Energy's business.

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<sup>38</sup> Schwantz Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at paras. 18, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab F, p. 79.

<sup>39</sup> Just Energy Ontario L.P.'s Response to Ontario Energy Board Staff Supplementary Information Request ("JE Response to OEB Supp. Request"), Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, pp. 3321-3322.

<sup>40</sup> Compliance Matrix, Exhibit "101" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 101, pp. 3488-3491.

<sup>41</sup> IC Agreement (para. 6) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1315.

<sup>42</sup> Schwantz Affidavit at para. 17 and 21, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab D, pp. 65; Lavigne Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 36, Transcript Brief, Tab 4, p. 164.

<sup>43</sup> All energy contracts are made between Just Energy and the consumer, Just Energy performs finalization and confirmation of all contracts, Just Energy has sole discretion on whether to accept or reject a potential contract; Just Energy handles customer complaints, Just Energy addresses renewals of consumer contracts and when a Sales Agent

**vi. Just Energy provides the tools of work**

24. Just Energy creates and provides all the "tools", without which the Sales Agents cannot complete their work for Just Energy, including contracts, marketing materials, identification badges, and clothing.<sup>44</sup>

**vii. Compensation of Sales Agents**

25. Just Energy only provides Sales Agents with a fixed commission for contracts finalized between Just Energy and customers. The commission schedule applicable to all Sales Agents is dictated by Just Energy and all payments are from Just Energy directly.<sup>45</sup> Just Energy can unilaterally change the commission schedule for all Sales Agents in their sole discretion without advance notice.<sup>46</sup> Similarly, no Sales Agent has control over the structure of commissions or how they may be charged through to consumers.<sup>47</sup>

26. There are three (3) basic commissions paid to Sales Agents set out in all ICAs: "Initial" commission;<sup>48</sup> "Reconciliation" commission;<sup>49</sup> and a "Residual" commission.<sup>50</sup> When a Sales

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leaves Just Energy they get no residual commission from that consumer contract. IC Agreement (Preamble, para. 1) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

<sup>44</sup> Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381; Teixeira Affidavit, para 104, Responding MR Tab 1, p. 29; Schwantz Affidavit at para. 15(d), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab F, p. 78; Schwantz Cross, Q. 355-356, Transcript Brief, Tab 4, p. 246; Teixeira Affidavit, para 106, Responding MR, Tab 1, p. 29; The Customer Interaction, Exhibit "50" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 50, p. 2373.

<sup>45</sup> IC Agreement (Independent Contractor Commission Schedule for Effective Contracts) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

<sup>46</sup> IC Agreement (para. 4) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1314.

<sup>47</sup> IC Agreement (para. 4) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1314; IC Agreement (Independent Contractor Commission Schedule for Effective Contracts) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

<sup>48</sup> This is the commission paid for contracts that are not canceled or deemed not to be "Effective" by Just Energy. IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 1) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

Agent stops working for Just Energy they do not receive Residual payments in respect of any contracts which were a product of their marketing.<sup>51</sup>

27. Just Energy also unilaterally "claw backs" Sales Agents' commissions when a consumer cancels or Just Energy deems the contract to be not "Effective". Claw backs can result in a Sales Agent owing money to Just Energy if commissions are less than the claw back for that period.<sup>52</sup>

28. Just Energy does not pay Sales Agents compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay.<sup>53</sup> Similarly, Just Energy does not pay any Canada Pension Plan ("CPP") or Employment Insurance ("EI") contributions on behalf of the Sales Agents they employ.<sup>54</sup>

**C. Change in characterization of Sales Agents – Just Energy now treats them as employees**

29. In 2016, following certification, Just Energy opted to officially "convert" Sales Agents to employees by providing certain Sales Agents with offers of employment.<sup>55</sup>

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<sup>49</sup> A Reconciliation commission is a further commission that can be paid after a consumer has had a flow of gas or electricity for at least 60 days, this amount is always smaller than the Initial commission. IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 2) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, pp. 1319-1320.

<sup>50</sup> This requires a Sales Agent to be an active Sales Agents for at least a year, has submitted at least 65 residential customer contracts in the 3 month period preceding the Residual payment, has submitted Effective Contracts 30 days prior to the Residual payment and has not provided services to a competitor of Just Energy. IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 5) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1320.

<sup>51</sup> IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 5) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1320.

<sup>52</sup> IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 2) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1320-1321.

<sup>53</sup> JE Discovery Transcripts, January 24, 2018, Q. 376-385, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 820-821.

<sup>54</sup> JE Discovery Transcripts, January 24, 2018, Q. 382-383, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 821.

<sup>55</sup> Excerpts from transcript of Ravi Maharaj dated January 25, 2018 ("**JE Discovery Transcripts, January 25, 2018**"), Q. 1137, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 922; Email exchange between

30. Following the 2016 conversion, Sales Agents are now called "Energy Advisors".<sup>56</sup> They are responsible for the marketing of Just Energy products – they are Sales Agents.<sup>57</sup> Importantly, unlike Sales Agents, Energy Advisors are now paid hourly wages with overtime pay.<sup>58</sup>

31. Sales Agents should properly be classified as employees, just as the courts in Ohio found that they ought to be.<sup>59</sup>

## ISSUES AND THE LAW

### D. Certified Common Issues

32. This class proceeding was certified on behalf of the following class:

Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an Independent Contractor Agreement.<sup>60</sup>

33. The Plaintiff moves for summary judgment in respect of the following twelve (12) certified common issues:

1. Are the Class Members "employees" of the Defendants pursuant to the Employment Standards Act, 2000 ("ESA")?
2. If the answer to (1) is "yes", are the Class Members in "pensionable employment" of the Defendants pursuant to the Canada Pension Plan ("CPP")?

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Rosalba Gullo, Richard Teixeira and Ryan Parnell, Exhibit "13" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 728.

<sup>56</sup> JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1191-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928.

<sup>57</sup> Role Description: Sales, Exhibit "12" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 720; JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1191-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928

<sup>58</sup> Role Description: Sales, Exhibit "12" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 724.

<sup>59</sup> *Hurt v. Commerce Energy, Inc.*, Case No. 1:12-CV-758, Doc. No. 808 (October 6, 2014), PBOA, Vol 1, Tab 1; *Hurt v. Commerce Energy, Inc.*, Case No. 1:12-CV-758, Doc. No. 853 (August 3, 2015) PBOA, Vol 1, Tab 2; *Hurt v. Commerce Energy, Inc.*, 2013 WL 4427257 (August 15, 2013) PBOA, Vol 1, Tab 3; *Hurt v. Commerce Energy, Inc.*, Case No. 1:12-CV-758 (Gwin J.) (January 29, 2018) PBOA, Vol 1, Tab 4; *Hurt v. Commerce Energy, Inc.*, 2018 WL 4204541 (September 4, 2018) PBOA, Vol 1, Tab 5.

<sup>60</sup> Exhibit "4" to the Alexander Affidavit, Plaintiff's MR, Vol. 1, Tab H4, pp. 170-176.

3. If the answer to (1) is "yes", are the Class Members in "insurable employment" of the Defendants pursuant to the Employment Insurance Act ("EI")?
4. If the answer to (1) is "yes", are the Class Members exempt from Parts VII, VIII, IX, X and XI of the ESA, or do the Class Members fall within the exception to this exemption as route salespersons?
5. If the answers to (1) and (4) are "yes", do the minimum requirements of the ESA with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?
6. If the answers to questions (1) and (4) are "yes", do the Defendants owe contractual duties and/or a duty of good faith to:
  - a. Ensure that the Class Members were compensated with the minimum wage?
  - b. Ensure that the Class Members' hours of work were monitored and accurately recorded?
  - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
  - d. Ensure that the Class Members were compensated with vacation pay?
  - e. Ensure that the Class Members were compensated with and public holiday and premium pay?
7. Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
8. If the answers to (1) and (4) are "yes", did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the ESA?
9. If the answers to (2) and/or (3) are "yes", did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?
10. Alternatively, did the Defendant owe a duty of care to the Class Members to:
  - a. ensure that Class Members are properly classified as employees;
  - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
  - c. ensure that the Class Members hours of work are monitored and accurately recorded; and
  - d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.
11. Did the Defendants breach any of the duties of care found to exist above? If so, how?
12. Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay

owed to them, in accordance with the ESA, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?<sup>61</sup>

### **E. Summary Judgment Should be Granted on All Common Issues**

34. The Supreme Court of Canada in *Hryniak v. Mauldin* provided guidance with respect to summary judgment motions as follows:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.<sup>62</sup>

35. Summary judgment would be appropriate in this case as:

- (a) the factual evidence is before this court in a paper-based record which will allow for necessary findings of fact in a summary fashion;<sup>63</sup>
- (b) the credibility of witnesses to ascertain what happened in an event is not an issue;
- (c) the focus of the common issues is on the impact that Just Energy's systemic organizational structure and approach to all class members has on the characterization of their status, which structure and approach is not factually disputed only the characterization is;
- (d) there is no expert evidence to weigh or assess; and
- (e) a trial wouldn't provide anything more than what this well-briefed motion can.

36. In his recent decision in *Brazeau v. Canada (AG)*, Justice Perell considered a voluminous and complex evidentiary record comprised of approximately 31,000 pages, not counting compendiums, when he addressed whether the charter rights of some 6,000 inmates were violated by the practice of solitary confinement.<sup>64</sup> He found in that case, while there were numerous difficult issues to be determined, there was no paucity of evidence to resolve them on

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<sup>61</sup> Certification Order, Exhibit "4" to the Alexander Affidavit, Plaintiff's MR, Vol. 1, Tab H4, pp. 170-176.

<sup>62</sup> *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 49, 50, PBOA, Vol 1, Tab 6.

<sup>63</sup> *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at para. 270, PBOA, Vol 1, Tab 7.

<sup>64</sup> *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at para. 159, PBOA, Vol 1, Tab 7.

such a fulsome record.<sup>65</sup> As was the case in *Brazeau*, this Court may order summary judgment on the common issues leaving individual issues determinations for individual issues trials.<sup>66</sup>

## F. Sales Agents are employees of Just Energy – Common issue 1

### i. Employee status: An objective test

37. In *671122 Ontario Ltd. v. Sagaz Industries Canada*<sup>67</sup> ("**Sagaz**"), the Supreme Court of Canada provided guidance on determining the true nature of an employment relationship. The central question is whether the person is performing services "as a person in business on his own account" - in other words "whose business is it"?<sup>68</sup>

38. Following *Sagaz*, the Court of Appeal for Ontario in *Belton v. Liberty Insurance Co. of Canada*,<sup>69</sup> and then again in *Braiden v. La-Z-Boy Canada Limited*<sup>70</sup> adopted and applied a specific five (5) part test for determining the status of *commissioned salespeople*:

1. Whether or not the agent was limited exclusively to the service of the principal;
2. Whether or not the agent is subject to the control of the principal, not only as to the product sold, but also as to when, where and how it is sold;
3. Whether or not the agent has an investment or interest in what are characterized as the "tools" relating to his service;
4. Whether or not the agent has undertaken any risk in the business sense or, alternatively, has any expectation of profit associated with the delivery of his service as distinct from a fixed commission;

<sup>65</sup> *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at paras. 277, 280, PBOA, Vol 1, Tab 7.

<sup>66</sup> *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at para. 282, PBOA, Vol 1, Tab 7.

<sup>67</sup> *671122 Ontario Ltd. v. Sagaz Industries Canada*, 2001 SCC 59, PBOA, Vol 1, Tab 8 ["**Sagaz**"].

<sup>68</sup> *Sagaz* at para. 47, PBOA, Vol 1, Tab 8. The Court set out a list of non-exhaustive factors that should be considered which include: (1) the level of control the employer has over the worker's activities; (2) whether the worker provides his or her own equipment; (3) whether the worker hires his or her own helpers; (4) the degree of financial risk taken by the worker; (5) what the degree of responsibility for investment and management held by the worker; and (6) what the worker's opportunity for profit in the performance of his risks is. ("**Sagaz Factors**")

<sup>69</sup> *Belton v. Liberty Insurance Co. of Canada*, [2004] O.J. No. 3358 (C.A.) at para. 11, PBOA, Vol 1, Tab 9 ["**Belton**"].

<sup>70</sup> *Braiden v. La-Z-Boy Canada Limited*, 2008 ONCA 464 at paras. 33-35, PBOA, Vol 1, Tab 10 ["**Braiden**"].



5. Whether or not the activity of the agent is part of the business organization of the principal for which he works. *In other words, whose business is it?*<sup>71</sup>

**("Belton/Braiden Factors")**

39. Courts in Ontario have repeatedly applied the *Belton/Braiden* factors to find commissioned salespersons who were subject to the control of their principal as "employees":<sup>72</sup>

40. Other relevant principles on determinations of employment status include:

- (a) an interpretation of the *ESA* that encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not;<sup>73</sup>
- (b) Any doubt arising from difficulties in the language of the *ESA* should be resolved in favour of the claimant;<sup>74</sup>
- (c) the wording of any agreement and purported intent cannot be determinative of an employment relationship;<sup>75</sup>
- (d) employees cannot "consent" to work in violation of the *ESA*;<sup>76</sup>
- (e) There is no basis pursuant to the *ESA* or the common law to workers paid only by commission are independent contractors;<sup>77</sup>

<sup>71</sup> *Belton* at para. 11, PBOA, Vol 1, Tab 9, citing the British Columbia Court of Appeal in *Doyle v. London Life Insurance Co.*, [1985] B.C.J. No. 2561 (C.A.) [*Doyle*], PBOA, Vol 1, Tab 11.

<sup>72</sup> See *Cormier v. 1772887 Ontario Limited c.o.b. as St Joseph's Communications*, 2019 ONSC 587 for the most recent adoption of the *Belton/Braiden* Factors by the Ontario Superior Court, PBOA, Vol 1, Tab 12. See also Schedule "C" – Chart of Analogous Cases: *Moseley-Williams v. Hansler Industries Ltd.*, [2008] O.J. No. 4457 (S.C.) at paras. 29-42, PBOA, Vol 1, Tab 13; *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916 at paras. 47-50, PBOA, Vol 1, Tab 14; *King v. Merrill Lynch Canada Inc.*, [2005] O.J. No. 5028 (S.C.), PBOA, Vol 1, Tab 15; *Jaremko v. A.E. LePage Real Estate Services Ltd.*, [1987] O.J. No. 506 (H.C.), PBOA, Vol 1, Tab 16, aff'd [1989] O.J. No. 996 (C.A.), PBOA, Vol 1, Tab 17; *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B. (Adj.)) at paras. 8, 28, 51, PBOA, Vol 1, Tab 18; *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19; *Big Picture Home Entertainment Ltd. v. MacDonald*, 2016 CarswellOnt 18808 (Ont. L.R.B.), PBOA, Vol 1, Tab 20, varied 2016 CarswellOnt 20591 (Ont. L.R.B.); *Baker v. 9111140 Canada Inc.*, 2017 CarswellOnt 5875 (Ont. L.R.B.); PBOA, Vol 1, Tab 21; *R. v. Pereira*, 1988 CarswellAlta 88 (Q.B.), PBOA, Vol 1, Tab 22.

<sup>73</sup> *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986 at pp. 1002-1003, PBOA, Vol 1, Tab 23.

<sup>74</sup> *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 36, PBOA, Vol 1, Tab 24.

<sup>75</sup> *Braiden* at para. 21, PBOA, Vol 1, Tab 10; *Belton* at para. 11, PBOA, Vol 1, Tab 9.

<sup>76</sup> *Wood v. CTS of Canada Co.*, 2018 ONCA 758 at para. 95, PBOA, Vol 1, Tab 25.

<sup>77</sup> Courts have repeatedly considered and determined commissioned salespeople to be employees: see *Belton* and *Braiden* as examples. In addition, the *ESA* Policy on Overtime Pay specifically provides a guide for determining overtime pay for employees paid solely by commission - Ministry of Labour, *Employment Standards Act, 2000*

- (f) 'mandatory employment requirements' can be inferred by conduct;<sup>78</sup> and
- (g) an employer choosing to manage its employees through what it classifies as "independent" contractors is still bound by those agents' actions on its behalf.<sup>79</sup>

**ii. Sales Agents are employees of Just Energy**

41. Just Energy's organizational structure, centralized recruitment, direction of Sales Agents' method, manner and location of work, the limited tools provided to Sales Agents by Just Energy, and the integral role of Sales Agents to Just Energy's business militate heavily in favour of a finding that Sales Agents are "employees" of Just Energy.

**(1) Sales Agents are subject to the control of Just Energy**

**(a) Just Energy's organizational structure is inconsistent with independence**

*(i) Organizational structure of door-to-door sales at Just Energy*

42. Despite claiming to have "independent contractors" running their own businesses while marketing Just Energy's products, Just Energy's door-to-door marketing channel through those "independent contractors" is highly structured across Ontario:

**(a) Just Energy establishes marketing offices throughout Ontario;<sup>80</sup>**

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*Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 241-242, PBOA, Vol 2, Tab 52..

<sup>78</sup> *Mazraani c. Industrielle Alliance*, 2016 TCC 65 at paras. 162, 169, 177, 239, 249, PBOA, Vol 1, Tab 26, rev'd on other grounds 2017 FCA 80; *Truong v. British Columbia*, 1999 BCCA 513 at paras. 28-29, PBOA, Vol 1, Tab 27; *MacDonald v. Richardson Greenshields of Canada Ltd.*, [1985] B.C.J. No. 2865 (S.C.), PBOA, Vol 2, Tab 28; *Sistema Toronto Academy Inc. v. Minister of National Revenue*, 2016 TCC 193 at paras. 29, 30 and 36, PBOA, Vol 2, Tab 29.

<sup>79</sup> *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B.) at paras. 8, 28, 51, PBOA, Vol 1, Tab 18; *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19. See principal/agency test in *Rockland Industries Inc. v. Amerada Minerals Corp. of Canada Ltd.*, [1980] 2 S.C.R. 2 at pp. 13-14, PBOA, Vol 2, Tab 30, and *Hav-A-Kar Leasing Ltd v. Vekselshtein*, 2012 ONCA 826 at para. 42, PBOA, Vol 2, Tab 31.

<sup>80</sup> JE Discovery Transcripts, January 24, 2018, Q. 269, 275, 278, 281, 282, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Tab H15, Vol. 2, at pp. 797, 798, 799; Marsellus Cross, Q. 15, 22-23, Transcript Brief, Tab 1, p. 5-6; Transcript of Cross-Examination of Daniel Gadoua dated March 6, 2019 ("**Gadoua Cross**"), Q. 58, Responding MR, Tab 3, p. 142.

- (b) in addition to an office administrator and recruiter who are employed by Just Energy, Just Energy offices are run by Regional Distributors;<sup>81</sup>
  - (c) Regional Distributors operate the Just Energy offices and manage the other "independent contractors" operating at the office on behalf of Just Energy;<sup>82</sup>
  - (d) Of those "independent contractors" are Crew Coordinators, who supervise Sales Agents and take direction from Regional Distributors;<sup>83</sup>
  - (e) All Sales Agents must operate out of one of the Just Energy offices;<sup>84</sup>
  - (f) All Sales Agents, Crew Coordinators, Regional Distributors and National Distributors are all "independent contractors" of Just Energy;<sup>85</sup> and
  - (g) Just Energy imposes a commission-based compensation structure for this sales channel:
    - (i) Sales Agents get paid a fixed commission for contracts they originate;
    - (ii) Crew Coordinators get paid a fixed commission for contract they originate and received commissions on contracts originated by Sales Agents they supervise; and
    - (iii) Regional Distributors receive commissions on contracts originated by all Sales Agents and Crew Coordinators out of their offices.<sup>86</sup>
- (ii) *Hierarchical structure is implemented by Just Energy*

43. This structure was designed and created by Just Energy, exists in all Just Energy offices in Ontario, and is directed to Sales Agents in the Just Energy orientation and training process.<sup>87</sup>

This structure is implemented by Just Energy by, among other ways, Just Energy deciding who

<sup>81</sup> JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Tab H15, Vol. 2, at pp. 800, 805; Marsellus Cross, Q. 14-16, 27-39 Transcript Brief, Tab 1, pp. 5, 7-9.

<sup>82</sup> Marsellus Cross, Q. 27-39, Transcript Brief, Tab 1, p. 7-9; JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 800, 805; Distributor Agreement (at 3.1), Exhibit "24" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, p. 1572.

<sup>83</sup> Marsellus Cross, Q. 27-39, Transcript Brief, Tab 1, p. 7-9; JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, 359, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Tab H15, Vol. 2, at pp. 800, 805, 817.

<sup>84</sup> JE Discovery Transcripts, January 24, 2018, Q. 257, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 794.

<sup>85</sup> JE Discovery Transcripts, January 24, 2018, Q. 305-306, 355, 356, 362, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 805, 816-818.

<sup>86</sup> Teixeira Cross, Q. 66-70, Transcript Brief, p. 55-56; Marsellus Cross, dated March 6, 2019, Q. 52-53, Transcript Brief, p. 11.

<sup>87</sup> Training Module 1 – Your Opportunity at Just Energy, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, p. 2401; Marsellus Cross, Q. 33-37; Transcript Brief, p. 11; Schwantz Affidavit at para. 8, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab E, pp. 69; Nemati Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab F, p. 76.

can become a National or Regional Distributor, deciding what Just Energy offices are opened in Ontario, and deciding which National/Regional Distributor is permitted to run which office.<sup>88</sup>

44. The compensation structure established and implemented by Just Energy reinforces and promotes this hierarchical system. Just Energy goes so far as to suggest to Sales Agents that if they work hard, some day they might be able to become Crew Coordinators or Regional Distributors with their own offices and get to receive commissions off the backs of the Sales Agents they would then be supervising.<sup>89</sup>

45. It is no coincidence that all Just Energy offices are operated in this hierarchical structure – Just Energy directed that to ensure a consistent marketing effort on its behalf across Ontario.

*(iii) Just Energy's sales offices*

46. Sales Agents must operate out of Just Energy offices owned or operated by Just Energy:

- (a) The office space is owned or leased by Just Energy – not Regional Distributors;<sup>90</sup>
- (b) The offices have Just Energy signs outside and inside marking them as Just Energy offices;<sup>91</sup>
- (c) Just Energy staffs these offices with Just Energy employees (as characterized by Just Energy) such as an "administrator" and a "recruiter" who assist the Regional Distributor in the management of the office;<sup>92</sup> and

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<sup>88</sup> Teixeira Affidavit, para. 16, Responding MR, p. 0048; JE Discovery Transcripts, January 24, 2018, Q. 269, 275, 278, 281, 282, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 797, 798, 799; Marsellus Cross, Q. 15, 22-23, Transcript Brief, Tab 1, p. 5-6; Gadoua Cross, Q. 58, Responding MR, Tab 3, p. 142.

<sup>89</sup> Teixeira Affidavit, para. 9, Responding MR, p. 0003; Marsellus Affidavit, para. 19, Responding MR, p. 0848; Training Module 1, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56 at p. 2402; Training Module 3, Exhibit "62" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 62 at p. 2545

<sup>90</sup> JE Discovery Transcripts, January 24, 2018, Q. 269, 270, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, pp. 797.

<sup>91</sup> JE Discovery Transcripts, January 24, 2018, Q. 275-284, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 798, 789.

<sup>92</sup> JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 800, 805; Marsellus Cross, Q. 14-16, 27-39 Transcript Brief, Tab 1, pp. 5, 7-9.

(d) Just Energy provides all promotional materials, promoting Just Energy, for use in the offices.<sup>93</sup>

(iv) *Regional Distributors manage offices and agents for Just Energy*

47. The Regional Distributors are the ones who manage the office and Sales Agents for Just Energy. Just Energy expressly assigns these duties to the Regional Distributor:

#### Section 3.1 Service Retainer

(1) JUST ENERGY hereby retains the Service Provider and the Service Provider hereby agrees to provide the services described below (the "Services") in the Province of Ontario, or in such province that JEC, or an Affiliate thereof, may designate from time to time, in accordance with the terms of this Services Agreement and consistent with the highest standards of integrity with respect to representations to the public on behalf of JUST ENERGY and its affiliates:

- (a) with the approval of JUST ENERGY, to advertise for and interview, recruit, educate, motivate and guide the activities of Independent Contractors;
- (b) through the Independent Contractors, to solicit Contracts using forms and solicitation material approved and supplied by JUST ENERGY or its Affiliates;
- (c) to ensure that each Independent Contractor executes an Independent Contractor Agreement;
- (d) to submit to JUST ENERGY completed contract forms for Contracts obtained by the Independent Contractors on a weekly basis in accordance with JUST ENERGY's practice as determined from time to time;
- (e) to ensure that Independent Contractors use the highest standards of integrity in soliciting Contracts;
- (f) to regularly report to JUST ENERGY any material breach by Independent Contractors with respect to the Independent Contractor obligations set out in each of their Independent Contractor Agreements;
- (g) to ensure that the Independent Contractors orally advise each customer of the material terms of the Contract prior to it being signed by the customer; and
- (h) to implement the compliance materials provided to the Service Provider by JUST ENERGY from time to time.

(2) The Service Provider agrees to read, and to ensure that all Independent Contractors read and, where required, sign, any applicable Code of Conduct.

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<sup>93</sup> Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381

- (3) The Service Provider, the Principal and JUST ENERGY agree that:
- (a) the Independent Contractors are independent contractors of JUST ENERGY or an Affiliate thereof, as the case may be, and not independent contractors of the Service Provider or the Principal;
  - ...
  - (e) the Service Provider and the Principal will comply with all directions of JUST ENERGY or its Affiliates with respect to the marketing of Contracts, including a decision by JUST ENERGY or any Affiliate thereof that the Service Provider and/or the Principal cease or limit such marketing for any specified: (i) period of time, (ii) area, (iii) number of Contracts, (iv) number of residential customer equivalents, or (v) number of Independent Contractors.
- (4) The Service Provider shall communicate, at least weekly, and immediately where a matter material to JUST ENERGY arises, with the Executive Vice President, Sales or the Senior Vice President, Regional General Manager, Canada of JUST ENERGY, or with such person designated by such persons from time to time, respecting the Service Provider's obligations pursuant to this Agreement.<sup>94</sup>

48. Just Energy contracts with Regional Distributors to act as its agent in the supervision and direction of Sales Agents. In doing so, Regional Distributors' actions bind Just Energy.<sup>95</sup>

49. Regional Distributors direct Sales Agents and Crew Coordinators on a daily basis.<sup>96</sup> To Sales Agents and Crew Coordinators in the day-to-day operations the Regional Distributor **was** Just Energy. The Regional Distributors held themselves out to Sales Agents and Crew Coordinators has having control over them, including the ability to discipline, hire and terminate

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<sup>94</sup> Distributor Services Agreement (Undertaking 10), July 5, 2018 – Responses to Undertakings, Exhibit "18" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, pp. 1261-1262.

<sup>95</sup> *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B.), at paras. 8, 28, 51, PBOA, Vol 1, Tab 18; *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19. See principal/agency test in *Rockland Industries Inc. v. Amerada Minerals Corp. of Canada Ltd.*, [1980] 2 S.C.R. 2 at para. 32, PBOA, Vol 2, Tab 30, and *Hav-A-Kar Leasing Ltd v. Vekselshtein*, 2012 ONCA 826 at para. 42, PBOA, Vol 2, Tab 31.

<sup>96</sup> 27-39, Transcript Brief, p. 7-9; Maresellus Cross, Q., Teixeira Cross, Q. 221-223, Transcript Brief, Tab 2, pp 96-97; Schwantz Affidavit at paras.9-11, 15, Plaintiff's MR, Vol. 1, Tab B, pp. 14-15; Borg Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab C, pp. 56-58; Acton Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Lavigne Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab E, pp. 70-71; Nematı Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab F, pp. 77-78; Schwantz Cross, Q. 97, Transcript Brief, pp. 178-179; Borg Cross, Q. 510-511, Transcript Brief, p. 713.

the employment of the Sales Agents and Crew Coordinators.<sup>97</sup> Sales Agents and Crew Coordinators simply understood that the Regional Distributors were acting as or on behalf of Just Energy and had the authority they exuded.<sup>98</sup>

(v) *Sales Agents and sales offices are the door-to-door sales division of Just Energy*

50. Just Energy conducted its door-to-door residential marketing of gas and electricity contracts by Sales Agents through the above-noted hierarchical structure. The Regional Distributors report to the Executive Vice President, Sales (an employee as deemed by Just Energy) who in turn reports to Senior Vice President, Regional Manager, Canada (an "employee" as deemed by Just Energy). This structure is no different than any sales division within any typical sales-dependent company. If one simply changes the Just Energy-imposed "names" of positions the organizational structure would look no different than any other company with an employee structure:

Vice President, Regional Manager, Canada >> Executive Vice President, Sales >> Regional Sales or Office Manager (Regional Distributor) >> Sales Supervisor (Crew Coordinator) >> Salesperson (Sales Agent)

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<sup>97</sup> Schwantz Cross, Q. 103, 111-113, Transcript Brief, pp. 180-183; Nemati Cross, Q. 182-183, Transcript Brief, p. 392, 393; Lavigne Cross, Q. 255-257, Transcript Brief, p. 469; Acton Cross, Q. 201-203, Transcript Brief, p. 562; Borg Cross, Q. 471-475, Transcript Brief, p. 703.

<sup>98</sup> Schwantz Cross, Q. 103, 111-113, Transcript Brief, pp. 180-183; Nemati Cross, Q. 182-183, Transcript Brief, p. 392, 393; Lavigne Cross, Q. 255-257, Transcript Brief, p. 469; Acton Cross, Q. 201-203, Transcript Brief, p. 562; Borg Cross, Q. 471-475, Transcript Brief, p. 703.

51. In fact, this is what the organizational structure looked like at Just Energy just after it stopped calling its Sales Agents "independent contractors" and started treating them as employees effective November 28, 2016:<sup>99</sup>

Vice President, Regional Manager, Canada >> Executive Vice President, Sales >> Territory Sales Manager (Regional Distributor) >> Field Sales Manager (Crew Coordinator) >> Just Energy Advisor (Sales Agent).<sup>100</sup>

52. Change the names and artificial employer-imposed characterization, and you have a basic structure of an employee sales division.

**(b) Just Energy's centralized recruitment of Sales Agents**

53. All Sales Agent are centrally recruited by Just Energy.<sup>101</sup> Just Energy has employees (as deemed by Just Energy) whose job it is to recruit Sales Agents on a daily basis.<sup>102</sup> Just Energy's own evidence is that it "... provided its recruiters with standardized recruitment materials" that "ensured that a consistent message was conveyed to recruits."<sup>103</sup> Just Energy's policy on the recruitment of "independent contractors" seeks to ensure that "all Regional offices meets all Just Energy requirements" by, among other things, requiring that all recruitment placements come from Just Energy Sales Operations.<sup>104</sup>

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<sup>99</sup> JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1a91-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928; Email exchange between Rosalba Gullo, Richard Teixeira and Ryan Parnell, Exhibit "13" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 728.

<sup>100</sup> JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1191-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928.

<sup>101</sup> JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763.

<sup>102</sup> JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763; Teixeira Affidavit, paras. 29-31, Responding MR, Tab 1, pp. 9-10.

<sup>103</sup> Teixeira Affidavit, para. 30, Responding MR, Tab 1, pp. 10.

<sup>104</sup> Independent Contractor and Employee Recruitment Policy dated November 10, 2014, Exhibit "136" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 136 at p. 4876.



54. Ads are placed by Just Energy.<sup>105</sup> Those answering the ads speak to Just Energy and are directed to a particular Just Energy sales office.<sup>106</sup> The Just Energy recruiters there (employees as deemed by Just Energy) conduct "interviews" and sign the ICAs with the Sales Agents.<sup>107</sup>

55. Just Energy did all of this to maintain control of this door-to-door sales channel.

**(c) Just Energy Directs Sales Agents on Method of Work**

**(i) Uniform training and orientation dictated by Just Energy**

56. The orientation process is standard and dictated by Just Energy.<sup>108</sup> The orientation process follows the same pattern:

- (a) "interview" of recruits at the Just Energy offices by Regional Distributors or recruiters;
- (b) Sales Agents are provided with their ICA to review and execute;
- (c) Regional Distributors or recruiters administer Just Energy's training through its five (5) module training program;
- (d) Regional Distributors or recruiters administer the OEB's training module;
- (e) Recruiters administer an OEB examination;
- (f) After passing the OEB examinations, Sales Agents are provided with their badge and sent into the field for more direct training and to market for Just Energy.<sup>109</sup>

<sup>105</sup> Teixeira Affidavit, paras. 27-28, Responding MR, Tab 1, p. 9.

<sup>106</sup> Teixeira Affidavit, paras. 32-33, Responding MR, Tab 1, p. 10.

<sup>107</sup> JE Discovery Transcripts, January 24, 2018, Q. 387, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 822; Teixeira Affidavit, paras. 33-34, 38-39, Responding MR, Tab 1, pp. 10-12.

<sup>108</sup> Just Energy Ontario LP Door to Door Recruiting and Orientation Process, Exhibit "35" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, Tab H35, p. 2237; Ontario OEB Module/Orientation Process, Exhibit "79" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H79, pp. 2813-2815; Guidebook – Independent Contractor Orientation – Ontario – Part I, Exhibit "81" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H81, pp. 2820-2934; Guidebook – Independent Contractor Orientation – Ontario – Part 3, Exhibit "82" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H82, pp. 2936-2967.

<sup>109</sup> Teixeira Affidavit, paras. 41-60, Responding MR, Tab 1, pp. 12-17; Schwantz Affidavit at paras. 4-8, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab E, p. 69; Nemati Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab F, pp. 76.

57. The orientation and training process takes 1-2 days and is undertaken at every Just Energy Office for every Sales Agent.<sup>110</sup> Just Energy provides central training to all Regional Directors and recruiters on how to conduct these orientation and training sessions.<sup>111</sup>

**(ii) Training directs Sales Agents how to perform their jobs for Just Energy**

58. Just Energy trains all Sales Agents in the same manner using a centralized and standard training course.<sup>112</sup> The five (5) module course is all-encompassing and instructs Sales Agents on how to do their job for Just Energy.<sup>113</sup> In particular, Sales Agents are trained on:

- (a) Just Energy and its group of companies;<sup>114</sup>
- (b) Just Energy's sales hierarchy;<sup>115</sup>
- (c) Just Energy's products;<sup>116</sup>
- (d) the market for Just Energy's products;<sup>117</sup>
- (e) acceptable marketing practices;<sup>118</sup>
- (f) when and how long to market;<sup>119</sup>
- (g) how to dress;<sup>120</sup>

<sup>110</sup> JE Discovery Transcripts, January 24, 2018, Q. 1047, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at p. 904; Schwantz Affidavit at para. 6, Plaintiff's MR, Tab B, p. 12; Borg Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab D, p. 62.

<sup>111</sup> JE Discovery Transcripts, January 24, 2018, Q. 399, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 825; Ontario OEB Module/Orientation Process, Exhibit "79" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H79, pp. 2813-2815; Guidebook – Independent Contractor Orientation – Ontario – Part I, Exhibit "81" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H81, pp. 2820-2934; Guidebook – Independent Contractor Orientation – Ontario – Part 3, Exhibit "82" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H82, pp. 2936-2967.

<sup>112</sup> Teixeira Affidavit, paras. 45, Responding MR, Tab 1, p. 13; JE Discovery Transcripts, January 24, 2018, Q. 500-509, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 836-838.

<sup>113</sup> Training Modules 1-5, Exhibits "56", "59", "62", "66", and "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56, 59, 62, 66, and 69 at pp. 2395-2407, 2434-2455, 2477-2485, 2537-2547, 2570-2586.

<sup>114</sup> Training Module 1, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56 at p. 2398.

<sup>115</sup> Training Module 1, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56 at p. 2402.

<sup>116</sup> Training Module 2, Exhibit "59" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 59 at p. 2435-2444.

<sup>117</sup> Training Module 2, Exhibit "59" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 59 at p. 2437-2444.

<sup>118</sup> Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2545-2546.

<sup>119</sup> Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2540.

- (h) how to sell to customers including:
  - (i) the sales process;
  - (ii) how to approach customers;
  - (iii) how to convince a customer to provide their energy bill;
  - (iv) how to explain Just Energy products;
  - (v) how to handle questions;
  - (vi) how to explain and sign an agreement; and
  - (vii) how to address the verification call.<sup>121</sup>

**(d) Just Energy directs Sales Agents when they work**

59. Thereafter Just Energy's direction on how the Sales Agents perform their work continues:
- (a) daily morning meetings are held where best practices are stressed to Sales Agents by Regional Distributors and Crew Coordinators;<sup>122</sup>
  - (b) Sales Agents undergo daily role playing with Regional Distributors and/or Crew Coordinators before heading to the field;<sup>123</sup>
  - (c) Sales Agents are provided with a "Sales Binder" created by Just Energy that provides direction to Sales Agents on topics such as:<sup>124</sup>
    - (i) how to market in hot & cold weather conditions;<sup>125</sup>
    - (ii) customer interaction scripts;<sup>126</sup>

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<sup>120</sup> Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2542.

<sup>121</sup> Training Module 5, Exhibit "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 69 at p. 2574-2586.

<sup>122</sup> Teixeira Affidavit, paras. 62-63, Responding MR, Tab 1, p. 18; Marsellus Affidavit, paras. 45-47, Responding MR, Tab 2, p. 854; Schwantz Affidavit at para. 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, pp. 78.

<sup>123</sup> Teixeira Affidavit, paras. 62-63, Responding MR, Tab 1, p. 18; Marsellus Affidavit, paras. 45-47, Responding MR, Tab 2, p. 854; Schwantz Affidavit at para. 14 and 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 77; Nemati Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 84.

<sup>124</sup> JE Discovery Transcripts, January 24, 2018, Q. 539-543, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 842-843.

<sup>125</sup> Marketing in Hot and Cold Weather Conditions, Exhibit "41" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H41, p. 2319; JE Discovery Transcripts, January 24, 2018, Q. 620-626, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 856-858;

<sup>126</sup> The Customer Interaction, Exhibit "42" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab 42, p. 2324; JE Discovery Transcripts, January 24, 2018, Q. 591-593, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 851-852.

- (iii) objection handling scripts;<sup>127</sup>
  - (iv) what a Sales Agent needs while marketing;<sup>128</sup>
  - (v) how to interact with disabled customers;<sup>129</sup> and
  - (vi) acceptable marketing practices.<sup>130</sup>
- (d) job shadowing of Sales Agents is conducted by Crew Coordinators in the field;<sup>131</sup>
  - (e) supervision and direction of Sales Agents is provided by Crew Coordinators in the field;<sup>132</sup> and
  - (f) weekly calls are conducted between Just Energy and Regional Distributors as to various operational matters.<sup>133</sup>
- (e) Just Energy monitors, tracks and disciplines non-compliance**

60. Just Energy also established an extensive system to monitor and track Sales Agents performance and discipline non-compliance:

- (a) Just Energy trains Sales Agents on OEB requirements;<sup>134</sup>

<sup>127</sup> Objection Handling– Ontario (JECF), Exhibit "44" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 44, p. 2335; JE Discovery Transcripts, January 24, 2018, Q. 607-612, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 854-855.

<sup>128</sup> What you need while marketing, Exhibit "46" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 46, p. 2362; JE Discovery Transcripts, January 24, 2018, Q. 536-539, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at pp. 841-842.

<sup>129</sup> Interacting with Customers with Disabilities, Exhibit "47" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 47, p. 2364J; E Discovery Transcripts, January 24, 2018, Q. 552-553, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at p. 844.

<sup>130</sup> Acceptable Marketing Practice: Code of Compliance - Ontario, Exhibit "48" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 48, p. 2366; JE Discovery Transcripts, January 24, 2018, Q. 560-863, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at pp. 846-847.

<sup>131</sup> Teixeira Affidavit, para. 54, Responding MR, Tab 1, p. 16.

<sup>132</sup> Schwantz Affidavit at para. 12 and 15(j), Plaintiff's MR, Vol. 1, Tab B, p. 13, 15; Borg Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab C, p. 56, 57; Acton Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab D, p. 63, 64; Lavigne Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab E, p. 77, 78; Nemati Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab F, p. 84, 85.

<sup>133</sup> Teixeira Affidavit, para. 64, Responding MR Tab 1, p. 18; Bi-weekly Renewal Emails, Exhibits "112(AA)", "112(BB)", "112(CC)", "112(DD)", "112(EE)", "112(FF)" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 112AA-FF, pp. 4279-4524.

<sup>134</sup> JE Discovery Transcripts, January 24, 2018, Q. 643-676, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at pp. 861-867; Ontario Energy Board - Code of Conduct for Gas Marketers, Exhibit "83" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 83, pp. 2969-3008; Ontario Energy Board - Electricity Retailer Code of Conduct, Exhibit "84" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 84, pp. 3010-3051; Just Energy – Ontario Industry Training Assessment Booklet, Exhibit "86" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 86, pp. 3055-3072; Quiz Slide for LMS Users, Exhibit "87" to the Alexander Affidavit, Plaintiff's

- (b) Just Energy has a dedicated compliance department established to monitor the Sales Agents compliance with Just Energy directions and regulations including;<sup>135</sup>
  - (i) daily reporting to Just Energy offices regarding complaints;
  - (ii) bi-weekly conference calls with Sales Offices about compliance issues;
  - (iii) conducting in-person audits of Just Energy offices;
  - (iv) tracking complaints for each Sales Agents;<sup>136</sup>
- (c) Just Energy imposes a "Compliance Matrix" for Sales Agents directing the type of discipline to be imposed for various conduct, including suspensions, fines and termination of employment;<sup>137</sup> and
- (d) Just Energy imposes fines or deducts money from Sales Agents' compensation for contracts that are later deemed invalid.<sup>138</sup>
- (f) Just Energy directs Sales Agents on where to work**

61. Just Energy also directs Sales Agents on where they should market:

- (a) During the daily morning meetings the marketing locations for the day are determined by the Regional Distributors and Crew Coordinators, which locations are determined by:<sup>139</sup>
  - (i) the use maps to keep track of areas previously marketed;<sup>140</sup>
  - (ii) do-not-solicit lists provided by Just Energy;<sup>141</sup>

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MR, Vol. 5, Tab H 87, pp. 3074-3179; Just Energy (JE) and Ontario Energy Board (OEB) Training Proctor Step by Step, Exhibit "89" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 89, pp. 3183-3187.

<sup>135</sup> JE Response to OEB Supp. Request, Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, pp. 3321-3322.

<sup>136</sup> JE Response to OEB Supp. Request, Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, p. 3323, 3331.

<sup>137</sup> Compliance Matrix, Exhibit "101" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 101, pp. 3488-3491.

<sup>138</sup> JE Response to OEB Supp. Request, Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, p. 3333.

<sup>139</sup> Marsellus Affidavit, paras. 61-65, Responding MR, Tab 2, p. 858-859; Schwantz Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 15, 203, Transcript Brief, pp. 353, 402; Schwantz Cross, Q. 271-272, 669, Transcript Brief, pp. 221-222, 334.

<sup>140</sup> Marsellus Affidavit, at paras. 74-75, Responding MR, Tab 2, p. 861; Marsellus Cross, Q. 154-167, Transcript Brief, Tab 1, pp. 35-37; Schwantz Cross, Q. 271, Transcript Brief, Tab 4, p. 222; Nemati Cross, Q. 218, Transcript Brief Tab 5, p. 406; Borg Cross, Q. 397-401, Transcript Brief, Tab 8, p. 688-689.

<sup>141</sup> Marsellus Affidavit at paras. 74-75, Responding MR, Tab 2, p. 861; Do Not Solicit Report, Exhibit "127" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 127, p. 4811; Email from Rosalba Gulbo to Just Energy Recruiters and Administrators dated 01/10/2014, Exhibit "128" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 128, p. 4813.

- (iii) coordination with Just Energy's installation technicians;<sup>142</sup>
- (iv) discussions among Crew Coordinators on pervious marketing areas;<sup>143</sup> and
- (v) discussions between Just Energy sales offices;<sup>144</sup>
- (b) Sales Agents are driven to the field in vans by Crew Coordinators;<sup>145</sup>
- (c) Sales Agents are dependent on Just Energy for transportation to the various marketing locations, which are often a significant distance from the office;<sup>146</sup>
- (d) Just Energy provided vans to the sales offices to transport Sales Agents;<sup>147</sup>
- (e) Crew Coordinators or Sales Agents are threatened with termination if they don't market in the approved areas;<sup>148</sup>
- (f) iPads are used to monitor and track the locations of Sales Agents in real time;<sup>149</sup>
- (g) Just Energy provides updates to offices about regulatory issues in various areas;<sup>150</sup>
- (h) Just Energy facilitates the application for and receipt of permits for Sales Agent to marketing in certain areas, which must be done in advance;<sup>151</sup> and

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<sup>142</sup> Teixeira Affidavit, at para. 67, Responding MR, Tab 1, p. 19.

<sup>143</sup> Gadoua Cross, Q. 85, Transcript Brief, Tab 3, p. 149; Borg Cross, Q. 400, Transcript Brief, Tab 8, p. 688.

<sup>144</sup> Gadoua Cross, Q. 102, Transcript Brief, Tab 3, p. 154.

<sup>145</sup> Teixeira Affidavit, para. 88, Responding MR tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28; Schwantz Cross Q. 128, Transcript Brief, Tab 4, pp. 185-186; Lavigne Cross, Q. 194-199, Transcript Brief, Tab 7, pp. 459-460; Acton Cross, Q. 163-165, Transcript Brief, Tab 7, pp. 553-554; Borg Cross, Q. 368-374, 459-462, Transcript Brief, Tab 8. pp. 682-683, 700-701.

<sup>146</sup> Teixeira Affidavit, para. 88, Responding MR, Tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28.

<sup>147</sup> Marsellus Cross, Q. 117-122, Transcript Brief, Tab 1, p. 25-26.

<sup>148</sup> Schwantz Affidavit at para. 120, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at paras. 18, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab F, p. 79.

<sup>149</sup> Schwantz Cross, Q. 544-55, Transcript Brief, Tab 4, p. 299; Just Energy Mobile Presentation, Exhibit "118" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H118, pp. 4654-4700; Live Energy Application – iPad, Exhibit "130" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H130, pp. 4821-4839; Just Energy Mobile Management Portal – Presentation, Exhibit "122" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H122, pp. 4708-4735.

<sup>150</sup> Email from Ravi Maharaj to Regional Distributors dated February 17, 2015, Exhibit "113" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H113, pp. 4526-4527.

<sup>151</sup> Email from Ravi Maharaj to Regional Distributors dated September 18, 2014, Exhibit "114" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H114, pp. 4529-4530; Just Energy – Permit Handbook, Exhibit "124" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H124, pp. 4772-4786.

- (i) regular road trip or push weeks are organized where Sales Agents travel to specific distant locations for a full week.<sup>152</sup>

**(2) Exclusivity to Just Energy**

62. In marketing for Just Energy the Sales Agents are unable to work for others in the same industry or at all. Just Energy mandates its ICAs that Sales Agents cannot provide services to other businesses "that compete directly with the business carried on by Just Energy corp. or its affiliates during the term of the Agreement and for a period of three (3) weeks following the termination of this Agreement".<sup>153</sup> Even if they wanted to, given the extensive control exerted over Sales Agents, and the time commitment of 6 days per week, it is impossible for Sales Agents to work anywhere else.<sup>154</sup>

63. It is both a tacit requirement and explicit requirement that the employment of all Sales Agents is exclusive to Just Energy.

**(3) Just Energy provides the tools of work**

64. Just Energy creates and provides all the "tools" for the job, without which the Sales Agents cannot complete their work for Just Energy:

- (a) all gas and electricity contracts are provided by Just Energy;

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<sup>152</sup> Teixeira Affidavit, paras. 135, 137, Responding MR, Tab 1, pp. 37-38; Gadoua Affidavit, para. 67, Responding MR, Tab 3, p. 887; Schwantz Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 270-271, Transcript Brief, Tab 4, pp. 221-222; Nemati Cross, Q. 230-231, Transcript Brief, Tab 5, p. 410; Lavigne Cross, Q. 247, Transcript Brief, Tab 6, p. 467.

<sup>153</sup> IC Agreement (para. 6) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1315.

<sup>154</sup> Schwantz Affidavit at para. 17 and 21, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab D, pp. 65; Lavigne Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 36, Transcript Brief, Tab 4, p. 164.

- (b) all marketing materials must be created and approved of by Just Energy;<sup>155</sup>
- (c) Just Energy name tags and badges are provided by Just Energy;<sup>156</sup>
- (d) Just Energy branded clothing is provided for purchase;<sup>157</sup>
- (e) Just Energy provides the verification call centre and process;<sup>158</sup>
- (f) Just Energy registers the Sales Agents with the OEB;<sup>159</sup> and
- (g) do-not-solicit lists are provided by Just Energy.<sup>160</sup>

**(4) Sales Agents have no chance at profit, other than being paid their wages**

65. Just Energy pays the Sales Agents a fixed commission based on the type of contract they successfully marketed. Just Energy's business is to buy gas and electricity wholesale and resell that gas and electricity retail to consumers. It makes money based on the spread between the price it pays for the gas and electricity and the price it receives from its customers. That is Just Energy's business. The Sales Agents have no ability or opportunity to profit in this business, or even their own "sales businesses" (as is to be asserted by Just Energy) as Sales Agents:

- (a) do not purchase gas and electricity wholesale;
- (b) have no ability to change the price of any contract marketed to customers;
- (c) do not make any profit based on the price Just Energy can buy the gas and electricity and the price it can sell that gas and electricity; and
- (d) only receive fixed (not variable) commissions on contracts successfully marketed for Just Energy; and

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<sup>155</sup> Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381.

<sup>156</sup> Teixeira Affidavit, para 104, Responding MR Tab 1, p. 29.

<sup>157</sup> Schwantz Affidavit at para. 15(d), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab F, p. 78; Schwantz Cross, Q. 355-356, Transcript Brief, Tab 4, p. 246; Teixeira Affidavit, para 106, Responding MR, Tab 1, p. 29.

<sup>158</sup> The Customer Interaction, Exhibit "50" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 50, p. 2373.

<sup>159</sup> Teixeira Affidavit, para 104, Responding MR. Tab 1, p. 29.

<sup>160</sup> Marsellus Affidavit at paras. 74-75, Responding MR, Tab 2, p. 861; Do Not Solicit Report, Exhibit "127" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 127, p. 4811; Email from Rosalba Gulbo to Just Energy Recruiters and Administrators dated 01/10/2014, Exhibit "128" to the Alexander Affidavit, Plaintiff's MRR, Vol. 7, Tab H 128, p. 4813.



(e) have no ability to change or negotiate the commission schedule.<sup>161</sup>

66. No different than any commission-based employee, Sales Agents do not get a chance at profit - they only earn their set wages.

**(5) Sales Agents are Integral Part of Just Energy's Business**

*(a) Sales Agents are not secondary or complimentary to Just Energy's business*

67. Just Energy's business is the profiting on gas and electricity contracts. Sales Agents market those contracts for Just Energy. In 2009, door-to-door marketing made up approximately 95% of Just Energy's sales revenue, presently 21%.<sup>162</sup> Their work is not secondary or complementary to the primary business of Just Energy – it is the business of Just Energy.

*(b) "Sales" is not an independent business*

68. It is not clear what independent business Just Energy asserts that 8,000 Sales Agents undertook while working for Just Energy. By its own ICA, Sales Agents were not permitted to market for any competitors<sup>163</sup> – therefore, Sales Agents could not have been in the gas and electricity marketing business, because they could only market for Just Energy. In addition, Sales Agents can only market for Just Energy because they don't have any time to do anything else. Additionally, Sales Agents have no power to change any gas and electricity contract terms or pricing – they have no independent control of their alleged business.

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<sup>161</sup> JE Discovery Transcripts, January 24, 2018, Q. 1069-1072, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 907-908; IC Agreement (para. 4 and commission schedule) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1314, 1319.

<sup>162</sup> Affidavit of Richard Teixeira sworn January 25, 2016, Exhibit "A" to the Teixeira Affidavit, sworn January 10, 2019, para. 8, Responding MR, Tab 1A, p. 46.

<sup>163</sup> IC Agreement (para. 6) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Responding MR, Vol. 2, Tab H19, pp. 1315.

69. What is left is the business of "sales". However, "sales" is not an independent business – one must have something to sell,<sup>164</sup> here Sales Agents could only sell Just Energy products.

**(6) Unilateral title and characterization by Just Energy is not determinative**

70. Just Energy makes much of the ICA and their repeated statements that Sales Agents knew they were "independent contractors" who were not provided with any of the benefits or minimum protections of the *ESA*, or otherwise.

71. The Sale Agents had no ability to make changes to the ICA. The ICA makes convenient self-serving statements about the legal nature of the relationship that do not accord with the actual working relationship. Those self-serving statements, which simply deter vulnerable workers from asserting their minimum employment rights, are not determinative and simply should not be considered – one cannot "consent" to violate the *ESA*.<sup>165</sup> Sales Agents simply wanted a job and thought they had one working for Just Energy.

**(7) Conclusion on employment status**

72. The hierarchical organizational structure, the control and direction asserted by Just Energy on the manner and location in which Sales Agents were to perform their work, the exclusivity of the relationship, and the nature of the Sales Agents' "business", is entirely inconsistent with the existence of 8,000 independent businesses all happening to sell only Just Energy products – Sales Agent are clearly employees of Just Energy.

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<sup>164</sup> *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916, PBOA , Vol 1, Tab 14; *Big Picture Home Entertainment Ltd. v. MacDonald*, 2016 CarswellOnt 18808 (Ont. L.R.B.), PBOA , Vol 1, Tab 20, varied on other grounds 2016 CarswellOnt 20591 (Ont. L.R.B.), *Baker v. 9111140 Canada Inc.*, 2017 CarswellOnt 5875 (Ont. L.R.B.); PBOA , Vol 1, Tab 21; *R. v. Pereira*, 1988 CarswellAlta 88 (Q.B.), PBOA , Vol 1, Tab 22.

<sup>165</sup> *Braiden* at para. 21, PBOA , Vol 1, Tab 10; *Belton* at para. 11, PBOA , Vol 1, Tab 9; *Wood v. CTS of Canada Co.*, 2018 ONCA 758 at para. 95, PBOA , Vol 1, Tab 25.

**G. Exemptions under the *ESA* do not Apply to Sales Agents – Common issue 4**

**i. O. Reg 285/01: Exemption from *ESA* and the "Route Salesperson" exception**

73. O. Reg 285/01, s. 2(1)(h) exempts certain salespeople from *ESA* protections:

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,...

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer's place of business.<sup>166</sup>

74. The exemption does not apply to Sales Agents.

**ii. Sales Agents do not make "offers to purchase" or "sales"**

75. There is ample evidence that Class members are not making "offers to purchase" or "sales", and therefore, section 2(1)(h) of O.Reg 285/01 has no applicability.<sup>167</sup>

76. The Ontario *Sale of Goods Act*, provides this on when an agreement becomes a sale:

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.<sup>168</sup>

77. The Sales Agents only market gas and electricity contracts to potential Just Energy customers.<sup>169</sup> Sales Agents cannot vary terms of contracts while at the door. The agreements with Just Energy are not even completed while at the door with a potential customer – only Just Energy can complete a contract through a "confirmation call" with the consumer.<sup>170</sup> Just Energy

<sup>166</sup> O. Reg. 285/01 at s. 2(1)(h), Plaintiff's Factum, Schedule B, Tab B.

<sup>167</sup> *Wilkins v Just Energy Marketing Corp*, 308 F.R.D. 170 (Ill. Dist. Ct. 2015) at 180, PBOA , Vol 2, Tab 32.

<sup>168</sup> *Sale of Goods Act*, R.S.O. 1990, c. S.1, s. 2(4), Plaintiff's Factum, Schedule B, Tab B.

<sup>169</sup> IC Agreement, (para. 1), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 19, p. 1313.

<sup>170</sup> Training Module 5, Exhibit "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H69, p. 2579.

retains sole discretion as to whether a contract is ultimately accepted.<sup>171</sup> Before any contract is completed the following steps must be completed, which are all overseen by Just Energy:

- A Just Energy confirmation call must take place, in which a Just Energy employee goes over all the terms of the contract and confirms the contents of the contract with the potential customer;
- The potential customer must clear a credit check with Just Energy;
- The potential customer must be accepted by the utility company that will be providing the actual flow of energy; and
- Just Energy always maintains sole discretion over whether to accept any customer.<sup>172</sup>

78. At best, Sales Agents marketed *potential contracts* for services to *potential customers*.

### iii. Sales Agents are "route salespersons"

#### (1) What is a "route salesperson"?

79. The *ESA* does not define a "route salesperson". Case law and the *ESA* interpretation manual define it to include those who are subject to significant control over scheduling.<sup>173</sup>

80. As such, the key consideration governing the exemption is the degree of control exercised by the employee relative to the employer.<sup>174</sup> Related questions such as whether the "routes" are determined by the employer or the employee, the capacity for chance of profit/risk of loss, and

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<sup>171</sup> IC Agreement, (para. 4), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 19, p. 1314.

<sup>172</sup> IC Agreement, (para. 4), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 19, p. 1314.

<sup>173</sup> *VanGrootel v. Advance Beauty Supply Ltd.*, 2016 CarswellOnt 5069 (Ont. L.R.B.) at paras. 12-14, PBOA, Vol 2, Tab 33, citing *Hayat v. Clegg Campus Marketing*, [2006] O.E.S.A.D. No. 606 (Ont. L.R.B.) PBOA, Vol 2, Tab 34; *Kognitive Marketing Inc. v. Ontario (Director of Employment Standards)*, [2015] O.E.S.A.D. No. 1129 (Ont. L.R.B.), PBOA, Vol 2, Tab 35; *Crestway Electronics Ltd., Re*, [1992] O.E.S.A.D. No. 132 (Ont. E.S.B. (Adjud.)); PBOA, Vol 2, Tab 36; *Wright, Re*, [1992] O.E.S.A.D. No. 91 (Ont. E.S.B. (Adjud.)), PBOA, Vol 2, Tab 37; and *Orlov v. Amato*, [2003] O.E.S.A.D. No. 590 (Ont. L.R.B.), PBOA, Vol 2, Tab 38.

<sup>174</sup> Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 971, PBOA, Vol 2, Tab 52.

entrepreneurial activity by the employee are also relevant.<sup>175</sup> This analysis is similar to the *Belton/Braiden* factor analysis above at paragraphs 37-72 above which overwhelmingly reveals Just Energy's control over Sales Agents.

**(2) Just Energy's control and direction on locations is overwhelming**

81. There is ample evidence that Just Energy controlled and directed the marketing locations of its Sales Agents such that they could not be considered independent salespeople exercising a high degree of independence and entrepreneurial initiative to locate customers for Just Energy:

- (a) Sales Agents' marketing locations for the day are determined by the Regional Distributors and Crew Coordinators at daily morning meetings;<sup>176</sup>
- (b) Locations are determined by:
  - (i) the use maps to keep track of areas previously marketed;<sup>177</sup>
  - (ii) do-not-solicit lists provided by Just Energy;<sup>178</sup>
  - (iii) coordination with Just Energy's installation technicians;<sup>179</sup>
  - (iv) discussions among Crew Coordinators on pervious marketing areas;<sup>180</sup> and
  - (v) discussions between Just Energy sales offices;<sup>181</sup>
- (c) Sales Agents are dependent on Just Energy for transportation to the various marketing locations, which are often a significant distance from the office;<sup>182</sup>

<sup>175</sup> Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 971, PBOA, Vol 2, Tab 52.

<sup>176</sup> Marsellus Affidavit, paras. 61-65, Responding MR Tab 2, p. 858-859; Schwantz Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 15, 203, Transcript Brief, pp. 353, 402; Schwantz Cross, Q. 271-272, 669, Transcript Brief, pp. 221-222, 334.

<sup>177</sup> Marsellus Affidavit, at paras. 74-75, Responding MR, Tab 2, p. 861; Marsellus Cross, Q. 154-167, Transcript Brief, Tab 1, pp. 35-37; Schwantz Cross, Q. 271, Transcript Brief, Tab 4, p. 222; Nemati Cross, Q. 218, Transcript Brief Tab 5, p. 406; Borg Cross, Q. 397-401, Transcript Brief, Tab 8, p. 688-689.

<sup>178</sup> Marsellus Affidavit at paras. 74-75, Responding MR, Tab 2, p. 861; Do Not Solicit Report, Exhibit "127" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 127, p. 4811; Email from Rosalba Gulbo to Just Energy Recruiters and Administrators dated 01/10/2014, Exhibit "128" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 128, p. 4813.

<sup>179</sup> Teixeira Affidavit, at para. 67, Responding MR, Tab 1, p. 19.

<sup>180</sup> Gadoua Cross, Q. 85, Transcript Brief, Tab 3, p. 149; Borg Cross, Q. 400, Transcript Brief, Tab 8, p. 688.

<sup>181</sup> Gadoua Cross, Q. 102, Transcript Brief, Tab 3, p. 154.

- (d) Sales Agents are driven to the field in vans by Crew Coordinators;<sup>183</sup>
- (e) Just Energy provided vans to the Sales offices to transport Sales Agents;<sup>184</sup>
- (f) Crew Coordinators or Sales Agents are threatened with termination if they don't market in the approved areas;<sup>185</sup>
- (g) iPads are used to monitor and track the locations of Sales Agents in real time;<sup>186</sup>
- (h) Just Energy provides updates to offices about regulatory issues in various areas;<sup>187</sup>
- (i) Just Energy facilitates the application for and receipt of permits for Sales Agent to marketing in certain areas, which must be done in advance;<sup>188</sup>
- (j) regular road trips or push weeks are organized where Sales Agents travel to specific distant locations for a full week.<sup>189</sup> Sales Agents perform these duties six (6) days per week every week;<sup>190</sup> and

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<sup>182</sup> Teixeira Affidavit, para. 88, Responding MR, Tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28.

<sup>183</sup> Teixeira Affidavit, para. 88, Responding MR tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28; Schwantz Cross, Q. 128, Transcript Brief, Tab 4, pp. 185-186; Lavigne Cross, Q. 194-199, Transcript Brief, Tab 7, pp. 459-460; Acton Cross, Q. 163-165, Transcript Brief, Tab 7, pp. 553-554; Borg Cross, Q. 368-374, 459-462, Transcript Brief, Tab 8, pp. 682-683, 700-701.

<sup>184</sup> Marsellus Cross, Q. 117-122, Transcript Brief, Tab 1, p. 25-26.

<sup>185</sup> Schwantz Affidavit at para. 120, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at paras. 18, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab F, p. 79.

<sup>186</sup> Schwantz Cross, Q. 544-55, Transcript Brief, Tab 4, p. 299; Just Energy Mobile Presentation, Exhibit "118" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H118, pp. 4654-4700; Live Energy Application – iPad, Exhibit "130" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H130, pp. 4821-4839; Just Energy Mobile Management Portal – Presentation, Exhibit "122" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H122, pp. 4708-4735.

<sup>187</sup> Email from Ravi Maharaj to Regional Distributors dated February 17, 2015, Exhibit "113" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H113, pp. 4526-4527.

<sup>188</sup> Email from Ravi Maharaj to Regional Distributors dated September 18, 2014, Exhibit "114" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H114, pp. 4529-4530; Just Energy – Permit Handbook, Exhibit "124" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H124, pp. 4772-4786.

<sup>189</sup> Teixeira Affidavit, paras. 135, 137, Responding MR, Tab 1, pp. 37-38; Gadoua Affidavit, para. 67, Responding MR, Tab 3, p. 887; Schwantz Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 270-271, Transcript Brief, Tab 4, pp. 221-222; Nemati Cross, Q. 230-231, Transcript Brief, Tab 5, p. 410; Lavigne Cross, Q. 247, Transcript Brief, Tab 6, p. 467.

- (k) Sales Agents has a standard daily regimen of: attending the Just Energy regional office, attending daily meetings and role playing, getting transported by Crew Coordinators to their marketing locations to start marketing by 1:00pm, get picked up by the Crew Coordinator and 9:00pm and return to the office.<sup>191</sup>

**(3) The "route salesperson" exemption applies to Sales Agents**

82. The ESA Interpretation Manual refers to the following example in reference to meeting the definition of "route salesperson":

Another case on the question of what is a route salesperson, *Schiller v P & L Corporation Ltd.*, 2012 CanLII 12611 (ON LRB), concerned **an employee selling newspaper subscriptions door-to-door who was picked up by the employer with other employees each day and dropped off in an assigned neighbourhood. She was provided with a list of non-subscribers on particular streets within the neighbourhood to solicit and she could not increase her ability to earn more by working at times or in neighbourhoods other than those assigned to her by the employer.** The Board held that she was a route salesperson because sales in this case were conducted on the basis of "routes" which were established and determined by the employer.<sup>192</sup>

83. This case might as well be styled *Omarali v Just Energy*.

84. Just as in that case, Sales Agents do not choose their marketing locations. Those decisions are made and directed by Just Energy through its Regional Distributors. Sales Agent are therefore provided with a "route" by Just Energy and are therefore "route salesperson[s]" as defined in s. 2(1)(h) of O. Reg. 285/01 and are thereby not exempt from the *ESA*.

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<sup>190</sup> Schwantz Affidavit at para. 16, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab D, pp. 65; Lavigne Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 36, Transcript Brief, Tab 4, p. 164.

<sup>191</sup> Schwantz Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab F, p. 78.

<sup>192</sup> Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 971 [emphasis added], PBOA, Vol 2, Tab 52.

**H. The provisions of the *ESA* are Express or Implied Terms of the Contracts of Class Members – Common issue 5**

85. The *ESA* applies to employees and provides legislative minimum employment standards

which cannot be contracted out of:

**No contracting out**

5. (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void.<sup>193</sup>

85. Recently, in *Wood v. CTS of Canada Co.*, the Ontario Court of Appeal affirmed that employees cannot "consent" to work in violation of the *ESA*.<sup>194</sup> As such, if an individual is found to be an "employee", that individual is owed statutory benefits under the *ESA* regardless of what that individual implicitly or explicitly "consented" to by signing an employment contract or agreement - the minimum employment standards set out by the *ESA* apply.<sup>195</sup> By operation of law the provisions of the *ESA* are terms of the class members' "contracts" with Just Energy.

**I. Just Energy did not Pay Minimum Wage, Overtime, Vacation, Public Holiday or Premium Pay to Sales Agents – Common issue 8**

86. The *ESA* provides the following for employees: (i) minimum wage;<sup>196</sup> (ii) overtime pay;<sup>197</sup> vacation pay;<sup>198</sup> and public holiday and premium pay.<sup>199</sup> Just Energy admits that it did not pay Sales Agents any of those minimum requirements.<sup>200</sup>

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<sup>193</sup> *ESA* at ss. 3 and 5(1), Plaintiff's Factum, Schedule B, Tab B.

<sup>194</sup> *Wood v. CTS of Canada Co.*, 2018 ONCA 758 at para. 95, PBOA , Vol 1, Tab 25, leave to appeal to SCC denied, 2019 CarswellOnt 6052 (S.C.C.).

<sup>195</sup> *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986 at p. 1005, PBOA , Vol 1, Tab 23; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29 at para. 137, PBOA, Vol 2, Tab 39.

<sup>196</sup> *ESA* at s. 23, Plaintiff's Factum, Schedule B, Tab B.

<sup>197</sup> *ESA* at s. 22, Plaintiff's Factum, Schedule B, Tab B.

<sup>198</sup> *ESA* at s. 35.2, Plaintiff's Factum, Schedule B, Tab B.

<sup>199</sup> *ESA* at s. 24, Plaintiff's Factum, Schedule B, Tab B.



**J. Failure to make CPP and EI contributions – Common issues 2, 3 and 9**

87. Section 9 of the *Canada Pension Plan*, and sections 68 and 82(1) of the *Employment Insurance Act* require employers to contribute CPP and EI remittances on behalf of "employees" employed in "pensionable" and "insurable employment".<sup>201</sup>

88. Section 6(1) of the *Canada Pension Plan* statute defines "pensionable employment" as "employment in Canada that is not excepted employment", whereas section 5(1) of the *Employment Insurance Act* stipulates that "insurable employment" is "employment in Canada by one or more employers under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise".<sup>202</sup>

89. Although neither statute defines "employment", it is well-settled that the *Sagaz* factors apply to that determination.<sup>203</sup> Once it is found that Sales Agents are employees of Just Energy as per common issue 1, it follows that Just Energy is obligated to pay CPP and EI contributions.

90. Just Energy has admitted it has not paid CPP or EI contributions for any Sales Agent.<sup>204</sup>

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<sup>200</sup> JE Discovery Transcripts, January 24, 2018, Q. 376-385, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 820-821.

<sup>201</sup> *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 9, Plaintiff's Factum, Schedule B, Tab B; *Employment Insurance Act*, S.C. 1996, c. 23, ss. 68 and 82(1), Plaintiff's Factum, Schedule B, Tab B.

<sup>202</sup> *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 6(1), Plaintiff's Factum, Schedule B, Tab B; *Employment Insurance Act*, S.C. 1996, c. 23, s. 5(1), Plaintiff's Factum, Schedule B, Tab B.

<sup>203</sup> *Dynamic Industries Ltd v. R.*, 2005 FCA 211, PBOA, Vol 2, Tab 40; *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85 at para. 23, PBOA, Vol 2, Tab 41; *Porotti v. Canada (National Revenue)*, 2014 TCC 267 at para. 5, PBOA, Vol 2, Tab 42, aff'd 2016 FCA 29, PBOA, Vol 2, Tab 43.

<sup>204</sup> JE Discovery Transcripts, January 24, 2018, Q. 382-383, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 821.

**K. Just Energy breached its contractual duties or was otherwise negligent – Common issues 6, 7, 10 and 11**

**i. Just Energy owes a duties of care**

91. Employers owe a common law duty of care and duty of good faith and fair dealing towards its employees.<sup>205</sup> This includes a duty of good faith in the performance of contractual obligations.<sup>206</sup> As such, in the course of the employer/employee relationship, the parties must not lie or mislead their interests.<sup>207</sup>

92. Just Energy imposed self-serving ICAs and a pay structure on Sales Agents. Sales Agents had no authority or power to make any changes to the ICAs or commission structure. They had no ability to change how they were to do their work or where they were to do it for Just Energy. In their relationship, they were at the mercy of Just Energy – all they wanted was a job. Just Energy itself states that Sales Agents are mostly of little means and have little or no sales experience before working for Just Energy.<sup>208</sup>

93. As a result of the closeness of this relationship, the nature of the power imbalance, and the vulnerability of the class, Just Energy owed the Sales Agents a duty of care and duty of good faith to properly characterize their employment, to ensure they were compensated with the minimum wage, ensure their hours were monitored and recorded, to advise them of their correct status and entitlement to overtime, and to ensure they were compensated by the minimum

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<sup>205</sup> *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at para. 63, PBOA, Vol 2, Tab 44; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701 at para. 98, PBOA, Vol 2, Tab 45. See also the SCC's most recent discussion on duty of care in *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19 at paras. 16-24, PBOA, Vol 2, Tab 46.

<sup>206</sup> *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 62, 73, PBOA, Vol 2, Tab 47.

<sup>207</sup> *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at p. 125, PBOA, Vol 2, Tab 44; *Antunes v. Limen Structures Ltd.*, 2015 ONSC 2163 at para. 64, PBOA, Vol 2, Tab 48, aff'd 2016 ONCA 509, PBOA, Vol 2, Tab 49.

<sup>208</sup> Teixeira Affidavit, para. 88, Responding MR, Tab 1, p. 24.

requirements of the *ESA*.<sup>209</sup>

**ii. Just Energy breached its duties**

94. The evidence that Sales Agents are employees of Just Energy is overwhelming, and there should be, and should have been, no question as to whether Sales Agents should have properly been considered as such by Just Energy. Instead, Just Energy forced the "independent contractor" characterization on Sales Agents for years. In doing so they have consciously avoided the minimum requirements of the *ESA* and deterred Sales Agents from enforcing their rights.

95. In the case of the Class they have done so since at least 2012. Over that time period, there were over 8,000 Sales Agents. Of that approximately 2/3 were not able to successful market a contract for Just Energy.<sup>210</sup> Since they were only paid on commission for contracts they originated and not on the basis of a minimum wage, they worked for Just Energy for free. This didn't bother Just Energy as it wasn't required to pay those Sales Agents anything - they just took advantage of their labour on behalf of Just Energy without any risk.

96. Just Energy did not exercise reasonable care to ensure that Sales Agents were classified as employees before or during their employment with Just Energy. Instead, Just Energy took advantage of the vulnerability of its Sales Agents by providing all Sales Agents with a self-serving ICA which unlawfully deemed those individuals "independent contractors". This unlawful practice allowed Just Energy to forego paying its Sales Agents their statutory entitlements under the *ESA* in further of its own business interests.

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<sup>209</sup> *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19 at paras. 16-24, PBOA, Vol 2, Tab 46.

<sup>210</sup> Teixeira Affidavit, para. 121, Responding MR, Tab 1, p. 33.

**iii. Resulting damage**

97. As a result of the breach of the duties owed, Just Energy failed to pay and facilitate the payment of minimum wage, overtime, vacation pay, public holiday and premium pay and CPP/EI contributions to or on behalf of the Plaintiff and Class – all of which is now owing.

98. However, Just Energy has impaired the Class' ability to prove their entitlements to these damages. In particular, Just Energy failed and refused to keep track of the hours of the Sales Agents, despite ample ability and requirement to do so.<sup>211</sup> This may impact Class Member's ability to prove damages. An adverse inference against any argument by Just Energy that damages are not determinable should be applied to all class members' claims.

**L. Just Energy was unjustly enriched by misclassifying sales agents – Common issue 12**

99. In *Garland v. Consumers' Gas Co.*, the Supreme Court of Canada stated that the test for unjust enrichment has three (3) elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment.<sup>212</sup> This test is easily satisfied.

100. By misclassifying the Sales Agents, Just Energy has been enriched as a result of avoiding the payment of the minimum requirements of the *ESA* and the payment of CPP and EI contributions for all Sales Agents, in addition to the costs of facilitating a system to accurately account and make such payments. The Class has suffered a corresponding deprivation in the form of unpaid minimum *ESA* requirements and having to pay, or not getting the benefit of, the employer portion of CPP or EI contributions. As there can be no contracting out of the *ESA* and

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<sup>211</sup> *ESA* at s. 15(1), Plaintiff's Factum, Schedule B, Tab B.

<sup>212</sup> *Garland v. Consumers' Gas Co.*, [2004] 1 S.C.R. 629 at para. 30, PBOA, Vol 2, Tab 50.

the employees are properly classified as employees, there is no juristic reason for Just Energy's enrichment and the Class members' corresponding deprivation. This entitles the Class to equitable remedies for the unjust enrichment.

### **M. Appropriate common remedies and declarations**

101. After determining the liability common issues, it is entirely within the purview of the trial judge to order an appropriate remedy whether or not they are certified as a common issue.<sup>213</sup>

The failures by Just Energy as noted above cry out for a just remedy before any individual assessment process is required, or to assist that process.

#### **i. Declarations and findings**

102. In addition to the declarations of employment status, entitlement to the protections of the *ESA* and determinations of the common issues, the Plaintiff seeks the following declarations or finds that have ample support in the evidence:

- (a) a finding that Agents worked a standard work week of six (6) days per week;<sup>214</sup>
- (b) a finding that standard work hours per day of at least 1:00pm to 9:00pm.<sup>215</sup>
- (c) a finding that job training of at least 1 day was required of all Sales Agents;<sup>216</sup> and
- (d) a finding that the job training time is compensable.<sup>217</sup>

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<sup>213</sup> *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 134, PBOA, Vol 2, Tab 51.

<sup>214</sup> Schwantz Affidavit at para. 16, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab F, p. 79.

<sup>215</sup> Teixeira Affidavit, para. 116, Responding MR, Tab 1, p. 32; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab F, p. 78.

<sup>216</sup> Independent Contractor Orientation Guidebook, Exhibit "45" to the Alexander Affidavit, Vol. 4, Tab H45, p. 2346; Schwantz Affidavit at para. 5, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at para. 5, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at paras. 5-6, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at paras. 5-6, Plaintiff's MR, Vol. 1, Tab E, p. 69; Nemati Affidavit at paras. 5-6, Plaintiff's MR, Vol. 1, Tab F, p. 76.

**ii. Damages orders**

103. In addition to any amount to be recovered through an individual assessment process, and given the findings on the common issues and the uncontroverted evidence, the following damages orders can be made and are sought by the Plaintiff:

- (a) that Just Energy pay 4% vacation pay on all amounts already paid to the Class;
- (b) that Just Energy pay the Class for all CPP and EI contributions on amounts already paid to the Class;
- (c) that Just Energy pay each class member for one day of training at the applicable minimum wage.

104. None of these orders require any individual evidence and are effectively automatically required by a finding of employment status in this case.

**PART III - ORDER REQUESTED**

105. The Plaintiff requests that this Honourable Court grant summary judgment on all common issues, and the declarations, findings and orders noted in paragraphs 103 and 104 above, and costs of this motion and the action up to this date.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of May, 2019.<sup>218</sup>



Koskie Minsky LLP  
Lawyers for the Plaintiff

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<sup>217</sup> Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 961, PBOA, Vol 2, Tab 52.

<sup>218</sup> A 48 page factum was initially served on May 2, 2019.

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

<b>Tab No.</b>	<b>Case</b>
1.	<i>Hurt v. Commerce Energy, Inc.</i> , Case No. 1:12-CV-758, Doc. No. 808 (October 6, 2014)
2.	<i>Hurt v. Commerce Energy, Inc.</i> , Case No. 1:12-CV-758, Doc. No. 853 (August 3, 2015)
3.	<i>Hurt v. Commerce Energy, Inc.</i> , 2013 WL 4427257 (August 15, 2013)
4.	<i>Hurt v. Commerce Energy, Inc.</i> , Case No. 1:12-CV-758, Doc. No. 887 (January 29, 2018)
5.	<i>Hurt v. Commerce Energy, Inc.</i> , 2018 WL 4204541 (September 4, 2018)
6.	<i>Hryniak v. Mauldin</i> , 2014 SCC 7
7.	<i>Brazeau v. Canada (Attorney General)</i> , 2019 ONSC 1888
8.	<i>671122 Ontario Ltd. v. Sagaz Industries Canada Inc.</i> , 2001 SCC 59
9.	<i>Belton v. Liberty Insurance Co. of Canada</i> , [2004] O.J. No. 3358 (C.A.)
10.	<i>Braiden v. La-Z-Boy Canada Limited</i> , 2008 ONCA 464
11.	<i>Doyle v. London Life Insurance Co.</i> , [1985] B.C.J. No. 2561 (C.A.)
12.	<i>Cormier v. 1772887 Ontario Limited c.o.b. as St Joseph's Communications</i> , 2019 ONSC 587
13.	<i>Moseley-Williams v. Hansler Industries Ltd.</i> , [2008] O.J. No. 4457 (S.C.)
14.	<i>McKee v. Reid's Heritage Homes Ltd.</i> , 2009 ONCA 916
15.	<i>King v. Merrill Lynch Canada Inc.</i> , [2005] O.J. No. 5028 (S.C.)
16.	<i>Jaremko v. A.E. LePage Real Estate Services Ltd.</i> , [1987] O.J. No. 506 (H.C.)
17.	<i>Jaremko v. A.E. LePage Real Estate Services Ltd.</i> , [1989] O.J. No. 996 (C.A.)
18.	<i>Sooters Studios Ltd., Re</i> , 1991 CarswellOnt 7806 (O.E.S.B. (Adjud.))
19.	<i>Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)</i> , 2001 CarswellBC 4136 (Employment Standards Tribunal)

<b>Tab No.</b>	<b>Case</b>
20.	<i>Big Picture Home Entertainment Ltd. v. MacDonald</i> , 2016 CarswellOnt 18808 (Ont. L.R.B.)
21.	<i>Baker v. 9111140 Canada Inc.</i> , 2017 CarswellOnt 5875 (Ont. L.R.B.)
22.	<i>R. v. Pereira</i> , 1988 CarswellAlta 88 (Q.B.)
23.	<i>Machtinger v. HOJ Industries Ltd.</i> , [1992] 1 S.C.R. 986
24.	<i>Rizzo &amp; Rizzo Shoes Ltd. (Re)</i> , [1998] 1 S.C.R. 27
25.	<i>Wood v. CTS of Canada Co.</i> , 2018 ONCA 758
26.	<i>Mazraani c. Industrielle Alliance</i> , 2016 TCC 65
27.	<i>Truong v. British Columbia</i> , 1999 BCCA 513
28.	<i>MacDonald v. Richardson Greenshields of Canada Ltd.</i> , [1985] B.C.J. No. 2865 (S.C.)
29.	<i>Sistema Toronto Academy Inc. v. Minister of National Revenue</i> , 2016 TCC 193
30.	<i>Rockland Industries Inc. v. Amerada Minerals Corp. of Canada Ltd.</i> , [1980] 2 S.C.R. 2
31.	<i>Hav-A-Kar Leasing Ltd v. Vekselshtein</i> , 2012 ONCA 826
32.	<i>Wilkins v. Just Energy Corp., Inc.</i> , 308 F.R.D. 170 (I11. Dist. Ct. 2015)
33.	<i>VanGrootel v. Advance Beauty Supply Ltd.</i> , 2016 CarswellOnt 5069 (Ont. L.R.B.)
34.	<i>Hayat v. Clegg Campus Marketing</i> , [2006] O.E.S.A.D. No. 606 (Ont. L.R.B.)
35.	<i>Kognitive Marketing Inc. v. Ontario (Director of Employment Standards)</i> , [2015] O.E.S.A.D. No. 1129 (Ont. L.R.B.)
36.	<i>Crestway Electronics Ltd., Re</i> , [1992] O.E.S.A.D. No. 132 (O.E.S.B. (Adjud.))
37.	<i>Wright, Re</i> , [1992] O.E.S.A.D. No. 91 (O.E.S.B. (Adjud.))
38.	<i>Orlov v. Amato</i> , [2003] O.E.S.A.D. No. 590 (Ont. L.R.B.)
39.	<i>Wilson v. Atomic Energy of Canada Ltd.</i> , 2016 SCC 29
40.	<i>Dynamic Industries Ltd v. R.</i> , 2005 FCA 211



Tab No.	Case
41.	<i>1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)</i> , 2013 FCA 85
42.	<i>Porotti v. Canada (National Revenue)</i> , 2014 TCC 267
43.	<i>Porotti v. Canada (National Revenue)</i> , 2016 FCA 29
44.	<i>Queen v. Cognos Inc.</i> , [1993] 1 S.C.R. 87
45.	<i>Wallace v. United Grain Growers Ltd.</i> , [1997] 3 S.C.R. 701
46.	<i>Rankin (Rankin's Garage &amp; Sales) v. J.J.</i> , 2018 SCC 19
47.	<i>Bhasin v. Hrynew</i> , 2014 SCC 71
48.	<i>Antunes v. Limen Structures Ltd.</i> , 2015 ONSC 2163
49.	<i>Antunes v. Limen Structures Ltd.</i> , 2016 ONCA 509
50.	<i>Garland v. Consumers' Gas Co.</i> , [2004] 1 S.C.R. 629
51.	<i>Pro-Sys Consultants Ltd. v Microsoft Corporation</i> , 2013 SCC 57
52.	Ministry of Labour, <i>Employment Standards Act, 2000 Policy and Interpretation Manual</i> , 2019, Release 1 (last updated March 22, 2019)

**SCHEDULE "B"**  
**RELEVANT STATUTES**

1. ***Employment Standards Act, 2002, S.O. 2000, c. 41***

**To whom Act applies**

**3 (1)** Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

- (a) the employee's work is to be performed in Ontario; or
  - (b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario.
- [...]

**No contracting out**

**5 (1)** Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void.

**Records**

**15 (1)** An employer shall record the following information with respect to each employee, including an employee who is a homemaker:

[...]

**3.1** The dates and times that the employee worked.

[...]

**4.** The number of hours the employee worked in each day and each week.

**Overtime threshold**

**22 (1)** Subject to subsection (1.1), an employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in each work week or, if another threshold is prescribed, that prescribed threshold.

**Same, two or more regular rates**

**(1.1)** If an employee has two or more regular rates for work performed for the same employer in a work week,

- (a) the employee is entitled to be paid overtime pay for each hour of work performed in the week after the total number of hours performed for the employer reaches the overtime threshold; and
- (b) the overtime pay for each hour referred to in clause (a) is one and one-half times the regular rate that applies to the work performed in that hour.

**Averaging**

**(2)** An employee's hours of work may be averaged over separate, non-overlapping, contiguous periods of two or more consecutive weeks for the purpose of determining the employee's entitlement, if any, to overtime pay if,

- (a) the employee has made an agreement with the employer that his or her hours of work may be averaged over periods of a specified number of weeks; and

(b) the averaging period does not exceed four weeks or the number of weeks specified in the agreement, whichever is lower.

(2.1) Repealed: 2019, c. 4, Sched. 9, s. 8 (1).

**Transition: certain agreements**

(2.2) For the purposes of this section, each of the following agreements shall be treated as if it were an agreement described in clause (2) (a):

1. An agreement to average hours of work made under a predecessor to this Act.
2. An agreement to average hours of work made under this section as it read on February 28, 2005.
3. An agreement to average hours of work that complies with the conditions prescribed by the regulations made under paragraph 7 of subsection 141 (1) as it read on February 28, 2005.

**Term of agreement**

(3) Subject to subsections (3.1) and (3.2), an averaging agreement is not valid unless it provides for a start date and an expiry date.

**Limit on agreement, not represented by trade union**

(3.1) If the employee is not represented by a trade union, the averaging agreement's expiry date shall not be more than two years after the start date.

**Limit on agreement, collective agreement applies**

(3.2) If the employee is represented by a trade union and a collective agreement applies to the employee, an averaging agreement shall expire no later than the day a subsequent collective agreement that applies to the employee comes into operation.

**Agreement may be renewed or replaced**

(4) For greater certainty, an averaging agreement may be renewed or replaced if the requirements set out in this section are met.

**Existing agreement**

(5) Any averaging agreement that was made before the day the Restoring Ontario's Competitiveness Act, 2019 received Royal Assent in accordance with this section, as it read at the time, and that was approved by the Director under section 22.1, as it read at the time, is deemed to have met the requirements set out in subsections (2), (3), (3.1) and (3.2) and continues to be valid until the earlier of,

- (a) the day the agreement is revoked under subsection (6);
- (b) the day the Director's approval expires; or
- (c) the day the Director's approval is revoked.

(5.1) Repealed: 2019, c. 4, Sched. 9, s. 8 (4).

**Agreement irrevocable**

(6) No averaging agreement referred to in this section may be revoked before it expires unless the employer and the employee agree to revoke it.

**Time off in lieu**

(7) The employee may be compensated for overtime hours by receiving one and one-half hours of paid time off work for each hour of overtime worked instead of overtime pay if,

- (a) the employee and the employer agree to do so; and
- (b) the paid time off work is taken within three months of the work week in which the overtime was earned or, with the employee's agreement, within 12 months of that work week.

**Where employment ends**

(8) If the employment of an employee ends before the paid time off is taken under subsection (7), the employer shall pay the employee overtime pay for the overtime hours that were worked in accordance with subsection 11 (5).

**Changing work**

(9) If an employee who performs work of a particular kind or character is exempted from the application of this section by the regulations or the regulations prescribe an overtime threshold of other than 44 hours for an employee who performs such work, and the duties of an employee's position require him or her to perform both that work and work of another kind or character, this Part shall apply to the employee in respect of all work performed by him or her in a work week unless the time spent by the employee performing that other work constitutes less than half the time that the employee spent fulfilling the duties of his or her position in that work week.

**Minimum wage**

**23 (1)** An employer shall pay employees at least the minimum wage.

**Room or board**

(2) If an employer provides room or board to an employee, the prescribed amount with respect to room or board shall be deemed to have been paid by the employer to the employee as wages.

**Determining compliance**

(3) Compliance with this Part shall be determined on a pay period basis.

**Hourly rate**

(4) Without restricting the generality of subsection (3), if the minimum wage applicable with respect to an employee is expressed as an hourly rate, the employer shall not be considered to have complied with this Part unless,

- (a) when the amount of regular wages paid to the employee in the pay period is divided by the number of hours he or she worked in the pay period, other than hours for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to the minimum wage; and

(b) when the amount of overtime pay and premium pay paid to the employee in the pay period is divided by the number of hours worked in the pay period for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to one and one half times the minimum wage.

**Public holiday pay**

**24 (1)** An employee's public holiday pay for a given public holiday shall be equal to, (a) the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20; or

(b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

(1.1), (1.2) Repealed: 2018, c. 14, Sched. 1, s. 7 (2).

**Premium pay**

**(2)** An employer who is required under this Part to pay premium pay to an employee shall pay the employee at least one and one half times his or her regular rate.

**Vacation pay**

**35.2** An employer shall pay vacation pay to an employee who is entitled to vacation under section 33 or 34, equal to at least,

(a) 4 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is less than five years; or

(b) 6 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is five years or more.

2. **O. Reg. 285/01: WHEN WORK DEEMED TO BE PERFORMED, EXEMPTIONS AND SPECIAL RULES**

**Exemptions from Parts VII to XI of Act**

**2. (1)** Parts VII, VII.1, VIII, IX, X and XI of the Act do not apply to a person employed, [...]

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer's place of business.

3. ***Sale of Goods Act, R.S.O. 1990, c. S.1***

**When agreement becomes sale**

**2 (4)** An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

4. *Canada Pension Plan, R.S.C., 1985, c. C-8*

**Pensionable employment**

**6 (1)** Pensionable employment is

- (a) employment in Canada that is not excepted employment;
- (b) employment in Canada under Her Majesty in right of Canada that is not excepted employment; or
- (c) employment included in pensionable employment by a regulation made under section 7.

**Employer's base contribution**

**9 (1)** Every employer shall, in respect of each employee employed by the employer in pensionable employment, make an employer's base contribution for the year in which remuneration in respect of the pensionable employment is paid to the employee of an amount equal to the product obtained when the contribution rate for employers for the year is multiplied by the lesser of

- (a) the contributory salary and wages of the employee for the year paid by the employer, minus such amount as or on account of the employee's basic exemption for the year as is prescribed, and
- (b) the maximum contributory earnings of the employee for the year, minus the amount, if any, that is determined in the prescribed manner to be the employee's salary and wages on which a base contribution has been made for the year by the employer with respect to the employee under a provincial pension plan.

**Employer's first additional contribution**

**(1.1)** For 2019 and each subsequent year, an employer referred to in subsection (1) shall also, in respect of each employee employed by the employer in pensionable employment, make an employer's first additional contribution for the year in which remuneration in respect of the pensionable employment is paid to the employee of an amount equal to the product obtained when the first additional contribution rate for employers for the year is multiplied by the lesser of

- (a) the employee's contributory salary and wages for the year paid by the employer, minus the amount as or on account of the employee's basic exemption for the year that is prescribed, and
- (b) the employee's maximum contributory earnings for the year, minus the amount, if any, that is determined in the prescribed manner to be the employee's salary and wages on which a first additional contribution has been made for the year by the employer with respect to the employee under a provincial pension plan.

**Employer's second additional contribution**

**(1.2)** For 2024 and each subsequent year, an employer referred to in subsection (1) shall also, in respect of each employee employed by the employer in pensionable employment, make an employer's second additional contribution for the year in which remuneration in respect of the pensionable employment is paid to the employee of an amount equal to the

product obtained when the second additional contribution rate for employers for the year is multiplied by the amount equal to

- (a) the amount by which the employee's contributory salary and wages for the year paid by the employer — not exceeding the employee's additional maximum pensionable earnings for the year — exceeds the employee's maximum pensionable earnings for the year, minus
- (b) the amount, if any, that is determined in the prescribed manner to be the employee's salary and wages on which a second additional contribution has been made for the year by the employer with respect to the employee under a provincial pension plan.

### **Succession of employers**

(2) If one employer immediately succeeds another as the employer of an employee as a result of the formation or dissolution of a corporation or the acquisition — with the agreement of the former employer or by operation of law — of all or part of a business of the former employer, the successor employer may, for the application of subsections (1), (1.1) and (1.2) and 8(1), (1.1) and (1.2) and section 21, take into account the amounts paid, deducted, remitted or contributed under this Act by the former employer in respect of the year in relation to the employment of the employee as if they had been paid, deducted, remitted or contributed by the successor employer. If the employer takes those amounts into account with respect to the employer's contributions, the employer shall also take them into account with respect to the employee's contributions.

### **Self-employment succeeded by employment**

(3) For the application of subsections (1), (1.1) and (1.2) and 8(1), (1.1) and (1.2) and section 21, if a person, in a year, is self-employed, ceases to be self-employed and becomes an employee of a corporation that is controlled by the person, the corporation may

- (a) take into account the amount of contributory self-employed earnings of the person in the year as contributory salary and wages paid by the corporation to the employee in that year; and
- (b) take into account one half of the contributions by the person in respect of self-employed earnings in the year as an amount deducted, remitted or contributed in relation to employee's contributions for that year, and one half of that amount as an amount remitted or contributed in relation to employer's contributions for that year.

## **5. *Employment Insurance Act, S.C. 1996, c. 23***

### **Types of insurable employment**

**5 (1)** Subject to subsection (2), insurable employment is

- (a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and

- whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;
- (b) employment in Canada as described in paragraph (a) by Her Majesty in right of Canada;
  - (c) service in the Canadian Forces or in a police force;
  - (d) employment included by regulations made under subsection (4) or (5); and
  - (e) employment in Canada of an individual as the sponsor or co-ordinator of an employment benefits project.

**Employer's premium**

**68** Subject to sections 69 and 70, an employer shall pay a premium equal to 1.4 times the employees' premiums that the employer is required to deduct under subsection 82(1).

**Deduction and payment of premiums**

**82 (1)** Every employer paying remuneration to a person they employ in insurable employment shall

- (a) deduct the prescribed amount from the remuneration as or on account of the employee's premium payable by that insured person under section 67 for any period for which the remuneration is paid; and
- (b) remit the amount, together with the employer's premium payable by the employer under section 68 for that period, to the Receiver General at the prescribed time and in the prescribed manner.



**SCHEDULE "C"**  
**CHART OF ANALOGOUS CASES**

CASE	SUMMARY OF PERTINENT FACTS AND FINDINGS
<p><i>Belton v. Liberty Insurance Co. of Canada</i>, [2004] O.J. No. 3358 (C.A.)</p> <p>Position: Commissioned life insurance sales agent</p>	<p>A call centre had eliminated direct contact between agents and customers with respect to policy changes and renewals, and further, all salespersons had managers, could not sell other insurance, and had no legal entitlement to the customers to which they sold.<sup>219</sup></p>
<p><i>Braiden v. La-Z-Boy Canada Limited</i>, 2008 ONCA 464</p> <p>Position: Salesperson for a furniture retailer</p>	<p>The employee worked exclusively for La-Z-Boy; was subject to control and monitoring by the employer in terms of territory, promotional methods, price, and manner of sale; was paid only on commission at prices established by the employer; and worked on a sales force which was a central to the manner in which La-Z-Boy distributed and sold its products.<sup>220</sup></p>
<p><i>Moseley-Williams v. Hansler Industries Ltd.</i>, [2008] O.J. No. 4457 (S.C.)</p> <p>Position: Commissioned equipment salesperson</p>	<p>The employee was expected to devote his efforts exclusively to selling products on behalf of the employer; the employee was assigned a geographic territory in which to solicit which was altered by the employer; the employee only used a car and his phone as "tools" to perform his job which he received a car allowance and business gas reimbursement; the employee did not take on any business risk, only earned commissions, and was entirely financially-dependent on the employer including for his "operating costs" such as gas and phone bills; and the employer worked as a part of a group of sales representatives.<sup>221</sup></p>
<p><i>McKee v. Reid's Heritage Homes Ltd.</i>, 2009 ONCA 916</p> <p>Position: Commissioned residential home salesperson</p>	<p>The employee worked exclusively for the employer's company; was subject to the employer's control with respect to where she was to sell, the promotion methods she was to use, what she was to sell, and how much she had to sell for; the employer supplied the employee with stationary and forms; the employee profited solely through fixed commissions; the employee did not risk significant capital in her sales operation; the employer provided the employee with necessary facilities and tools; and the sales force that the employee worked for was a crucial element of the employer's business organization.<sup>222</sup></p>
<p><i>King v Merrill Lynch Canada</i></p>	<p>The employees were limited to selling investments exclusively</p>

<sup>219</sup> *Belton* at para. 11, PBOA, Vol 1, Tab 9.

<sup>220</sup> *Braiden* at para. 35, PBOA, Vol 1, Tab 10.

<sup>221</sup> *Moseley-Williams v. Hansler Industries Ltd.*, [2008] O.J. No. 4457 (S.C.), at paras. 30-41, PBOA, Vol 1, Tab 13.

<sup>222</sup> *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916 at paras. 47-50, PBOA, Vol 1, Tab 14.

<p><i>Inc.</i>, [2005] O.J. No. 5028 (S.C.)</p> <p>Position: Commissioned stock/investment salesperson</p>	<p>through the employer; were treated as employees for income tax purposes; were subject to control through the policy manuals of the employer, approval of any advertising use, approval before speaking to media, monitoring of trading activity through compliance department, complaints process, filling out new account application for new clients. Although their hours of work and remuneration were not controlled these factors were not given much weight as the employees were paid solely on commission.<sup>223</sup></p>
<p><i>Jaremko v. A.E. LePage Real Estate Services Ltd.</i>, [1987] O.J. No. 506 (H.C.), aff'd [1989] O.J. No. 996 (C.A.)</p> <p>Position: Commissioned real estate salesperson</p>	<p>The employee was subject to substantial control of his operations, through use of the employer's office, and secretarial assistance, the employer's policy and company discipline, receiving memoranda, ability to apply for promotions within the company, and inclusion in the company bonus and profit sharing plan. Although the employee had substantial freedom to operate from the point of view of arranging his time, a master-servant relationship was found to exist.<sup>224</sup></p>
<p><i>Sooters Studios Ltd., Re</i>, 1991 CarswellOnt 7806 (Ont. E.S.B. (Adj.))</p> <p>Position: Commissioned managers overseeing film and photography sales</p>	<p>Nine "managers" employed at the defendant's various retail locations, each owned or leased by franchisees or the defendant, were supervised by regional "supervisors" who were labelled independent contractors. Employees were subject to substantial control in that only products approved by the defendant could be offered for sale (although managers had some discretion to give discounts). Although they hired and paid others, this was no necessarily inconsistent with the manager's being an employee.<sup>225</sup></p>
<p><i>Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)</i>, 2001 CarswellBC 4136 (Employment Standards Tribunal)</p> <p>Position: Fundraising canvass person</p>	<p>The employee worked under the direction and control of a "crew manager" who was an independent contractor, who could bind the employer in contracts. The employee was subject to substantial control in that he did the work requested of him; he not able to hire others and go into business for himself (as he tried to do that once and the company rejected his proposal); his contract was for specific work and the company provided the materials.<sup>226</sup></p>
<p><i>Big Picture Home Entertainment Ltd. v. MacDonald</i>, 2016 CarswellOnt</p>	<p>Although the employee had significant flexibility in determining hours of work and business opportunities, she was subject not in business for herself as the employer determined the neighbourhoods</p>

<sup>223</sup> *King v. Merrill Lynch Canada Inc.*, [2005] O.J. No. 5028 (S.C.) at paras. 38-39, PBOA, Vol 1, Tab 15.

<sup>224</sup> *Jaremko v. A.E. LePage Real Estate Services Ltd.*, [1987] O.J. No. 506 (H.C.) at para. 3, PBOA, Vol 1, Tab 16, aff'd [1989] O.J. No. 996 (C.A.), PBOA, Vol. 1, Tab 17.

<sup>225</sup> *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B.), at paras. 8, 28, 51, PBOA, Vol 1, Tab 18.

<sup>226</sup> *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19.

<p>18808 (Ont. L.R.B.), varied on other grounds 2016 CarswellOnt 20591 (Ont. L.R.B.)</p> <p>Position: Commissioned salesperson of home entertainment systems</p>	<p>where claimant would conduct business; the employer determined the contents of brochures and business cards; employer tracked her while she worked; and the employer provided transportation, fuel, training, etc.<sup>227</sup></p>
<p><i>Baker v. 9111140 Canada Inc.</i>, 2017 CarswellOnt 5875 (Ont. L.R.B.)</p> <p>Position: Commissioned door-to-door salesperson selling home and cooling systems</p>	<p>The employee was not engaged in business on his own account as he was driven to the areas where he did door-to-door sales, he was provided with worksheets to fill out about his efforts, and he was provided with blank contracts and never filled out a contract completely on his own. Although the employee could profit, it was only through commissions from the employer.<sup>228</sup></p>
<p><i>R. v. Pereira</i>, 1988 CarswellAlta 88 (Q.B.)</p> <p>Position: Commissioned salespersons</p>	<p>The accused company hired eight children under the age of 15 to sell chocolate bars, contrary to the age restriction for employment under Alberta's <i>ESA</i>. The accused company provided the chocolate bars, provided transportation, and determined where the bars would be sold, approved any price variations. Although the sellers paid for their own meals and were responsible for lost or broken bars and dishonoured cheques, it could not be found that they were engaged in business as the accused company retained control throughout.<sup>229</sup></p>

<sup>227</sup> *Big Picture Home Entertainment Ltd. v. MacDonald*, 2016 CarswellOnt 18808 (OLRB) at para. 33, varied on other grounds 2016 CarswellOnt 20591 (Ont. L.R.B.), PBOA, Vol 1, Tab 20.

<sup>228</sup> *Baker v. 9111140 Canada Inc.*, 2017 CarswellOnt 5875 (Ont. L.R.B.) at para. 10, PBOA, Vol 1, Tab 21.

<sup>229</sup> *R. v. Pereira*, 1988 CarswellAlta 88 (Q.B.) at para. 35, PBOA, Vol 1, Tab 22.

Haidar Omarali v. Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.

Court File No.: CV-15-527493-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

**FACTUM OF THE MOVING PLAINTIFF  
(Summary Judgment Motion  
Returnable June 11-13, 2019)**

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**THIS IS EXHIBIT C REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

CITATION: Omarali v. Just Energy, 2016 ONSC 4094  
COURT FILE NO.: CV-15-527493-CP  
DATE: 20160727

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Haidar Omarali / Plaintiff

**AND:**

Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario LP /  
Defendants

**BEFORE:** Justice Edward P. Belobaba

**COUNSEL:** *David Rosenfeld and Jody Brown* for the Plaintiff / Moving Party

*Paul J. Martin, Laura F. Cooper and Janna L. Young* for the Defendants /  
Responding Parties

**HEARD:** June 21 and June 28, 2016

Proceeding under the *Class Proceedings Act, 1992*

**CERTIFICATION DECISION**

**Introduction**

[1] This is a motion to certify a proposed class action of some 7000 sales agents who were hired by the defendants as independent contractors and worked door-to-door selling their products. The plaintiff says the sales agents were misclassified - that they are not independent contractors but employees and are therefore entitled to the benefits and protections of the *Employment Standards Act*<sup>1</sup> such as minimum wage, overtime pay, and vacation and public holiday pay.

[2] Class counsel says this is “the archetypal misclassification case.” He says this to suggest that the proposed class action should be easily certified. The reality, of course, is

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<sup>1</sup> *Employment Standards Act, 2000*, S.O. 2000, c. 41 (“ESA”).

otherwise. Misclassification cases are generally difficult to certify because individualized assessments are often required and commonality cannot be established.<sup>2</sup>

[3] Misclassification cases have been certified in two situations: one, where the issue was job function but the class was carefully defined to ensure class-wide job function similarity;<sup>3</sup> and two, where the common issues were focused on the systemic nature of the defendant company's policies and practices rather than on class member entitlements.<sup>4</sup> Otherwise, most misclassification cases that ask whether the class member is an employee (rather than say a manager) collapse under the weight of an "it depends" reality.<sup>5</sup> I am not saying that an "archetypal misclassification case" can never be certified,<sup>6</sup> only that the challenge in doing so should not be underestimated.

[4] That is why the defendants in this action argue that the determination whether the sales agents herein are independent contractors or employees can only be made on an individualized basis and, because there is no commonality, the matter cannot proceed as a class action. The defendants submit that the motion for certification must therefore be dismissed.

[5] When I first reviewed the parties' submissions, I was inclined to agree with the defendants. However, as I considered the matter further, and reviewed the applicable case law and the actual record before me, I realized that the evidence in this case was quite different from what was before the court in *Brown*<sup>7</sup> and *McCracken*<sup>8</sup>. More specifically, I realized that the defendants really had little in the way of "it depends" evidence and the plaintiff, on the other hand, had significant evidence of systemic commonality. I therefore came to the conclusion that the plaintiff has satisfied the commonality as well as the other

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<sup>2</sup> See, for example, *McCracken v. Canadian National Railway*, 2012 ONCA 445, and *Brown v. Canadian Imperial Bank of Commerce*, 2014 ONCA 677.

<sup>3</sup> *Rosen v. BMO Nesbitt Burns Inc.*, 2013 ONSC 2144.

<sup>4</sup> *Baroch v. Canada Cartage*, 2015 ONSC 40. Also see *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443 and *Fresco v. Canadian Bank of Commerce*, 2012 ONCA 444.

<sup>5</sup> *Brown v. Canadian Imperial Bank of Commerce*, 2012 ONSC 2377, at para. 175.

<sup>6</sup> Indeed, in *McCracken*, *supra*, note 2, at para. 44, the Court of Appeal agreed that "there is no rule that misclassification cases are automatically incapable of raising common issues." As in every certification motion, it depends on the evidence.

<sup>7</sup> *Brown*, *supra*, note 2.

<sup>8</sup> *McCracken*, *supra*, note 2.

requirements under s. 5(1) of the *Class Proceedings Act*<sup>9</sup> and that the proposed action should be certified as a class proceeding.

[6] The defendants may well prevail on the merits whether by way of summary judgment or a common issues trial. But overall merits are not relevant at certification. On a motion for certification, which is primarily a procedural decision, the plaintiff simply has to show a cause of action and some basis in fact for the four remaining s. 5(1) requirements: an identifiable class, common issues that will advance the litigation, procedural preferability and a suitable representative plaintiff.

[7] In my view, for the reasons set out below, the plaintiff has satisfied each of these requirements. The motion for certification is granted. The common issues, as proposed and certified, are attached in the Appendix.

### **Outline of decision**

[8] To explain why this “archetypal misclassification case” has been certified as a class action on the evidence herein, I will proceed as follows. First, I will describe the defendants’ ‘independent contractor’ sales structure. Next, I will provide a brief overview of how the law decides who is an “employee” and a summary of the key provisions of the *Employment Standards Act* as they apply here. I will then discuss the commonality requirement in detail because this is the core issue on the motion. I will end by considering the certification requirements in s. 5(1) of the CPA.

### **Background**

#### **Just Energy’s sales structure**

[9] Just Energy is a “family of companies” that provide electricity and natural gas supply to residential and commercial customers across North America. They commenced operations in Ontario in 1997, initially marketing fixed price natural gas contracts. After the provincial market for electricity was deregulated in 2002, Just Energy began to market electricity in addition to natural gas. Just Energy currently carries on business in six provinces and fifteen American states.

[10] From the time it began operating in Ontario, Just Energy has hired what it believes are independent sales agents to solicit customer contracts for natural gas and electricity. The sales agents work door-to-door and are paid entirely by commission. In 2009 about 95 per cent of the company’s sales revenues came from door-to-door selling. Today, on-

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<sup>9</sup> *Class Proceedings Act*, 1992, S.O. 1992, c.6 (“CPA”).



line sales generate most of the company's revenue and about 21 per cent of the revenue comes from door-to-door selling. Nonetheless, even at 21 per cent, door-to-door selling remains a significant component of the defendants' business. As the company's vice president explained in his affidavit, "Our success has been built one door at a time."

[11] Just Energy has about 130 sales agents working in Ontario as independent contractors ("ICs"). However, because of the high turn-over rate in the door-to-door workforce (close to 18 times a year) the defined class over the four-year class period includes some 7000 former and current sales agents.

[12] Each of these putative class members work or worked in a team or "crew" supervised by a crew coordinator. The crew coordinators are supervised, in turn, by regional distributors who run the regional sales office. The crew coordinators and regional distributors are also IC's and are also paid on commission, drawing "over-rides" from the commissions earned by the door-to-door sales agents under their supervision. The sales agents can become crew coordinators and regional distributors. Some of the latter have been hired by Just Energy as senior employees.

[13] The regional distributors are trained by Just Energy and report to the national distributors employed by the company. Every regional distributor signs an agreement with Just Energy which provides that the sales agents are ICs working for Just Energy, that the regional distributor must recruit, educate, motivate and guide the activities of the ICs, solicit customer contracts using forms and solicitation material approved and supplied by Just Energy, implement the compliance materials provided by Just Energy and generally comply with "all directions" provided by the company. Every sales agent is recruited and hired by Just Energy. All sales agents must wear a Just Energy identification badge.

[14] As an independent energy retailer, Just Energy is regulated by the Ontario Energy Board ("OEB"). Just Energy is responsible for the training, monitoring and conduct of its sales agents and must ensure that all sales agents adhere to internal and external codes of conduct.

### **The independent contractor agreement**

[15] Every sales agent is required to execute an IC agreement. The plaintiff signed his IC agreement in July, 2012 and worked as a sales agent until December, 2013.

[16] In their submissions, the defendants go to great lengths to identify the many provisions in the IC agreement that assert that the sales agents are not employees. Let me simplify this part of the analysis by agreeing with the defendants that, except for clause 2 of the agreement (which requires the sales agents to "follow all instructions or directions" provided by Just Energy), there is no doubt, based on the IC agreement alone, that the defendants intended to hire the sales agents as ICs and not as employees.

[17] The IC agreement provides that the sales agents are generally on their own to do as they please. They must, of course, comply with applicable provincial regulations, such as the codes of conduct promulgated by the OEB and they are required to wear the prescribed identification badge and not engage in any misleading or deceptive sales practices. Otherwise, they can pursue sales as they wish.

[18] According to the IC agreement, there is no requirement to attend the morning meetings at the regional office or wear the defendants' clothing or use the defendants' suggested sales scripts or work door-to-door in any particular location. The IC agreement provides that the sales agents are free to choose when, where and how they will solicit contracts. Thus, I say again, if the IC agreement alone was determinative, it is reasonably clear (except for clause 2) that sales agents were being hired as ICs and not as employees.

[19] But the hiring agreement alone is not determinative.<sup>10</sup>

### **Who is an employee - the “economic realities” test**

[20] Little weight is given by courts as to how the parties describe their relationship in the contractual agreement because this is often self-serving.<sup>11</sup> Nor does the ESA provide any assistance in this regard. The ESA applies to employees.<sup>12</sup> But “employee” is not defined. Thus, both courts and administrative adjudicators have had to look beyond the labels and examine the “economic realities” of the parties' relationship in practice.<sup>13</sup> It is in the common law that one finds the factors that must be considered. A leading Canadian text summarizes the key factors as follows:

Canadian courts and administrative tribunals use various formulations of the test for determining employee status, but three elements are common: (1) the employer must exercise a relatively high degree of bureaucratic control over the when and the where of employment; (2) the worker must be economically dependent on the employer; and (3) the worker must not be an entrepreneur operating a business as a going concern but must form part of the employer's business.<sup>14</sup>

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<sup>10</sup> England, *Individual Employment Law* (2008) at 22.

<sup>11</sup> *Ibid.*

<sup>12</sup> ESA, s. 3.

<sup>13</sup> England, *supra*, note 10, at 22.

<sup>14</sup> *Ibid.*, at 19.

[21] The application of this common law test is invariably fact-specific and more often than not requires a nuanced analysis. Different courts or agencies in different regulatory contexts can come to different conclusions. A worker can simultaneously be an employee under the ESA and an IC under, say, the *Income Tax Act*.<sup>15</sup> Rulings by the CRA or the WSIB or other administrative agencies that the Just Energy sales agents are ICs and not employees are interesting and to a point relevant, but they are not determinative.<sup>16</sup> What counts, and the only thing that counts here, is whether the ICs are employees under the ESA as determined by the application of the common law test set out above.

[22] I pause here to note that of the three primary factors that are typically considered, the one that is the most determinative on the facts herein is the “control” factor, that is, the degree of control over the how, when and where of what’s being sold.

[23] The other two factors are not seriously contested by the defendants:

- There is no serious dispute about the fact that the sales agents are economically dependent on Just Energy. Other than one example of a sales agent in the Ottawa area who also tries to sell LED lights while going door-to-door, the bulk of the evidence is that the sales agents sell only Just Energy products and are economically dependent on the defendants.
- There is also no serious dispute about the fact that the sales agents are not operating stand-alone businesses that service Just Energy as just one of several clients. The evidence is uncontroverted that the sales agents put in full days working exclusively for Just Energy and in doing so form a significant part of the defendants’ business. (Recall the fact that door-to-door sales account for more than 20 per cent of Just Energy’s total revenues.)

[24] Thus, when we come to consider whether there is “some basis in fact” or “some evidence” for the proposed common issues - for example, whether the sales agents are employees rather than ICs - the question will really be whether the plaintiff has presented some evidence that Just Energy exercises a degree of control over the how, where and when of the sales agent’s job – because, as discussed, this is the determinant factor on the facts herein.

[25] I recognize that the Court of Appeal listed five factors in *Belton*<sup>17</sup> not three. The two that were added were these: whether the sales agent is limited exclusively to the

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<sup>15</sup> England, *supra*, note 10, at 18 and cases cited therein.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Belton v. Liberty Insurance Co. of Canada*, [2004] O.J. No. 3358 (C.A.)

service of the principal; and the cost and ownership of any tools required for the job. Neither factor, on the facts herein, is significant. In practice, virtually all of the sales agents work exclusively for Just Energy (except for the individual working out of the Ottawa office who also sells LED lights); and both sides agree that no special tools are needed to do door-to-door sales. Thus, the three-factor test outlined above is more than sufficient.

[26] A final point before turning to the applicable ESA provisions. “Control” is not defined either in the ESA or in the case law. One must therefore resort to the definition of “control” that can be found in most on-line and in-print dictionaries: “the power to influence or direct people’s behavior.” Note that “control” does not mean ‘compel at gunpoint’ but simply “*influence or direct*” people’s behavior. I will return to this definition later in these reasons.

### **The applicable ESA provisions**

[27] As already noted, because the ESA does not define “employee” it is necessary to apply the “economic realities” test described above. If the IC sales agents are found to be employees, then (unless they fall within a statutory exemption) they are entitled to a range of benefits and protections as set out in Parts VII to XI of the Act, such as minimum hourly wages, overtime pay and vacation and public holiday pay. These benefits and protections, as already noted, cannot be waived. One cannot contract out of the ESA.<sup>18</sup>

[28] A number of exemptions are set out in the legislation. The exemption that applies here is found in s. 2(1)(h) of O. Reg. 285/01:

*Exemptions from Parts VII to XI of Act*

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed...

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer’s place of business.

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<sup>18</sup> ESA, s. 5(1).

[29] In other words, a sales agent who is found to be an “employee” under the common law test is exempted from receiving ESA benefits if she is a sales person who is paid in commission and works outside the employer’s place of business. Thus, because Just Energy’s door-to-door sales agents are outside salespersons they would fall within this exemption<sup>19</sup> and would not be entitled to minimum wage, overtime pay, or vacation or public holiday pay, *unless* they were found to be “route salespersons”. If they come within the “route salesperson” exception to the general exemption, then they would be entitled to minimum wage and related benefits already noted.

[30] The ESA does not define “route salesperson.” However, according to the Act’s interpretation manual and related case law, the key consideration is the degree of control exercised by the employee relative to the employer.<sup>20</sup> Whether the “routes” are determined by the employer or the employee, the chance of profit or risk of loss and the level of entrepreneurial activity by the employee are also relevant questions.<sup>21</sup>

[31] The case law follows suit. “The key characteristics driving the conclusion that a person is either a salesperson or a route salesperson are the degree of control the employer exercises over the scheduling and order of sales calls and the degree of entrepreneurial initiative the employee at issue exercises.”<sup>22</sup> The adjudicator typically considers such facts as whether the employees were given scripts, were pre-assigned work locations, were driven to the assigned locations, were given direction and coaching on how to perform sales, wore a uniform provided by the employer and were subjected to supervisory phone calls.<sup>23</sup>

[32] It is important to remember as we begin to consider whether there is some evidence of commonality for the two key issues – that is, whether there is some evidence that the sales agent is an employee or route salesperson – that the most important evidence for each of these determinations is evidence about the defendants’ degree of control over the how, when and where of what is being sold.

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<sup>19</sup> The plaintiff argues that the sales agents do not fall within the exemption because they are not paid commissions with respect to “offers to purchase or sales.” I explain below why this is not a reasonable interpretation of the s. 2(1)(h) provision.

<sup>20</sup> *Employment Standards Act 2000 Policy and Interpretation Manual*, at 31-18.2.

<sup>21</sup> *Ibid.*

<sup>22</sup> *VanGrootel v. Advance Beauty Supply Limited*, 2016 CanLII 17209 (OLRB).

<sup>23</sup> *Schiller v. P & L Corporation Ltd*, 2012 CanLII 12611 (OLRB); *Kognitive Marketing Inc. v. Director of Employment Standards*, 2015 CanLII 61657 (OLRB); and *Orlov v. Amato*, 2003 CanLII 2984 (OLRB).

### Commonality

[33] As already noted, this motion for certification turns on commonality – whether the proposed common issues can be answered on a class-wide basis. In *Brown and McCracken*, the defendant adduced extensive evidence to show that individualized inquiries were needed (to decide whether the employee was also a manager). And the plaintiff, in turn was unable to adduce sufficient evidence of systemic, class-wide commonality. Here however, the defendants’ “individualized inquiries” evidence was surprisingly weak and the plaintiff’s “systemic commonality” evidence was quite compelling.

[34] The proposed common issues (“PCIs”) are set out in the attached Appendix. The key issues are PCI No. 1 (are the sales agents employees?) and PCI No. 4 (are they route salespersons?). In both cases, as already noted, the most relevant evidence is evidence about the degree of control that Just Energy has over the how, when and where of what is being sold.

[35] I will therefore take some time discussing the s. 5(1)(c) commonality requirement. I will set out the reasons why in my view commonality has been established for PCI Nos. 1 and 4, and I will then go on to consider the other certification requirements and the remaining PCIs.

[36] The law of commonality is well established. Under s. 5(1)(c) of the CPA, the plaintiff must show that his claim raises common issues. In order to satisfy the commonality requirement, the plaintiff only needs to adduce some basis in fact for the existence of the common issue.<sup>24</sup> This has been generally interpreted in the case law as involving two-steps - some evidence that the proposed common issue actually exists and some evidence that the proposed issue can be answered in common on a class-wide basis.<sup>25</sup> This must be coupled with the over-arching proposition that an issue cannot be common if its resolution is dependent upon individual findings of fact that have to be made with respect to each individual claimant.<sup>26</sup>

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<sup>24</sup> *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443, at para. 79 (“...some evidentiary basis indicating that a common issue *exists* beyond a bare assertion in the pleadings.”)

<sup>25</sup> *Dine v Biomet*, 2015 ONSC 7050 at paras. 15-19; *affd*, 2016 ONSC 4039 (Div.Ct.).

<sup>26</sup> *Fehring v. Sun Media Corp.*, [2002] O.J. No. 4110 (S.C.J.), *affd*, [2003] O.J. No. 3918 (Div. Ct.).

**Step one: Some evidence that the “employee” and “route salesperson” issues exist**

[37] The first step, some evidence that the proposed common issue actually exists, is typically satisfied with affidavit evidence from the plaintiff about his or her own experience. Here the plaintiff has adduced more than enough evidence to show that PCI Nos. 1 and 4 exist – that is, some evidence that Just Energy controls the how, where and when of the door-to-door sales and that the questions about whether the sales agents are “employees” and “route salespersons” are legitimate questions.

[38] I refer specifically to the evidence presented by sales agents Omarali, Awal, Nazerally and Filipovic. They make the following points. They work twelve-hour days, the morning portion dedicated to meetings and role-playing, and the balance of the day, 12 noon to 9 p.m., to door-to-door selling. They are required to wear Just Energy clothing. They are given sales scripts. They are driven in vans to pre-assigned locations, picked up at day’s end and returned to the regional sales office. They cannot change their pre-assigned work areas without explicit permission. They are reprimanded if they take time off work and sanctioned if they breach internal or external codes of conduct. In short, say the affiants, they are told how, when and where to sell the defendants’ products.

[39] The plaintiff has therefore satisfied the first step of the commonality analysis by showing some basis in fact that the “employee” and “route salesperson” issues exist.

**Step two: Some evidence of systemic or class-wide commonality**

[40] This is always the more difficult challenge in misclassification cases. The plaintiff may well have some evidence that the PCI exists at least for one or more class members. But now, under the second step of the analysis, he must present some evidence that the PCI is common to the entire class. To do this, the plaintiff typically must find evidence of systemic commonality, ideally in the defendants’ own practices and policies.

[41] Here the plaintiff does just that. He relies not only on the defendants’ own documentation (such as Just Energy’s training materials) but also on the representations made on behalf of the company to the OEB. The plaintiff provides the following evidentiary support for the proposition that the defendants influence or direct (that is, control) the sales agents’ behavior on a class-wide basis.

[42] There is evidence in the company’s own documentation that the completion of the sales agent’s five-part training program is not optional but “must” be completed in its entirety. There is evidence that the morning meetings provide an opportunity “to practice the sales presentation and receive coaching and suggestions from the crew coordinator.” There is evidence that a detailed sales script is provided and that the sales agents are trained in “what must and must not be said at each door.”

[43] There is evidence in the defendants' documentation that the sales agents "will be dropped off by the crew coordinator at the location you will be working in for the day." The sales agents "will work from early afternoon to early evening in one area, contacting customers." There is evidence that they are provided with "do not solicit" lists for the assigned area and must "use only current and approved Just Energy sales and marketing materials."

[44] Customer contracts are finalized by Just Energy. All customer complaints are handled by Just Energy. There is evidence of ongoing quality-control supervision on the part of Just Energy with daily and weekly reports detailing sales agent productivity and customer complaints. The OEB was told by the defendants' legal counsel that "... Just Energy's Ontario operations and compliance teams commit more than 80 person hours per week on quality assurance and monitoring activities."

[45] There is evidence that the sales agents must comply with the company's internal Code of Business Conduct. Just Energy advises its sales agents that it "may discipline and/or terminate its relationship or affiliation with any representative who breaches this Code or related policies." There is evidence that violations of either the OEB or the Just Energy code of conduct can result in "progressive discipline" - from warning letters to monetary penalties, suspensions and terminations.

[46] Last but not least, Clause 2 of the IC agreement (executed by every sales agent) requires every IC to "follow all instructions or directions provided by JEC from time to time." Note the language: all "instructions and directions."

[47] In sum, I have no difficulty concluding that the plaintiff has presented some evidence that the defendants control (that is, influence or direct) the "how, when and where" behavior of the sales agents and do so on a class-wide basis.

**Why this is not *Brown* or *McCracken***

[48] In *Brown* and *McCracken*, the plaintiff failed to provide some evidence that the job functions of class members were "sufficiently similar" that the misclassification claim could be resolved without considering the individual circumstances of class members.<sup>27</sup> In both cases, the defendants presented extensive evidence showing a "wide variability"<sup>28</sup> in the duties and responsibilities of employees having the same job title or

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<sup>27</sup> *McCracken*, *supra*, note 2, at para. 104.

<sup>28</sup> *Brown*, *supra*, note 2, at para. 44.



classification. Some had managerial duties; other did not. The court concluded that individual inquiries were required and thus there was no commonality.<sup>29</sup>

[49] Here, however, the issue is not whether the job functions of class members are “sufficiently similar” but whether the level or degree of control over the how, when and where of what is being sold is “sufficiently similar” that the misclassification claim can be resolved without considering the individual circumstances of class members.

[50] Here, the defendants did not present any evidence of wide variation in the nature or extent of control over the sales agents. The defendants pointed to the IC agreement which, as I have already noted, is not determinative. They pointed to several broad assertions in their affidavit evidence that the sales agents were under no obligation to attend the morning meetings, were not required to wear Just Energy branded clothing and were “at liberty” to work “at any time and at any location.” But these highly generalized assertions are akin to the “bald, sweeping and conclusory assertions” that were rejected by the Court of Appeal in *McCracken*.<sup>30</sup>

[51] The defendants also tried to suggest there were variations in job functions and related degrees of control by noting that not all of the class members worked door-to-door selling energy supply contracts to first-time residential customers. Some of the sales agents sometimes worked on residential “renewal” sales and others on commercial customers, both new and renewal.<sup>31</sup>

[52] However, the defendants presented no evidence showing any variation in the level of control relating to the residential renewal sales, or commercial new or renewal sales. There was no evidence, for example, that sales agents selling to commercial customers worked their own hours, used their own sales scripts, wore their own clothing, drove their own cars or finalized their own contracts.

[53] Instead, there is evidence to the contrary. Every sales agent was hired to perform just one job: door-to-door selling. Indeed, Just Energy instructed its recruiters that, “We can't tell people we have multiple positions as multiple positions imply different jobs. We have *one job* with multiple openings.”

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<sup>29</sup> *McCracken*, *supra*, note 2, at para. 128.

<sup>30</sup> *McCracken*, *supra*, note 2, at para. 104.

<sup>31</sup> I note that some of the sales agents also sold water heaters at one time. However, no further information has been provided about the water heater sales.

[54] Also, the company's VP noted in his affidavit that the sales agents working the residential renewal or the commercial customers were still selling 'door-to-door':

While these sales agents may sell different products to differing customer bases, the one constant is that each and every door-to-door sales person is an Independent Contractor and it is this business model that has remained constant at Just Energy since 1997.

[55] In short, unlike in *Brown* and *McCracken*, here the evidence adduced by the defendants does not show a "wide variability"<sup>32</sup> or "lack of core commonality"<sup>33</sup> in the nature or extent of control exercised by the company over its door-to-door sales agents.

[56] I am satisfied that there is some basis in fact for both the existence and the commonality of the key common issues, "employee" and "route salesperson."

### **Certification requirements**

[57] I can now turn to the certification requirements as set out in s. 5(1) of the CPA - cause of action, identifiable class, common issues, preferable procedure and a suitable representative plaintiff. I will consider each of these in turn.

#### **(1) Cause of action**

[58] Section 5(1)(a) requires that the pleadings disclose a cause of action. I am satisfied that the pleadings disclose the following causes of action: breach of the ESA, breach of contract and the duty of good faith, negligence, and unjust enrichment.

[59] The defendants' complain that more facts should have been pleaded. However, Rule 25.06(1) requires "a concise statement of the material facts but not the evidence by which those facts are to be proved." In my view, there is nothing deficient or improper about the pleadings.

[60] The defendants also argue that because the pleadings refer to the IC agreement, and the IC agreement is clear that the sales agents were independent contractors, it follows that no cause of action is disclosed in the pleadings. However, as already noted, the contractual agreement is not determinative. The application of the so-called *Belton* factors may well result in a finding that the sales agents were actually employees even though they signed an IC agreement. The primary issue in this analysis is "control" and

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<sup>32</sup> *Brown, supra*, note 2, at para. 44.

<sup>33</sup> *Ibid.*

that issue is not decided by the content of the IC agreement but the “economic realities” of the parties’ relationship in practice.<sup>34</sup> The fact that the pleadings refer to the IC agreement is simply not determinative.

[61] In short, the pleadings disclose the causes of action as noted above. The first requirement under s. 5(1)(a) is satisfied.

**(2) Identifiable class**

[62] The plaintiff, Haidar Omarali, signed the Just Energy IC agreement in July, 2012 and worked in Toronto as a Just Energy door-to-door sales agent from approximately August 2012 to December 2013. In his first month of employment, the plaintiff worked about 288 hours and made \$956.40 or the equivalent of \$3.32 per hour. The plaintiff’s commission income in 2012 was \$8,851 and in 2013 it was \$23,515.

[63] To satisfy the section 5(1)(b) requirement of the CPA, there must be an identifiable class of two or more persons. The class must also be objectively defined and limited by rational criteria bearing a relationship to the common issues.<sup>35</sup> In my view, this second requirement has been satisfied.

[64] The plaintiff proposes the following class definition:

Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.

[65] The defendants say the class definition should be narrowed to exclude claims that are, on the face of the pleadings, statute-barred. The statement of claim was issued on May 4, 2015. Therefore, all claims in respect of services provided prior to May 4, 2013 (or services for which commission payments were made prior to May 4, 2013) are barred by the two-year limitation period set out in the *Limitations Act, 2002*.<sup>36</sup> Every class member, say the defendants, would have known upon the receipt of his or her first commission payment, if not sooner, that he or she was not being paid a minimum wage or receiving any other benefits under the ESA. In other words, the class period should begin on May 4, 2013 not January 1, 2012.

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<sup>34</sup> *Supra*, note 13.

<sup>35</sup> *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, at para. 38.

<sup>36</sup> S.O. 2002, c. 24, Sch. B, ss. 4-5.

[66] I am not persuaded that the class should be narrowed at this stage of the proceeding. The defendants may well prevail on the limitations point but more evidence on the issue of reasonable discoverability is needed, particularly where the defendants themselves were continually representing to the sales agents through words and actions (e.g. pay slips) that they were ICs and not employees. On these facts, I prefer to follow the case law as summarized in the leading text on class actions, that “the limitations issue should not be resolved on a pleadings motion or on a motion for certification.”<sup>37</sup>

[67] The better approach, in my view, is to allow the defendants to add the limitations question as a common issue<sup>38</sup> and I have done so herein. On the defendants’ motion, I have added Common Issue 15 to deal with the limitations argument.

[68] Returning then to the s. 5(1)(b) requirement. The class consists of an identifiable group of door-to-door sales agents who are recruited and trained in common, have the same job, and are all classified as independent contractors. The term "sales agent" is an objective term that is used by Just Energy and readily understood by the class members. The class definition is rationally connected to the common issues because the class members were allegedly misclassified as independent contractors in violation of the ESA.

[69] The “identifiable class” requirement is satisfied.

### **(3) Common issues**

[70] I will now consider each of the PCIs in turn and decide whether the PCI should be certified as a common issue.

#### ***PCI No.1: Are the class members employees?***

[71] PCI No. 1 asks if the class members are employees under the ESA. I have already found in my discussion of the commonality question<sup>39</sup> that there is some basis in fact that the issue exists and has class-wide commonality.

[72] PCI No. 1 is certified as a common issue.

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<sup>37</sup> Winkler, Perell, Kalajdzic and Warner, *The Law of Class Actions in Canada* (2014) at 294.

<sup>38</sup> *Ibid.*

<sup>39</sup> See above, at paras. 37-47.

***PCI Nos. 2, 3 and 9: CPP and EI contributions***

[73] PCI Nos. 2 and 3 ask about CPP and EI contributions. PCI No. 9 asks if the defendants failed to make these contributions on behalf of the class members. There is certainly some evidence that the issues exist and, because they focus on the defendants' conduct, they can be answered on a class-wide and common basis.

[74] I suggested to the plaintiff that because the answers to these PCIs were self-evident (obviously no such contributions were made) there was little to be gained in having these questions certified as common issues. But counsel on both sides insisted that there was value in doing so. I will yield to their joint request.

[75] PCI Nos. 2, 3 and 9 are certified as common issues.

***PCI No. 4: Are the class members route salespersons?***

[76] This is the second core common issue. If the answer to PCI No. 1 is "yes" and the class members are found to be employees, PCI No. 4 asks whether they are exempt from Parts VII, VIII, IX, X and XI of the ESA as outside salespersons or fall within the exception to this exemption as route salespersons? I have already found in my discussion of commonality above,<sup>40</sup> that there is evidence in the plaintiff's affidavit material that the issue exists and has class-wide commonality.

[77] There is one problem, however, with this common issue as drafted by the plaintiff. The first dozen or so words of PCI No. 4 suggest that s. 2(1)(h) of O. Reg. 285/01 should be interpreted as meaning that "class members are making offers to purchase" rather than the customer.<sup>41</sup> In my view, it is plain from the language in the Regulation that it is the customer that is making the offer to purchase not the sales agent. I therefore agree with the defendants that the opening language in PCI No. 4 should be revised to simply read, "If the answer to (1) is "yes", are the class members ... [etc]."

[78] With this revision, PCI No. 4 is certified as a common issue.

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<sup>40</sup> Recall above at paras.37-47.

<sup>41</sup> The plaintiff's PCI No. 4 reads as follows: "*If the Class Members are making offers to purchase or sales pursuant to s. 2(1)(h) of O. Reg. 285/01, are the class members exempt from Parts VII, VIII, IX, X and XI of the ESA, or do the Class Members fall within the exception to this exemption as route salespersons?*"

***PCI No. 5: ESA requirements as express or implied terms***

[79] PCI No. 5 asks the following: if the class members are employees and route salespersons, do the ESA requirements regarding minimum pay and related benefits form express or implied terms of the class members' contracts?

[80] Here again, I suggested to the plaintiff that very little would be gained by adding this question to the common issues list. The answer is self-evident. If the ESA applies, and one cannot contract out of the ESA, then it follows that the ESA benefits and protections are payable and these requirements can be characterized as an implied term of the class member employment contracts.

[81] But here again, counsel for both sides requested that this question be added as a common issue. And here again, as I did with PCI Nos. 2, 3 and 9, I acceded to the joint request. I note that a similar issue was certified in *Rosen, Fulawka* and *Fresco*.

[82] PCI No. 5 is certified as a common issue.

***PCI Nos. 6 and 7: Breach of contractual and good faith duties***

[83] PCI No. 6 asks if the defendants owed contractual duties or a duty of good faith to ensure that the class members paid the minimum wage, that the hours of work were monitored and accurately recorded, that the class members were properly classified and advised of their rights to overtime pay and that they were compensated with vacation and public holiday pay.

[84] There is certainly some evidence that none of this was done and that the questions posed can be answered on a class-wide basis. The basis of the duties alleged are informed by the requirements of the ESA and the Supreme Court's decision in *Bhasin v Hrynew*<sup>42</sup> that requires honesty in contractual performance. I also note that similar questions have been certified in other employment class actions, including *Rosen, Fulawka, Fresco* and *Baroch*.

[85] PCI No. 7 is certified as a common issue.

***PCI No. 8: Failure to comply with ESA requirements***

[86] If the class members are found to be employees and route salespersons, PCI No. 8 asks if the defendants failed to pay minimum wage, overtime pay, and vacation and

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<sup>42</sup> *Bhasin v Hrynew*, [2014] S.C.R. 494.

public holiday pay. Here again, the answer is self-evident. But here again, because both sides requested that this issue be added, I will accede to the joint request.

[87] PCI No. 8 is certified as a common issue.

***PCI Nos. 10 and 11: Negligence***

[88] PCI Nos. 10 and 11 ask, in the alternative, if the various failures alleged under the contractual claim in PCI Nos. 6 and 7 can constitute breaches of a duty of care in negligence and if so, whether the defendants breached such a duty. As with PCI Nos. 6 and 7, there is sufficient evidence for PCI Nos. 10 and 11. I also note that negligence as a common issue was certified in other ESA cases such as *Fresco*, *Fulawka* and *Baroch*.

[89] PCI Nos. 10 and 11 are certified as common issues.

***PCI No. 12: Unjust enrichment***

[90] PCI No. 12 asks if the defendants were unjustly enriched by failing to make the payments required under the ESA or the contributions required under the CPP and EI legislation.

[91] I agree with the plaintiff that unjust enrichment is well suited to certification as a common issue because the focus is on the defendant's actions and not on the actions of individual class members. An unjust enrichment issue has been certified by the court in numerous employment class actions, such as *Rosen*, *Fulawka*, *Fresco* and *Baroch*.

[92] PCI No. 12 is certified as common issue

***PCI No. 13: Aggregate damages***

[93] PCI No. 13 asks if the damages sustained by class members should be assessed on an aggregate basis. Aggregate damages under s. 24(1) of the CPA may be certified as a common issue if there is a reasonable likelihood that the damages can be determined without proof by individual class members.

[94] If the class members are found to be employees and route salespersons, the bulk of the loss would consist of the unpaid ESA benefits, in particular minimum hourly wages and overtime pay. But the defendants kept no records of hours worked. Therefore, these losses cannot be determined without proof by individual class members. Aggregate damages are not appropriate.

[95] Further, to properly assess each sales agent's "loss" the court would likely have to subtract the 'commissions received' amount from the 'ESA benefits that should have been paid' amount – again, requiring individualized inquiries.

[96] I therefore conclude that for the bulk of the damages sustained, an aggregate damages common issue should not be certified. However, I recognize that the Court of Appeal in *Good*<sup>43</sup> concluded that aggregate damages can be certified as a common issue where it can be established that the class members are entitled to “a base amount” that does not depend on individualized proof.<sup>44</sup> Here, says the plaintiff, the amounts owing for CPP and EI contributions can be determined by reviewing the income records in the defendants’ possession.

[97] I accept the plaintiff’s submission about the CPP and EI amounts. But this action is not about CPP and EI. So, on balance, I prefer to leave the entire aggregate damages question to the common issues trial judge who will be able to decide on his or her own whether aggregate damages can or should be awarded.

[98] PCI No. 13 is not certified as a common issue.

***PCI No. 14: Punitive damages***

[99] PCI No. 14 asks if the class members are entitled to an award of aggravated, exemplary or punitive damages based on the defendants’ conduct.

[100] A punitive damages common issue (asking about entitlement rather than amount<sup>45</sup>) is often certified because the focus is on the defendants’ conduct and thus the commonality requirement is satisfied. But one still needs to adduce some evidence that the issue exists - that there is conduct that would justify a punitive damages question.<sup>46</sup>

[101] Punitive damages are awarded when the defendant’s wrongful acts are “harsh, vindictive, reprehensible and malicious”, indeed “so malicious and outrageous that they are deserving of punishment on their own.”<sup>47</sup> There is no evidence in the record that the defendants’ conduct in classifying and hiring sales agents as ICs rather than as employees was in any way “harsh, vindictive, reprehensible and malicious.”

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<sup>43</sup> *Good v. Toronto (Police Services Board)*, 2016 ONCA 250.

<sup>44</sup> *Ibid.*, at para. 75.

<sup>45</sup> See the discussion in *Dine v Biomet*, *supra*, note 25, at paras. 58-60.

<sup>46</sup> *Ibid.*, at para. 55.

<sup>47</sup> See the case law as discussed most recently by the Court of Appeal in *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, 2016 ONCA 520 at paras. 110-112.



[102] Instead, the evidence shows that over the years the ‘independent contractor’ issue was adjudicated before various administrative agencies including the CRA, the WSIB, and on at least one occasion, before an employment officer of the ESA. With each decision the defendants were reassured that their sales agents were indeed ICs not employees. This does not mean that the same result will necessarily follow in this case. But it does mean that the defendants’ actions in the design and implementation of their IC sales structure cannot be characterized as “so malicious and outrageous that they are deserving of punishment on their own.” In any event, and to repeat, there is no evidence of conduct that would support a punitive damages issue.

[103] PCI No. 14 is not certified as a common issue.

***PCI No. 15: Limitations period***

[104] As I have already explained in my discussion of the “identifiable class” requirement, I will add and certify a common issue dealing with the limitations question. There is some evidence that the class definition should be narrowed to confine the class period to the two years preceding the issuance of the statement of claim. The resolution of the limitations issue will have a common impact on all those affected.

[105] I will therefore add and certify the following issue:

Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

[106] This completes my analysis of the proposed common issues. In sum, for the reasons set out above, PCI Nos. 1 to 12 are certified, PCI Nos. 13 and 14 are not certified, and a new PCI No. 15 has been added.

**(4) Preferability**

[107] Section 5(1)(d) of the CPA requires that a class proceeding be the preferable procedure for the resolution of the common issues in the context of the claim as a whole.<sup>48</sup> Preferability is meant to capture two ideas: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii)

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<sup>48</sup> *Pearson v. Inco Ltd.* (2005), 78 O.R. (3d) 641 (C.A.) at para. 67.

whether a class proceeding would be preferable to other procedures such as joinder, test cases, consolidation or any other means of resolving the dispute.<sup>49</sup>

[108] Here, in my view, a class proceeding is the preferable procedure and would provide a fair, efficient and manageable method of advancing the claim. The individual claims of the class members may be small and not warrant the commencement of individual lawsuits. A common determination in a class proceeding about their employment status will significantly advance the litigation and provide meaningful access to justice some 7000 class members.

[109] One would still need individual damage assessments if the common issues are resolved in favour of the class members. However, this does not detract from the overall preferability of the class action. In any event, s. 6(1) of the CPA makes clear that the court shall not refuse certification just because individual damage assessments will be required after the conclusion of the common issues trial.

#### **(5) Suitable representative plaintiff**

[110] Finally, under s. 5(1)(e) of the CPA, the court must be satisfied that there is a representative plaintiff who (i) will fairly and adequately represent the interests of the class, (ii) has produced a workable litigation plan and (iii) does not have a conflict of interest with any of the other class members. The proposed representative need not be 'typical' of the class, but must be 'adequate' in the sense that he or she will vigorously prosecute the claim.<sup>50</sup>

[111] Mr. Omarali has proven to be a conscientious representative plaintiff by retaining and instructing class counsel, reviewing the evidence filed to date, providing his own evidence, being cross-examined and attending in court for the certification hearing. He shares interests in common with the other class members and has produced a workable litigation plan. He is more than suitable as a representative plaintiff.

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<sup>49</sup> *Hollick v. Metropolitan Toronto (Municipality)*, 2001 SCC 68 at paras. 28-31; *Fischer v. IG Investment Management Ltd.*, 2013 SCC 69, at paras. 16 and 22.

<sup>50</sup> *Campbell v. Flexwatt*, 98 B.C.A.C. 22 (C.A.) at paras. 75-76, leave to appeal to S.C.C. refused [1998] S.C.C.A. No. 13.


### Conclusion

[112] For the reasons set out above, I find that the requirements in s. 5(1) of the CPA have been satisfied. The proposed action is certified as a class proceeding.<sup>51</sup>

[113] As noted in the attached Appendix, proposed common issues Nos. 1 to 12 are certified; Nos. 13 and 14 are not certified; and a new common issue dealing with limitations has been added. I would ask that counsel prepare a draft Order in the form contemplated by s. 8 of the CPA.

[114] If the parties are unable to agree on the costs, I would be pleased to receive brief written submissions from the plaintiff within 14 days and from the defendants within 14 days thereafter. Counsel are urged to review my costs awards in previous certification cases.<sup>52</sup>

[115] My thanks to counsel for their co-operation and for their additional written submissions.

  
\_\_\_\_\_  
Belobaba J.

**Date:** July 27, 2016

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<sup>51</sup> I note that a similar class action was certified in 2013 by the U.S. District Court for the Northern District of Ohio: see, *Hurt et al v. Commerce Energy Inc.*, (Case No. 1:12-CV-00758). The defendant Commerce Energy is a Just Energy company. I also note that when another similar class action was litigated on the merits, the U.S. District Court for the Northern District of California granted Just Energy's motion for summary judgment finding that the IC's were "outside sales persons" under the California Labour Code and thus fell within the exemption: see *Dailey v. Just Energy Marketing Corp.*, (Case No. 14-CV-02012-HSG).

<sup>52</sup> See any of *Dugal v Manulife Financial*, 2013 ONSC 4083; *Rosen v BMO Nesbitt Burns*, 2013 ONSC 2144; *Crisante v DePuy Orthopaedics*, 2013 ONSC 5186; *Brown v. Canada (Attorney General)* 2013 ONSC 5637; or *Sankar v Bell Mobility*, 2013 ONSC 5916.

Appendix

Revised Proposed Common Issues

[Issues 1 to 12 are certified. Issues 13 and 14 are not certified. Issue 15 dealing with Limitation Periods has been added and certified.]

*Statutory Claim*

1. Are the Class Members “employees” of the Defendants pursuant to the *Employment Standards Act, 2000* (“ESA”)?
2. If the answer to (1) is “yes”, are the Class Members in “pensionable employment” of the Defendants pursuant to the *Canada Pension Plan* (“CPP”)?
3. If the answer to (1) is “yes”, are the Class Members in “insurable employment” of the Defendants pursuant to the *Employment Insurance Act* (“EI”)?
4. If the answer to (1) is “yes”, are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?
5. If the answers to (1) and (4) are “yes”, do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?

*Breach of Contract*

6. If the answers to questions (1) and (4) are “yes”, do the Defendants owe contractual duties and/or a duty of good faith to:
  - a. Ensure that the Class Members were compensated with the minimum wage?
  - b. Ensure that the Class Members’ hours of work were monitored and accurately recorded?
  - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
  - d. Ensure that the Class Members were compensated with vacation pay?
  - e. Ensure that the Class Members were compensated with and public holiday and premium pay?

7. Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
8. If the answers to (1) and (4) are “yes”, did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?
9. If the answers to (2) and/or (3) are “yes”, did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

*Negligence*

10. Alternatively, did the Defendant owe a duty of care to the Class Members to:
  - a. ensure that Class Members are properly classified as employees;
  - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
  - c. ensure that the Class Members hours of work are monitored and accurately recorded; and
  - d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.
11. Did the Defendants breach any of the duties of care found to exist above? If so, how?

*Unjust Enrichment*

12. Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

*Aggregate Damages*

13. If the Defendants breached the *ESA*, or its contracts with Class Members, or its duties of good faith or duties of care owed to the Class Members, or was unjustly enriched, should damages be assessed on an aggregate basis?

*Punitive Damages*

14. Are the Class Members entitled to an award of aggravated, exemplary, or punitive damages based on the Defendants' conduct?

*Limitation Period Issue* (added at the request of the defendants)

15. Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

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**THIS IS EXHIBIT D REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Court File No. CV-15-527493-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) THURSDAY, THE 27<sup>TH</sup>  
 )  
 MR. JUSTICE BELOBABA ) DAY OF JULY, 2016

BETWEEN:

**Haidar Omarali**

**Plaintiff**

- and -

**JUST ENERGY GROUP INC., JUST ENERGY CORP.**  
**and JUST ENERGY ONTARIO L.P.**

**Defendants**

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION** for certification brought by the Plaintiff was initially heard on June 21, 2016 at Osgoode Hall, 130 Queen St. West, Toronto, Ontario, and was continued on June 28, 2016 at 361 University Ave., Toronto, Ontario.

**ON READING** the motion records, the facts of the parties, the revised list of common issues, and the subsequent written submissions of the parties, and all other written submissions and materials filed by the parties, and on hearing submissions of counsel,

**1. THIS COURT ORDERS** that this action be and hereby is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.



### Class Definition

2. **THIS COURT ORDERS AND DECLARES** that the Class Members are defined as:

Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.

### Common Issues

3. **THIS COURT ORDERS AND DECLARES** that the common issues be and hereby are certified as:

#### *Statutory Claim*

- (1) Are the Class Members "employees" of the Defendants pursuant to the *Employment Standards Act, 2000* ("ESA")?
- (2) If the answer to (1) is "yes", are the Class Members in "pensionable employment" of the Defendants pursuant to the *Canada Pension Plan* ("CPP")?
- (3) If the answer to (1) is "yes", are the Class Members in "insurable employment" of the Defendants pursuant to the *Employment Insurance Act* ("EI")?
- (4) If the answer to (1) is "yes", are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?
- (5) If the answers to (1) and (4) are "yes", do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?

#### *Breach of Contract*

- (6) If the answers to questions (1) and (4) are "yes", do the Defendants owe contractual duties and/or a duty of good faith to:

- a. Ensure that the Class Members were compensated with the minimum wage?
  - b. Ensure that the Class Members' hours of work were monitored and accurately recorded?
  - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
  - d. Ensure that the Class Members were compensated with vacation pay?
  - e. Ensure that the Class Members were compensated with public holiday and premium pay?
- (7) Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
- (8) If the answers to (1) and (4) are "yes", did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?
- (9) If the answers to (2) and/or (3) are "yes", did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

*Negligence*

- (10) Alternatively, did the Defendants owe a duty of care to the Class Members to:
- a. ensure that Class Members are properly classified as employees;
  - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
  - c. ensure that the Class Members hours of work are monitored and accurately recorded; and

d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.

(11) Did the Defendants breach any of the duties of care found to exist above? If so, how?

*Unjust Enrichment*

(12) Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

*Limitation Period Issue*

(13) Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

**Representative Plaintiff and Class Counsel**

**4. THIS COURT ORDERS AND DECLARES** that Haidar Omarali be and hereby is appointed as the representative Plaintiff for the Class and that Koskie Minsky LLP be and hereby are appointed as class counsel ("Class Counsel").

**Relief Sought and Nature of Claims Asserted**

**5. THIS COURT ORDERS AND DECLARES** that the Class seeks damages, declarations and orders related to claims for breach of the *ESA*, breach of CPP and EI, breach of contract, breach of the duty of good faith, negligence, and unjust enrichment.

**Notice of Certification**

**6. THIS COURT ORDERS** that the form of notice of this certification Order, the manner of giving notice and all other related matters shall be determined by further order of this Court.

Costs

7. **THIS COURT ORDERS** that the costs of this motion are payable by the Defendants within thirty (30) days of this order becoming final, to the Plaintiff in the all-inclusive amount of \$135,000.



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

SEP 20 2016

PER / PAR:



KM-2306191v3

**Haidar Omarali**  
Plaintiff

**JUST ENERGY GROUP INC., et al.**  
Defendant

and

Court File No.: CV-15-527493-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at TORONTO

**ORDER**

**KOSKIE MINSKY LLP**  
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Toronto, ON M5H 3R3

**David Rosenfeld LSCU #51143A**  
Tel: 416.595.2117  
Fax: 416.204.2889

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Tel: 416.595.2117  
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**Lawyers for the Plaintiff**

**THIS IS EXHIBIT E REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

# Role Description: Sales Representative/Energy Advisor

## POSITION OVERVIEW

The Energy Advisor is responsible for door-to-door sales of Just Energy products, services and offerings. They will demonstrate the required knowledge and sales techniques necessary to successfully interact with customers.

Energy Advisors will strive to achieve daily and weekly targets. A successful candidate will execute daily and weekly routing plans.

Energy Advisors must drive sales, be performance driven and dedicated to achieving goals in order to achieve success at Just Energy while receiving little to no negative customer/consumer feedback.

## MINIMUM REQUIREMENTS

Education	Highschool diploma or equivalent
Experience	Direct sales experience preferred however not required however experience with customers in any platform; i.e. retail, customer service, hospitality is an asset
Knowledge and Skills	Strong verbal skills and the ability to be coachable and take direction
Other	Applicants must be authorized to work in the country where position resides

## JOB LEVEL

Level	Level 1
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## ORGANIZATION STRUCTURE

[justenergy.com](http://justenergy.com)

Function	Sales
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## REPORTING RELATIONSHIPS

Reports To	Team Leader
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## AUTHORITIES AND KEY DECISION MAKING

- Individuals must use judgment to determine appropriate product and service offerings and presentation techniques during interaction with clients
- Individuals must be able to determine when to disengage or avoid customer interactions to prevent and mitigate against negative consumer feedback

## WORKING CONDITIONS

- The Energy Advisor will be required to work outside ~ 90% of the time and will be exposed to the elements including at times unpredictable inclement weather; must dress appropriately for weather conditions with Just Energy provided apparel
- Will need to walk ~ 90% of the time, and in transit ~ 10% of the time in a vehicle, travelling to the assigned local territory marketing area
- The job requires local travel ~ 90% of the time into a variety of geographic areas that may have unpredictable environmental conditions; may be required to travel outside of the assigned territory ~10% of the time, including overnight stays
- Will be required to deal with a variety of prospective and current customers and may at times be subject to difficult situations with customers, which may lead to stressful working conditions.
- The Energy Advisor will be required to adapt thinking and verbal responses quickly to respond to customer objections; this requires considerable mental processing and verbalization to influence and communicate and utilization of Just Energy approved sales scripts and objection handling documents
- Must be able to maintain composure, professionalism, and focus while interacting with confrontational customers
- Responsible for achieving positive consumer interactions and a high level of consumer satisfaction in their interactions with consumers
- Job environment is subject to change and candidates must be able to adapt and support changes



May be required to work overtime as defined by the needs of the office and production levels

- The incumbent will be required to work evenings and, weekends (Saturday or Sunday), and holidays throughout the year as defined by the needs of the office

## CORE COMPETENCIES

Competency Name	Competency Definition
JE Products, Policies & Procedures Knowledge	<ul style="list-style-type: none"> <li>• Trained For</li> </ul>
Energy Market Knowledge	<ul style="list-style-type: none"> <li>• Trained For</li> </ul>
Sales Routing and Call Planning	<ul style="list-style-type: none"> <li>• Trained For</li> </ul>
Professionalism	<ul style="list-style-type: none"> <li>• Conducts themselves in a professional manner at all times</li> <li>• Approaches work with vigor, enthusiasm and engagement</li> <li>• Is open to feedback</li> <li>• Remains motivated and positive, even when facing difficult situations</li> </ul>
Rapport Building	<ul style="list-style-type: none"> <li>• Interacts with customers in a polite, polished and courteous manner</li> <li>• Demonstrates patience and sensitivity when engaging customers</li> <li>• Establishes a relaxed and friendly atmosphere when interacting with customers</li> <li>• Creates credibility and trust through confidence and their interaction with the customer</li> </ul>
Customer Needs and Opportunity Assessment	<ul style="list-style-type: none"> <li>• Uses standardized surveying questions to discover basic facts about the buyer (e.g. current energy usage and needs)</li> <li>• Seeks to prequalify customer and uncover decision process (e.g. people involved in decision process)</li> <li>• Establishes two-way communication by asking appropriate questions and listening carefully to the customer's responses</li> </ul>
Communication of Value Proposition	<ul style="list-style-type: none"> <li>• Clearly and effectively communicates product value proposition to customers</li> <li>• Presents product value proposition in a way that allows the customer to favorably differentiate the value of their offer from competition</li> </ul>

Advancing Sales	<ul style="list-style-type: none"> <li>• Seeks to gain better understanding of objections (i.e. clarifies or allows buyer to clarify the objection)</li> <li>• Maintains composure with confrontational customers</li> <li>• Employs standard approach to overcome different types of objections</li> <li>• Demonstrates basic closing techniques, such as summary-of-benefits closing technique</li> </ul>
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### ADDITIONAL HIRING CHARACTERISTICS – INTERNAL USE ONLY

*The following skills are to inform hiring and are in addition to the Core Competencies. This is for **Internal Use Only**.*

Motivation	<ul style="list-style-type: none"> <li>• Highly motivated and driven</li> <li>• Overcomes obstacles and remains focused on the achieving performance targets</li> </ul>
Perseverance	<ul style="list-style-type: none"> <li>• Remains positive in the face of rejection and challenging situations; does not get discouraged</li> <li>• Employs stress management techniques and does not let stress effect job performance</li> </ul>

### Promotion Criteria to Team Leader

*The followings are guides to identify strong performance which could ultimately lead to a promotion to the Team Leader role*

Promotion Identification	<ul style="list-style-type: none"> <li>• Potential promotions are identified by the Territory Sales Manager, Field Sales Manager and Regional Manager of Field Operations</li> <li>• There must be scale to promote</li> </ul>
Requirements for Potential Promotion	<ul style="list-style-type: none"> <li>• Office must be at critical mass for promotion. For example, promotion must be considered based on the demotion of a currently poor performing Team Leader or RSO has grown in size based on head count.</li> <li>• Personal compliance ratio of less than 0.5% (half of one percent) off of personal sales based on YTD or rolling 12 month statistics.</li> <li>• Cannot go from Energy Advisor to Field Sales Manager. Must be promoted to Team Leader role first unless the promotion falls into the categories listed below.</li> <li>• Minimum of three month tenure in Energy Advisor role with only one record of an Performance Improvement Plan (production) or Corrective Action Plan (behaviour) based on YTD or rolling 12 onth</li> </ul>

	<p>statistics. Exceptions to the tenure can come from 1) previous sales experience leading a team of sales people; 2) RSO is in start up phase (brand new office) and/or; 3) immediate increase in actual performance above set standards and expectations.</p> <ul style="list-style-type: none"> <li>• Passing of Just Energy's Corporate fleet policy and drug test (failing the test may not result in promotion being offered however they will not be able to drive a Just Energy van or any car with Just Energy employees to and from the field).</li> <li>• Must have a strong track record of adhering to all Just Energy policies and procedures,</li> <li>• Must have referred a minimum of five individuals to Just Energy</li> </ul>
Income Baseline as Energy Advisor	<ul style="list-style-type: none"> <li>• Hourly wages with overtime if eligible for overtime based on sales production.</li> <li>• Commissions on personal sales for Effective Contracts.</li> <li>• Ability to participate in Just Energy's Employee Benefit program,</li> <li>• Ability to participate in Just Energy's recognition and reward program</li> </ul>
Promotion Bonus to Incumbent Team Leader	<ul style="list-style-type: none"> <li>• Team Leader to receive \$2,000 bonus for every individual from their team that is promoted to a Team Leader role. \$500 upon successful acceptance of promotion and the remaining \$1,500 after six months of successful role transition to the requirements listed on this document or if promoted to Field Sales Manager.</li> </ul>

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AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**To:** Richard Teixeira[RTeixeira@justenergy.com]  
**From:** Rosalba Gullo  
**Sent:** Fri 04/11/2016 12:26:03 PM  
**Importance:** High  
**Subject:** FW: Ontario Employee Conversion  
**MAIL\_RECEIVED:** Fri 04/11/2016 12:26:04 PM

Thx.

Rosalba

(ext.73555)

**From:** Ryan Parnell  
**Sent:** Friday, November 04, 2016 12:24 PM  
**To:** Rosalba Gullo <rgullo@justenergy.com>; Ravi Maharaj <rmaharaj@justenergy.com>  
**Cc:** Arturo Florcruz <aflorcruz@justenergy.com>  
**Subject:** FW: Ontario Employee Conversion  
**Importance:** High

Hi Rosie,

Do you know who in HR will be supporting us in Ontario?

On Wednesday next week, I am planning to host a recruiter call to tell them about the new model as we will begin interviews 11/12.

Are you able to or can you suggest who can speak to the below:

- Benefit overview (for speaking purposes)

- Employee Package changes
- Hour tracking

Would you be able to join my call this week with the recruiters for a quick briefing on any admin responsibilities that may be changing as well as an Employee Package/HR benefit overview?

The purpose of the call is not training...but more an FYI so the recruiters can incorporate this into their understanding of the new world on Nov 28.

Please let me know

RP

**From:** Ryan Parnell  
**Sent:** Wednesday, November 02, 2016 1:33 PM  
**To:** Ravi Maharaj; Arturo Floracruz; Richard Teixeira; Rosalba Gullo; Mujeeb Jafferi  
**Subject:** Ontario Employee Conversion  
**Importance:** High

Hello Team,

I'm sending this note to confirm that we are moving full steam ahead on the recruiter side with a Nov 28, 2016 Ontario Employee conversion. What's unique about this conversion is we are converting 5 offices at the same time....so a lot of grounds to cover.

Here are some quick notes / items to confirm:

- Offices converting to Employee

- Oshawa
- Fairview
- Ottawa
- Toronto
- Kitchener

- Offices remaining Just Energy IC/Commercial – continue to keep IC commercial ads

- Islington
- Yorkland
- Cambridge

#### ADS and EMPLOYEE TRAINING FOR RECRUITERS

- ON online Ads will be changed on Nov 10, 2016 to employee

- We will be conducting 2 weeks of employee interviews leading into Nov 28, 2016 where every new hire will start
- Do you want to introduce a CAP on new hires per office? Let me know....so we can onboard accordingly. My plan is to have 5-10-15 people starting on Nov, 28<sup>th</sup> in each office. (interviewing for a Nov 28 start)

- Employee Flyers and recruiting materials will be shared with all recruiters prior to Nov 10 for promotion/interviews

•□□□□□□□ RP to host ON Recruiter Employee Training call Wednesday Nov 9 to overview on the below – *interviews will start 11/11 or 11/14.*

- Earning model – hour + overtime + commission + bonus etc (Ravi to confirm ON offer prior to Wed Nov 9)
  - Paid training
  - Performance quotas / standards
- HR brief – Will ask HR or Rosie to join/support me on the call
  - Employee packages
  - Benefit offer – so recruiters know how to promote this during interviews
- Admin – overview on hourly tracking – will ask Rosie to join/support me on the call
  - Admin training to be conducted by Rosie/Ravi?

To summarize, I will need to train the recruiters on everything they will need to know Wednesday Nov 9, prior to conducting employee interviews. We will start conducting employee interviews as early as 11/11 or 11/14 for a Nov 28<sup>th</sup> start date (first training class),

I hope this framework makes sense – I'm excited to work with Ravi/Rosie/HR to present the employee offer to our recruiters next week so we can begin to book interviews in for a Nov 28<sup>th</sup> hire date!

Thank you,

RP



T 905.670.4440 ext: 71346 | C 416.993.3626



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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Court File No. CV-15-527493-00CP  
ONTARIO  
SUPERIOR COURT OF JUSTICE

SC/ep

B E T W E E N:

Haidar Omarali

Plaintiff

- and -

JUST ENERGY GROUP INC., JUST ENERGY CORP. and  
JUST ENERGY ONTARIO L.P.

Defendants

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This is the Continued Examination for Discovery of RAVI MAHARAJ, produced and examined on behalf of the corporate defendant, Just Energy Group Inc., held at the Offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, 222 Bay Street, Ernst & Young Tower, Toronto-Dominion Centre, Toronto, Ontario, on the 25th day of January, 2018.

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A P P E A R A N C E S:

DAVID ROSENFELD	}	
JODY BROWN	}	
BRITTANY TOVEE	}	--- for the Plaintiff
PAUL MARTIN	}	
ANASTASIA REKLITIS	}	
MELISSA LOSCO (law clerk)	}	--- for the Defendants

1 an email chain and I'd like to go down to the bottom  
2 of the chain to an email dated November 2nd, 2016,  
3 from Ryan Parnell to yourself amongst others talking  
4 about Ontario employee conversion.

5 MR. MARTIN: Yes, I've got that.  
6

7 BY MR. ROSENFELD:

8 1134. Q. So, this is addressing the employee  
9 conversion in Ontario for Just Energy, is that  
10 right?

11 A. Yes. Did you want me to read it  
12 real quick or...

13 1135. Q. Yes, please.

14 A. Okay.

15 1136. Q. Great. And do you recall when this  
16 process started, to convert employees...convert  
17 contractors to employees at Just Energy?

18 A. For Ontario?

19 1137. Q. Yes.

20 A. I think in and around November of  
21 2016 is when the conversion occurred.

22 1138. Q. Right, and you said in Ontario.  
23 Have they converted everywhere else...in the other  
24 provinces or territories that they operate?

25 MR. MARTIN: Do you know?

1 THE DEPONENT: In Canada or the U.S?

2

3 BY MR. ROSENFELD:

4 1139. Q. In Canada or the United States.

5 A. I think the residential we have

6 converted in the U.S.

8

9 BY MR. ROSENFELD:

10 1190. Q. Okay. Can we go to JE00004714? And  
11 this is a document of role description sales  
12 representative/energy advisor.

13 MR. MARTIN: Yes, we have that.

14

15 BY MR. ROSENFELD:

16 1191. Q. Do you just want to take a moment to  
17 take a look at that document, please? Thank you.

18 A. Okay.

19 1192. Q. And so, can you tell me what this  
20 is?

21 A. My understanding is this is  
22 essentially the role description for the employee  
23 based energy advisor...

24 1193. Q. Have you seen this before?

25 A. That, I can tell you, this is...yes.

1 Typically when I look at it that's what I understand  
2 it to be. I've seen an energy advisor job  
3 description, essentially.

4 1194. Q. Great. And is this the same role as  
5 the...would be the door-to-door sales agent, that  
6 low level independent contractor, under the  
7 independent contractor structure?

8 A. If I had to compare the roles,  
9 correct.

10 1195. Q. Yes. And would the...sorry. On  
11 page two it talks about the working conditions.  
12 Would this be a similar description of what the  
13 independent contractor sales agents conditions were  
14 while they were operating under independent  
15 contractor agreements?

16 MR. MARTIN: I think it goes down to the  
17 next page too.

18 THE DEPONENT: Okay. Sorry, what was  
19 the question?  
20

21 BY MR. ROSENFELD:

22 1196. Q. Is that an accurate description of  
23 the conditions that the sales agents were operating  
24 under while they were independent contractors?

25 A. In my opinion this is the working

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**CITATION:** Omarali v. Just Energy, 2019 ONSC 3734

**COURT FILE NO.:** CV-15-527493-CP

**DATE:** 20190621

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Haidar Omarali / Plaintiff

**AND:**

Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario LP /  
Defendants

**BEFORE:** Justice Edward P. Belobaba

**COUNSEL:** *David Rosenfeld and Garth Myers* for the Plaintiff / Moving Party

*Paul J. Martin and Anastasia Reklitis* for the Defendants / Responding  
Parties

**HEARD:** June 11 and 12, 2019

Proceeding under the *Class Proceedings Act, 1992*

**Summary Judgment Decision**

[1] A motion for summary judgment on certified common issues that ask in essence whether the defendants' sales agents were independent contractors or employees will not always work.

[2] If there are serious credibility issues, or the court finds that the evidence needs substantial clarification, and recourse to a "mini-trial" is precluded by a provision in the *Class Proceedings Act*,<sup>1</sup> the motion for summary judgment may well be dismissed.

[3] That's what happened here.

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<sup>1</sup> *Class Proceedings Act, 1992*, S.O. 1992, c. 6.



## Background

[4] In this class action, the plaintiff alleged that the defendants' 8000 sales agents were misclassified - that they were not independent contractors but employees and were therefore entitled to the benefits and protections of the *Employment Standards Act*<sup>2</sup> such as minimum wage, overtime pay, and vacation and public holiday pay. The defendants argued that the determination whether the defendants' sales agents were independent contractors or employees could only be made on an individualized basis. Because commonality could not be established on the evidence before the court, argued the defendants, the matter could not proceed as a class action and the motion for certification should be dismissed.

[5] In 2016, I certified this action as a class proceeding.<sup>3</sup> I found there was some evidence of commonality for each of the 13 certified common issues that are attached in the Appendix.

### The motion for summary judgment

[6] The plaintiffs now move for summary judgment on the 13 common issues. The key issues are Common Issue Nos. 1 and 4:

- CI No. 1: Are the Class Members "employees" of the Defendants pursuant to the *Employment Standards Act, 2000* ("ESA")?
- CI No. 4: If the answer to (1) is "yes", are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?

[7] The outside sales agent exemption and the route sales person exception are set out in s. 2(1)(h) of O. Reg. 285/01:

*Exemptions from Parts VII to XI of Act*

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed...

---

<sup>2</sup> *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("ESA").

<sup>3</sup> *Omarali v. Just Energy*, 2016 ONSC 4094.

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer's place of business.

[8] In other words, if a worker is found to be an employee, he is entitled to the range of benefits and protections set out in Parts VII to XI of the Act, such as minimum wage, overtime pay, and vacation and public holiday pay. However, if the employee is an outside door to door sales agent who works on commission, he falls within the exemption and the ESA benefits and protections are not available, *unless* the outside sales agent is a "route salesperson." In other words, on the facts of this case, the ESA provisions in question only apply if the defendants' door to door sales agents are both employees *and* route salespersons.

[9] At the certification stage, I found there was some basis in fact for each of the 13 certified common issues, including the all-important employee and route salesperson determinations. But that was at the certification stage. We are now at the merits stage where the overall evidence may well point to a very different determination.

[10] The plaintiff says the evidence on this summary judgment motion requires a finding that the defendants' sales agents were employees and route salespersons.<sup>4</sup> The defendants refer to their evidence and argue that the sales agents were not employees but independent contractors and if they were employees, they cannot reasonably be characterized as route salespersons – and instead fall within the outdoor sales agent exemption.

#### **The "control" factor**

[11] Neither "employee" nor "route salesperson" is defined in the ESA – hence the need to rely on judicial interpretation. The case law is clear that one of the factors in the

---

<sup>4</sup> I say "were" because the defendants' residential door to door sales practices ended five years into the class period. As of January 1, 2017, Just Energy no longer engages individuals for door-to-door energy solicitation as a result of legislative amendments to the *Energy Consumer Protection Act*, 2009, S.O. 2010, c. 8, which came into force on that date. These amendments provide, in part, that the sale or offer of sale of electricity or natural gas to a consumer in person at the consumer's home is prohibited, and that such sales or offers of sale cannot be based on a commission or value of volume sales basis.

analysis that decides both the “employee” and “route sales person” determinations is the defendants’ degree of control over the how, where and when of what is being sold.<sup>5</sup>

[12] The courts have identified five or six factors that are relevant to the “employee” determination.<sup>6</sup> The central question is “whether the person who has been engaged to perform the services is performing them as a person in business on his own account”<sup>7</sup> – in other words, “whose business is it?”<sup>8</sup> The various factors may be weighed differently depending on the evidence before the court, but as the Supreme Court noted in *Sagaz*, “the level of control the employer has over the worker’s activities will always be a factor.”<sup>9</sup>

[13] The focus on the level of control over the how, when and where of what is being sold – important as it is for deciding the threshold “employee” question - is even more important in deciding whether the employee/outside sales agent is a “route sales person.” The evidence that is relevant to the “route salesperson” determination is evidence about the degree of control exercised by the employer over the selection of the marketing locations, whether the employees are driven to and from the pre-assigned locations, are given sales scripts or direction or coaching on how to perform sales calls, wear uniforms provided by the employer and are generally subject to employer monitoring or supervision.<sup>10</sup>

[14] In short, evidence about the level of control that is exercised by the employer is always relevant (to some degree) when deciding the “employee” question and pretty much determinative when deciding whether the employee/outside sales agent is a “route salesperson.”

---

<sup>5</sup> *Omarali, supra*, note 3, at para. 32.

<sup>6</sup> *671122 Ontario Ltd. v. Sagaz Industries Canada*, 2001 SCC 59, at para. 47. The Supreme Court set out a list of non-exhaustive factors that should be considered: (1) the level of control the employer has over the worker’s activities; (2) whether the worker provides his or her own equipment; (3) whether the worker hires his or her own helpers; (4) the degree of financial risk taken by the worker; (5) the degree of responsibility for investment and management held by the worker; and (6) the worker’s opportunity for profit in the performance of his or her risks. Also see *Belton v. Liberty Insurance Co. of Canada*, [2004] O.J. No. 3358 (C.A.) at para. 11 and *Braiden v. La-Z-Boy Canada Limited*, 2008 ONCA 464 at paras. 33-35

<sup>7</sup> *Sagaz, supra*, note 6, at para. 47.

<sup>8</sup> *Braiden, supra*, note 6, at para. 34.

<sup>9</sup> *Sagaz, supra*, note 6, at para. 47.

<sup>10</sup> *Omarali, supra*, note 3, at para. 31 and case law cited therein.

[15] Both sides, not surprisingly, provided compelling affidavit evidence about the level of control over the how, when and where Just Energy products were sold by the class member sales agents – the plaintiffs saying the level of control was extensive; the defendants the exact opposite.

[16] In the certification decision, I noted that “control” is conventionally defined as “the power to influence or direct people’s behaviour.”<sup>11</sup> On this motion, counsel on both sides focused more on the “power to direct” the sales agents’ behaviour than on “the power to influence” the sales agents’ behaviour. (This may change as the case proceeds.)

### **Mini-trial or trial?**

[17] The difficulty that I face on this motion for summary judgment is that there is diametrically conflicting evidence about the level of control over the how, when and where question. The plaintiff says I can decide the common issues more directly by simply considering the “organizational structure” evidence and finding that Just Energy’s organizational structure is “inconsistent” with the sales agents being independent contractors. Not surprisingly, the defendants refer to the same organizational structure to make the opposite point.

[18] In any event, even if I were to focus on the defendants’ organizational structure, I would still have to consider the relevant factors that are set out in the case law. Given that “the level of control the employer has over the worker’s activities will always be a factor”<sup>12</sup> I would be obliged to consider the extent to which Just Energy exercised control over the how, where and when of what was being sold.

[19] The plaintiffs filed six affidavits (all quite similar in format and content) that describe a high level of control. The affidavits say, in essence, that the morning sales meetings were mandatory, the sales agents were driven to and from pre-selected sales locations, were required to wear the defendants’ uniform, used a pre-approved sales script, and worked a mandatory number of hours, all under the defendants’ supervision. In other words, the defendants’ level of control over the how, when and where was extensive.

[20] The defendants filed three affidavits from equally knowledgeable witnesses swearing the exact opposite - that the outside sales agents were independent contractors that were “free to market anywhere they wanted.” The defendants’ affiants swore that the

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<sup>11</sup> *Ibid.* at para. 26.

<sup>12</sup> *Sagaz, supra*, note 6, at para. 47.

morning sales meetings were completely optional, the sales locations or hours of work were not imposed on the sales agents, they weren't required to wear a Just Energy uniform or accept van rides from the crew co-ordinators and they didn't only sell Just Energy products. There were sales scripts but they were imposed primarily because of regulatory requirements. The sales agents were neither monitored nor supervised. According to the defendants' affiants, the sales agents were free to come and go as independent contractors and work wherever and whenever they pleased.

[21] Cross-examinations were conducted by counsel on both sides but the conflicting evidence about the level of control remained intact.

[22] Following the roadmap in *Hryniak v. Mauldin*,<sup>13</sup> I readily concluded, without using the enhanced fact-finding powers set out in Rule 20.04 (2.1), that there were genuine issues (about the level of control) that required trial.

[23] I then asked the next question - whether the need for a trial could be avoided by using the enhanced fact-finding powers. I was concerned about using the enhanced powers for two reasons: (i) the significance of the credibility issues; and (ii) the insufficiency of the evidence before me. I realized that *viva voce* evidence would be needed. I then had to decide whether resort to a "mini-trial" under Rule 20.01 (2.2) was precluded by an over-arching statutory provision. I will explain each of these points in turn.

[24] **Credibility.** As already noted, the evidence about the level of control exercised by the defendants over its door to door sales agents is conflicting. One side swears that the sales agents could come and go and work whenever and wherever they pleased. The other side, the exact opposite.

[25] The Court of Appeal noted in *Gordashevskiy v. Aharon*,<sup>14</sup> that "it is not open to a motion judge to simply prefer one affidavit over another in the absence of explanatory reasons for the preference that permit appellate review."<sup>15</sup> Without hearing *viva voce* evidence, I would not be able to provide explanatory reasons why I prefer, say, the plaintiffs' affidavit evidence over that of the defendants. All the more so where, as here, the plaintiffs failed on cross-examination to challenge the defendants' affiants on their "no control" evidence. Given the evidentiary conflict in the sworn evidence before me, *viva voce* evidence would be essential, whether via a mini-trial or a trial.

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<sup>13</sup> *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87.

<sup>14</sup> *Gordashevskiy v. Aharon*, 2019 ONCA 297.

<sup>15</sup> *Ibid.* at para. 6.

[26] *Insufficient evidence.* During the class period, Just Energy had about a dozen offices in Ontario, each run by a regional distributor who was also said to be an independent contractor. The plaintiffs' affiants spoke about their experiences in only three of these offices and only for a portion of the class period. They also limited their evidence to residential door to door sales agents and made no mention of the other two sales agent categories: customer renewal agents and commercial (business) agents.

[27] In order to fairly determine the key Common Issues (Nos. 1 and 4) – that is, whether the class members were “employees” and if so, whether they fell within the “route salesperson” exception - I would need more evidence about the customer renewal agents and the commercial agents. In particular, I would need evidence about the number of sales agents that did renewal and commercial work on a regular basis; the level of control that the defendants exercised in these circumstances; and the number of residential agents that from time to time opted to do this kind of work and how often this happened.

[28] I would also need evidence that would allow this court to draw reasonable inferences that could support a determination of the Common Issues on a class-wide basis for all 8000 class members. To clarify these questions<sup>16</sup> at this stage of the proceeding, I would need to conduct either a mini-trial or a trial.

[29] *Can't be a mini-trial.* I say this for three reasons, the first two raising concerns and the third one being determinative. First, I would have to hear from numerous witnesses. Given the number of required witnesses, the mini-trial might arguably be no more efficient or cost-effective than a conventional “hybrid” trial.

[30] Second, I am mindful of the Court of Appeal's admonition in *Baywood Homes*,<sup>17</sup> that “the motion judge's task of assessing credibility and reliability [is] especially difficult in a summary judgment and mini-trial context.”<sup>18</sup> I recognize that the Supreme Court in *Hryniak* was less timid, noting that “concerns about credibility or clarification of the evidence” on the summary judgment motion can be addressed by calling oral evidence by way of a mini-trial.<sup>19</sup> However, I also recognize that the Supreme Court added a proviso to this statement that in my view could well apply here:

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<sup>16</sup> *Hryniak, supra*, note 13, at para. 51: “Often, concerns about credibility or clarification of the evidence can be addressed by calling oral evidence on the motion itself.” (Emphasis added.)

<sup>17</sup> *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450.

<sup>18</sup> *Ibid.* at para. 44.

<sup>19</sup> *Hryniak, supra*, note 13, at para. 51.

A motion for partial summary judgment should be considered to be a rare procedure that is reserved for an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost-effective manner.<sup>24</sup>

[36] Common Issues Nos. 10 and 11 are not easily detached from the other 11 issues. And even if they could be detached, there is no good reason to do so on the facts herein. It makes more sense if all 13 issues are heard together.

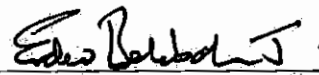
### **Disposition**

[37] The plaintiffs' motion for summary judgment is dismissed. All 13 common issues shall proceed to trial.

[38] If both sides agree, I would be prepared to preside over the trial of the common issues. I would issue directions under Rule 20.05 to ensure that the trial proceeds in a timely, focused and expeditious fashion.

[39] Given that much of the material that was filed on this summary judgment motion can be used at the upcoming trial (whoever hears it) I am inclined to defer the question of costs until after the trial and the court's decision on the common issues. I say this because but for s. 34(1) of the CPA I would seriously have considered the super-sized mini-trial (using s. 12 of the CPA if necessary.) Had this happened, the costs question would not have materialized until the mini-trial was concluded and a decision had been rendered. In fairness, the same reasoning should apply here. In other words, the costs award on this motion should be deferred until the conclusion of the trial and a decision on the common issues. If either side disagrees, they should advise forthwith.

[40] I am obliged to counsel on both sides for their co-operation and assistance.



Justice Edward P. Belobaba

**Date:** June 21, 2019

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<sup>24</sup> *Ibid.* at para. 34.

AppendixCertified Common Issues*Statutory Claim*

1. Are the Class Members “employees” of the Defendants pursuant to the *Employment Standards Act, 2000* (“ESA”)?
2. If the answer to (1) is “yes”, are the Class Members in “pensionable employment” of the Defendants pursuant to the *Canada Pension Plan* (“CPP”)?
3. If the answer to (1) is “yes”, are the Class Members in “insurable employment” of the Defendants pursuant to the *Employment Insurance Act* (“EI”)?
4. If the answer to (1) is “yes”, are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?
5. If the answers to (1) and (4) are “yes”, do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?

*Breach of Contract*

6. If the answers to questions (1) and (4) are “yes”, do the Defendants owe contractual duties and/or a duty of good faith to:
  - a. Ensure that the Class Members were compensated with the minimum wage?
  - b. Ensure that the Class Members’ hours of work were monitored and accurately recorded?
  - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
  - d. Ensure that the Class Members were compensated with vacation pay?
  - e. Ensure that the Class Members were compensated with and public holiday and premium pay?
7. Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
8. If the answers to (1) and (4) are “yes”, did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?



9. If the answers to (2) and/or (3) are “yes”, did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

*Negligence*

10. Alternatively, did the Defendant owe a duty of care to the Class Members to:
- a. ensure that Class Members are properly classified as employees;
  - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
  - c. ensure that the Class Members hours of work are monitored and accurately recorded; and
  - d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.

11. Did the Defendants breach any of the duties of care found to exist above? If so, how?

*Unjust Enrichment*

12. Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

*Limitation Period*

13. Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

\*\*\*

**THIS IS EXHIBIT I REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

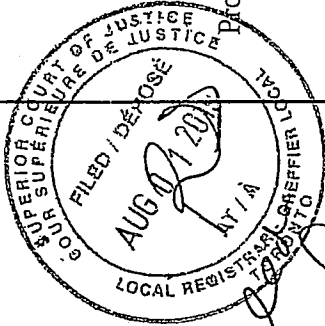
**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

HAIDAR OMARALI  
PLAINTIFF

JUST ENERGY GROUP INC., ET AL  
DEFENDANTS

Court File No.: CV-15-52749300CP



ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

TRIAL RECORD

KOSKIE MINSKY LLP  
900-20 Queen Street West  
Toronto, ON M5H 3R3

David Rosenfeld LSUC #51143A  
Tel: 416-595-2700  
Fax: 416-204-2894

Garth Myers LSO #62307G  
Tel: 416-595-2102  
Fax: 416-204-4924

Lawyers for the Plaintiff

Nov 20/19.

A 20 day trial is scheduled for Nov 15/21. The pre-trial conference is scheduled for Sept 30/21, at 10:00 am. There are no experts for the trial. The parties consent to the attached timetable.

*[Signature]*  
CHRISTOPHER S. J.

#19

TIMETABLE FOR REMAINING LITIGATION STEPS

Title of Proceeding:

**OMARALI V JUST ENERGY GROUP et. al.**

File Number:

15-00527493-00CP

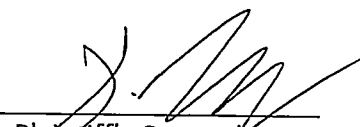
Examination for Discovery of the Plaintiff, if any, by: March 13, 2020

Answers to Undertakings of the Plaintiff, arising from the above examination by: May 15, 2020

Exchange of Expert Reports: N/A

Motions arising from the above examination, if any, to be initiated by: June 19, 2020

Evidentiary and pre-trial motions: TBD

  
\_\_\_\_\_  
Plaintiff's CounselName: Koskie Minsky LLP, David Rosenfeld  
Telephone Number: (416) 595-2700  
Email Address: [drosenfeld@kmlaw.ca](mailto:drosenfeld@kmlaw.ca)  
\_\_\_\_\_  
Defendants CounselName: FASKEN MARTINEAU DUMOULIN LLP, Paul Martin  
Telephone Number: (416) 865-4439  
Email Address: [pmartin@fasken.com](mailto:pmartin@fasken.com)

**THIS IS EXHIBIT J REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

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DATED AT TORONTO THIS 9<sup>TH</sup> DAY OF MARCH 20 21  
 AT A TORONTO LE 9<sup>TH</sup> JOUR DE MARCH 20 21

Court File No. CV-21-00658423-00CL

*N. Marjolis*  
 REGISTRAR **ONTARIO**  
 GREFFIER

**SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST**

THE HONOURABLE MR. ) TUESDAY, THE 9TH  
 )  
 JUSTICE KOEHNEN ) DAY OF MARCH, 2021  
 )

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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.  
 (each, an “Applicant”, and collectively, the “Applicants”)

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the affidavit of Michael Carter sworn March 9, 2021 and the Exhibits thereto (the “**Carter Affidavit**”), the pre-filing report of the proposed monitor, FTI Consulting

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*M. Mayadas*  
 REGISTRAR  
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Canada Inc. (“**FTI**”), dated March 9, 2021 (the “**Pre-Filing Report**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed in Schedule “A” hereto (the “**JE Partnerships**”, and collectively with the Applicants, the “**Just Energy Entities**”), FTI, Alter Domus (US) LLC (the “**DIP Agent**”), as administrative agent for the lenders (the “**DIP Lenders**”) under the DIP Term Sheet (as defined below) and such other counsel who were present, and on reading the consent of FTI to act as the monitor (the “**Monitor**”),

### **SERVICE**

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

### **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in Schedule “B” hereto or the Carter Affidavit, as applicable, if they are not otherwise defined herein.

### **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, the JE Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Just Energy Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Just Energy Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Just Energy Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, staffing agencies, consultants, agents, experts, accountants, counsel and

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DATED AT TORONTO THIS 9TH DAY OF MARCH 20 21

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GREFFIER

such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that:

- (a) the Just Energy Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Carter Affidavit or, with the consent of the DIP Agent, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System (a “**Cash Management Bank**”) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Just Energy Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Just Energy Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement with regard to Cash Management Obligations. All present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever to a Cash Management Bank under, in connection with, relating to or with respect to any and all agreements evidencing treasury facilities and cash management products (including, for greater certainty, all pre-authorized debit banking services, electronic funds transfer services and overdraft balances) provided by a Cash Management Bank to any Just Energy Entity, and any unpaid balance thereof, are collectively referred to herein as the “**Cash Management Obligations**”;
- (b) during the Stay Period (as defined below), no Cash Management Bank shall, without leave of this Court: (i) exercise any sweep remedy under any applicable documentation (provided, for greater certainty, that the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts held by the U.S. Bank



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*N. Markedsk*  
 REGISTRAR  
 GREFFIER

Account Holders (as defined in the Carter Affidavit) may continue in the ordinary course); or (ii) exercise or claim any right of set-off against any account included in the Cash Management System;

- (c) any of the Cash Management Banks may rely on the representations of the applicable Just Energy Entities with respect to whether any cheques or other payment order drawn or issued by the applicable Just Energy Entity prior to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for relying on such representations by the applicable Just Energy Entities as provided for herein; and
- (d) (i) those certain existing deposit agreements between the Just Energy Entities and the Cash Management Banks shall continue to govern the post-filing cash management relationship between the Just Energy Entities and the Cash Management Banks, and that all of the provisions of such agreements shall remain in full force and effect, (ii) either any of the Just Energy Entities, with the consent of the Monitor, the DIP Agent and the Cash Management Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, and (iii) all control agreements in existence prior to the date of this Order shall apply.

6. **THIS COURT ORDERS** that, except as specifically permitted herein, the Just Energy Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Just Energy Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided, however, that the Just Energy Entities, until further order of this Court, are hereby permitted, subject to the terms of the Definitive Documents: (i) to reimburse the reasonable documented fees and disbursements of legal counsel and one financial advisor to the agent under the Credit Agreement, whether incurred before or after the date of this Order; (ii) to pay all non-default interest and fees to the agent and the lenders under the Credit Agreement in accordance with its terms; and (iii) to repay advances under the Credit

Agreement for the purpose of creating availability under the Revolving Facilities in order for the Just Energy Entities to request the issuance of Letters of Credit under the Revolving Facilities to continue to operate the Business in the ordinary course during these proceedings, subject to: (A) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit under the Revolving Facilities; and (B) receipt of written confirmation from the applicable lender(s) under the Credit Agreement that such lender(s) will issue a Letter of Credit of equal value within one (1) Business Day thereafter. Capitalized terms used but not otherwise defined in this paragraph shall have the meanings ascribed thereto in the Credit Agreement.

7. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as hereinafter defined), the Just Energy Entities shall be entitled but not required to pay the following amounts whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, employee benefits, contributions in respect of retirement or other benefit arrangements, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) all outstanding and future amounts owing to or in respect of other workers providing services in connection with the Business and payable on or after the date of this Order, incurred in the ordinary course of business and consistent with existing arrangements;
- (c) the fees and disbursements of any Assistants retained or employed by the Just Energy Entities in respect of these proceedings at their standard rates and charges, which, in the case of the Financial Advisor (as defined below) shall be the amounts payable in accordance with the Financial Advisor Agreement (as defined below);
- (d) with the consent of the Monitor in consultation with the agent under the Credit Agreement (or its advisors), amounts owing for goods or services actually provided to any of the Just Energy Entities prior to the date of this Order by third parties, if, in the opinion of the Just Energy Entities, such third party is critical to the Business and ongoing operations of the Just Energy Entities;

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*N. Masjood*  
 REGISTRAR

- (e) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) not covered by paragraph 9 of this Order, and whereby the nonpayment of which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such nonpayment; and
- (f) taxes related to revenue, State income or operations incurred or collected by a Just Energy Entity in the ordinary course of business.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Just Energy Entities shall be entitled but not required to pay all reasonable expenses incurred by the Just Energy Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Just Energy Entities following the date of this Order.

9. **THIS COURT ORDERS** that the Just Energy Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Just Energy Entities in connection with the sale of goods and services by the Just Energy Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or

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DATED AT TORONTO THIS 9<sup>TH</sup> DAY OF MARCH 20 21  
 FAIT A TORONTO LE 9<sup>TH</sup> JOUR DE MARCH 20 21

*N. Magod*  
 REGISTRAR GREFFIER

collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Just Energy Entities.

**RESTRUCTURING**

10. **THIS COURT ORDERS** that the Just Energy Entities shall, subject to such requirements as are imposed by the CCAA and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations; and
- (b) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Just Energy Entities to proceed with an orderly restructuring of the Just Energy Entities and/or the Business (the “**Restructuring**”).

**NO PROCEEDINGS AGAINST THE JUST ENERGY ENTITIES, THE BUSINESS OR THE PROPERTY**

11. **THIS COURT ORDERS** that until and including March 19, 2021 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process before any court, tribunal, agency or other legal or, subject to paragraph 12, regulatory body (each, a “**Proceeding**”) shall be commenced or continued against or in respect of any of the Just Energy Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Just Energy Entities and

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 FAIT À TORONTO LE 9<sup>TH</sup> MARS 20 21

*N. Madgool*

the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Just Energy Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, foreign regulatory body or agency or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Just Energy Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Just Energy Entities to carry on any business which the Just Energy Entities are not lawfully entitled to carry on, (ii) subject to paragraph 13, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

13. **THIS COURT ORDERS** that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales against or in respect of the Just Energy Entities or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court on notice to the Service List.

**NO INTERFERENCE WITH RIGHTS**

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Just Energy Entities except with the written consent of the Just Energy Entities and the Monitor, leave of this Court or as permitted under any Commodity ISO/Supplier Support Agreement.

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**CONTINUATION OF SERVICES**

15. **THIS COURT ORDERS** that during the Stay Period, except as permitted under any Commodity ISO/Supplier Support Agreement, all Persons having oral or written agreements with any Just Energy Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Just Energy Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Just Energy Entities, and that the Just Energy Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Just Energy Entities in accordance with normal payment practices of the Just Energy Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Just Energy Entity and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

16. **THIS COURT ORDERS** that, subject to paragraph 20 but notwithstanding any other paragraphs of this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Just Energy Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**COMMODITY SUPPLIERS**

17. **THIS COURT ORDERS** that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the **“Priority Commodity/ISO Charge”**) on the Property in an amount equal to the value of the Priority Commodity/ISO Obligations. The value of the Priority Commodity/ISO Obligations shall be determined in accordance with the terms of the existing agreements or arrangements between the applicable Just

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DATED AT TORONTO THIS 9th DAY OF MARCH 2011  
FAIT À TORONTO LE 9 MARS 2011  
N. Maynard

Energy Entity and the Qualified Commodity/ISO Supplier or, in the event of any dispute, by the Court. The Priority Commodity/ISO Charge shall have the priority set out in paragraphs 43-45 herein.

18. **THIS COURT ORDERS** that the Commodity/ISO Supplier Support Agreements are hereby ratified, approved and deemed to be Qualified Support Agreements.

19. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver Qualified Support Agreements with any counterparty to a Commodity Agreement.

20. **THIS COURT ORDERS** that upon the occurrence of an event of default under a Qualified Support Agreement, the applicable Qualified Commodity/ISO Supplier may exercise the rights and remedies available to it under its Qualified Support Agreement, or upon five (5) days' notice to the Just Energy Entities, the Monitor and the Service List, may apply to this Court to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to its Commodity Agreement or ISO Agreement and the Priority Commodity/ISO Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities.

21. **THIS COURT ORDERS** that the Monitor shall provide a report on the value of the Priority Commodity/ISO Obligations as of the last day of each calendar month by posting such report on the Monitor's Website (as defined below) within three (3) Business Days of such calendar month end.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Just Energy Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Just Energy Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Just Energy Entities, if one is

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*M. Marpaet*

filed, is sanctioned by this Court or is refused by the creditors of the Just Energy Entities or this Court.

**DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

23. **THIS COURT ORDERS** that each of the Just Energy Entities shall jointly and severally indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Just Energy Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$30,000,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 43-45 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (ii) the Just Energy Entities’ 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 that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23.

**APPOINTMENT OF MONITOR**

26. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Just Energy Entities with the powers and obligations set out in the CCAA or set forth herein and that the Just Energy Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Just Energy Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

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29. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

30. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Just Energy Entities and the DIP Agent and the DIP Lenders with information provided by the Just Energy Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Just Energy Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

31. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor (including both U.S. and Canadian counsel for all purposes of this Order), and counsel to the Just Energy Entities (including both U.S. and Canadian counsel for all purposes of this Order) shall be paid their

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DATED AT TORONTO THIS 9TH DAY OF MARCH 20 01  
 FAIT À TORONTO LE 9<sup>TH</sup> JOUR DE MARCH 20 01

REGISTRAR

reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the Just Energy Entities as part of the costs of these proceedings. The Just Energy Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the Just Energy Entities' counsel on a weekly basis.

33. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### ADMINISTRATION CHARGE

34. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of C\$2,200,000 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43-45 herein.

#### DIP FINANCING

35. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, pursuant a credit facility from the DIP Agent and the DIP Lenders in order to finance the Just Energy Entities' working capital requirements and other general corporate purposes, all in accordance with the Cash Flow Statements (as defined in the DIP Term Sheet, which term is defined below) and Definitive Documents, provided that borrowings under such credit facility shall not exceed US\$125,000,000 unless permitted by further Order of this Court.

36. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities, the DIP Agent and the DIP Lenders dated as of March 9, 2021 and attached as Appendix "DD" to the Carter Affidavit (as may be amended or amended and restated from time to time, the "**DIP Term Sheet**").

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DATED AT TORONTO THIS 9<sup>TH</sup> DAY OF MARCH 20 21  
 FAIT À TORONTO LE 9<sup>TH</sup> JOUR DE MARCH 20 21

*N. Marjolef*  
 REGISTRAR / GREFFIER

37. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet and the Cash Flow Statements, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Just Energy Entities are hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order. Notwithstanding any other provision in this Order, all payments and other expenditures to be made by any of the Just Energy Entities to any Person (except the Monitor and its counsel) shall be in accordance with the terms of the Definitive Documents, including in respect of payments in satisfaction of Priority Commodity/ISO Obligations.

38. **THIS COURT ORDERS** that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Lenders’ Charge**”) on the Property, which DIP Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders’ Charge shall have the priority set out in paragraphs 43-45 hereof.

39. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent on behalf of the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders’ Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lenders’ Charge, the DIP Agent or the DIP Lenders, as applicable, may immediately cease making advances or providing any credit to the Just Energy Entities and shall be permitted to set off and/or consolidate any amounts owing by the DIP Agent or the DIP Lenders to the Just Energy Entities against the obligations of the Just Energy Entities to the DIP Agent and the DIP Lenders under the Definitive Documents or the DIP Lenders’ Charge, make demand, accelerate payment and give other notices with respect to the obligations of the Just Energy Entities to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Lenders’ Charge, or to apply to

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DATED AT TORONTO THIS 21 DAY OF MARCH 2021  
 AT TORONTO  
 REGISTRAR  
*[Signature]*  
 GREFIER

this Court on five (5) days' notice to the Just Energy Entities, the Monitor and the Service List to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities; and

- (c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Just Energy Entities or the Property.

40. **THIS COURT ORDERS AND DECLARES** that the DIP Agent, the DIP Lenders and the Qualified Commodity/ISO Suppliers shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants or any of them under the CCAA, or any proposal filed by the Applicants or any of them under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

41. **THIS COURT ORDERS** that the agreement dated February 20, 2021 engaging BMO Nesbitt Burns Inc. (the "**Financial Advisor**") as financial advisor to the Just Energy Entities and attached as Confidential Appendix "FF" to the Carter Affidavit (the "**Financial Advisor Agreement**"), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and the Just Energy Entities are authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

42. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**FA Charge**") on the Property, which charge shall not exceed an aggregate amount of C\$1,800,000 as security for the fees and disbursements and other amounts payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 43-45 herein.

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DATED AT TORONTO THIS 9<sup>TH</sup> DAY OF MARCH 2021  
 FAIT À TORONTO LE 9<sup>JOUR</sup> DE MARCH 2021

*M. Majedski*  
 REGISTRAR GREFFIER

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DATED AT TORONTO THIS 9<sup>TH</sup> DAY OF MARCH 20 21

REGISTRAR *N. Marjorick* GREFFIER

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

43. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the Directors' Charge, the DIP Lenders' Charge and the Priority Commodity/ISO Charge, as among them, shall be as follows:

First – Administration Charge and FA Charge (to the maximum amount of C\$2,200,000 and C\$1,800,000, respectively), on a *pari passu* basis;

Second – Directors' Charge (to the maximum amount of C\$30,000,000); and

Third – DIP Lenders' Charge (to the maximum amount of the Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time) and the Priority Commodity/ISO Charge, on a *pari passu* basis.

44. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the FA Charge, the Directors' Charge, the DIP Lenders' Charge or the Priority Commodity/ISO Charge (collectively, the “Charges”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person (including those commodity suppliers listed in Schedule “A” hereto), other than any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation that has not been served with notice of this Order.

46. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Just Energy Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Just Energy Entities also obtain the prior written consent of the Monitor, the DIP Agent on behalf of the DIP Lenders and the beneficiaries of the Administration Charge, the

FA Charge, the Directors' Charge and the Priority Commodity/ISO Charge, or further Order of this Court.

47. **THIS COURT ORDERS** that the Charges, the agreements and other documents governing or otherwise relating to the obligations secured by the Charges, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Agent or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Just Energy Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any Just Energy Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Just Energy Entities entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of any of the other Definitive Documents; and
- (c) the payments made by the Just Energy Entities pursuant to this Order or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

48. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Just Energy Entities' interest in such real property leases.

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DATED AT TORONTO THIS 9TH DAY OF MARCH 2021  
 FAIT À TORONTO LE 9 JOUR DE MARS 2021

*N. Margad*  
 REGISTRAR GREFFIER

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2021

9th

MARCH 20 21

DATED AT TORONTO THIS DAY OF  
FAIT A TORONTO LE JOUR DE

*N. Margolis*

REGISTRAR GREFFIER

## SERVICE AND NOTICE

49. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Just Energy Entities, a notice to every known creditor who has a claim against the Just Energy Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

50. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

51. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL - <http://cfcanda.fticonsulting.com/justenergy> (the “Monitor’s Website”).

52. **THIS COURT ORDERS** that the Just Energy Entities, the DIP Agent or the DIP Lenders and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any



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other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal deliver, facsimile or other electronic transmission to the Just Energy Entities' creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

### FOREIGN PROCEEDINGS

53. **THIS COURT ORDERS** that the Applicant, Just Energy Group Inc. (“JEGI”) is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

54. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

### GENERAL

55. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on a date to be set by this Court upon the granting of this Order (the “**Comeback Date**”), and any such interested party shall give not less than two (2) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought in advance of the Comeback Date; provided, however, that the Chargees, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set out in paragraphs 43-45 hereof, including with respect to any fees, expenses and disbursements incurred and in respect of advances made under the Definitive Documents or pursuant to the Qualified Support Agreement, as applicable, until the

date this Order may be amended, varied or stayed. For the avoidance of doubt, no payment in respect of any obligations secured by the Priority Commodity/ISO Charge shall be subject to the terms of any intercreditor agreement, including any “turnover” or “waterfall” provision(s) therein.

56. **THIS COURT ORDERS** that, notwithstanding paragraph 55 of this Order, the Just Energy Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

57. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Just Energy Entities, the Business or the Property.

58. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Just Energy Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to JEGI, in any foreign proceeding, or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

59. **THIS COURT ORDERS** that each of the Just Energy Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that JEGI is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

60. **THIS COURT ORDERS** that Confidential Appendices “FF” and “GG” to the Carter Affidavit shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

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**SCHEDULE "A"****JE Partnerships****Partnerships:**

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

**Commodity Suppliers:**

- EXELON GENERATION COMPANY, LLC
- BRUCE POWER L.P.
- SOCIÉTÉ GÉNÉRALE
- EDF TRADING NORTH AMERICA, LLC
- NEXTERA ENERGY POWER MARKETING, LLC
- MACQUARIE BANK LIMITED
- MACQUARIE ENERGY CANADA LTD.
- MACQUARIE ENERGY LLC
- MORGAN STANLEY CAPITAL GROUP

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REGISTRAR *N. Magyard* GREFFIER

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DATED AT TORONTO THIS 9<sup>TH</sup> DAY OF MARCH 2021  
FAIT A TORONTO LE

DAY OF MARCH 2021

**SCHEDULE "B"**  
**DEFINITIONS**

REGISTRAR

GREFFIER

**"Commodity Agreement"** means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products.

**"ISO Agreement"** means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

**"Priority Commodity/ISO Obligation"** amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under an ISO Agreement on or before the date of this Order, whether or not yet due).

**"Qualified Commodity/ISO Supplier"** means any counterparty to a Commodity Agreement or ISO Agreement as of March 9, 2021 that has executed or executes a Qualified Support Agreement with a Just Energy Entity and refrained from exercising termination rights under the Commodity Agreement as a result of the commencement of the Proceedings absent an event of default under such Qualified Support Agreement.

**"Qualified Support Agreement"** means a support agreement between a Just Energy Entity and a counterparty to a Commodity Agreement, in form and substance satisfactory to the Just Energy Entities and the DIP Lenders, acting reasonably, which includes, among other things: (i) that such counterparty shall apply to the Court on five (5) days' notice to the Just Energy Entities, the Monitor and the Service List prior to exercising any termination rights under a Qualified Support Agreement; (ii) the obligation to supply physical and financial power and natural gas and other

related services pursuant to any confirmations or transactions executed pursuant to a Commodity Agreement; and (iii) an agreement to refrain from exercising termination rights as a result of the commencement of the Proceedings absent an event of default under such support agreement.

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

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DATED AT TORONTO THIS 9<sup>TH</sup> DAY OF MARCH 20 21  
 FAIT À TORONTO LE 9<sup>JOUR</sup> DE MARS 20 21

REGISTRAR *[Signature]* GREFFIER

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

Court File No: CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al  
(collectively, the "Applicants")

---

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

---

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT, LLP**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)  
Michael De Lellis (LSO# 48038U)  
Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111  
Fax: (416) 862-6666

Lawyers for the Applicants

---

**THIS IS EXHIBIT K REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**Lori Seto**

---

**From:** James Harnum <jharnum@kmlaw.ca>  
**Sent:** September 10, 2021 1:40 PM  
**To:** Wasserman, Marc; 'rthornton@tgf.ca'  
**Cc:** Aryan Ziaie; David Rosenfeld  
**Subject:** Just Energy - claims process order

Marc and Bob,

I hope you are both well.

As you know, Koskie Minsky is class counsel in *Omarali v. Just Energy*. The class action has been certified and was set for trial this year. Through the Representative Plaintiff, our firm represents approximately 7,900 potential employee creditors. We have reviewed the claims process order and have a few minor concerns that we hope can be addressed prior to the hearing of the motion on the 15th.

First, we see that the definition of "Claim" captures "any claim brought by any proposed or confirmed representative plaintiff on behalf of a class in a class action". Can both the Company and the Monitor please confirm that the Representative Plaintiff, through Koskie Minsky, can file one claim on behalf of all the Class Members and that the Class Members can rely on that claim without any need to file any individual claims. It appears that this is the intention of the language in the order, but as it is not as explicit as it might be, we would ask for you to both confirm on behalf of your clients that Koskie Minsky can file one claim on behalf of the class.

Second, we have some concerns about the process for the appointment of a claims officer. We are of course hopeful that the class members' claims can be resolved without the need for a claims officer, but if one is required, we are not convinced that Mr. Sellers is necessarily the right choice for the adjudication of this claim. We note that para. 42 of the Order empowers the Monitor or the Company to bring a motion to appoint a different officer, and we would request that this language be changed to allow for a different claims officer to be appointed upon agreement of the creditor, the Company and Monitor, and failing agreement, to allow any party to bring a motion to appoint a different officer. That being said, we are cognizant of concerns that the Company and Monitor may have about an unwieldy process where multiple creditors may seek to pick and choose who their claims officer would be, and as a result, we are open to other suggestions for how our concerns might be addressed.

We are happy to discuss.

Regards,

James Harnum

---

**KOSKIE  
MINSKY**

James Harnum

Partner

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JUSTICE MATTERS

**THIS IS EXHIBIT L REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



September 21, 2021

**David Rosenfeld**  
Direct Dial: 416-595-2700  
Direct Fax: 416-204-2894  
drosenfeld@kmlaw.ca

**BY EMAIL - [MWasserman@osler.com](mailto:MWasserman@osler.com); [RThornton@tqf.ca](mailto:RThornton@tqf.ca)**

Mr. Marc Wasserman  
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100 King Street West, Suite 6200  
Toronto ON M5X 1B8

Mr. Robert Thornton  
THORNTON GROUT FINNIGAN LLP  
100 Wellington Street West, Suite 3200  
Toronto ON M5K 1K7

Dear Counsel:

**Re: *Omarali v. Just Energy Group Inc. et al.*  
Court File No. CV-15-52749300 CP  
Class Members' Claims in the Just Energy CCAA Proceeding**

As you are aware, we are class counsel in the above-noted action against Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (collectively "**Just Energy**") bearing Court File No. CV-15-52749300 CP (the "**Class Action**").

The Class Action has been certified and involves a class of approximately 7,900 individuals. As asserted in the Class Action, these individuals were employees of Just Energy and are owed wages. As a result, they are creditors in the application commenced by Just Energy and related companies under the *Companies' Creditors Arrangement Act* bearing Court File No. CV-21-00658423-00CL (the "**CCAA Proceeding**").

### **Background and Status of the Class Action**

The core allegation in the Class Action is that Just Energy misclassified class member employees as independent contractors, thereby denying them minimum protections under the *Employment Standards Act* ("**ESA**"). As a result of Just Energy's employment misclassification and related breach of contract, class members claim \$100 million in damages, including for Just Energy's failure to pay minimum wage, overtime pay and vacation pay to them. A copy of the Amended Statement of Claim filed in the Class Action is enclosed with this letter.

As you also know, a four-week trial of the certified common issues in this action was scheduled to commence in November 2021. Although the trial cannot proceed because of the stay of proceedings obtained in the CCAA Proceeding, there is significant evidence that confirms class members' employment status and their entitlement to the damages claimed in the aggregate. Such evidence will substantiate the class' entitlement to damages in the claims process.

Our position concerning the employment status of class members is consistent with judicial determinations made by the lower and appellate courts in Ohio. We are confident that an Ontario trier-of-fact would reach similar conclusions in the Class Action.

Based on our understanding of the CCAA Proceeding, there is a possibility that the claims of the class members will not be fully satisfied.

### **Claims Against Directors**

As employees of Just Energy, class members have valid claims for unpaid wages and vacation pay against Just Energy's directors under the *ESA*, the *Business Corporations Act* (Ontario) and/or the *Canada Business Corporations Act*. These claims will be asserted in the claims process in the CCAA Proceeding.

We understand that there exist certain insurance policies covering claims against Just Energy's directors. We recognize there are various other creditors who may attempt to make claims on those insurance policies. We also understand those policies, or some of them, were identified and disclosed as part of the *Canada Business Corporations Act* reorganization that occurred in September 2020. Pursuant to subrule 31.06(4) of the *Rules of Civil Procedure*, and given that the claims in the Class Action engage Just Energy's directors' liability, which liability is sought to be addressed in the CCAA Proceeding, class members are entitled to disclosure of the insurance policies. Kindly provide copies of them to us as soon as possible.

Yours truly,

**KOSKIE MINSKY LLP**



David Rosenfeld  
DR/ls  
Enclosure

C Marc Wasserman, Jeremy Dacks – Fasken Martineau (by email)  
James Harnum, Aryan Ziaie – Koskie Minsky LLP (by email)

**THIS IS EXHIBIT M REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00XXXX-00CL**

**Just Energy Group Inc. et al.**

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC., AS  
THE PROPOSED MONITOR**

**March 9, 2021**

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Court File No. CV-21-00XXXX-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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC., FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP., AND JUST ENERGY (FINANCE) HUNGARY ZRT (collectively, the "**Applicants**").

**PRE-FILING REPORT OF THE PROPOSED MONITOR**

**INTRODUCTION**

1. FTI Consulting Canada Inc. ("**FTI**" or the "**Proposed Monitor**") understands that Just Energy Group Inc. ("**Just Energy**") and the other applicant companies listed in the style of cause above (collectively, the "**Applicants**") intend to make an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") for an initial order (the "**Initial Order**") under the Companies' Creditors Arrangement Act (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow the Applicants an opportunity to restructure their business and affairs.



2. The Applicants propose that the Court appoint FTI as Monitor in these CCAA proceedings (the “**CCAA Proceedings**”).
3. This Pre-Filing Report of the Proposed Monitor (the “**Pre-Filing Report**”) has been prepared by the Proposed Monitor prior to and in contemplation of its appointment as Monitor to provide information to the Court solely in respect of the relief sought by the Applicants at the hearing in respect of the Initial Order. Should FTI be appointed as Monitor at the initial hearing, FTI intends to file a further report with the Court as Monitor in respect of the relief being sought by the Applicants at the comeback hearing.
4. Any capitalized terms that are not defined herein have the meanings given to them in the glossary attached as **Schedule “A”** to this Pre-Filing Report (the “**Glossary**”). To assist the Court and other readers, the Glossary includes certain common industry-specific terms that are not used herein but arise in pertinent documents relating to the Applicants’ business.

## **PURPOSE**

5. The purpose of this Pre-Filing Report is to inform the Court of:
  - (a) background information with respect to the Applicants;
  - (b) FTI’s qualifications to act as Monitor, if appointed;
  - (c) an overview of the Cash Flow Forecast (as defined herein) and the Proposed Monitor’s comments regarding the reasonableness thereof;
  - (d) the relief sought by the Applicants in the proposed Initial Order and the Proposed Monitor’s recommendation in respect of same, including, among other things:
    - (i) granting a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants up to and including March 19, 2021;
    - (ii) extending the Stay of Proceedings to certain foreign and domestic regulators on an interim basis;

- (iii) extending the protections and stays afforded in the Initial Order to certain limited partnerships that are affiliates of the Applicants;
  - (iv) approving the proposed debtor-in-possession interim financing arrangement;
  - (v) approving the Applicants' engagement of BMO Nesbitt Burns Inc. ("**BMO**") as its financial advisor (in such capacity, the "**Financial Advisor**");
  - (vi) authorizing the Applicants to make certain pre-filing payments;
  - (vii) granting certain protections in favour of the Applicants' critical suppliers; and
  - (viii) granting certain Court-ordered charges sought by the Applicants.
6. This Pre-Filing Report should be read in conjunction with the Affidavit of Michael Carter, to be sworn March 9, 2021 (the "**Carter Affidavit**"), which describes in more detail the Applicants' operations and the circumstances leading to their current situation.
7. All references to monetary amounts in this Pre-Filing Report are in Canadian dollars unless otherwise noted.

## **BACKGROUND INFORMATION**

### Overview

8. Just Energy is incorporated under the *Canada Business Corporations Act*. It maintains dual headquarters in Ontario and Texas, and its shares are listed on the Toronto Stock Exchange and the New York Stock Exchange.
9. Just Energy is primarily a holding company, with operating subsidiaries situated across Canada and the United States (Just Energy and its subsidiaries collectively, the "**Just Energy Group**"). A copy of the Just Energy Group's corporate organizational chart will be attached as Exhibit "F" to the Carter Affidavit.

10. As detailed herein, the Just Energy Group faces a material and immediate risk to its ability to continue as a going concern, which is a direct consequence of the unprecedented and catastrophic effects of an extreme weather event that crippled the Texas energy system in February of this year. The Proposed Monitor understands that the Just Energy Group is urgently seeking the Court-ordered relief described herein in order to avoid the near-certain demise of its operations. Specifically, as described herein, as a result of the winter storm and the subsequent regulatory response, the Just Energy Group estimates it may have incurred losses and additional costs totaling over \$312 million. As a result, the Just Energy Group is currently estimating that it will be in a negative liquidity position on March 9, 2021 as certain payments owing by the Just Energy Group become due and owing on such date, including approximately US\$96.24 million to Electric Reliability Council of Texas (“ERCOT”).

*Business Operations and the Regulatory Environment*

11. Established in 1997, the Just Energy Group is a leading retail energy provider. Its principal line of business consists of purchasing retail energy and natural gas commodities from certain large energy suppliers and re-selling them to residential and commercial customers.
12. The Just Energy Group services more than 950,000 residential and commercial customers across various jurisdictions in Canada and the United States. Residential customers represent approximately 35% of its residential customer equivalent (“RCE”)<sup>1</sup> base, with the Just Energy Group’s commercial customers making up the balance. The Proposed Monitor understands that Texas is the single largest market for the Just Energy Group, representing 47% of its revenues in fiscal year 2020. Other significant markets include Ontario, Alberta, Illinois and Pennsylvania. The Just Energy Group has expended significant effort over many years to build a large and geographically-diversified customer base.

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<sup>1</sup> A unit of measurement equivalent to the approximate amount of gas and electricity used by a typical household in Ontario.

13. According to the Just Energy Group's consolidated financial statements, for the nine-months ending December 2020, despite a challenging operating environment because of the COVID-19 pandemic, revenues were approximately \$1.7 billion. During the same period, the Just Energy Group had positive cash flow of approximately \$27 million. Its reported Embedded Gross Margin<sup>2</sup> for residential and commercial customers for the same period was approximately \$1 billion and \$360 million, respectively.
14. The Just Energy Group collectively employs approximately 979 full-time, non-unionized employees. A geographic breakdown of the employees is set out in the Carter Affidavit. Most employees are located in one of three jurisdictions: Ontario, Texas and India.
15. The Just Energy Group operates in highly regulated markets. The Just Energy Group is subject to numerous different regulatory regimes in Canada and the U.S. overseen by various provincial and state regulators. The Carter Affidavit provides an overview of the complex regulatory environment and details the licenses and other permissions granted in favour of the Just Energy Group in respect of the various jurisdictions in which it operates.
16. Certain of Just Energy's operating subsidiaries set out in **Schedule "B"** hereto are limited partnerships (collectively, the "**Just Energy LPs**"). The Just Energy LPs hold most of the regulatory licenses pursuant to which the Just Energy Group conducts business. The Just Energy LPs are not applicants in these CCAA proceedings as they are not "companies" to which the CCAA applies. Nevertheless, as the business and operations of the Just Energy LPs are heavily intertwined with that of the Applicants, the Applicants seek to have all of the protections and authorizations under the Initial Order extended to the Just Energy LPs, including the Stay of Proceedings.

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<sup>2</sup> The gross margin expected to be realized over the next five years from existing customers.

17. Complying with the various regulatory regimes creates direct and indirect financial, legal and operational obligations for the Just Energy Group. Among other things, certain regulators require substantial financial collateral to be posted by entities in the Just Energy Group. Any non-compliance with the regulatory regimes, including the failure to provide sufficient collateral by a specified deadline can lead to the suspension or cancellation of the Just Energy Group's ability to operate in a particular market and, in some jurisdictions, the transfer of the Just Energy Group's customers to another energy provider. The amount of collateral required can vary depending on a number of factors including the current commodity market environment and the financial health of the Just Energy Group and, as a result, can be difficult to forecast.
18. In certain circumstances, the Just Energy Group entities have posted collateral with the regulators themselves; in other circumstances, they have arranged for collateral to be posted by third-party bonding companies (the "**Bonding Companies**"). In such circumstances, a breach of the agreement with the Bonding Companies, including failing to post additional collateral with the Bonding Companies on demand, can lead to non-compliance with the regulator's demands and consequently, the suspension or cancellation of the Just Energy Group's ability to operate in a particular market. The Proposed Monitor understands that the Bonding Companies have recently demanded over \$30 million in additional collateral be posted by the Just Energy Group as a result of, among other things, the Texas weather event. The Just Energy Group estimates as much as \$10 million remains outstanding and could be demanded upon filing.

Commodity Suppliers and ISO Supplier Relationships

19. As noted earlier, the Just Energy Group transacts with various suppliers of natural gas and electricity (collectively, the "**Commodity Suppliers**"). As detailed in the Carter Affidavit, a small group of suppliers including Shell, BP, Exelon, and Bruce Power, provides the majority of such supplies. Any disruption to continued supply by the Commodity Suppliers would materially impact the Just Energy Group's ability to carry on its business operations. Such disruption would prevent the Just

- Energy Group from entering into any further sales contracts with customers as it would be unable to properly backstop and hedge the obligations. The obligations owing to the Commodity Suppliers by the Just Energy Group are secured by security granted by Just Energy and other members of the Just Energy Group.
20. In addition to supply agreements, the Just Energy Group is also party to independent system operator (“**ISO**”) services agreements (the “**ISO Agreements**”) with certain of its Commodity Suppliers (in such capacity, the “**ISO Suppliers**”). Pursuant to the ISO Agreements, the contracting counterparty (for reasons of administrative efficiency) provides certain scheduling services as well as working capital and credit support to the Just Energy Group by making payments on its behalf to the independent system operator.

### The Just Energy Group’s Capital Structure

#### **2020 Recapitalization**

21. As detailed in the Carter Affidavit, the Just Energy Group underwent a balance sheet recapitalization in 2020 (the “**Recapitalization**”) pursuant to section 192 of the *Canada Business Corporations Act* under the supervision of this Court. The Recapitalization was the culmination of extensive discussions with stakeholders over the span of a year and put the Just Energy Group on a strong financial footing.

#### **Capital Structure**

22. The Just Energy Group’s capital structure is described in detail in the Carter Affidavit. As at December 31, 2020, the aggregate book value of the Just Energy Group’s assets was approximately \$1.069 billion, and the aggregate book value of its liabilities was approximately \$1.28 billion.
23. The Just Energy Group’s debt obligations include: (i) secured obligations to its Commodity Suppliers in the approximate amount of \$198.96 million as at January 31, 2021 (the “**Trade Debt**”); and (ii) significant non-trade obligations. Below is

a chart setting out the relative priorities of the Justice Energy Groups' debt obligations, which are detailed below.

Tier	Items	Date	Approximate Amount
Tier 1	Secured Suppliers AP	March 31, 2021	\$244 million
Tier 2	Credit Facility Lenders	March 5, 2021	\$331.82 million
	Suppliers MTM (Liability Only)	March 1, 2021	\$146.17 million
	ISO Service Obligations (Subject to Cap)	March 5, 2021	\$94.5 million
Tier 3	ISO Service Obligations (In Excess of Cap)	March 5, 2021	\$77.66 million
Tier 4	Term Loan (unsecured)	December 31, 2020	\$273.48 million
Tier 5	Subordinated Notes (unsecured)	December 31, 2020	\$13.2 million

(a) Trade Debt

24. The Proposed Monitor understands that the Commodity Suppliers and the agent for the lenders under the Credit Agreement (as defined below) are party to an intercreditor agreement (the “**Intercreditor Agreement**”) that sets out the relative priorities of the parties’ security interests. In accordance with the terms of the Intercreditor Agreement, the secured Commodity Suppliers rank *pari passu* with the lenders under the Credit Agreement subject to the following waterfall as set out in the above chart: (i) accounts payable owing to the secured Commodity Suppliers rank first, (ii) the following amounts rank second and *pari passu* amongst themselves: (A) the mark-to-market (“**MTM**”) liability to the secured Commodity Suppliers, (B) amounts owing to the lenders under the Credit Agreement, and (C) amounts owing to Commodity Suppliers under the ISO Agreements up to a cap of \$94.5 million (the “**Cap**”); and (iii) ranking third, amounts owing to providers under the ISO Agreements above the Cap.
25. The significant non-trade debt obligations of the Just Energy Group are summarized as follows:

	Type	Borrower(s)	Maturity Date	Approximate Outstanding Amount as of December 31, 2020
Secured Credit Facility	Revolving credit facilities available on borrowing base	Just Energy Ontario L.P. and Just Energy (U.S.) Corp.	December 31, 2023	\$232.62 million in principal \$77.8 million in letters of credit
Term Loan	Non-revolving, multi-draw senior unsecured term loan facility	Just Energy Group Inc.	March 31, 2024	\$273.48 million
Subordinated Notes	Unsecured subordinated notes	Just Energy Group Inc.	September 27, 2026	\$13.2 million

(b) Credit Facility

26. Just Energy Ontario L.P. and Just Energy (U.S.) Corp. are borrowers under a ninth amended and restated credit agreement (the “**Credit Agreement**”) dated as of September 28, 2020 with a syndicate of lenders that includes CIBC, National Bank of Canada, HSBC, JPMorgan, Alberta Treasury Branches, Canadian Western Bank, and Morgan Stanley Senior Funding, Inc., a subsidiary of Morgan Stanley Bank N.A.
27. The Credit Agreement provides for certain scheduled mandatory commitment reductions over time.
28. As at March 5, 2021, there was approximately \$227.86 million in principal outstanding under the Credit Agreement, plus outstanding letters of credit amounting to approximately \$103.96 million.



(c) Term Loan

29. Just Energy is a borrower under a \$205.9 million unsecured principal note (the “**Term Loan Agreement**”) in favour of Sagard Credit Partners, LP and certain funds managed by a leading U.S.-based global fixed income asset manager. The Term Loan matures on March 31, 2024.
30. Pursuant to the Term Loan Agreement, interest payments are capitalized with payment of principal and accrued interest due on March 31, 2024.
31. As at December 31, 2020, approximately \$273.48 million was outstanding under the Term Loan.

(d) Subordinated Notes

32. Just Energy is also a borrower under certain subordinated unsecured notes (“**Subordinated Notes**”). As at October 19, 2020, the Subordinated Notes had a principal amount of \$13.2 million outstanding.

## THE TEXAS WEATHER EVENT

33. As noted earlier herein, Texas is the Just Energy Group’s single largest market. The Texas energy market is subject to regulatory oversight by ERCOT. ERCOT’s operations, in turn, are overseen by the Public Utility Commission of Texas (“**PUCT**”).
34. The Proposed Monitor understands that the Just Energy Group’s Texas-based operating subsidiaries, in addition to purchasing supply directly from the Commodity Suppliers, purchase energy products (for subsequent resale to customers) in Texas through an ERCOT-operated wholesale electricity market. The Texas subsidiaries are directly liable to ERCOT for such electricity purchases, pursuant to and in accordance with the terms of the ERCOT protocols (the “**Protocols**”) and certain governing agreements that implement such Protocols.<sup>3</sup>

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<sup>3</sup> The Protocols are accessible at the following link: <http://www.ercot.com/mktrules/nprotocols/current>.

35. As described in greater detail in the Carter Affidavit, beginning on February 13, 2021, Texas experienced an unprecedented and catastrophic energy crisis when a powerful winter storm impacted the entire state. Being a warm-weather state, (i) the colder temperatures had the effect of causing demand for electricity to spike as residents sought to heat their homes and businesses,<sup>4</sup> and (ii) certain of the state's electricity generating sources were not sufficiently winterized to withstand the cold temperatures or were unable to secure fuel with which to operate their plants and suffered critical operational shut-downs.
36. The Proposed Monitor understands that the Just Energy Group diligently hedges against potential weather risks based on historical data. For February 2021, the Just Energy Group had weather hedges in place to cover an incremental 50% increase in customer usage above the normal February consumption, which in any other year would have provided sufficient cushion against extreme weather. However, the extreme Texas weather event meant energy use on February 14, 2021 was 200% higher than the week earlier, substantially above the hedge estimates.
37. The Texas' electricity grid, by design, is largely separate from neighbouring states, so generating sources that were unable to operate could not be easily substituted by importing electricity from neighbouring markets. The combination of the spike in demand and plummeting supply pushed Texas' electric system to the brink of collapse. The Carter Affidavit details ERCOT and PUCT's hurried response to this event in order to avoid a complete shutdown of the entire grid and the operational and financial repercussions for the entire Texas electric grid that otherwise could have lasted several months.
38. The effects of ERCOT and PUCT's actions on the Texas wholesale energy market during the Texas weather event are described in detail in the Carter Affidavit. In brief, PUCT adopted an order instructing ERCOT to set wholesale energy prices at the maximum price allowed, being US\$9,000 per megawatt hour, for over 100 consecutive hours. By way of comparison, the real time electricity price did not hit

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<sup>4</sup> To note, most of Texas uses electric heating.

- US\$9,000/MWh for even one 15-minute interval in 2020. The winter storm and regulators' actions caused wholesale buyers to incur additional costs of approximately US\$55 billion during the 7-day period of the winter storm, equivalent to the amount the wholesale market would ordinarily incur over a four-year period.
39. The Proposed Monitor understands, as set out in the Carter Affidavit, that ERCOT and PUCT's decision to sustain an artificially high wholesale price may have contravened the Protocols and has been challenged by numerous stakeholders. The Proposed Monitor understands that there have been several appeals to PUCT and ERCOT to provide accommodations to energy providers affected by the ERCOT wholesale market price surges, including appeals by the Just Energy Group to suspend ERCOT's usual protocols. The Proposed Monitor understands that such appeals have not been successful to date.
  40. In the meantime, ERCOT has issued invoices to wholesale energy purchasers, including the Just Energy Group's Texas subsidiaries, for the entire US\$55 billion amount in additional costs. The Proposed Monitor understands that the Just Energy Group's portion of such obligation is estimated to be approximately US\$250 million. The magnitude of this financial burden has had a ripple effect through a myriad of market participants including retail energy providers, electric cooperatives and municipalities, independent power producers, and natural gas local distribution companies across the state.
  41. The Proposed Monitor understands that the Just Energy Group is disputing the amount of ERCOT's issued invoices. Nevertheless, in accordance with the Protocols, invoices issued by ERCOT must be paid in full within two days, even if the energy provider is actively disputing the invoice.
  42. ERCOT has several remedies available to it when an energy provider fails to pay in full the amount of any invoice within two days of it being issued. Principal among such remedies is ERCOT's ability to revoke all of the right of such energy provider to operate in the Texas market and to mass-transition all of such energy

- provider's Texas customers to another energy provider of last resort (a "**POLR**") on five days' notice to the energy provider (the mass-transition being, the "**POLR Process**").
43. The Proposed Monitor understands that the Just Energy Group does not have sufficient liquidity to cover its remaining unpaid obligation to ERCOT of approximately US\$123.21 million, of which approximately US\$96.24 million is required to be paid by the end of day on March 9, 2021. Additionally, on March 8, 2021, the Just Energy Group received from ERCOT (i) a notice that it must post approximately US\$25.7 million of additional collateral within two business days; and (ii) invoices totalling approximately US\$25.46 million, of which approximately US\$18.86 million is due by March 10, 2021.
  44. The Proposed Monitor understands that the Just Energy Group is unable, as a legal and practical matter, to charge and collect this unprecedented amount from its Texas customers given the fixed-rate customer billing arrangements with most of its customers.
  45. As at the date of this Report, and as described in the Carter Affidavit, the Proposed Monitor understands that one large Texas-based energy provider, Brazos Electric Power Cooperative, Inc., has already filed for relief under chapter 11 of title 11 of the United States Code, after incurring an estimated US\$2.1 billion in charges over seven days during the Texas weather event.
  46. The Proposed Monitor also understands that ERCOT (i) revoked all of the rights of two other energy providers, Griddy Energy LLC and Entrust Energy Inc., to operate in the Texas energy market after they failed to pay to ERCOT their portion of the additional US\$55 billion liability; and (ii) implemented the POLR Process in respect of both such energy providers. Without the protection afforded by the proposed Initial Order being sought by the Just Energy Group, the Just Energy Group could face similar consequences. If granted, Just Energy intends to initiate a case under Chapter 15 of Title 11 of the United States Code seeking to recognize and enforce the proposed Initial Order in the U.S.

**GOING CONCERN DOUBTS AS A RESULT OF THE TEXAS WEATHER EVENT**

47. As noted above, the Just Energy Group may be liable to ERCOT for an estimated US\$250 million. The Just Energy Group is disputing amounts that are owing to ERCOT. Nevertheless, if payment in full is not made to ERCOT within two days of invoices being issued, ERCOT may decide to implement a POLR Process that, the Proposed Monitor understands, would cause nearly half of the Just Energy Group's Embedded Gross Margin to dissipate and would pose significant risk to the Just Energy Group's ability to maintain going concern operations.
48. The Proposed Monitor understands that the Just Energy Group does not have sufficient liquidity to cover the amount of its estimated obligations, including the full amount of the estimated liability to ERCOT. The Just Energy Group is forecast to have negative liquidity as of March 9, 2021 primarily due to one of the aforementioned payments due to ERCOT on that date of approximately \$121.2 million.
49. In addition, on March 22, 2021, approximately \$270 million will become owing to counterparties under the ISO Agreements. This amount has increased significantly from normal levels, which is a direct result of the Texas weather event.
50. The Proposed Monitor further understands that an event of insolvency constitutes an event of default under the Just Energy Group's licences with various Canadian and U.S. regulators, as detailed in the Carter Affidavit, which causes serious concerns about the Just Energy Group's ability to continue to operate in key markets outside of Texas.
51. Likewise, upon an insolvency event, there are other material concerns about the continued supply of energy commodities from the Commodity Suppliers and immediate demands for additional collateral from the Bonding Agencies (in addition to the collateral that has already been demanded by the Bonding Companies, as noted earlier in this report). The Proposed Monitor understands that any one of these events (i.e. the loss of continuing supply or a request for additional

collateral that cannot be satisfied) could trigger cascading materially adverse results for the Just Energy Group by virtue of cross-default provisions under a number of governing agreements.

### **FTI'S QUALIFICATIONS TO ACT AS MONITOR**

52. Paul Bishop, who will lead the FTI team and have primary carriage of this matter, is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada).
53. Since becoming engaged by the Just Energy Group, FTI has acquired knowledge of the business and operations of the Just Energy Group, including its personnel, stakeholders and the key issues in the proposed CCAA Proceedings. As a result, FTI is in a position to immediately act as Monitor in the CCAA Proceedings if appointed by this Court.
54. In September 2020, FTI was engaged by the Applicant, Just Energy Inc., to assist in assessing the quantification of potential damages relating to certain securities class actions against the company. This work is ongoing, and an ethical wall has been put in place between the FTI members assisting with the preparation of the these CCAA Proceedings and those members assisting Just Energy Inc. with the claim quantification engagement.
55. Neither FTI, nor any of its representatives, has been, at any time in the two preceding years:
  - (a) a director, officer or employee of the Just Energy Group;
  - (b) related to the Just Energy Group or to any director or officer of the Just Energy Group; or
  - (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the Just Energy Group.

Engagement of FTI and the Preparation of this Pre-Filing Report

56. FTI was initially engaged by the Applicants in July 2020 to assist in preparing for a potential filing under the CCAA, on a contingency basis, as they sought, successfully, to conclude the Recapitalization under the CBCA.
57. Pursuant to an engagement letter dated February 26, 2021, FTI was engaged to assist the Just Energy Group with a review of its financial position, business plan, financial projections and liquidity requirements and, if required, to assist the Just Energy Group in preparation for a filing under each of the Canadian and U.S. insolvency regimes. For the purpose of this mandate, FTI has, among other things:
- (a) participated in numerous meetings and discussions with the Just Energy Group's senior management and legal advisors in connection with the Just Energy Group's business and financial affairs generally and in connection with the preparation of the Cash Flow Forecast (as defined herein);
  - (b) participated in numerous meetings and discussions with the Just Energy Group and its counsel in connection with the requested relief in these CCAA Proceedings;
  - (c) engaged legal counsel in Canada and the U.S., who have also participated in certain of the aforementioned meetings;
  - (d) obtained and reviewed financial and other information produced by the Just Energy Group relating to its operations, cash flow forecasts and current financial situation;
  - (e) assisted the Just Energy Group in the preparation of its cashflow forecasts;
  - (f) assisted the Just Energy Group in assessing the quantum of potential claims against its directors and officers; and
  - (g) prepared this Pre-Filing Report.
58. Although this Pre-Filing Report has been prepared in anticipation of FTI's appointment as Monitor of the Just Energy Group, it has been prepared with the

same duty, care and level of diligence that FTI would have utilized had it already been appointed as Monitor.

59. In preparing this Pre-Filing Report, the Proposed Monitor has relied upon unaudited financial information of the Just Energy Group, the books and records of the Just Energy Group, certain financial information prepared by the Just Energy Group and discussions with the Just Energy Group's management. Other than as described in this section of the Pre-Filing Report, the Proposed Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Proposed Monitor expresses no opinion or other form of assurance on the information contained in Pre-Filing Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Pre-Filing Report is based on the Just Energy Group's management's assumptions regarding future events; actual results may vary from the forecast and such variations may be material.

#### **THE JUST ENERGY GROUP'S CASH MANAGEMENT SYSTEM**

60. The Just Energy Group maintains a centralized cash management system in Canada and the United States to consolidate and track funds generated by the operations of the Just Energy Group, as described more fully in the Carter Affidavit.
61. The Proposed Monitor has reviewed the Just Energy Group's cash management arrangements and confirms the importance of these systems for the continuation of the Just Energy Group's business and operations. Replacement of the cash management systems would be costly, unviable from a short-term operational perspective, and excessively time consuming. Accordingly, the Proposed Monitor supports the Just Energy Group's request to continue to operate its existing cash management systems throughout these CCAA Proceedings and supports the Just Energy Group's request to temporarily restrict the right of set-off by the lenders in order to ensure that the cash management system continues to function properly.



## CASH FLOW FORECAST

62. The Just Energy Group, with the assistance of the Proposed Monitor, has prepared (i) a consolidated 13-week cash-flow forecast of its receipts and disbursements (the “**Weekly Forecast**”), and (ii) a daily cash flow forecast for the 13-day period following the filing of these CCAA Proceedings ending March 21, 2021 (the “**Daily Forecast**”, and together with the Weekly Forecast, the “**Cash Flow Forecast**”). The Cash Flow Forecast and the management’s report on the cash-flow statement as required by section 10(2)(b) of the CCAA are attached hereto as **Appendix “A”**. The Weekly Forecast and Daily Forecast are summarized as follows:

<i>(CAD\$ in millions)</i>	13-Day period ending March 21, 2021	13-Week period ending June 6, 2021
<b>Forecast Week</b>	<b>Total</b>	<b>Total</b>
<b>RECEIPTS</b>		
Sales Receipts	\$77.1	\$608.5
Miscellaneous Receipts	-	8.0
<i>Total Receipts</i>	\$77.1	\$616.5
<b>DISBURSEMENTS</b>		
<i>Operating Disbursements</i>		
Energy and Delivery Costs	(\$224.6)	(\$574.1)
Payroll	-	(22.3)
Taxes	(5.4)	(36.6)
Commissions	(6.3)	(27.8)
Selling and Other Costs	(6.6)	(48.4)
<i>Total Operating Disbursements</i>	(\$242.8)	(\$709.1)
<b>OPERATING CASH FLOWS</b>	(\$165.7)	(\$92.6)
<i>Financing Disbursements</i>		
Credit Facility - Borrowings / (Repayments)	\$126.0	\$157.5
Interest Expense & Fees	(3.2)	(7.2)
<i>Restructuring Disbursements</i>		
Professional Fees	(1.4)	(14.4)
<b>NET CASH FLOWS</b>	<b>(\$44.3)</b>	<b>\$43.3</b>
<b>CASH</b>		
Beginning Balance	\$77.3	\$77.3
Net Cash Inflows / (Outflows)	(44.3)	43.3
Other (FX)	-	-
<b>ENDING CASH</b>	<b>\$33.0</b>	<b>\$120.7</b>

63. The Just Energy Group's Daily Forecast indicates that during the 13-day period ending March 21, 2021, the Just Energy Group will have net cash outflows from operating activities of approximately \$165.7 million with total receipts of approximately \$77.1 million and total disbursements of approximately \$242.8 million, before borrowings of approximately \$126.0 million and professional fees of approximately \$1.4 million such that the net cash outflows are forecast to be approximately \$44.3 million.
64. The Just Energy Group's Weekly Forecast indicates that, during the 13-week cash flow period ending June 6, 2021, the Just Energy Group will have net cash outflows from operating activities of approximately \$92.6 million with total receipts of approximately \$616.5 million and total disbursements of approximately \$709.1 million, before borrowings of approximately \$157.5 million and professional fees of approximately \$14.4 million such that the net cash flows are forecast to be approximately \$43.3 million.
65. The Cash Flow Forecast incorporates the following key assumptions:
- (a) Payment to ERCOT of approximately \$151.3 million with respect to the Texas weather event due during the week ending March 14, 2021;
  - (b) Payment of certain pre-filing amounts outstanding, pending Monitor consent, including with respect to commodity delivery-related services;
  - (c) Payment of pre-filing amounts outstanding, owing to or in respect of workers providing sales and sales support for the Just Energy Group;
  - (d) An initial drawdown on the DIP Facility of approximately \$126 million on March 9, 2021 to satisfy the liquidity requirements of the Just Energy Group through to the comeback hearing; and
  - (e) Cash receipts of the Just Energy Group contemplates the ongoing collection of receivables from its customers.

66. Section 23(1)(b) of the CCAA states that the Proposed Monitor shall, “review the company’s cash-flow statement as to its reasonableness and file a report with the court on the Proposed Monitor’s findings”.
67. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:
- (a) the Cash Flow Forecast has been prepared by management of the Just Energy Group for the purpose described in notes to the Cash Flow Forecast, using the probable and hypothetical assumptions set out therein;
  - (b) the Proposed Monitor’s review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Just Energy Group. Since hypothetical assumptions need not be supported, the Proposed Monitor’s procedures with respect to them were limited to evaluating whether they were consistent with the purposes of the Forecast. The Proposed Monitor has also reviewed the support provided by management of the Just Energy Group for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast;
  - (c) based on its review, and as at the date of this Pre-Filing Report, nothing has come to the attention of the Proposed Monitor that causes it to believe that, in all material respects:
    - (i) the hypothetical assumptions are not consistent with the purposes of the Cash Flow Forecast;
    - (ii) the probable assumptions developed by management are not suitably supported and consistent with the plans of the Just Energy Group or do not provide a reasonable basis for the Cash Flow Forecast, given the hypothetical assumptions; or
    - (iii) the Cash Flow Forecast does not reflect the probable and hypothetical assumptions;

- (d) Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Pre-Filing Report, or relied upon by the Proposed Monitor in preparing this Pre-Filing Report; and
- (e) The Cash Flow Forecast has been prepared solely for the purpose of estimating the liquidity requirements of the Just Energy Group during the forecast period. The Cash Flow Forecast should not be relied upon for any other purpose.

## **RELIEF SOUGHT IN INITIAL ORDER**

### *Extending the CCAA protections to the Just Energy LPs*

- 68. The Initial Order provides that the Just Energy LPs be granted all of the same protections and authorizations provided to the Applicants under the Initial Order, notwithstanding that the Just Energy LPs are not “companies” within the meaning of the CCAA.
- 69. The Proposed Monitor understands that the Just Energy LPs hold many of the permits, licenses and other regulatory permissions that permit the Just Energy Group to conduct business operations in particular jurisdictions. The Proposed Monitor further understands that the business and operations of the Applicants and the Just Energy LPs are heavily intertwined, including on a day-to-day basis.
- 70. If such entities are not granted protection under the proposed Initial Order, including in respect of any enforcement proceedings by regulators (as described below), the regulators may proceed to cancel such permits, licences or other regulatory permissions as a result of the filing of these CCAA Proceedings, which the Proposed Monitor understands would be within their rights. The effect of any

such regulator actions would have material adverse effects for the Just Energy Group, including the loss of customers or an inability to operate in a particular market.

71. For the above reasons and to ensure the stability of the Just Energy Group's operations during these CCAA Proceedings, the Proposed Monitor is of the view that the protections and other authorizations permitted to the Applicants under the Initial Order should be extended to the Just Energy LPs.

*Implementing the Stay of Proceedings, including in respect of Regulators*

72. The Just Energy Group is seeking the Stay of Proceedings up to and including March 19, 2021 in respect of the Just Energy Group.
73. The Just Energy Group requires the Stay of Proceedings and other protections provided by the CCAA given that the Just Energy Group is insolvent. The Stay of Proceedings is needed to maintain the *status quo* and provide time for the Just Energy Group to consider its strategic alternatives.
74. The proposed Initial Order provides that, notwithstanding section 11.1 of the CCAA, the Stay of Proceedings should apply to provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales (collectively, the "**Provincial Regulators**"), except with the written consent of the Just Energy Group and the Proposed Monitor, or leave of the Court.
75. As described in the Carter Affidavit, the Just Energy Group believes that an insolvency event or the filing of these CCAA Proceedings may cause the Provincial Regulators and U.S. Regulators (together, the "**Regulators**") to enforce certain of their rights and remedies, notwithstanding that the proposed interim financing will allow the Just Energy Group to pay the Regulators everything as and when due in the ordinary course of business. Any such enforcement would have material adverse effects for the Just Energy Group. This includes requiring additional collateral to be posted, revoking Just Energy Group's rights to operate in a particular market, or transitioning the Just Energy Group's customers in that

particular market to a competitor. Any such actions by any one Regulator could severely harm existing operations. If such actions are implemented by a group of Regulators however, or by a Regulator in respect of a particularly important market for the Just Energy Group's business, this could impair the Just Energy Group's viability to continue as a going concern.

76. Given the unique circumstances facing the Just Energy Group and the severe repercussions that could result if a Stay of Proceedings is not extended to the Regulators, the Proposed Monitor is of the view that the Regulators should be temporarily stayed from exercising their rights and remedies in accordance with the Initial Order, provided they are paid amounts owing to them in the ordinary course as planned, to provide the Just Energy Group with a stable environment in which it can seek to restructure. If necessary, this matter can be revisited at the subsequent comeback hearing.

Proposed debtor-in-possession financing

77. The Applicants are seeking approval of a term sheet (the "**DIP Agreement**") between Just Energy L.P., Just Energy Group Inc. and Just Energy (U.S.) Corp. (collectively, the "**Borrowers**") and Alter Domus (US) LLC, as administrative agent for the lenders (the "**DIP Lenders**"), pursuant to which the DIP Lenders will make a debtor-in-possession facility (the "**DIP Facility**") available to the Borrowers, subject to the terms and conditions set out in the DIP Agreement, in the maximum principal amount of US\$125 million. The obligations owing to the DIP Lenders under the DIP Facility will be guaranteed by each of the remaining Applicants (the "**Guarantors**"). The Proposed Monitor cautions that, at the current time, the DIP Agreement is still under negotiation and has not been finalized.
78. Terms not otherwise defined in this section have the meanings ascribed to them in the DIP Agreement, a copy of which will be appended as an exhibit to the Carter Affidavit.
79. The Proposed Monitor understands that the salient terms of the DIP Agreement are as follows:

- (a) **DIP Charge:** The DIP Charge (as defined below) shall have been granted in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, subject to the Permitted Priority Liens;
- (b) **Term:** The DIP Facility shall be available until the earlier of (i) December 31, 2021; (ii) the CCAA Plan Implementation Date; (iii) the expiry of the stay of proceedings; (iv) the termination of the CCAA proceedings; or (v) the acceleration of the DIP Facility in accordance with the terms of the DIP Agreement upon the occurrence and during the continuation of an Event of Default;
- (c) **Interest:** Interest accrued on the principal amounts outstanding under the DIP Facility at a rate equal to 13% per annum (which will automatically increase by an additional 2% per annum upon the occurrence of any Event of Default);
- (d) **Additional Fees:** A commitment fee in an amount equal to 1% of the Maximum Amount, along with an origination fee in an amount equal to 1% of the Maximum Amount, shall each be fully earned and payable in cash on the Closing Date;
- (e) **Use of proceeds:** The Borrowers shall use the DIP Facility solely for the purposes set out in the DIP Agreement, in each case in accordance with the CCAA Orders and Cash Flow Statements, subject to the Permitted Variance, which includes funding the general corporate and working capital requirements of the Borrowers and Guarantors. Once every four weeks, the Borrowers are required to deliver a new rolling 13-week cash flow forecast to the DIP Lenders, which shall be subject to the approval of the DIP Lenders;
- (f) **Initial Draw:** The Borrowers are required to make an initial draw under the DIP Facility in the minimum aggregate amount of US\$100 million. This amount will enable them to pay specified amounts that are known to be due

during the first 10 days of the CCAA proceedings, which are detailed in the Cash Flow Forecast; and

- (g) **Events of Default:** The DIP Agreement sets Events of Default, which include, among other things, failure to abide by specified milestones in the Loan Parties' CCAA proceedings.

80. The Just Energy Group requires such interim financing to provide stability, continue going concern operations and to restructure its business. The Applicants initially solicited interim financing terms from its five largest stakeholders, which ultimately culminated in the Just Energy Group entering into the DIP Agreement with the DIP Lenders.

Engagement of Financial Advisor

81. The Just Energy Group has engaged BMO as its Financial Advisor pursuant to an engagement letter dated February 20, 2021 (the "**Financial Advisor Engagement Letter**") which will be attached as a confidential exhibit to the Carter Affidavit. The Financial Advisor's mandate is to assist the Just Energy Group with assessing its liquidity and capital needs and reviewing potential strategic opportunities and transactions.
82. The proposed Initial Order provides that the FA Charge (as defined and described below) shall secure the Financial Advisor's post-filing fees, including any success fees in connection with finalizing a DIP loan transaction and the successful closing of a strategic transaction in accordance with the terms of the Financial Advisor Engagement Letter.
83. The Proposed Monitor has discussed with the Financial Advisor the scope, allocation and complexity of the work already undertaken by it, as well as the work remaining to be completed. The Proposed Monitor understands that the Financial Advisor does not foresee the need for any out of scope work and that post-filing fees are not duplicated for services already rendered.



84. Given the scope, nature and complexity of the Financial Advisor's role and fees charged by financial advisors in similar circumstances, the Proposed Monitor is of the view that the fees charged by the Financial Advisor are reasonable in the circumstances.
85. The Proposed Monitor supports the approval of the (i) Financial Advisor Engagement Letter, and (ii) permitting the FA Charge to secure the Financial Advisor's post-filing fees (including its work fee and success fees), subject to review by the Proposed Monitor of any invoices and the services provided by the Financial Advisor. The FA Charge is proposed to rank *pari passu* with the Administration Charge and have first priority over all other charges.

Permitting certain repayments under the Credit Agreement

86. The proposed Initial Order provides that the Just Energy Group be permitted to repay advances under the Credit Agreement for the purpose of creating availability under the LC Facility (as defined in the Credit Agreement) (an "**Advance Repayment**"), and that the Just Energy Group may utilize such availability to allow letters of credit to be issued under the Credit Agreement in order to maintain ordinary business operations. The proposed Initial Order provides that the foregoing shall be subject (i) to the consent of the Proposed Monitor with respect to any letter of credit issuance, and (ii) written confirmation from the applicable lender under the Credit Agreement that they shall issue a letter of credit of equal value to an Advance Repayment.
87. Subject to the Proposed Monitor's review and prior consent with respect to any Advance Repayment and letter of credit to be issued and the respective confirmations from lenders, the Proposed Monitor is of the view that it is reasonable and appropriate for the Just Energy Group to be permitted to make Advance Repayments and obtain letters of credit in order to sustain its business operations.

Permitting certain pre-filing payments to third parties

88. Pursuant to paragraph 7(d) of the proposed Initial Order, the Just Energy Group is entitled, but not required, to pay certain pre-filing amounts to third parties for goods or services provided to the Just Energy Group prior to these CCAA Proceedings with the consent of the Proposed Monitor and provided that such third parties are critical to the business operations of the Just Energy Group.
89. In accordance with the above, the Proposed Monitor intends to review on a case-by-case basis any pre-filing payments and will only approve such payments to be made if it decides that payment of such amounts is critical to the Just Energy Group's operations. The Proposed Monitor is of the view that these conditions are sufficient in the circumstances to permit the Just Energy Group to make pre-filing payments that satisfy these conditions.

Certain other relief for Commodity Suppliers

90. The proposed Initial Order provides that any counterparty to a Commodity Agreement<sup>5</sup> or ISO Agreement<sup>6</sup> that has executed or executes a Qualified Support Agreement (as defined in the proposed Initial Order) with an entity in the Just Energy Group and refrained from exercising termination rights under the Commodity Agreement as a result of the commencement of the Proceedings (as defined in the proposed Initial Order) absent an event of default under such Qualified Support Agreement (each, a “**Qualified Commodity/ISO Supplier**”), shall be entitled to a charge that secures the Just Energy Group's obligations to the Qualified Commodity/ISO Supplier.

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<sup>5</sup> As defined in the Initial Order: a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas or electricity.

<sup>6</sup> As defined in the Initial Order: an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

91. Specifically, each Qualified Commodity/ISO Supplier shall be entitled to the benefit of a charge (the “**Priority Commodity/ISO Charge**”) on the Property in an amount equal to the value of the amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under the ISO Agreement on or before the date of the Initial Order, whether or not yet due).
92. The proposed Initial Order does not specify a limit for the Priority Commodity/ISO Charge. Instead, such charge shall secure the actual quantum of supplies provided by the Qualified Commodity/ISO Suppliers that it is intended to secure. The proposed Initial Order further provides that if a Qualified Commodity/ISO Supplier ceases to be a Qualified Commodity/ISO Supplier, it shall no longer benefit from such charge.
93. The proposed Initial Order also provides that those Qualified Support Agreements that may be entered into among the Qualified Commodity/ISO Suppliers and the Just Energy Group confirming the terms for the continued supply by the Qualified Commodity/ISO Suppliers are to be approved. The Proposed Monitor understands that certain Qualified Support Agreements are under negotiation but have not yet been finalized.
94. Pursuant to the proposed Initial Order, the Proposed Monitor, if appointed, will post a report on its website, on a monthly basis, setting out the total value of obligations to the Qualified Commodity/ISO Suppliers, thereby allowing any stakeholder concerned about the size of the secured obligation to seek an appropriate remedy at that time.

95. As the Proposed Monitor has indicated herein, the Just Energy Group relies on a small group of Commodity Suppliers and ISO Suppliers to provide critical services, including the supply of electricity that the Just Energy Group resells to customers. If any such supply or services are stopped, delayed or otherwise impaired, the Proposed Monitor believes that such actions will have a material adverse effect on the operations of the Just Energy Group.
96. Further, certain of the Commodity Agreements or ISO Agreements may be eligible financial contracts that would be subject to termination, which is why the Just Energy Group is requesting this particular relief in order to encourage the counterparties under such contracts to continue to do business with it.
97. In agreeing to continue to supply commodities and provide services under the Commodity Agreements and ISO Agreements, the counterparties are providing new value to the Applicants that will allow them to continue operating in the ordinary course of business after the date of the Initial Order. In order to protect that continued supply of goods and services, the Priority Commodity/ISO Charge secures the payment for such post-filing provision of goods and services.
98. As outlined above, there is an Intercreditor Agreement that governs the priority for payments made by the Applicants to certain counterparties and lenders. We understand that various parties may wish to seek to have the court determine the application of such Intercreditor Agreement to payments and priorities as part of these proceedings. While the Intercreditor Agreement may be relevant with respect to certain pre-filing obligations of the Applicants, given that the Commodity Agreement and ISO Agreement counterparties could terminate their existing arrangements (requiring the Applicants to attempt to find replacement suppliers which may not be practically possible), the Proposed Monitor views the continued supply and provision of services as fresh, post-filing consideration.
99. As such, the Proposed Monitor is of the view that, at least until any potential dispute on the point is properly presented for a determination by this Court:

- (a) post-filing supply of goods and services pursuant to the Commodity Agreements and ISO Agreements should be governed only by the Initial Order and should be treated as separate and apart from the certain pre-filing amounts governed by the Intercreditor Agreement; and
  - (b) entitlement to the consideration for such newly supplied goods and services under the Commodity Agreements and ISO Agreements should be for the exclusive benefit of the actual counterparty delivering such post-filing goods and services and governed by the Priority Commodity/ISO Charge.
100. For the foregoing reasons, the Proposed Monitor is of the view that the Qualified Support Agreements consistent with the terms hereof should be approved and the Priority Commodity/ISO Charge be granted.

*Court-ordered charges sought in the proposed Initial Order*

**(i) Administration Charge**

101. The Initial Order provides for a charge in the amount of up to \$2.2 million (the “**Administration Charge**”), covering the period until the comeback hearing, in favour of the Proposed Monitor, the Proposed Monitor’s Canadian and U.S. counsel, and the Just Energy Group’s Canadian and U.S. counsel as security for their professional fees and disbursements incurred both before and after the making of the Initial Order in respect of these CCAA Proceedings.
102. The Administration Charge currently only secures the fees expected to be incurred by the foregoing professionals prior to and during the initial 10-day stay period prior to the comeback hearing. The quantum of the Administration Charge has been established based on the various professionals’ previous history and experience with cross-border restructurings of similar scope and complexity. The Proposed Monitor believes that such a charge is required and reasonable in the circumstances. The Proposed Monitor will comment on the proposed amendment to increase the amount of the Administration Charge at the comeback hearing as part of a further report to this Court.

**(ii) FA Charge**

103. The Initial Order provides for a charge in the amount of up to \$1.8 million (the “**FA Charge**”), covering the period until the comeback hearing, in favour of the Financial Advisor as security for (i) its professional fees and disbursements incurred both before and after the making of the Initial Order in respect of these CCAA Proceedings, and (ii) any success fees earned by the Financial Advisor in accordance with the terms of the Financial Advisor Engagement Letter. The FA Charge is intended to have an equal ranking to the Administration Charge.
104. The FA Charge currently only secures the fees earned prior to and during the initial 10-day stay period prior to the comeback hearing. The Proposed Monitor will comment on the proposed amendment to increase the amount of the FA Charge at the comeback hearing as part of a further report to this Court.
105. Given the Financial Advisor’s critical role in these restructuring proceedings and in exploring strategic transaction opportunities, the Proposed Monitor is of the view that such a charge is reasonable in the circumstances.

**(iii) Directors’ Charge**

106. The Proposed Monitor understands that the Just Energy Group’s present and former directors and officers are among the potential beneficiaries under liability insurance policies (the “**D&O Insurance**”) that cover an aggregate annual limit of approximately \$38.5 million. The Proposed Monitor understands that there may not be sufficient coverage under the D&O Insurance, given various exceptions and exclusions thereunder and as result of claims having been made thereunder.
107. The Just Energy Group is seeking the Directors’ Charge in the amount of \$30 million with priority over all encumbrances on the Just Energy Group’s property other than the Administration Charge and the FA Charge. The Proposed Monitor was involved in determining the quantum of the Directors’ Charge.

108. The proposed Directors' Charge represents the amount applicable during the initial 10-day stay period prior to the comeback hearing. The Proposed Monitor will comment on the proposed amendment to increase the amount of the Directors' Charge at the comeback hearing as part of a further report to this Court.
109. The Proposed Monitor is of the view that the amount of the Directors' Charge is reasonable in relation to the quantum of the estimated potential liability of the Just Energy Group's directors and officers, which includes significant potential director and officer liabilities under U.S. laws, including (i) approximately \$10.2 million potential liability under U.S. laws in respect of sales taxes, and (ii) approximately \$2.9 million potential liability under U.S. laws in respect of wages, source deductions and accrued vacation. The Just Energy Group's directors and officers are only entitled to the benefit of the Directors' Charge to the extent that coverage under the D&O Insurance is insufficient.
110. The Just Energy Group's directors have the necessary background and knowledge, particularly with respect to the complex regulatory environment in which the Just Energy Group operates, to steer it through these CCAA Proceedings. The Proposed Monitor also understands that the Just Energy Group's directors have insisted on the protection of the Directors' Charge in order to remain on the board during the course of the CCAA Proceedings. For the foregoing reasons, the Proposed Monitor is of the view that the Directors' Charge is necessary to ensure that the directors stay with the Just Energy Group and assist it through these CCAA Proceedings.

**(iv) DIP Charge**

111. The Applicants are seeking an Order granting the DIP Lender a charge (the "**DIP Charge**") over all of the present and future assets, property and undertaking of the Applicants, in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, subject to the Administration Charge, FA Charge, Directors' Charge, KERP Charge, and shall rank *pari passu* with the Priority Commodity/ISO Charge. The DIP Charge will secure all Obligations owing to the DIP Lenders under the DIP Facility.

112. The Monitor is of the view that the DIP Facility represents the necessary financing which allows the Just Energy Group to pay certain critical payables, including to ERCOT to prevent the application of ERCOT's POLR rights, and maintain the Just Energy Groups' ongoing operations. The requested DIP Charge does not secure any advances made to the Applicants prior to the commencement of the CCAA proceedings.
113. The Monitor recommends that the Court approve the DIP Agreement, DIP Facility and accordingly, also supports the granting of the DIP Charge.

**(v) KERP Charge and Employee Bonus**

114. The Just Energy Group will be seeking a key employee retention plan charge (the "**KERP Charge**") as part of an amended and restated initial order to be requested at the subsequent comeback hearing. The Proposed Monitor intends to review and comment on the KERP Charge as part of a further report to the Court.
115. The Just Energy Group will also be seeking the authority to pay certain employee bonuses in the amount of approximately \$3.2 million on April 2, 2021 (the "**Employee Bonus**"). The Proposed Monitor intends to review and comment on the Employee Bonus as part of a further report to the Court.

**(vi) Priority Commodity/ISO Suppliers Charge**

116. As noted above, the proposed Initial Order provides for a Priority Commodity/ISO Charge in favour of Qualified Commodity/ISO Suppliers, which is intended to ensure the continuing supply of critical goods and services to the Just Energy Group. Such charge does not have a set limit. Instead, it secures the actual amounts of the obligations to the Qualified Commodity/ISO Suppliers as described earlier herein, and in strict accordance with the terms of the Initial Order.
117. Just Energy's ongoing relationship with its Commodity Suppliers and ISO Suppliers is critical to these CCAA Proceedings and the long-term viability of Just



Energy Group's operations. For this reason, the Proposed Monitor is of the view that the Priority Commodity/ISO Charge is necessary and should be granted.

### **Summary of the Proposed Rankings of the Court-Ordered Charges**

118. If the proposed Initial Order is granted, the proposed Court-ordered charges would have the following ranking:
- (a) First – the Administration Charge in the amount of \$2.2 million and the FA Charge in the amount of \$1.8 million on a *pari passu* basis;
  - (b) Second – the Directors' Charge in the amount of \$30 million; and
  - (c) Third – the DIP Charge in in the amount of funds actually advanced under the DIP Facility and the Priority Commodity/ISO Charge on a *pari passu* basis.
119. The Proposed Monitor believes that the proposed Court-ordered charges and rankings are required and reasonable in the circumstances of these CCAA Proceedings in order to preserve the going concern operations of the Just Energy Group and maintain its enterprise value, and accordingly, supports the granting of and the proposed ranking of the charges.

## **CHAPTER 15 PROCEEDINGS**

120. The Just Energy Group seeks authorization under the proposed Initial Order to apply for foreign recognition and approval of these CCAA proceedings in foreign jurisdictions, including the United States pursuant to the chapter 15 of Title 11 of the United States Code (the "**Chapter 15 Proceedings**"). The Initial Order provides that the Applicant, Just Energy Group Inc., is authorized to act as the foreign representative for the purpose of the Chapter 15 Proceedings.
121. The Proposed Monitor agrees that recognition of the proposed Initial Order in the United States, including the Stay of Proceedings, is necessary to preserve the going concern value of the Just Energy Group's business and further agrees that the Chapter 15 proceedings should be commenced immediately. The Proposed Monitor

has reviewed the circumstances, including facts set out in the Carter Affidavit, and agrees that Canada is the centre of main interest for the Just Energy Group.

## CONCLUSION

122. The Proposed Monitor is of the view that the relief requested by the Just Energy Group pursuant to the proposed Initial Order is necessary, reasonable and justified, particularly in the context of the unprecedented challenges that have resulted from the Texas weather event. The Proposed Monitor is also of the view that granting the relief requested will provide the Just Energy Group the best opportunity to preserve value and maximize recoveries for its stakeholders.
123. The Proposed Monitor believes that the requested relief is justified by the exceptional circumstances confronting the Just Energy Group and is of the view that the Just Energy Group faces significant risks to its going concern operations if the requested relief is not granted.
124. Accordingly, the Proposed Monitor respectfully recommends that the Just Energy Group's request for the proposed Initial Order be granted.

The Proposed Monitor respectfully submits to the Court this Pre-Filing Report dated this 9<sup>th</sup> day of March, 2021.

**FTI Consulting Canada Inc.**, in its capacity as proposed Monitor of Just Energy Group Inc. et al. and not in its personal or corporate capacity



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Per: Paul Bishop  
Senior Managing Director

### Schedule “A”

**Commodity Agreement**” means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas or electricity.

**“Embedded gross margin”** is a standard industry term that means the gross margin expected to be realized over the next five years from existing customers.

**“ERCOT”** means the Electric Reliability Council of Texas, an ISO.

**“FERC”** means the U.S. Federal Energy Regulatory Commission.

**“ISO”** means an independent system operator; an independent, regulated entity established to coordinate regional transmission and ensure the safety and reliability of the electric system.

**“ISO Servicing Agreement”** means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

**“LDC”** means a local distribution company; the natural gas or electricity distributor for a regulatory or governmentally defined geographic area.

**“POLR”** means a provider of last resort, an energy retailer that has been selected by ERCOT to take over customers from another energy retailer that has been removed from the Texas electricity market by ERCOT.

**“Protocols”** means the ERCOT rules for market participants in the Texas energy market.

**“PUCT”** means the Public Utility Commission of Texas, a public body that oversees the ERCOT and otherwise manages the Texas utilities system.

**“RCE”** means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m<sup>3</sup> (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada

**Schedule “B”  
Just Energy LPs**

- Just Energy Ontario L.P.
- Just Energy Manitoba L.P.
- Just Energy (B.C.) Limited Partnership
- Just Energy Québec L.P.
- Just Energy Trading L.P.
- Just Energy Alberta L.P.
- Just Green L.P.
- Just Energy Prairies L.P.
- JEBPO Services LLP
- Just Energy Texas LP

**Appendix "A"**  
**Cash Flow Forecast**

**Just Energy Group Inc. et al**

CCAA 13-Week Cash Flow Forecast

March 9, 2021

(CAD\$ in millions)

Weeks Ending (Sunday) <sup>1</sup>	3/14/21	3/21/21	3/28/21	4/4/21	4/11/21	4/18/21	4/25/21	5/2/21	5/9/21	5/16/21	5/23/21	5/30/21	6/6/21	13-Week	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	Total	
<b>RECEIPTS</b>															
Sales Receipts	[2]	\$28.6	\$48.5	\$46.3	\$35.2	\$44.4	\$41.8	\$67.1	\$48.3	\$48.4	\$42.6	\$60.5	\$55.1	\$41.8	\$608.5
Miscellaneous Receipts	[3]	-	-	-	2.4	-	-	-	5.6	-	-	-	-	8.0	
<b>Total Receipts</b>		<b>\$28.6</b>	<b>\$48.5</b>	<b>\$46.3</b>	<b>\$37.6</b>	<b>\$44.4</b>	<b>\$41.8</b>	<b>\$67.1</b>	<b>\$53.9</b>	<b>\$48.4</b>	<b>\$42.6</b>	<b>\$60.5</b>	<b>\$55.1</b>	<b>\$41.8</b>	<b>\$616.5</b>
<b>DISBURSEMENTS</b>															
<i>Operating Disbursements</i>															
Energy and Delivery Costs	[4]	(\$172.1)	(\$52.5)	(\$9.7)	(\$25.0)	(\$13.2)	(\$16.0)	(\$79.8)	(\$26.8)	(\$13.6)	(\$14.6)	(\$103.2)	(\$36.9)	(\$10.8)	(\$574.1)
Payroll	[5]	-	-	(2.5)	(3.2)	(2.5)	-	(2.5)	-	(2.5)	-	(2.5)	-	(6.5)	(22.3)
Taxes	[6]	(0.1)	(5.3)	(6.0)	(0.0)	(0.1)	-	(5.0)	(12.6)	-	(0.2)	(4.7)	(2.4)	(0.1)	(36.6)
Commissions	[7]	(2.2)	(4.0)	(4.5)	(0.6)	(2.5)	(0.7)	(4.8)	(0.7)	(1.4)	(0.4)	(4.5)	(0.7)	(0.6)	(27.8)
Selling and Other Costs	[8]	(3.2)	(3.4)	(3.5)	(4.5)	(5.0)	(3.5)	(3.3)	(4.1)	(4.7)	(2.9)	(3.5)	(2.9)	(4.0)	(48.4)
<b>Total Operating Disbursements</b>		<b>(\$177.6)</b>	<b>(\$65.2)</b>	<b>(\$26.3)</b>	<b>(\$33.4)</b>	<b>(\$23.3)</b>	<b>(\$20.2)</b>	<b>(\$95.4)</b>	<b>(\$44.1)</b>	<b>(\$22.1)</b>	<b>(\$18.0)</b>	<b>(\$118.5)</b>	<b>(\$42.9)</b>	<b>(\$22.0)</b>	<b>(\$709.1)</b>
<b>OPERATING CASH FLOWS</b>		<b>(\$149.0)</b>	<b>(\$16.7)</b>	<b>\$19.9</b>	<b>\$4.2</b>	<b>\$21.1</b>	<b>\$21.6</b>	<b>(\$28.4)</b>	<b>\$9.7</b>	<b>\$26.3</b>	<b>\$24.6</b>	<b>(\$57.9)</b>	<b>\$12.2</b>	<b>\$19.8</b>	<b>(\$92.6)</b>
<i>Financing Disbursements</i>															
Credit Facility - Borrowings / (Repayments)	[9]	\$126.0	\$-	\$31.5	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$157.5
Interest Expense & Fees	[10]	(3.2)	-	-	(1.4)	-	-	-	(1.3)	-	-	-	-	(1.4)	(7.2)
<i>Restructuring Disbursements</i>															
Professional Fees	[11]	-	(1.4)	(2.6)	(1.3)	(1.6)	(1.1)	(1.1)	(0.8)	(1.1)	(0.8)	(0.9)	(0.9)	(0.9)	(14.4)
<b>NET CASH FLOWS</b>		<b>(\$26.2)</b>	<b>(\$18.1)</b>	<b>\$48.9</b>	<b>\$1.6</b>	<b>\$19.5</b>	<b>\$20.5</b>	<b>(\$29.5)</b>	<b>\$7.6</b>	<b>\$25.2</b>	<b>\$23.8</b>	<b>(\$58.9)</b>	<b>\$11.3</b>	<b>\$17.6</b>	<b>\$43.3</b>
<b>CASH</b>															
Beginning Balance		\$77.3	\$51.2	\$33.0	\$81.9	\$83.5	\$103.0	\$123.5	\$94.0	\$101.6	\$126.9	\$150.6	\$91.8	\$103.1	\$77.3
Net Cash Inflows / (Outflows)		(26.2)	(18.1)	48.9	1.6	19.5	20.5	(29.5)	7.6	25.2	23.8	(58.9)	11.3	17.6	43.3
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		<b>\$51.2</b>	<b>\$33.0</b>	<b>\$81.9</b>	<b>\$83.5</b>	<b>\$103.0</b>	<b>\$123.5</b>	<b>\$94.0</b>	<b>\$101.6</b>	<b>\$126.9</b>	<b>\$150.6</b>	<b>\$91.8</b>	<b>\$103.1</b>	<b>\$120.7</b>	<b>\$120.7</b>
<b>BORROWING SUMMARY</b>															
DIP Facility Credit Limit		\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5
DIP Draws		126.0	-	31.5	-	-	-	-	-	-	-	-	-	-	-
DIP Principal Outstanding		126.0	126.0	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5
DIP Availability		\$31.5	\$31.5	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-

1. The week shown as ending March 14, 2021 reflects a 6-day stub week from March 9 (the filing date) to 3/14/21.

2. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.

3. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.

4. Energy & Delivery costs reflect the purchase energy from suppliers and the cost of delivery and transmission to the Company's customers.

5. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of any payments associated with the Company's bonus programs.

6. Taxes reflect the remittance of sales taxes collected from customers and the Company's corporate income taxes.

7. Commissions include fees paid to customer acquisition contractors and suppliers.

8. Selling and Other Costs include selling, general, administrative and interest payments.

9. The Credit Facility Borrowings / (Repayments) assume USD\$ 100 million of the DIP is drawn immediately, with a subsequent draw for the remainder of the facility within the first few weeks of the proceedings.

10. Interest expenses & fees include interest and fees on the Company's credit facilities.

11. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, and the DIP lenders' professionals.

## Just Energy Group Inc. et al

CCA 13-Day Cash Flow Forecast

March 9, 2021

(CAD\$ in millions)

		3/9/21	3/10/21	3/11/21	3/12/21	3/13/21	3/14/21	3/15/21	3/16/21	3/17/21	3/18/21	3/19/21	3/20/21	3/21/21	13-Day
Forecast Week		1	2	3	4	5	6	7	8	9	10	11	12	13	Total
<b>RECEIPTS</b>															
Sales Receipts	[1]	\$8.7	\$6.3	\$6.9	\$6.7	\$ -	\$ -	\$8.2	\$9.8	\$8.0	\$10.1	\$12.4	\$ -	\$ -	\$77.1
Miscellaneous Receipts	[2]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Receipts</b>		<b>\$8.7</b>	<b>\$6.3</b>	<b>\$6.9</b>	<b>\$6.7</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$8.2</b>	<b>\$9.8</b>	<b>\$8.0</b>	<b>\$10.1</b>	<b>\$12.4</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$77.1</b>
<b>DISBURSEMENTS</b>															
<i>Operating Disbursements</i>															
Energy and Delivery Costs	[3]	(\$121.2)	(\$45.8)	(\$7.9)	\$2.7	\$ -	\$ -	(\$1.8)	(\$7.0)	(\$22.6)	(\$6.1)	(\$15.0)	\$ -	\$ -	(\$224.6)
Payroll	[4]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Taxes	[5]	-	(0.1)	-	-	-	-	(5.3)	-	-	-	-	-	-	(5.4)
Commissions	[6]	(0.0)	-	-	(2.2)	-	-	-	(0.3)	(3.2)	-	(0.6)	-	-	(6.3)
Selling and Other Costs	[7]	(1.0)	(1.0)	(0.0)	(1.0)	-	-	(0.0)	(1.1)	(1.1)	(0.0)	(1.1)	-	-	(6.6)
<b>Total Operating Disbursements</b>		<b>(\$122.2)</b>	<b>(\$46.9)</b>	<b>(\$7.9)</b>	<b>(\$0.5)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>(\$7.1)</b>	<b>(\$8.4)</b>	<b>(\$26.9)</b>	<b>(\$6.2)</b>	<b>(\$16.7)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>(\$242.8)</b>
<b>OPERATING CASH FLOWS</b>		<b>(\$113.5)</b>	<b>(\$40.6)</b>	<b>(\$1.0)</b>	<b>\$6.1</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$1.1</b>	<b>\$1.4</b>	<b>(\$18.8)</b>	<b>\$3.9</b>	<b>(\$4.3)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>(\$165.7)</b>
<i>Financing Disbursements</i>															
Credit Facility - Borrowings / (Repayments)	[8]	\$126.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$126.0
Interest Expense & Fees	[9]	(3.2)	-	-	-	-	-	-	-	-	-	-	-	-	(3.2)
<i>Restructuring Disbursements</i>															
Professional Fees	[10]	-	-	-	-	-	-	(1.4)	-	-	-	-	-	-	(1.4)
<b>NET CASH FLOWS</b>		<b>\$9.3</b>	<b>(\$40.6)</b>	<b>(\$1.0)</b>	<b>\$6.1</b>	<b>\$ -</b>	<b>\$ -</b>	<b>(\$0.4)</b>	<b>\$1.4</b>	<b>(\$18.8)</b>	<b>\$3.9</b>	<b>(\$4.3)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>(\$44.3)</b>
<b>CASH</b>															
Beginning Balance		\$77.3	\$86.7	\$46.1	\$45.0	\$51.2	\$51.2	\$51.2	\$50.8	\$52.2	\$33.4	\$37.3	\$33.0	\$33.0	\$77.3
Net Cash Inflows / (Outflows)		9.3	(40.6)	(1.0)	6.1	-	-	(0.4)	1.4	(18.8)	3.9	(4.3)	-	-	(44.3)
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		<b>\$86.7</b>	<b>\$46.1</b>	<b>\$45.0</b>	<b>\$51.2</b>	<b>\$51.2</b>	<b>\$51.2</b>	<b>\$50.8</b>	<b>\$52.2</b>	<b>\$33.4</b>	<b>\$37.3</b>	<b>\$33.0</b>	<b>\$33.0</b>	<b>\$33.0</b>	<b>\$33.0</b>
<b>BORROWING SUMMARY</b>															
DIP Facility Credit Limit		\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$ -
DIP Draws		126.0	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Principal Outstanding		126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	-
DIP Availability		\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$ -

1. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.

2. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.

3. Energy & Delivery costs reflect the purchased energy from suppliers and the cost of delivery and transmission to the Company's customers.

4. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of any payments associated with the Company's bonus or programs.

5. Taxes reflect the remittance of sales taxes collected from customers and the Company's corporate income taxes.

6. Commissions include fees paid to customer acquisition contractors and suppliers.

7. Selling and Other Costs include selling, general, administrative and interest payments.

8. The Credit Facility Borrowings / (Repayments) assume USD\$ 100 million of the DIP is drawn immediately, with a subsequent draw for the remainder of the facility within the first few weeks of the proceedings.

9. Interest expenses & fees include interest and fees on the Company's credit facilities.

10. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, and the DIP lenders' professionals.

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

**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 **JUST ENERGY GROUP INC.**, JUST  
ENERGY CORP., ONTARIO ENERGY COMMODITIES INC.,  
UNIVERSAL ENERGY CORPORATION, JUST ENERGY  
FINANCE CANADA ULC, HUDSON ENERGY CANADA  
CORP., JUST MANAGEMENT CORP., JUST ENERGY  
FINANCE HOLDING INC., 11929747 CANADA INC.,  
12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE  
SERVICES HOLDCO II INC., 8704104 CANADA INC. JUST  
ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY  
(U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST  
ENERGY INDIANA CORP., JUST ENERGY  
MASSACHUSETTS CORP., JUST ENERGY NEW YORK  
CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC,  
JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY  
MICHIGAN CORP., JUST ENERGY SOLUTIONS INC.,  
HUDSON ENERGY SERVICES LLC, HUDSON ENERGY  
CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON  
PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST  
ENERGY ADVANCED SOLUTIONS INC., FULCRUM  
RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC,  
TARA ENERGY, LLC, JUST ENERGY MARKETING CORP.,  
JUST ENERGY CONNECTICUT CORP., JUST ENERGY  
LIMITED, JUST SOLAR HOLDINGS CORP., JUST ENERGY  
(FINANCE) HUNGARY ZRT. (the "**Applicants**")

**March 9, 2021**

**REPORT ON CASH FLOW STATEMENT**

**(Paragraph 10.2(b) of the CCAA)**

The management of the Applicants has developed the assumptions and prepared the attached statement of projected cash flow as of March 9, 2021 consisting of (i) a 13-week cash flow forecast for the period March 9, 2021 to June 6, 2021 and (ii) a daily cash flow forecast for the 14-day period from March 9, 2021 to March 21, 2021 (together, the "**Forecasts**").



The purpose of the Forecasts is to estimate the liquidity requirements of the Applicants during the respective forecast periods. The hypothetical assumptions are reasonable and consistent with the purpose of the projections, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Forecasts.

Since the Forecasts are based on future events, actual results will vary from the information presented and the variations may be material.

The Forecasts have been prepared solely for the purpose outlined above, using the probable and hypothetical assumptions set out in notes to the Forecasts. Consequently, readers are cautioned that the Forecasts may not be suitable for other purposes.

Dated at Houston, Texas, this 8<sup>th</sup> day of March 2021.

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Michael Carter  
Chief Financial Officer  
Just Energy Group Inc.

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 **JUST ENERGY GROUP INC. et al** (Applicants)

Court File No. CV-21-00\_\_\_\_\_ -00CL

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

Proceedings commenced at Toronto

**PRE-FILING REPORT OF THE PROPOSED MONITOR**

**Thornton Grout Finnigan LLP**

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100 Wellington Street West, Suite 3200  
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Lawyers for the proposed Monitor,  
FTI Consulting Canada Inc.

**THIS IS EXHIBIT N REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Court File No.

**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 JUST ENERGY GROUP INC., JUST  
ENERGY CORP., ONTARIO ENERGY COMMODITIES  
INC., UNIVERSAL ENERGY CORPORATION, JUST  
ENERGY FINANCE CANADA ULC, HUDSON ENERGY  
CANADA CORP., JUST MANAGEMENT CORP., JUST  
ENERGY FINANCE HOLDING INC., 11929747 CANADA  
INC., 12175592 CANADA INC., JE SERVICES HOLDCO I  
INC., JE SERVICES HOLDCO II INC., 8704104 CANADA  
INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,  
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS  
CORP., JUST ENERGY INDIANA CORP., JUST ENERGY  
MASSACHUSETTS CORP., JUST ENERGY NEW YORK  
CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY,  
LLC, JUST ENERGY PENNSYLVANIA CORP., JUST  
ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS  
INC., HUDSON ENERGY SERVICES LLC, HUDSON  
ENERGY CORP., INTERACTIVE ENERGY GROUP LLC,  
HUDSON PARENT HOLDINGS LLC, DRAG MARKETING  
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC,  
FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL  
HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY  
MARKETING CORP., JUST ENERGY CONNECTICUT  
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS  
CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

**AFFIDAVIT OF MICHAEL CARTER**

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH

AND SAY:

1. This affidavit is made in support of an application by Just Energy Group Inc. (“**Just Energy**”) and the other applicant companies listed in the style of cause above (collectively, the “**Applicants**”) for an Initial Order and related relief under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”).

2. I have been Just Energy’s Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of Just Energy’s business. As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of Just Energy and its subsidiaries. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

**A. Overview**

4. Just Energy and its subsidiaries (collectively, the “**Just Energy Group**”) are retail energy providers specializing in delivering electricity and natural gas to consumer and commercial customers as well as energy-efficient solutions and renewable energy options. The Just Energy Group currently serves over 950,000 consumer and commercial customers, mostly in the United States and Canada.

5. Over the past few years, the Just Energy Group has taken steps to position itself for sustainable growth as an independent industry leader. Most notably, on September 28, 2020, Just Energy completed a balance sheet recapitalization transaction (the “**Recapitalization**”) through a plan of arrangement (the “**Arrangement**”) under section 192 of the *Canada Business Corporations Act* (the “**CBCA**”). The Arrangement was approved by a Final Order of the Ontario

Superior Court of Justice (Commercial List) dated September 2, 2020 and the Recapitalization closed on September 28, 2020. The Recapitalization was the culmination of a year-long strategic review process and reflected a comprehensive plan to strengthen Just Energy's business.

6. However, despite continued improving performance since the closing of the Recapitalization, the Just Energy Group is facing severe short-term liquidity challenges due to the recent unprecedented and catastrophic winter storm in Texas (the Just Energy Group's largest market). While the Just Energy Group employs a comprehensive hedging strategy to manage weather risk, the weather conditions in Texas were colder than anything experienced in decades, causing significantly higher than normal customer demand while also forcing significant electricity market supply offline. As a result, the Just Energy Group was forced to balance its demand through real time purchases through ERCOT (defined below).

7. While Texas was already experiencing extreme market pricing, the negative financial impact of the storm was exacerbated by the actions of Texas regulators. Texas's electricity grid, the Texas Interconnection, is one of the three main grids in the United States and largely operates independently with limited export and import capability. Unlike most other electricity markets in the United States, the Texas Interconnection is not subject to regulation by the Federal Energy Regulatory Commission ("FERC"). Instead, an independent system operator ("ISO") called Electric Reliability Council of Texas ("ERCOT") is solely responsible for managing the Texas Interconnection and ERCOT is only subject to regulation by the Texas Public Utility Commission ("PUCT").

8. In response to the winter storm, on February 15, 2021, the PUCT issued an order instructing ERCOT to set the real time settlement price of power at the high offer cap of U.S. \$9,000 per

megawatt hour (“MWh”) for over 100 consecutive hours (in contrast, the real time electricity price did not hit U.S. \$9,000 per MWh for even one 15-minute interval in 2020). As a result, the Just Energy Group was forced to balance its power supply through ERCOT at artificially high electricity prices and significantly increased ancillary service costs. The Just Energy Group estimates that it may have incurred losses and additional costs currently totaling over \$315 million as a result of PUCT and ERCOT’s actions and the winter storm.

9. The winter storm and the regulatory response has been devastating for other participants in the Texas electricity market as well. The largest power generation and transmission cooperative in Texas, Brazos Electric Power Cooperative, filed for Chapter 11 bankruptcy protection on March 1, 2021 after incurring an estimated U.S. \$2.1 billion in charges over seven days as reported in an article titled *Texas Power Firm Hit With \$2.1 Billion Bill Files for Bankruptcy*, attached as **Exhibit “A”**. In addition, ERCOT has already barred two electricity sellers, Entrust Energy Inc. and Griddy Energy LLC, from the Texas power market for failing to make payments after last month’s energy crisis as reported in an article titled *A Second Power Provider Defaults After Texas Energy Crisis*, attached as **Exhibit “B”**. The ERCOT wholesale market incurred charges of U.S. \$55 billion over a seven-day period, an amount equal to what it ordinarily incurs over four years.

10. ERCOT and PUCT have faced sustained criticism for their response to the winter storm. In recent weeks, both PUCT’s chair and several ERCOT board members have resigned and the ERCOT board voted to oust its CEO as reported in the article titled *ERCOT fires CEO, following resignation of head utility regulator, board members*, attached as **Exhibit “C”**. Potomac Economics, an independent market monitor hired by the state of Texas to assess ERCOT’s performance, concluded that ERCOT overpriced electricity for almost two days, resulting in U.S. \$16 billion in overcharges as noted in the article titled *Texas Watchdog Says Power Grid Operator*

*Made \$16 Billion Error*, a copy of which is attached as **Exhibit “D”**. In response, PUCT has indicated that it will not be reversing these overcharges despite its independent market monitor recommending that the charges be reversed, as reported in the article titled *Texas Opts Not to Fix \$16 Billion Power Overcharge*, a copy of which is attached as **Exhibit “E”**.

11. The Just Energy Group has disputed both the artificially high prices and the extraordinary ancillary costs charged by ERCOT. However, under ERCOT’s protocols, the Just Energy Group must pay any invoices within two days of receipt, even if it is disputing them. Otherwise, ERCOT can suspend the Just Energy Group’s market participation in as little as 2 days and transfer the Just Energy Group’s customers to another energy provider, called a Provider of Last Resort (“**POLR**”), on 5 days’ notice. The Texas market accounts for approximately 47% of the Just Energy Group’s embedded gross margin (“**EGM**”)<sup>1</sup> and is essential for the Just Energy Group maintaining going concern operations.

12. Despite the historic nature of the winter storm and the unprecedented resulting costs incurred by energy retailers, both ERCOT and PUCT have, to date, ignored the Just Energy Group’s requests to suspend ERCOT’s usual protocols. Therefore, the Just Energy Group had no option other than to pay its ERCOT invoices in Texas.

13. On March 5, 2021, the Just Energy Group received three invoices for approximately U.S. \$123.21 million from ERCOT, of which approximately U.S. \$96.24 million must be paid by end of day on March 9, 2021. On March 8, 2021, the Just Energy Group received from ERCOT (i) a notice that it must post approximately U.S. \$25.7 million of additional collateral within two

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<sup>1</sup> EGM is a rolling five-year measure of management’s estimate of future contracted energy and product gross margin.



business days; and (ii) three invoices for approximately U.S. \$ 25.46 million, of which approximately U.S. \$18.86 million is due by March 10, 2021. The Just Energy Group does not have enough liquidity to pay that amount without access to the DIP Facility (defined below). If the amount due is not paid, ERCOT can transfer all of the Just Energy Group's customers in Texas to a POLR, which would be devastating to the Just Energy Group's business.

14. The Just Energy Group's financial challenges have been exacerbated by the reaction of certain creditors and other stakeholders to the extreme weather event and significant amounts coming due in the near future. Bonding companies that issued surety bonds have demanded that the Just Energy Group provide more than \$30 million in additional collateral (with over \$20 million already provided and the rest expected by March 17). The bonding companies had either threatened to start the process of cancelling bonds issued by them if the Just Energy Group did not post additional collateral or had already started the process of cancelling the bonds they had issued and agreed to issue rescission notices upon receipt of the additional collateral. The cancellation of the bonds may have resulted in the revocation of licenses necessary for the Just Energy Group to carry on business in certain jurisdictions.

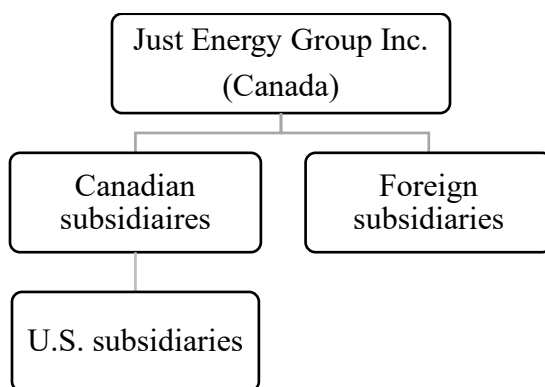
15. The Just Energy Group also has significant payables coming due in the next few weeks. On March 22, 2021, approximately \$270 million owing to counterparties under the ISO Services Agreements (defined below) will come due. In addition, over \$75 million owing to Commodity Suppliers (defined below) will be coming due by March 25, 2021. As such, the Just Energy Group has significant liabilities coming due that it cannot currently pay and are therefore insolvent. In these circumstances, the Applicants require immediate CCAA protection to ensure that they can continue as a going concern, service their significant customer base, maintain employment for almost 1,000 employees, and preserve enterprise value.

## B. Corporate Structure

16. Just Energy is the ultimate parent company of the Just Energy Group and the other Applicants are all direct or indirect subsidiaries of Just Energy. All of the Applicants are either borrowers under the Credit Facility (defined below) or have provided secured guarantees in respect of the Credit Facility.

17. While the limited partnerships listed in Schedule “A” (the “**Just Energy LPs**”) are not applicants in this proceeding, the Applicants seek to have a stay of proceedings and other provisions of an Initial Order under the CCAA extended to the Just Energy LPs in order to maintain stability and business operations through this restructuring process. The business and operations of the Applicants are heavily intertwined with that of the Just Energy LPs. In particular, certain of the Just Energy LPs hold most of the gas and electricity licenses granted by Canadian regulators pursuant to which the Just Energy Group conducts business in Canada.

18. A corporate chart showing the structure of the Just Energy Group as of November 10, 2020 is attached as **Exhibit “F”**. A simplified version of the corporate chart is below:



### (a) Just Energy Group Inc.

19. Just Energy is a CBCA corporation. It has two head offices: one in Mississauga, Ontario and one in Houston, Texas. Just Energy’s registered office is First Canadian Place, 100 King Street

West, Suite 2630, Toronto, Ontario. Its common shares (the “**Common Shares**”) are listed on the Toronto Stock Exchange (the “**TSX**”) and the New York Stock Exchange (the “**NYSE**”).

**(b) Canadian Subsidiaries**

20. The Canadian subsidiaries are corporations, limited partnerships, and unlimited liability companies that are directly or indirectly wholly owned by Just Energy. The material Canadian subsidiaries are set out below:

- (a) *Just Energy Corp.*: Just Energy Corp. is a direct subsidiary of Just Energy. It employs almost all of the Just Energy Group’s employees in Canada and is the general partner for all of the Just Energy operating subsidiaries listed below that are limited partnerships.
- (b) *Just Energy Ontario L.P. (Ontario), Just Energy Alberta L.P. (Alberta), Just Green L.P. (Alberta), Just Energy Manitoba L.P. (Manitoba), Just Energy B.C. Limited Partnership (British Columbia), Just Energy Québec L.P. (Quebec), Just Energy Prairies L.P. (Manitoba), Hudson Energy Canada Corp. (Canada), and Filter Group Inc.*: These are the Canadian operating entities for the Just Energy Group’s business.
- (c) *Just Energy Trading L.P. (Ontario)*: This entity is used to procure supply of energy commodities.

21. Just Energy also indirectly holds an approximate 8% fully diluted interest in ecobee Inc., a manufacturer and distributor of smart thermostats, located in Toronto, Ontario.

**(c) U.S. Subsidiaries**

22. The U.S. subsidiaries are corporations, limited liability companies and limited partnerships indirectly wholly owned by Just Energy. The material U.S. subsidiaries are noted below (all of which are formed under the laws of the State of Delaware, unless otherwise noted):

- (a) *Just Energy (U.S.) Corp.; Just Energy Illinois Corp.; Just Energy Indiana Corp.; Just Energy Massachusetts Corp.; Just Energy New York Corp.; Just Energy Texas I Corp.; Just Energy Texas LP (Texas); Just Energy Pennsylvania Corp.; Just Energy Solutions Inc. (California); Just Energy Michigan Corp.; Hudson Energy Services LLC (New Jersey); Just Energy Limited; Fulcrum Retail Energy LLC d/b/a Amigo Energy (Texas); Tara Energy, LLC (Texas); Interactive Energy Group LLC; and Filter Group USA Inc.* These are the U.S. operating entities for the Just Energy Group's business.

**(d) Foreign Subsidiaries**

23. Until recently, the Just Energy Group had operations in several countries outside North America. In 2019, Just Energy made a strategic decision to focus on its North American operations. The Just Energy Group has completed sales of its U.K., Irish, and Japanese operations. On February 4, 2021, the Just Energy Group entered into an agreement to sell its German operations for nominal consideration. However, due to the current circumstances resulting from the Texas weather event, the preconditions for closing this sale may no longer be achievable and the German operations will likely be wound down instead. The Just Energy Group still has an Indian subsidiary and has employees in India that support the Just Energy Group's operations in North America.

## C. The Just Energy Group's Business

### (a) Products and Services Offered by the Just Energy Group

24. The Just Energy Group primarily supplies electricity and natural gas commodities to both consumer and commercial customers. These sales are made under various arrangements, mainly under long-term fixed price contracts with some customers remaining on month-to-month variable-price after their long-term contract expired. As of December 31, 2020, the Just Energy Group had a total of 956,000 customers (859,000 consumer and 97,000 commercial customers).

25. The Just Energy Group also provides various green products. Customers can choose an appropriate JustGreen program to supplement their natural gas and electricity contracts and offset their carbon footprint. In addition, through terrapass (a Just Energy subsidiary), customers can offset their environmental impact by purchasing high quality environmental products. Terrapass supports projects throughout North America that destroy greenhouse gases, produce renewable energy, and restore freshwater ecosystems through the purchase of renewable energy credits and carbon offsets.

26. The Just Energy Group also offers water filtration systems through Filter Group Inc. ("**Filter Group**") in Canada and through its subsidiary Filter Group US Inc. in the United States.

27. The Just Energy Group's business is divided into two main segments, a consumer segment and a commercial segment.

**(i) Consumer Segment**

28. The consumer segment sells gas and electricity to customers with annual consumption equal to or less than 15 residential customer equivalents (“RCEs”).<sup>2</sup> Consumer customers made up 36% of the Just Energy Group’s RCE base and accounted for approximately 60% of sales in the quarter ended December 31, 2020. Products are marketed to consumer customers primarily through digital and retail sales channels.

29. For its retail sales channels, in the United States, the Just Energy Group enters into contracts with (i) retail establishments to obtain access to their premises to market to and sign-up new customers, and (ii) staffing companies which provide sales agents who carry out the marketing activities to attract and sign-up customers and who are paid on commission.

30. The retail sales channel is a competitive space, and the Just Energy Group’s relationships with the retailers and staffing companies are critical for its ability to attract customers directly and maintain and grow its consumer business. The Just Energy Group experiences some attrition of customers on an ongoing basis (approximately 2 percent a month), and so marketing to and signing up new customers is essential for sustaining and growing the business.

31. For certain retailers, the Just Energy Group has exclusive relationships pursuant to which only the Just Energy Group is permitted to market in some or all of that retailer’s stores, including certain retailers where the Just Energy Group is able to target a more lucrative clientele. The Just Energy Group has long-standing relationships with certain staffing companies, which provide sales representatives to enroll consumer customers, and train sales agents and ensure that sales agents

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<sup>2</sup> A unit of measurement equivalent to a customer using 2,815 m<sup>3</sup> (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity used by a typical household in Ontario, Canada.

act in accordance with standards and codes of conduct set by both the staffing agencies and the retailers.

**(ii) Commercial Segment**

32. The commercial segment sells gas and electricity to customers with annual consumption over 15 RCEs. Commercial customers made up 64% of the Just Energy Group's RCE base and accounted for approximately 40% of sales in the quarter ended December 31, 2020. Sales to commercial customers are made through three main channels: brokers, door-to-door commercial independent contractors, and inside commercial sales representatives.

33. Brokers and independent contractors are the two most significant channels through which the Just Energy Group attracts and renews commercial customers. Independent contractors directly market the Just Energy Group to potential commercial customers whereas brokers are contacted by potential customers and then reach out to energy sellers to bid on the opportunity. Both brokers and independent contractors are paid solely on commission.

34. The Just Energy Group's relationship with brokers and independent contractors is critical for its ability to attract and renew commercial customers. As noted above, in light of ongoing customer attrition, marketing to and signing up new customers is essential for sustaining and growing the Just Energy Group's business.

35. There is significant competition for commercial customers and the Just Energy Group attracts and renews the vast majority of its commercial customers through these channels. The brokers and independent contractors have direct relationships with customers and could easily divert the customers elsewhere. Moreover, if the Just Energy Group does not pay outstanding

amounts owing to brokers, those brokers may conclude that the Just Energy Group is not financially reliable and choose to refer customers to other retailers.

**(b) Just Energy Group operates in heavily regulated markets**

36. The natural gas and electricity markets that the Just Energy Group operates in are highly regulated. I am advised by Richard King of Osler, Hoskin & Harcourt LLP (“Osler”), Canadian counsel for the Applicants, and believe that the fundamental purpose of the regulatory regime governing energy (gas and electricity) retailers can be traced back to energy sector reforms across much of North America that began in the 1980s and 1990s. Through these reforms, non-utility power generators and retailers/marketers gained access to many North American energy markets, which were previously monopolized by traditional public utilities. These regulatory regimes were reformed to facilitate and encourage companies like the Just Energy Group to enter energy markets.

37. I am further advised by Mr. King and believe that the rationale for opening the energy commodity market to competition was to provide gas and electricity to consumers at lower cost, through price competition, as well as offering greater choice for customers. As a corollary to opening the market to greater competition for gas or electricity retailers like the Just Energy Group, the regulatory regime encompasses two important public interest goals:

- (a) to provide for consumer protection in the marketing of gas or electricity at the retail level; and
- (b) to establish standard contractual terms and conditions governing the relationship between energy retailers and the incumbent utilities, largely to ensure that utilities



do not utilize their dominant monopoly position to impair retailers from selling and contracting with retail customers.<sup>3</sup>

38. In most jurisdictions where it operates, the Just Energy Group is subject to oversight from public utility commissions or independent electricity system operators responsible for ensuring the financial stability of market participants and continued supply to customers. These regulators could take various steps if they are concerned about the Just Energy Group's financial stability or ability to continue as a going concern, including requiring the Just Energy Group to post additional collateral (or provide other financial security) or taking steps to suspend or revoke the Just Energy Group's licenses.

39. In Canada, certain of the Just Energy LPs (the "**Licensed Entities**") have received gas and electricity licenses from regulators in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario. I am advised by Mr. King and believe that the licences and registrations are granted by provincial regulatory bodies (the "**Provincial Regulators**") and are necessary to permit the Licensed Applicants to market and sell natural gas and/or electricity to consumers in the particular province.

40. In addition, I am advised by Mr. King and believe, Hudson Energy Canada Corp. (an Applicant) is registered as a market participant with the Alberta Electricity System Operator (the "**ISO Regulator**"). This registration allows the purchase and sale of electricity in the wholesale electricity market in Alberta and the import/export of electricity with neighbouring jurisdictions. Participation in the wholesale electricity market is essential to the Just Energy Group's ability to

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<sup>3</sup> These licensing, code of conduct, and mandatory contractual terms are set out in legislation as well as Rules, Codes and decisions issued by the Provincial Regulators.

supply electricity to retail customers in Alberta and neighbouring jurisdictions. I am advised by Mr. King and believe that an insolvency event constitutes an event of default under the applicable Market Rules, which permit the ISO Regulator to suspend trades and participation in the market, and then terminate the market registration. In relation to the ISO Regulator, the Just Energy Group has posted all required collateral.

41. I am further advised by Mr. King and believe the Licensed Entities are under certain obligations to the Provincial Regulators, including to notify some of the Provincial Regulators of any “material change” in their businesses. It is likely that a CCAA filing would constitute such a material change. At least two Provincial Regulators have expressed concern about the Just Energy Group’s ongoing viability. The queries were prompted by media reports arising from Just Energy’s public disclosure about its current financial challenges. In addition, a market participant in Manitoba has requested that the Provincial Regulator authorize the utility to no longer permit the Licensed Entity to enroll new customers in Manitoba. A copy of the request is attached as **Exhibit “G”**.

42. I am advised by Mr. King and believe that, absent the Regulatory Stay (defined below), these regulators could respond to the Applicants’ CCAA filing by terminating the licenses they have granted or imposing other conditions, and that these measures may result in the Just Energy Group losing its ability to conduct business with its customers in the applicable provinces. Without the stable of customer contracts that the Licensed Entities have invested many years developing, the Applicants will instantly lose vital revenue streams. A chart including information concerning the Provincial Regulators and the actions they could potentially take against the Just Energy Group is attached as **Exhibit “H”**.

43. As part of the proposed Initial Order, the Applicants are seeking to stay the Provincial Regulators from, among other things, terminating the licenses granted to the Licensed Entities. With the benefit of the DIP Facility, the Applicants intend to continue paying amounts owing to its contractual counterparties (primarily its ISOs and utilities) in the ordinary course, which is reflected in the Cash Flow Forecast. Despite continuing to make such payments, the Provincial Regulators may still attempt to take steps to terminate the Licensed Entities in Canada or impose other conditions. Accordingly, unless the Provincial Regulators are stayed, the Just Energy Group may not be able to continue business in the applicable provinces and present a viable restructuring plan.

44. The Just Energy Group is also subject to regulation by the Federal Energy Regulatory Commission (“**FERC**”) and by regulators in the following U.S. states: Texas, Connecticut, California, Delaware, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Ohio, Pennsylvania, and Virginia.

45. I am advised by Kirkland & Ellis LLP (“**Kirland**”), U.S. counsel for the Applicants, that the Applicants’ entities that have been issued gas and electricity licenses (the “**U.S. Licensed Entities**”) by regulators in the United States (the “**U.S. Regulators**”) are susceptible to similar concerns as those applicable to the Licensed Entities regarding the risk that such licenses can be terminated or have other conditions imposed on them, which may result in the Just Energy Group losing its ability to conduct business with its customers in the United States. With the benefit of the DIP Facility, the Applicants intend to continue making payments to the ISOs and utilities in the ordinary course, which is reflected in the Cash Flow Forecast. Despite continuing to make such payments, the U.S. Regulators may still attempt to take steps to terminate the U.S. Licensed Entities’ licenses in the United States or impose other conditions. Accordingly, in conjunction with

the Chapter 15 Case (defined below), the Applicants are also seeking to stay the U.S. Regulators from, among other things, terminating the licenses granted to the U.S. Licensed Entities.

**(c) Employees and Employee Benefits**

46. As of March 1, 2021, the Just Energy Group employed approximately 979 full-time employees and 5 part-time employees. The geographic distribution of the Just Energy Group's employees is as follows:

<b>Province / Territory</b>	<b>Number of Employees</b>
<b>Canada</b>	
Ontario	324
Alberta	6
British Columbia	1
New Brunswick	1
Saskatchewan	1
<i>Total (Canada)</i>	333
<b>United States</b>	
Texas	351
Other states	30
<i>Total (United States)</i>	381
<b>Other</b>	
India	265
<b><i>Total (overall)</i></b>	<b>979</b>

47. In addition, as of March 1, 2021, the Just Energy Group contracts with 23 independent contractors. The Just Energy Group's employees are all non-unionized and there are no applicable collective agreements.

**(i) Stock-Based Compensation Plans**

48. The following sections describe certain stock-based compensation plans currently maintained by the Just Energy Group.

**(A) Employee Share Purchase Plan**

49. Certain employees of the Just Energy Group are eligible to participate in the Employee Share Purchase Plan (“**ESPP**”) that awards Common Shares, subject to the terms and conditions of the ESPP. There are separate ESPPs for Canadian and U.S. employees:

- (a) The *Canadian ESPP* is maintained for employees of Just Energy Corp. and its subsidiaries, subject to certain eligibility criteria. Eligible employees can have 2 percent of their salaries deducted for the program, which amount is matched by their employer. Employee and employer contributions are used by the administrative agent, Solium Capital Inc., to purchase Common Shares through normal market purchases. Awards of the Common Shares generally vest after two years from the date on which the employee first joins the Canadian ESPP. During the vesting period, all unvested Common Shares and all dividends from such unvested units are held in trust (the “**Canadian ESPP Trust**”). As of February 28, 2021, there are 144 current employees and 99 former employees participating in the Canadian ESPP. The share value of the Canadian ESPP Trust is approximately \$156,236.
- (b) The *U.S. ESPP* is maintained for employees of U.S. subsidiaries of Just Energy, subject to certain eligibility criteria. Eligible employees can have 3 percent of their salaries deducted for the program, which amount is matched by their employer. Employee and employer contributions are used by the administrative agent, Computershare Trust Company of Canada (“**Computershare**”), to acquire Common Shares. Awards of shares generally vest after six months of participation in the program. During the vesting period, all unvested shares and all dividends

from such unvested shares are held in trust (the “**U.S. ESPP Trust**”). As of February 28, 2021, there are 120 current employees and 49 former employees participating in the US ESPP and the share value of the U.S. ESPP Trust is approximately U.S. \$143,421.

### **(B) Equity Compensation Plan**

50. Just Energy’s 2020 Equity Compensation Plan, which was approved as part of the Recapitalization, provides for the issuance of Restricted Share Units (“**RSUs**”), Performance Share Units (“**PSUs**”), Options, and Deferred Share Units (“**DSUs**”). Currently, there are no RSUs or PSUs issued and outstanding. There is an aggregate of 190,983 DSUs issued to 7 directors and an aggregate of 650,000 options issued to 9 executives with an exercise price of \$8.46 each.

### **(C) Retirement Savings Plans**

51. Certain full-time employees are entitled to participate in (a) the group registered retirement savings plan for Canadian resident employees (“**RRSP**”) maintained by Just Energy Corp., (b) the profit sharing/401(k) plan for U.S. resident employees (“**401(k)**”) maintained by Just Energy (U.S.) Corp., and (c) the deferred profit sharing plan (“**DPS Plan**”) maintained by Just Energy Corp.

52. The RRSP is offered by Just Energy Corp. and is available to all full-time Canadian resident employees of Just Energy Corp. Just Energy Group does not make contributions to the RRSP.

53. The 401(k) is offered by Just Energy (U.S.) Corp. and is available to employees of Just Energy (U.S.) Corp., Just Energy Marketing Corp., and Just Energy Limited, I.E.G. Just Energy (U.S.) Corp. may make discretionary contributions to the 401(k). In 2020, the Just Energy Group contributed U.S. \$929,721 to the 401(k).

54. Full time employees who have materially and significantly contributed to the prosperity and profits of Just Energy Corp., as determined by the Board of Directors of Just Energy Corp., are entitled to participate in the DPS Plan. Just Energy Corp. contributes to the DPS Plan in the amount of two percent of any DPS Plan registered-employee's yearly salary, excluding overtime and bonuses. DPS Plan funds are held in trust and administered by a trustee. Upon retirement or death, the value of the DPS Plan registered-employee's account is paid out in the form of a cash refund. If the DPS Plan-registered employee is terminated prior to retirement after two years of continuous membership in the DPS Plan, he or she is entitled to receive a cash refund equal to the value of his or her account. Just Energy Corp. contributed approximately \$352,532 to the DPS Plan in 2020.

**(ii) Health and Welfare Benefits**

55. Just Energy (U.S.) Corp. offers group medical, prescription, dental, vision and disability benefits as well as basic life insurance to its full-time employees ("**U.S. Health and Welfare Benefits**"). U.S. Health and Welfare Benefits are effective following 30 days of continuous employment. Just Energy (U.S.) Corp. made total contributions of approximately U.S. \$3,102,330 in 2020 in respect of the U.S. Health and Welfare Benefits.

56. Just Energy Corp. offers group disability, prescription, dental, and health benefits as well as basic life insurance to its full-time and certain part-time employees ("**Canadian Health and Welfare Benefits**"). Canadian Health and Welfare Benefits are effective for full time salaried employees from the first day of employment. Canadian Health and Welfare Benefits are effective for full-time hourly and eligible part-time employees effective following 3 months of employment. Just Energy Corp. made total contributions of approximately \$2,520,370 in respect of the Canadian Health and Welfare Benefits in 2020.

**(d) Suppliers**

57. The Just Energy Group transacts with various suppliers to purchase gas and electricity (the “**Commodity Suppliers**”). The Just Energy Group typically purchases gas and electricity for larger commercial customers when it executes the contract for that customer. For remaining customers, supplies are purchased based on forecasted consumption. Commodity and volume forecasts are developed using historical data and current market conditions.

58. In addition to agreements for the physical supply of gas and electricity, the Just Energy Group also enters into hedge contracts with Commodity Suppliers in order to minimize commodity and volume risk. These include derivative instruments such as physical forward contracts and options and financial swap contracts and options that are designed to fix the price of supply for estimated customer commodity demand. The Just Energy Group also purchases various weather derivatives to mitigate its exposure to variances in customer requirements that are driven by changes in expected weather conditions.

59. The Just Energy Group evaluates and manages weather-related risks by analyzing historically observed weather and commodity scarcity scenarios in its various markets. The Just Energy Group’s current portfolio and forecasts are stress tested against multiple scenarios to estimate a range of revenue and supply outcomes. Scenarios are constructed using historical consumption, weather, load, and price patterns adjusted for known and expected market changes. Scenarios include events such as a polar vortex, the Texas 2011 heat wave, El-Nino winters, and other severe weather events. Based on the forecasts, the Just Energy Group will then layer in its hedging strategy under its risk management policy. In its planning for the current winter season (November 2020 – March 2021), the Just Energy Group had positioned its portfolio under all



known historical weather and commodity scarcity scenarios to not have its exposure exceed \$10 million in the aggregate.

60. In addition to supply agreements, the Just Energy Group is also party to ISO services agreements (the “**ISO Services Agreements**”) with certain Commodity Suppliers (in such capacity, the “**ISO Services Providers**”). The most significant is an Independent Electricity System Operator Scheduling Agreement (the “**BP Agreement**”) with BP Energy Company (“**BP**”) pursuant to which BP provides a variety of services as well as working capital and credit support:

- (a) BP provides all services and takes all actions required for the scheduling and arranging for the delivery of all physical sales of energy by Hudson Energy Services, LLC.
- (b) BP makes certain payments to ISOs monitoring the electrical power system in certain jurisdictions on behalf of the Just Energy Group. The payments to the ISOs must be made daily but BP provides the Just Energy Group on average 35 days to repay these amounts as the amounts due from the current month are due on the 20th day after month end or the first business day thereafter.
- (c) BP posts collateral and provides credit support for the Just Energy Group with ISOs, which relieves the Just Energy Group of the obligation to post the collateral related to its load requirements.

61. The services provided under the BP Agreement are critical to the delivery of energy to the Just Energy Group’s commercial customers. Absent this agreement, the Just Energy Group would

be obligated to provide these services itself and would be subject to shorter payment terms for amounts owing to the ISOs.

**(e) Distribution Arrangements**

62. The Just Energy Group transacts with various third-party local distribution companies (“LDCs”) to distribute electricity and natural gas to both commercial and consumer customers. The Just Energy Group also receives certain customer billing and customer collection services from LDCs in various markets, as described in greater detail below. These LDC agreements are critical to the delivery of electricity and natural gas in the Just Energy Group’s markets.

63. The Canadian counterparties to the LDC Agreements are incumbent public utilities in all of the Canadian provinces where the Licence-holders carry on business. They include both privately-owned entities (such as Enbridge Gas, Fortis BC, and ATCO Gas) and publicly-owned entities (such as Toronto Hydro, SaskEnergy, and Cit of Lethbridge). I am advised by Mr. King and believe that, whether these counterparties may be public or private, they are themselves regulated entities and that, in most cases, the terms of the LDC Agreements with the Licensed Entity are established and approved by the Provincial Regulators.

64. In respect of the Just Energy Group’s electricity retail services, LDCs provide customer billing services in all electricity markets except Alberta and Texas. The LDCs also provide collection services, including the collection and remittance to the Just Energy Group of the commodity portion of each customer’s account for a small monthly fee, except in Alberta and Texas, and with respect to some Ohio utilities. In the case of some Ohio utilities, the LDCs provide collection services only until the account is delinquent. In Alberta and Texas, the Just Energy Group conducts billing and collection directly. In Ontario, Massachusetts, Delaware, New York,

Pennsylvania, New Jersey, Illinois, Maryland, and Michigan, and in the case of some Ohio utilities, LDCs assume 100% of the risk associated with default in payment by customers.

65. In respect of the Just Energy Group's natural gas retail services, customers purchase gas supply directly from Just Energy's operating entities, which is distributed by the LDCs. With the exception of Alberta, the LDCs provide customer billing services. In all markets except Alberta, Illinois and California, the LDCs provide collection services, including the collection and remittance to the Just Energy Group of the commodity portion of each customer's account for a small monthly fee. In Illinois and California, the LDCs provide collection services only until the account is delinquent. In Ontario, British Columbia, Manitoba, Quebec, New York, Saskatchewan, Ohio, Maryland, New Jersey, New York, Pennsylvania, Indiana, and Michigan, each LDC assumes 100% of the credit (receivable) risk associated with default in payment by consumer and commercial customers. In all Canadian markets except for Alberta, the LDCs bill and collect from end-use customers (including the Just Energy Group's customers) and remit the commodity component of the bill to the Just Energy Group (less a small charge). In Alberta and Texas, the Just Energy Group bills and collects from end-use customers and pays the LDCs for providing transmission and distribution services for the customer.

**(f) Surety Bonds**

66. Pursuant to arrangements with several bonding companies, such bonding companies have issued surety bonds to various counterparties including states, regulatory bodies, utilities (including LDCs), and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required to operate in certain states or markets. As at December 31, 2020, the total surety bonds issued were \$46.3 million.

67. Most bonding companies can require collateral on demand at any time, whereas one is required to give 30 days' notice. If the Just Energy Group does not discharge the liability or post the required collateral, the bonding companies have the right to cancel the underlying bond within as early as 10 days. Just Energy and various other members of the Just Energy Group have entered into indemnity agreements with the bonding companies with respect to such surety bonds. The bonding companies have already demanded that the Just Energy Group post approximately \$34 million in additional collateral.

68. The cancellation of certain bonds may trigger the suspension or cancellation of licenses necessary to operate, and the suspension or cancellation of all services including commodity delivery services provided by LDCs to consumers that would force the transfer of Just Energy's customers back to the utilities or regulated energy providers by the various utility commissions. This would affect the Just Energy Group's business in many significant markets making up a vast majority of its customer base, including Texas, Alberta, Saskatchewan, Illinois, Pennsylvania, Ohio, Michigan, New York, California, New Jersey, and British Columbia.

**(g) Banking and Cash Management System**

69. Just Energy maintains a centralized cash management system to consolidate and track funds generated by the operations of Just Energy and its subsidiaries.

70. Just Energy and certain subsidiaries have accounts at each of Canadian Imperial Bank of Commerce ("**CIBC**"), JPMorgan Chase and its affiliates ("**JPMorgan**"), Royal Bank of Canada ("**RBC**"), TD Canada Trust ("**TD**"), FirstCaribbean International Bank ("**CIBC First Caribbean**"), Allied Irish Banks ("**AIB**"), and Erste Bank Hungary Zrt. ("**Erste Bank**").

71. Just Energy and a number of other Just Energy Group companies<sup>4</sup> (collectively, the “**Bank Account Holders**”) maintain accounts at one or more of the above banks. Collectively, the Bank Account Holders maintain 36 accounts at CIBC, 60 accounts at JPMorgan, 3 accounts at TD, 2 accounts at AIB, and 1 account at each of RBC, CIBC First Caribbean and Erste Bank (the “**Bank Accounts**”). The Bank Accounts are either CAD, USD, EUR, GBP, or INR denominated. While most Bank Accounts are domiciled within Canada or the United States, a small number are domiciled outside of North America in Ireland, the United Kingdom, and Germany. These accounts in Ireland and Germany pertain to non-core businesses that the Just Energy Group is in the process of divesting or winding down.

72. For accounts held by Canadian Bank Account Holders, the Just Energy Group is in the process of decentralizing its cash management system with CIBC. Upon completion, it is expected that all account activity for outgoing wire or electronic funds transfer (“**EFT**”) direct deposits will need to be fully funded in advance. Pre-authorized debits from customer accounts will be subject to a daily limit.

73. For accounts held by U.S. Bank Account Holders, Just Energy has in place a cash pooling mechanism and zero-balance account service among most of the JPMorgan accounts that

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<sup>4</sup> 11929747 Canada Inc., Filter Group Inc., Filter Group USA Inc., Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Management Corp.; Just Energy Finance Holding Inc.; Just Energy Foundation Canada; Just Energy Trading L.P.; Ontario Energy Commodities Inc.; Just Energy Advanced Solutions Corp.; Just Energy Advanced Solutions LLC; Just Energy Prairies L.P.; Just Energy (Québec) L.P.; Just Energy (B.C.) Limited Partnership; Just Green L.P.; Just Energy Ontario L.P.; Just Energy Manitoba L.P.; JE Services Holdco I Inc.; Just Energy Alberta L.P.; JE Services Holdco II Inc.; Just Energy Finance Canada ULC; Momentis Canada Corp.; Universal Energy Corporation; Hudson Energy Canada Corp.; 8704104 Canada Inc; Tara Energy LLC; Just Energy Foundation USA, Inc.; Just Energy (U.S.) Corp.; Just Energy Marketing Corp.; Just Energy Illinois Corp.; Just Energy New York Corp.; Just Energy Indiana Corp.; Just Energy Texas I Corp.; Just Energy Michigan Corp.; Just Energy Massachusetts Corp.; Just Energy Solutions Inc.; Just Energy Pennsylvania Corp.; Just Solar Holdings Corp.; Interactive Energy Group LLC; Just Energy Services Limited; Just Energy (U.K.) Limited; Just Energy (Ireland) Limited; Just Energy Germany GmbH; Just Energy Deutschland GmbH; Just Energy (Finance) Hungary Zrt; and JEBPO Services LLP.

automatically conducts transfers to ensure a zero-balance is achieved in U.S. accounts on a daily basis. Just Energy has a master account (the “**Master Account**”) used to sweep and replenish the zero balanced accounts. Upon business close on a daily basis, positive cash balances from zero-balanced accounts are automatically swept into the Master Account on a daily basis. Negative cash balances are likewise replenished daily from the Master Account.

74. The Just Energy Group maintains ISDA Master Agreements with HSBC Bank Canada (“**HSBC**”), National Bank of Canada, ATB Financial and the Bank of Nova Scotia, specifically to transact foreign exchange hedge transactions (“**FX hedges**”). As of March 1, 2021, the Just Energy Group held approximately U.S. \$105 million in FX hedges.

#### **D. The Financial Position of the Just Energy Group**

75. A copy of Just Energy’s consolidated audited financial statements for the fiscal year ended March 31, 2020 are attached as **Exhibit “I”** and a copy of Just Energy unaudited financial statements for the quarter ended December 31, 2020 are attached as **Exhibit “J”**. These are Just Energy’s most recent publicly disclosed annual and quarterly financial statements respectively and have been prepared on a consolidated basis for the Just Energy Group. Certain information contained in Just Energy’s latest quarterly financials is summarized below.

76. The latest quarterly financial statements include a going concern note explaining that, following the recent extreme cold weather event in Texas, the Just Energy Group’s ability to continue as a going concern for the next 12 months is dependent on the company meeting the potential liquidity challenges and potential non-compliance with debt covenants from this event. The note further explained that there can be no assurance that Just Energy will be able to address these challenges with its stakeholders or otherwise, and any inability or failure of the company to

appropriately address such challenges could materially and adversely impact the business, operations, financial condition and operating results of the Just Energy Group and that these material uncertainties may cast significant doubt upon Just Energy's ability to continue as a going concern.

**(a) Assets**

77. As at December 31, 2020, the total assets of the Just Energy Group had a book value of approximately \$1,069,042,000 and consisted of the following (which figures are in thousands of dollars):

<b>Current assets: \$606,947</b>	
Cash and cash equivalent	\$66,635
Restricted cash	\$207
Trade and other receivables, net	\$344,080
Gas in storage	\$16,185
Fair value of derivative financial assets	\$29,196
Income taxes recoverable	\$4,928
Other current assets	\$143,145
Assets classified as held for sale	\$2,571
<b>Non-current assets: \$462,095</b>	
Investments	\$32,889
Property and equipment, net	\$20,638
Intangible assets, net	\$86,618
Goodwill	\$264,651
Fair value of derivative financial assets	\$20,071

Deferred income tax assets	\$3,414
Other non-current assets	\$33,814
<b>Total Assets</b>	<b>\$1,069,042</b>

**(b) Liabilities**

78. As at December 31, 2020, the total liabilities of the Just Energy Group had a book value of approximately \$1,284,885,000 and consisted of the following (which figures are in thousands of dollars):

<b>Current liabilities: \$607,464</b>	
Trade and other payables	\$472,763
Deferred revenue	\$8,909
Income taxes payable	\$3,434
Fair value of derivative financial liabilities	\$110,166
Provisions	\$5,945
Current portion of long-term debt	\$3,535
Liabilities associated with assets classified as held for sale	\$2,712
<b>Non-current liabilities: \$677,421</b>	
Long-term debt	\$515,233
Fair value of derivative financial liabilities	\$136,329
Deferred income tax liabilities	\$2,715
Other non-current liabilities	\$23,144
<b>Total liabilities</b>	<b>\$1,284,885</b>



**(c) Stockholder's Deficit**

79. As at December 31, 2020, the shareholders deficit in the Just Energy Group was \$215,843,000 and consisted of the following (which figures are in thousands of dollars):

Shareholders' capital	\$1,537,863
Contributed deficit	\$(12,469)
Accumulated deficit	\$(1,829,210)
Accumulated other comprehensive income	\$88,388
Non-controlling interest	\$(415)
<b>Total shareholders' deficit</b>	<b>\$(215,843)</b>

**(d) Capital Structure**

80. The Just Energy Group's capital structure includes trade debt, the Credit Facility, the Term Loan, the Subordinated Notes, and Common Shares, each of which is defined and described below. Below is a table setting out the priority of payment of the significant debt owed by the Just Energy Group:

<b>Tier</b>	<b>Items</b>	<b>Date</b>	<b>Approximate Amount</b>
Tier 1	Secured Suppliers AP	March 31, 2021 <sup>5</sup>	\$244 million
Tier 2	Credit Facility Lenders	March 5, 2021	\$331.82 million
	Suppliers MTM (Liability Only)	March 1, 2021	\$146.17 million

<sup>5</sup> This amount is an estimate based on a forecast of Secured Supplier AP estimated at March 31, 2021. An estimate has been included to give an indication of the expected quantum of this category following the impact of the Texas weather event. As of January 31, 2021, the Just Energy Group owed its Secured Suppliers approximately \$198.96 million.

	ISO Service Obligations (Subject to Cap)	March 5, 2021	\$94.5 million
Tier 3	ISO Service Obligations (In Excess of Cap)	March 5, 2021	\$177.66 million
Tier 4	Term Loan	December 31, 2020	\$273.48 million
Tier 5	Subordinated Notes	December 31, 2020	\$13.2 million

81. Attached as **Exhibit “K”** is a letter dated March 4, 2021 that Just Energy received from BP in the context of ongoing discussions regarding the effect of the Texas weather event on Just Energy. The letter advises that BP disagrees with the characterization of amounts due from Just Energy as Tier 2 and Tier 3 obligations and that such amounts are Tier 1 obligations. On March 5, 2021, Just Energy responded to the BP letter stating that Just Energy was happy to look into the matter but believed it is largely an intercreditor issue that will be resolved over time. The Applicants do not intend to take a position on this intercreditor issue as part of this proceeding or otherwise. Attached as **Exhibit “L”** is a copy of Just Energy’s responding letter.

82. As at March 5, 2021, the Just Energy Group had cash and cash equivalents of \$81.6 million and available borrowing capacity of \$2.9 million under the Credit Facility.

**(i) Trade Debt**

83. The Just Energy Group’s financial obligations to its primary Commodity Suppliers in North America, which include Shell, BP, Exelon Generation Company LLC, Bruce Power L.P., EDF Trading North America, LLC, Nextera Energy Marketing, LLC, Macquarie and Morgan Stanley Capital Group Inc. (collectively, the “**Secured Suppliers**”), are secured by security granted by Just Energy and other members of the Just Energy Group pursuant to general security

agreements, pledges of securities, and other security documents. As of January 31, 2021, the Just Energy Group owed its Secured Suppliers approximately \$198.96 million. The Just Energy Group currently estimates this amount will increase to approximately \$244 million as at March 31, 2021.

84. The Just Energy Group has also posted letters of credit to secure its obligations to certain Commodity Suppliers other than the Secured Suppliers.

85. In addition, Filter Group is the borrower under an outstanding loan from Home Trust Company to finance the cost of rental equipment over a period of three to five years (the “**Filter Group Loan**”). Payments on the loan are made monthly as Filter Group receives payment from the customer and continue up to the end date of the customer contract term on the factored receivable. As of December 31, 2020, there was approximately \$5.5 million outstanding under the Filter Group Loan.

**(ii) Non-Trade Debt**

86. The following table summarizes the Just Energy Group’s significant non-trade debt, which is described in greater detail below. The debts are listed by priority of payment in the table below.

	<b>Type</b>	<b>Borrower(s)</b>	<b>Maturity Date</b>	<b>Approximate Outstanding Amount as of December 31, 2020</b>
Credit Facility	Revolving credit facilities on borrowing base	Just Energy Ontario L.P. and Just Energy (U.S.) Corp.	December 31, 2023	\$232.62 million in principal <sup>6</sup> \$77.8 million in letters of credit <sup>7</sup>

<sup>6</sup> \$227.86 million as at March 5, 2021.

<sup>7</sup> \$103.96 million as at March 5, 2021.

Term Loan	Non-revolving, senior unsecured term loan facility	Just Energy Group Inc.	March 31, 2024	\$273.48 million
Subordinated Notes	Unsecured subordinated notes	Just Energy Group Inc.	September 27, 2026	\$13.2 million

**(A) Credit Facility**

87. Just Energy Ontario L.P. and Just Energy (U.S.) Corp. (collectively, the “**Credit Facility Borrowers**”) are borrowers under a ninth amended and restated credit agreement (as amended from time to time, the “**Credit Agreement**”) made as of September 28, 2020 with a syndicate of lenders that includes CIBC, National Bank of Canada, HSBC, JPMorgan, Alberta Treasury Branches, Canadian Western Bank, and Morgan Stanley Senior Funding, Inc., a subsidiary of Morgan Stanley Bank N.A. (the “**Credit Facility Lenders**”). A copy of the Credit Agreement is attached as **Exhibit “M”**.

88. Under the Credit Agreement, the Credit Facility Lenders agreed to extend a credit facility of \$335 million, with scheduled mandatory commitment reductions during the term of the Credit Agreement (the “**Credit Facility**”).

89. As at March 5, 2021, there was approximately \$227.86 million in principal outstanding under the Credit Agreement, plus outstanding letters of credit amounting to \$103.96 million. The letters of credit are issued to various counterparties, primarily utilities and suppliers. Interest is payable on outstanding loans at rates that vary with bankers’ acceptance rates, London Interbank Offered Rate, Canadian bank prime rate or U.S. prime rate. Interest rates are adjusted quarterly based on certain financial performance indicators.

90. The Just Energy Group has made several draws on the Credit Facility in the past few months, including following the Texas weather event. As a result of these, available borrowing capacity under the Credit Facility has decreased from \$24.6 million as of December 31, 2020, to \$2.9 million as of March 5, 2021.

91. The Credit Facility Borrowers' obligations are guaranteed by guarantees from certain subsidiaries and affiliates and secured by general security agreements from the Credit Facility Borrowers and such subsidiaries and affiliates, pledges of the securities of the Credit Facility Borrowers and such subsidiaries and affiliates, and other security documentation. The Applicants are all borrowers under the Credit Facility or have delivered a guarantee and a general security agreement in respect of the Credit Facility.

#### **(B) Term Loan**

92. As part of the Recapitalization, Just Energy issued a U.S. \$205.9 million principal note (the "**Term Loan Agreement**") maturing on March 31, 2024 to Sagard Credit Partners, LP and certain funds managed by a leading U.S.-based global fixed income asset manager (the "**Term Loan Lenders**"). Attached as **Exhibit "N"** is a copy of the original Term Loan Agreement.

93. As at December 31, 2020, approximately \$273.48 million was outstanding on the Term Loan.

94. The Term Loan bears interest at 10.25% per annum, and payments are to be capitalized into the note. The interest is capitalized on a semi-annual basis on September 30 and March 31. Upon achieving certain financial measures, Just Energy will pay either 50% or 100% of the interest in cash at a 9.75% rate on a semi-annual basis. The Term Loan matures on March 31, 2024.

### (C) Subordinated Notes

95. As part of the Recapitalization, Just Energy issued \$15 million principal of subordinated notes (“**Subordinated Notes**”) to holders of certain subordinated convertible debentures that were extinguished as part of the Recapitalization. Attached as **Exhibit “O”** is a copy of the indenture for the Subordinated Notes. The Subordinated Notes bear an annual interest rate of 7% payable in-kind semi-annually on March 15 and September 15. A \$2 million fee related to the issuance of the notes was capitalized at inception to be amortized over the term of the notes. The Subordinated Notes had a principal amount of \$15 million as at September 28, 2020, which was reduced to \$13.2 million through a tender offer for no consideration on October 19, 2020.

### (iii) Intercreditor Arrangements

96. The Secured Suppliers, the Credit Facility Borrowers (defined below), certain subsidiaries and affiliates of the Credit Facility Borrowers (including Just Energy), and the agent for the lenders under the Credit Agreement (defined below) are also party to an intercreditor agreement (the “**Intercreditor Agreement**”) setting out the relative priority of the parties’ security interests. A copy of the Intercreditor Agreement is attached as **Exhibits “P”**. The security is granted in favour of a collateral agent under the Intercreditor Agreement for the benefit of the Credit Facility Lenders and the Secured Suppliers. Pursuant to the Intercreditor Agreement, the Secured Suppliers rank *pari passu* with the Credit Facility Lenders, subject to a waterfall set out in the agreement which provides that: (i) accounts payable owing to the Secured Suppliers rank first; (ii) the “mark to market” liability that would be owed to the Secured Suppliers rank second and *pari passu* with the amounts owed to the Credit Facility Lenders and amounts owing to the providers under the ISO Services Agreements up to a cap of \$94.5 million; and (iii) amounts owing to the providers under the ISO Services Agreement above the cap rank third.

(iv) **Equity**

97. Just Energy's authorized share capital consists of an unlimited number of Common Shares and 50,000,000 preference shares (the "**Preferred Shares**"). As at March 1, 2021, there were 48,078,637 Common Shares and no Preferred Shares issued and outstanding. The Common Shares are listed on the TSX and the NYSE.

**E. Background to CCAA Proceedings**

(a) **Just Energy's efforts to improve financial performance**

98. Over the past few years, the Just Energy Group has taken various steps to address significant financial challenges (including high leverage levels and an unsustainable capital structure) and liquidity risks faced by the business. Attached as **Exhibits "Q"** and "**R"** are the Interim Order and Final Order affidavits sworn by Jim Brown (my predecessor as Just Energy's CFO and currently Just Energy's Chief Commercial Officer) for the Arrangement proceeding that describes the measures taken by the Just Energy Group in detail.

99. In May 2020, after a year-long review of strategic alternatives (the "**Strategic Review**"), Just Energy concluded that the Recapitalization was the only viable option short of an insolvency proceeding that provided a long-term solution to its financial challenges. Following extensive negotiations, Just Energy entered into support agreements with its Credit Facility and Term Loan lenders and launched the Arrangement proceedings under s. 192 of the CBCA in July 2020. The Arrangement was approved by a Final Order of the Court granted on September 2, 2020 and the Recapitalization closed on September 28, 2020. The Recapitalization was the culmination of a comprehensive plan to strengthen and de-leverage its business and it positioned the Just Energy Group for sustainable growth as an independent industry leader. After the Recapitalization closed,

the Just Energy Group hit its financial targets and accordingly the Board approved a distribution of the Q3 bonus, which were tied to meeting those targets.

**(b) Texas regulatory environment**

100. As noted above, this filing is the result of recent events in Texas. For context, I explain the regulatory environment in Texas below before describing the Texas weather event.

101. Fulcrum Retail Energy, LLC, Just Energy Texas L.P., Tara Energy, LLC, and Hudson Energy Services, LLC (the “**Just Energy Texas Entities**”) have electricity licenses in Texas. The Just Energy Texas Entities are subject to oversight from ERCOT and PUCT.

102. ERCOT is the ISO that is solely responsible for managing the Texas Interconnection, which covers 213 of the 254 Texas counties. ERCOT is subject to regulation by PUCT, a state agency that regulates the state’s electric, water and telecommunication utilities, implements respective legislation, and offers customer assistance in resolving consumer complaints. Among other things, PUCT enforces compliance with Texas utility laws and regulates electric utility rates. Thus, PUCT is ultimately responsible for ERCOT’s operations and overall electricity regulation in Texas.

103. Generally, ISOs within the Eastern and Western Interconnections (the two main grids in the United States outside Texas) are subject to regulation by the FERC and various regional reliability agencies. The ERCOT grid, by contrast, is its own standalone interconnection, and it has limited ability to import electricity into or export it out of the grid. Texas is the only one of the contiguous 48 states with its own standalone electricity grid. However, the delivery of electricity in the ERCOT market operates similarly to other electricity markets in the United States. Market participants buy and sell electricity using both the Real-Time Market (*i.e.*, electricity for current



transmission/distribution and use by consumers) and the Day-Ahead Market, both of which are facilitated by ERCOT in its role as the ISO, and through bilateral contracts that indirectly facilitate the majority of wholesale electricity sales in the ERCOT market.

104. These markets allow ERCOT, in conjunction with the qualified scheduling entities (“QSEs”) that transact directly in the day-ahead and spot markets (facilitated by the bilateral contracts entered into between electricity generators/wholesalers, retailers, and the qualified scheduling entities) to ensure that electricity is reliably delivered to all market participants.

105. As such, in addition to managing the overall operation of the electrical grid, ERCOT effectively serves as a clearinghouse for the purchase and sale of electricity between electric generation and load-serving entities. ERCOT also performs financial settlements for the competitive wholesale electricity market and enforces certain credit requirements, including collateral-posting requirements, to ensure market participants’ creditworthiness for ERCOT-facilitated transactions.

106. The Just Energy Group is required to post collateral or other form of financial comfort with ERCOT in an amount determined pursuant to ERCOT’s protocols. If the Just Energy Group is unable to provide such financial comfort or pay its invoices when due, ERCOT can suspend the Just Energy Group’s market participation in as little as 2 days and transfer the Just Energy Group’s customers to a POLR on 5 days’ notice. Such actions would be devastating to the Just Energy Group’s business.

**(c) Unprecedented winter storm and regulatory response in Texas**

107. Just Energy Group is facing new liquidity pressures and challenges because of the extreme cold weather recently experienced throughout Texas, which is the Just Energy Group’s single

largest market and one of the largest electricity markets in the United States. Attached as **Exhibits “S”, “T”, “U”, “V” and “W”** are press releases issued by the Just Energy Group between February 16 and March 3, 2021, describing the Texas weather event and its impact on the Just Energy Group.

108. Beginning on February 13, 2021, Texas experienced an unprecedented and catastrophic energy crisis when a powerful winter storm moved over and blanketed the entire state, resulting in temperatures well below 20°F in a state where many homes and businesses rely on electricity for heating. Price shocks in Texas were felt as early as February 12 when natural gas prices jumped from U.S. \$3 to over U.S. \$150/MMBtu in anticipation of gas supply shortages.

109. Customer demand for electricity grew on February 13 and 14, pushing Texas’s power grid to a new winter peak demand record, topping 69,000 megawatts between 6:00 p.m. and 7:00 p.m. This was more than 3,200 megawatts higher than the previous winter peak set in January 2018.

110. As noted above, the Just Energy Group hedges weather risk based on historical scenarios. For February 2021, the Just Energy Group had weather hedge contracts in place to cover an incremental 50% increase in customer usage above normal February consumption. However, due to the extreme cold weather, customer usage increased significantly above the weather hedges for a sustained period. For example, the Just Energy Group’s load in Texas was up over 200% on February 14 from the same day a week earlier.

111. In the early hours of February 15, ERCOT declared an Energy Emergency Alert Level 1, urging consumers to conserve power. Within an hour, ERCOT elevated to an Energy Emergency Alert Level 2, and only 13 minutes later, at 1:25 a.m., ERCOT elevated to an Energy Emergency Alert Level 3. With the grid stressed to within minutes of a catastrophic failure, ERCOT ordered transmission operators to implement deep cuts in load in the form of rotating outages to reduce the

strain and avoid a complete collapse of the grid. While demand soared, supply plummeted as power plants tripped offline and demand threatened to exceed supply. Natural gas prices spiked in response to falling supply as lines froze up. As a result, the cost to produce electricity from gas-fueled power plants increased dramatically.

112. The financial impact of the Texas winter event was exacerbated by the actions of Texas regulators. PUCT adopted an order instructing ERCOT to set the real time price at the high offer cap of U.S. \$9,000 per MWh during an emergency meeting on February 15, 2021. PUCT's actions and rationale are described by the Wall Street Journal article, *Amid Blackouts, Texas Scrapped Its Power Market and Raised Prices. It Didn't Work*, a copy of which is attached as **Exhibit "X"**. PUCT has stated that it made this order because the computer that was supposed to help match supply and demand on the power grid was not working properly and PUCT believed it needed to intervene to relieve a growing crisis. However, the higher prices did not result in additional power production because many electricity generators were dealing with frozen equipment or fuel shortages and were unable to deliver more power. As a result, buyers were forced to pay significantly higher prices for the same limited supply of electricity as before.

113. While ERCOT rescinded all load shed instructions by 1:05 a.m. on February 18, it failed to return the real time prices to their normal levels as required by PUCT's order and ERCOT Nodal Protocols. Instead, the price for wholesale electricity remained at U.S. \$9,000/MWh for more than four straight days until 9:00 a.m. on February 19, 2021 (*i.e.*, for over 100 consecutive hours). In contrast, the real time electricity prices did not hit U.S. \$9,000 for even one 15-minute interval for all of 2020.

114. In addition to artificially high electricity costs in ERCOT during the Texas weather event, the Just Energy Group was also exposed to significantly increased ancillary service costs, which are charges associated with maintaining the reliability of the grid that are uplifted to all market participants daily based on that day's load ratio share. The Just Energy Group believes that its invoices include Ancillary Services charges that were either erroneously calculated or are an unreasonable application of ERCOT's protocols.

115. For example, typically the Just Energy Group's invoices include a charge for Reliability Deployment Ancillary Service Imbalance Revenue Neutrality that ranges from U.S. \$0 to U.S. \$23,500 per day. Between June 2015 and February 16, 2021, the Just Energy Group paid approximately \$504,000 in respect of this charge. In contrast, for the three settlement dates of February 17, 18 and 19, 2021, the aggregate charge is over U.S. \$53 million. This is approximately **106 times higher than the last 5 years of charges combined**. The Just Energy Group has not been able to discern any reasonable basis for the exponential increase in this charge and ERCOT has provided no data in support of this determination.

116. The Just Energy Group had hedge contracts in place to cover its normal load level ancillary costs which are based on its normal load share of electricity in ERCOT. However, the significantly higher Ancillary Service prices resulted in significant additional costs of more than U.S. \$105 million that cannot be covered by the Just Energy Group's hedge contracts.

**(d) Efforts to seek relief from Texas regulators refused**

117. Other energy retailers operating in the Texas market have also suffered significant losses and incurred significant costs because of the Texas weather event and ERCOT's response. The Texas weather event caused the ERCOT wholesale market to incur charges of approximately

U.S. \$55 billion over a seven-day period, an amount equal to what it ordinarily incurs over four years. In recognition of this fact, on February 21, 2021, PUCT issued an “Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols” (the “**February 21 Order**”), a copy of which is attached as **Exhibit “Y”**, which explained that “In an attempt to protect the overall integrity of the financial electric market in the ERCOT region, the Commission concludes it is necessary to authorize ERCOT to use its sole discretion in taking actions under the ERCOT Nodal Protocols to resolve financial obligations between a market participant and ERCOT.”

118. In response, ERCOT issued a notice on February 22, 2021 stating that it was “temporarily deviating from Protocol deadlines and timing related to settlements, collateral obligations, and Invoice payments while prices are under review. Invoices or settlements will not be executed until issues are finalized by State leaders considering solutions to the financial challenges caused by the winter event, which is anticipated to occur this week.” However, just one day later, ERCOT changed course without explanation and issued a second notice saying that “ERCOT has ended its temporary deviation from protocol deadlines and timing related to settlements, collateral obligations, and invoice payments. Invoices and settlement will be executed in accordance with Protocol language.” Copies of the February 22 and 23 notices from ERCOT are attached as **Exhibits “Z”** and **“AA”**.

119. On March 1, 2021, representatives of the Just Energy Group had a teleconference with ERCOT personnel to discuss these charges during which participating ERCOT personnel were unable to explain the dramatic departure from historical charges other than stating that it was protocol driven. The Just Energy Group has officially disputed invoices from ERCOT and taken the position that ERCOT should remove the administrative price adders that set prices to U.S. \$9,000/MWh from 1:05 a.m. on February 18, 2021 forward and to challenge the additional and

unprecedented ancillary costs. Copies of the written submissions sent to ERCOT are attached as **Exhibit “BB”**.

120. In addition, on March 3, 2021, the Just Energy Group filed with PUCT a petition for emergency relief seeking an order (i) that ERCOT deviate from the deadlines and timing in its Protocols and Market Guides related to settlements, collateral obligations, and invoice payments and suspend the execution or issuance of invoices or settlements for intervals during the dates of February 14, 2021 through February 19, 2021 until issues related to the catastrophic Texas weather event of February 2021 raised by Texas authorities from the executive and legislative branches (collectively, “**State Authorities**”) are investigated, addressed, and resolved, or alternatively (ii) waiving Section 9.6(2) of the ERCOT Protocols to allow the Just Energy Group to delay payment of certain ERCOT Settlement Invoices while it fully exercises its rights under the ERCOT Protocols to dispute the invoiced payment amounts. A copy of the petition is attached as **Exhibit “CC”**. PUCT has not granted the relief requested by the Just Energy Group.

121. As such, the Just Energy Group had no choice but to pay its invoices from ERCOT. As noted above, under ERCOT’s protocols, the Just Energy Group must pay any invoices within two days, even if it is disputing them. Otherwise, ERCOT can suspend the Just Energy Group’s market participation in as little as 2 days and transfer the Just Energy Group’s customers to a POLR.

122. The Texas weather event and the response from ERCOT and PUCT has been devastating for other participants in the Texas electricity market as well. As noted above, Brazos Electric Power Cooperative filed for creditor protection under Chapter 11 of the U.S. Bankruptcy Code on March 1, 2021 and ERCOT has barred two electricity sellers (Entrust Energy Inc. and Griddy Energy LLC) from Texas’s power market for failing to make payments and has already transferred

their customers to a POLR. Several energy retailers have also filed petitions for emergency relief with PUCT that, like the Just Energy Group's petition, are seeking relief from section 9.62 of the ERCOT Protocols, including Brilliant Energy, LLC, Liberty Power, and Spark Energy, Inc.

**(e) Payment and collateral demands from other creditors**

123. The Just Energy Group's liquidity challenges have been further exacerbated because certain business partners and regulators following the Texas weather event have issued demands or taken actions in response to concerns about the Just Energy Group's liquidity and significant amounts owing to trade creditors that are coming due:

- (a) The Just Energy Group has received demands from certain of its bonding companies for more than \$30 million in additional collateral. Over \$20 million of additional collateral has already been provided and the rest is expected to be provided by March 17, 2021. The bonding companies had either threatened to start the process of cancelling bonds issued by them if the Just Energy Group did not post additional collateral or had already started the process of cancelling bonds they issued and agreed to issue rescission notices upon receipt of the additional collateral. The cancellation of the bonds may have resulted in the revocation of licenses necessary for the Just Energy Group to carry on business in certain jurisdictions.
- (b) On February 24, 2021, the Just Energy Group received a letter from a transmission and distribution service provider stating that the Just Energy Group was delinquent on invoices totaling U.S. \$141,745 that had an original due date of February 23, 2021 (*i.e.*, one day earlier), that the Just Energy Group would be in default if the

delinquent balance is not received within ten days, and that the supplier would exercise its remedies in the event of default. The Just Energy Group paid all outstanding amounts due to the transmission and distribution service providers on March 1, 2021, as an event of default for non-payment may result in ERCOT transferring customers to a POLR.

- (c) On March 22, 2021, approximately \$270 million owing to counterparties under the ISO Services Agreements. This amount has increased significantly from what the Just Energy Group would normally expect, which increase is a direct result of the Texas weather event. In addition, more than \$75 million in payables owing to Commodity Suppliers will also come due around March 22, 2021.

#### **F. Urgent Need for Relief under the CCAA**

124. Following the Texas weather event, the steps taken by the Texas regulators in response and the additional demands from creditors, the Just Energy Group is facing significant liquidity challenges which threaten its ability to continue as a going concern. Both ERCOT and PUCT have ignored the Just Energy Group's requests to delay payment of invoices it is challenging

125. On March 5, 2021, the Just Energy Group received three invoice for approximately U.S. \$123.21 million from ERCOT, of which approximately U.S. \$96.24 million is required to be paid by the end of day on March 9, 2021.<sup>8</sup> The Just Energy Group cannot pay this amount without access to the DIP Facility (defined below). However, if the Just Energy Group does not pay amounts owing to ERCOT, ERCOT can assign some or all of its customers in Texas to a POLR.

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<sup>8</sup> The remaining amount is paid by BP in the first instance under the BP Agreement. The amount owing to BP from the Just Energy Group is part of the amounts owing to ISO counterparties coming due on March 22, 2021.



126. In addition to the March 5 ERCOT invoices, on March 8, 2021, the Just Energy Group received from ERCOT (i) a notice that it must post approximately U.S. \$25.7 million of additional collateral within two business days; and (ii) three invoices for approximately U.S. \$ 25.46 million, of which approximately U.S. \$18.86 million is due by March 10, 2021.<sup>9</sup> In addition, as noted above, the Just Energy Group has significant amounts coming due in the near future.

127. As such, the Just Energy Group has significant liabilities coming due in the near future that it cannot currently pay. Just Energy is therefore insolvent as it cannot meet its liabilities as they come due. In these circumstances, the Applicants require urgent relief under the CCAA to ensure that they can continue as a going concern, service their significant customer base, maintain employment for approximately 1,000 employees, and preserve enterprise value.

128. The Applicants, with the assistance of the proposed Monitor, have sized the DIP to address the Just Energy Group's urgent liquidity needs over the first ten days of this proceeding. The Applicants estimate that they will a beginning cash balance of \$77.4 million on March 9, 2021 and the Applicants are seeking authority to draw \$126 million on the DIP Facility on March 9. Between March 9 and 19, the cashflows reflect that the Applicants will need to pay the following amounts:

- (a) Energy and delivery costs: \$224.6 million.
- (b) Taxes: \$5.4 million.
- (c) Commissions: \$6.3 million.

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<sup>9</sup> The remaining amount is paid by BP in the first instance under the BP Agreement. The amount owing to BP from the Just Energy Group is part of the amounts owing to ISO counterparties coming due on March 22, 2021.

- (d) Selling and other costs: \$6.6 million.
- (e) Interest expenses and fees: \$3.2 million
- (f) Professional fees: \$1.4 million.

129. The Cash Flow Forecasts state that (as a result of the receipts and outflows set out there) the Applicants cash balance is expected to be as low as \$33 million at certain points in the first 10 days of this proceeding. In addition to the specific amounts set out above, the Just Energy Group expects that it may receive other demands or invoices that will have to be paid in the first 10 days of this proceeding. The Just Energy Group expects that it may receive one or more additional invoices from ERCOT, and, in light of the continuing uncertainty created by the Texas weather event, it is not possible to reliably predict the amount of those invoices. In addition, as discussed above, the Just Energy Group operates in heavily regulated markets and may receive additional demands to post collateral or other financial security on short notice after its CCAA filing as a condition of permitting the Just Energy Group to continue doing business. As a result, in order to ensure that it can continue going concern operations in the first 10 days of this proceeding, the Just Energy Group needs authorization to access the full DIP Facility to ensure that it has sufficient liquidity to pay both the specific amounts set out above and other demands that may arise.

## **G. Initial Relief Sought**

### **(a) Stay of Proceedings**

130. The Applicants are insolvent and urgently require a stay of proceedings and other protections provided by the CCAA in order to preserve the status quo and secure breathing space to prevent precipitous regulatory and counterparty action which threatens its business. The proposed Initial Order provides a stay of proceedings until March 19, 2021 (the “**Stay Period**”).

131. The proposed Initial Order includes a prohibition on any present or future bank providing the Cash Management System (as defined in the Initial Order) from exercising any sweep remedy under any applicable documentation and exercising or claiming any right of set-off against any account included in the Cash Management System (except for the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts). As noted above, the Canadian Bank Account Holders have recently agreed to decentralize the Just Energy Group's cash management system with CIBC. Therefore, this relief is needed to ensure that any amounts borrowed under the DIP Facility and any receipts received during the Stay Period are used to facilitate the Just Energy Group's restructuring objectives and to maintain its going concern operations. Any risk of prejudice to banks providing the Cash Management System is mitigated by the fact that the Canadian Bank Account Holders have agreed that all account activity for outgoing wire or EFT direct deposits will need to be fully funded in advance.

132. As noted above, the Applicants seek to have a stay of proceedings and other provisions of an Initial Order under the CCAA extended to the Just Energy LPs (with the Applicants, the "**Just Energy Entities**"). The business and operations of the Applicants are heavily intertwined with that of the Just Energy LPs. In particular, the Just Energy LPs hold most of the gas and electricity licenses granted by Canadian regulators pursuant to which the Just Energy Group conducts business in Canada.

133. Moreover, the proposed Initial Order provides that, pursuant to section 11.1(3) of the CCAA, all rights and remedies of Provincial Regulators are stayed during the Stay Period except with the written consent of the Just Energy Entities and the Monitor or leave of the Court.

134. The Applicants believe that it is necessary to extend the Stay to prevent Provincial Regulators and U.S. Regulators from taking steps against any Licensed Entities and U.S. Licensed Entities that could undermine their ability to restructure their business, and to provide a meaningful opportunity for licenceholders to engage with the regulators with respect to a path forward. In order to give effect to the Stay as against parties in the United States, the Applicants intend to commence a proceeding to recognize this Canadian proceeding under Chapter 15 of the US Bankruptcy Code. As discussed above, with the benefit of the DIP Facility, the Applicants intend to continue making payments to the contractual counterparts in the ordinary course, which is reflected in the Cash Flow Forecast. Despite this, if the Stay is not granted, it is possible that the Provincial Regulators or U.S. Regulators may still take steps that would cause the Just Energy Group to lose its ability to conduct business with its customers and frustrate the Just Energy Group's restructuring efforts to the detriment of the Just Energy Group and its key stakeholders.

**(b) DIP Financing**

135. Because of its current liquidity challenges, and as demonstrated in the Cash Flow Forecast (discussed below), the Just Energy Group requires interim financing to provide stability, continue going concern operations, and to restructure its business as part of this CCAA proceeding.

136. The Just Energy Group contacted its five largest stakeholders and provided them with a term sheet and certain information necessary to assess and evaluate an opportunity to provide debtor-in-possession financing. The information provided included a situation update presentation and access to a virtual data room. The Just Energy Group also responded to numerous information requests and management held virtual meetings with these stakeholders to answer questions about the Just Energy Group and its financial forecast. In addition, the Just Energy Group engaged with four other parties who had interest in considering the DIP financing opportunity. The Just Energy

Group negotiated the form of non-disclosure agreement (“**NDA**”) with two of these parties. However, due to the short timeframe in which the Just Energy Group needed to secure DIP financing, there was not sufficient time for the parties to finalize NDAs or conduct the necessary due diligence.

137. As a result of this process, subject to certain terms and conditions, the DIP Lenders have agreed to provide a debtor-in-possession facility (the “**DIP Facility**”). The related credit agreement (the “**Commitment Letter**”) is attached to this affidavit as **Exhibit “DD”**.

138. The DIP Facility includes the following commercial terms:

- (a) **Facility size:** U.S. \$125 million delayed-draw term loan credit facility, subject to a first draw of U.S. \$100 million and a second draw of U.S. \$25 million.
- (b) **Term:** December 31, 2021.
- (c) **Interest:** 13% per annum, payable in cash.
- (d) **Default rate:** 2% per annum, payable in cash.
- (e) **Fees:** Commitment Fee equal to 1% of Commitments and Origination Fee equal to 1% of Commitments.

139. The DIP Facility is proposed to be secured by a Court-ordered charge (the “**DIP Lenders’ Charge**”) on all of the present and future assets, property and undertaking of the Applicants (the “**Property**”). The DIP Lenders’ Charge will not secure any obligation that exists before the Initial Order is made. The DIP Lenders’ Charge will have priority over all other security interests, charges

and liens, except the Administration Charge, the FA Charge, the Directors' Charge and the KERP Charge and *pari passu* with the Priority Commodity/ISO Charge (each defined below).

140. In the Initial Order, the Applicants are seeking authorization to request an initial draw of U.S. \$100 million to enable them to pay specified amounts that are known to be due during the first 10 days of the CCAA proceeding. These amounts are specified in the Cash Flow Forecast and include amounts owed to ERCOT and other energy and delivery costs, taxes, commissions, selling and other costs, interest expenses and fees, and professional fees and other costs and expenses in connection with the CCAA proceedings. The balance of funds will only be used if necessary, providing the Applicants with flexibility to address additional liquidity demands made during the first 10 days of the CCAA proceeding given the nature of the Applicants' business, unforeseen liquidity demands that may need to be satisfied to ensure the Applicants' ability to operate as a going concern, and the continued risk of receipt of future invoices from ERCOT that must be paid within 2 business days of receipt. At the Comeback Hearing, the Applicants intend to request the authority to draw down the remainder of the DIP Facility in accordance with the Cash Flow Forecast.

**(c) Monitor**

141. FTI Consulting Canada Inc. ("FTI") has consented to act as the Monitor of the Applicants under the CCAA. A copy of the Monitor's consent is attached as **Exhibit "EE"**.

**(d) Administration Charge**

142. The Applicants propose that the Monitor, its Canadian and U.S. counsel, and Canadian and U.S. counsel to the Applicants be granted a court-ordered charge on the Property as security for their respective fees and disbursements relating to services rendered in respect of the

Applicants (the “**Administration Charge**”). The Administration Charge is proposed to rank *pari passu* with the FA Charge and have first priority over all other charges. With the concurrence of the proposed Monitor, the Applicants are proposing that the Administration Charge for the first ten days be limited to \$2.2 million and will be seeking to increase the charge at the comeback hearing.

**(e) Financial Advisor and FA Charge**

143. In the aftermath of the Texas weather event, Just Energy engaged BMO Nesbitt Burns Inc. (“**BMO**”) as an independent financial advisor to assist Just Energy in dealing with the liquidity challenges it was facing and to provide financial advisory services to, among other things, assist in exploring and evaluating potential transactional alternatives. The engagement letter for BMO is attached as **Confidential Exhibit “FF”** (the “**BMO Engagement Letter**”). The Applicants are asking, as part of the proposed Initial Order, for the Court to approve Just Energy’s engagement of BMO as its financial advisor and are seeking a charge in the amount of \$1.8 million (the “**FA Charge**”) to secure the amounts payable to BMO. At the comeback hearing, the Applicants will be seeking to increase the FA Charge. The FA Charge is proposed to rank *pari passu* with the Administration Charge and have first priority over all other charges.

144. As the BMO Engagement Letter contains commercially sensitive information, the proposed Initial Order also orders that the Confidential Appendix to the Pre-Filing Report be sealed and not form part of the court record pending further order of the Court.

**(f) Directors’ and Officers’ Protection**

145. A successful restructuring of the Just Energy Group will only be possible with the continued participation of its directors, officers, management, and employees. These personnel are

essential to the viability of the Applicants' continuing business and the preservation of enterprise value.

146. I am advised by Marc Wasserman of Osler and believe that, in certain circumstances, directors of Canadian companies can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes. The Applicants estimate, with the assistance of FTI in its capacity as proposed Monitor, that these obligations may amount to as much as approximately \$5.8 million.

147. I am also advised by Kirkland and believe that, in certain circumstances, directors of U.S. companies may be held liable for certain obligations of a company owing to employees and government entities, which may include sales and use taxes, employee withholding and certain payroll taxes, state income taxes in a few states, 401(k) and other obligations withheld from employees, unpaid wages (including paid vacation), ERISA fiduciary obligations, and non-payment of contractual obligations owed to suppliers of perishable agricultural commodities. The Applicants estimate, with the assistance of FTI in its capacity as proposed Monitor, that these obligations may amount to as much as approximately \$30 million.

148. It is my understanding that Just Energy's present and former directors and officers are among the potential beneficiaries under liability insurance policies (the "**D&O Insurance**") that cover an aggregate annual limit of approximately U.S. \$38.5 million. However, I understand that the D&O Insurance has various exceptions, exclusions, and carve-outs where coverage may not be available and that claims on such policy have already been made. I therefore do not believe that this insurance policy provides sufficient coverage against the potential liability that the directors



and officers could incur in relation to this CCAA proceeding. The current D&O Insurance will be expiring on its own terms on April 1, 2021. The Applicants are currently in the process of either securing renewal or replacement insurance or purchasing a tail for the existing policy and a new policy.

149. In light of the complexity and scope of the overall enterprise and potential liabilities and the uncertainty surrounding available indemnities and insurance, the directors and officers have indicated to the Applicants that their continued service to the company and involvement in this proceeding is conditional upon the granting of an order under the CCAA which grants a charge in favour of the directors and officers of Just Energy in the amount of \$30 million on the Property (the “**Directors’ Charge**”). The Directors’ Charge is proposed to be subordinate to the Administration Charge and FA Charge but shall rank in priority to all the other charges. The Directors’ Charge is necessary so that the Applicants may benefit from their directors’ and officers’ experience with the Applicants’ business and industry, and so that its directors and officers can guide the Applicants’ restructuring efforts.

**(g) KERP**

150. At the comeback hearing, the Applicants will be seeking approval of a key employee retention plan (the “**KERP**”) and the granting of a Court-ordered charge (the “**KERP Charge**”) as security for payments under the KERP. A summary of the KERP is attached as **Confidential Exhibit “GG”**. The KERP summary contains commercially sensitive information as well as personal information relating to the Just Energy Group’s employees. Therefore, the proposed Initial Order orders that the Confidential Exhibit EE be sealed and not form part of the court record pending further order of the Court.

151. The KERP was developed by the Applicants to facilitate and encourage the continued participation of senior management and other key employees of the Applicants who are required to guide the business through the restructuring and preserve value for stakeholders. The KERP will provide participants with additional payments as an incentive to continue their employment through the CCAA proceedings. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Further, these key employees will likely have other, more certain employment opportunities and will be faced with a significantly increased workload during the restructuring process.

152. The Applicants propose to include the following employees in the KERP:

<b>Group</b>	<b>Approximate Number of Employees</b>	<b>Approximate Estimated Cost</b>
Executives	8	\$3.39 million
Commercial	11	\$1.37 million
Operations	13	\$925,249
Legal, Regulatory, Finance and HR	10	\$1.14 million
<b>Total</b>	<b>42</b>	<b>\$6.83 million<sup>10</sup></b>

153. The KERP payments will be made in three installments payable as follows: (i) 180 days after the filing date; (ii) 270 days after the filing date; and (iii) the earlier of 15 months after the filing day or exit from the CCAA proceeding. For executive employees, the first and second

<sup>10</sup> Over \$1 million of the amount of the KERP comprises foreign exchange charges for employees being paid in U.S. dollars.

installments will each be in an amount equal to 25 percent of the total KERP payment payable to the employee in question whereas the final installment will be equal to 50 percent of the total KERP payment. For all other employees, the first and second installments will each be in an amount equal to 40 percent of the total KERP payment payable to the employee in question whereas the final installment will be equal to 20 percent of the total KERP payment. The total KERP payments range from 35 percent to 90 percent of the base salary of the relevant employees.

**(h) Q3 Bonuses**

154. The cash flows included payment of certain bonuses awarded to Just Energy Group employees for Q3 of Fiscal 2021 and the Just Energy Group intends to pay them when due on April 2, 2021, in accordance with the terms of the proposed Initial Order.

155. The payment of the bonus depended on Just Energy achieving corporate targets as set and approved annually by the Compensation Committee and the Board of Just Energy. Following the close of the applicable fiscal quarter, the Board has the absolute discretion to determine if the corporate targets have been met and will make all determinations with respect to any bonus. Any approved bonus shall be paid no later than 60 days following the date the bonus is approved by the Board, subject to the executive's continued employment through the end of the applicable fiscal quarter.

156. At the Compensation Committee meeting on July 2, 2020, the Compensation Committee reviewed a quarterly bonus structure for FY 2021 based on the excess achievement of quarterly Base EBITDA targets. If Just Energy's actual Base EBITDA result for a fiscal quarter exceeds the target, then the bonus for such quarter would be funded from a portion of such excess. The Compensation Committee recommended to the board that the quarterly bonus structure for FY

2021, including the quarterly Base EBITDA targets, be approved. The Q3 target was set at \$42 million and the Board approved the quarterly bonus structure for FY 2021, including the quarterly Base EBITDA targets, at its July 3, 2020 meeting.

157. At the Compensation Committee meeting on February 9, 2021, it was reported that the Q3 Base EBITDA result was \$55.785 million, which exceeded the target of \$42 million, which is reflected in Just Energy's Q3 financials. The Compensation Committee requested that the Board approve the bonus pool for Q3 in the amount of approximately \$3.23 million and the Board approved the Q3 bonus at its February 10, 2021 meeting. As such, the Q3 bonuses were properly approved by both the Compensation Committee and the Board based on the achieved Base EBITDA for Q3 in accordance with the terms of the bonus structure that the Compensation Committee and the Board approved in July 2020.

**(i) Priority Commodity/ISO Charge**

158. To continue to operate as a going concern and successfully achieve its restructuring objectives, the Just Energy Group requires its relationships with its Commodity Suppliers and ISO Service Providers to remain uninterrupted. I am advised by Mr. Wasserman and believe that the Commodity Agreements (as defined in the Initial Order) are covered by the eligible financial contract provisions in the CCAA and, therefore, the Applicants cannot rely on a stay of proceedings to prevent the Commodity Suppliers from terminating their existing contractual commitments or refraining from conducting new business with the Applicants.

159. Accordingly, to incentivize Commodity Suppliers and ISO Services Providers to continue transacting with the Just Energy Group, the proposed Initial Order grants a charge to any counterparty to a Commodity Agreement or ISO Agreement (as defined in the Order) as of March

9, 2021 that has executed or executes a Qualified Support Agreement (as defined in the Initial Order) with a Just Energy Entity and refrained from exercising termination rights under the Commodity Agreement as a result of the commencement of these proceedings absent an event of default under such Qualified Support Agreement (each, a “**Qualified Commodity/ISO Supplier**”). The Initial Order provides that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of a charge (the “**Priority Commodity/ISO Charge**”) on the Property in an amount equal to the value of the amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction executed pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement on or after March 9, 2021; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under the BP ISO Agreement on or before the date of this Order, whether or not yet due) (the “**Priority Commodity/ISO Obligation**”).

160. The Just Energy Group cannot continue going concern operations or successfully restructure if Commodity Suppliers and ISO Services Providers do not enter into new transactions. Due to the financial pressures the Just Energy Group is facing, suppliers may be reluctant to continue transacting without receiving additional security. Under the terms of the Credit Agreement, the Term Loan Agreement and the Intercreditor Agreement, the Just Energy Group cannot provide additional security without the applicable lenders’ consent. Therefore, the Priority Commodity/ISO Charge is essential for incentivizing Commodity Suppliers and ISO Services Providers to continue doing business with the Just Energy Group.

161. The Just Energy Group has entered into Qualified Support Agreements with its two most significant Secured Suppliers, (i) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, “**Shell**”); and (ii) BP Canada Energy Company, BP Canada Energy Marketing Corp., BP Energy Company, a Delaware corporation, BP Corporation North America Inc., and BP Canada Energy Group ULC (collectively, “**BP**”), copies of which are attached as **Exhibit “HH”** and “**II**”. In these Commodity/ISO Supplier Support Agreements, among other things, Shell and BP have agreed to not exercise any termination rights and to supply and deliver services under their existing agreements consistent with historical practice and perform such other acts that are required to satisfy all of their obligations. However, Shell and BP’s obligation to continue supplying services is conditional on the Court granting the Commodity/ISO Charge.

**(j) Cash Flow Forecast**

162. The Applicants prepared 13-week cash flow projections and the underlying assumptions as required by the CCAA. A copy of the cash flow projections is attached as **Exhibit “JJ”**. The projections demonstrate that the Applicants have sufficient liquidity and cash on hand to continue going concern operations during the Stay Period. I confirm that:

- (a) all material information relative to the 13-week cash flow projections and to the underlying assumptions has been disclosed to FTI in its capacity as proposed Monitor; and
- (b) senior management has taken all actions that it considers necessary to ensure that:
  - (i) the individual assumptions underlying the 13-week cash flow projections are appropriate in the circumstances; and
  - (ii) the individual assumptions underlying the

13-week cash flow projections, taken as a whole, are appropriate in the circumstances.

163. The Applicants anticipate that the Monitor will provide oversight and assistance and will report to the Court in respect of the Applicants' actual results relative to the cash flow forecast during this proceeding if the relief being requested by the Applicants is granted by the Court.

**(k) Payments During this CCAA Proceeding**

164. During the course of this CCAA proceeding, the Applicants intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the Initial Order.

165. Moreover, in order to ensure uninterrupted business operations during the CCAA proceeding, the Applicants are proposing in the Initial Order that they be authorized, with the consent of the Monitor, in consultation with the DIP Agent and the agent under the Credit Agreement (or its advisors), to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Just Energy Group's business and ongoing operations.

166. I am advised by Kirkland and believe that the nonpayment of taxes (including, without limitation, sales, use, withholding, unemployment, and excise) could result in a Director or Officer of a Just Energy Entity being held personally liable in certain circumstances for such nonpayment as well as for taxes related to income or operations incurred or collected by a Just Energy Entity in the ordinary course of business. Accordingly, the proposed Initial Order provides that the Just Energy Entities are authorized to pay any such taxes.

167. In addition, the proposed Initial Order provides that the Applicants shall not grant credit or incur liabilities except in the ordinary course of business but may repay advances under the Credit Agreement for the purpose of creating availability under the LC Facility (as defined in the Initial Order) in order for the Just Energy Entities to provide Letters of Credit to continue to operate their business in the ordinary course during these proceedings, subject to: (i) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit; and (ii) receipt of written confirmation from the applicable lender(s) under the Credit Agreement that such lender(s) will issue a Letter of Credit of equal value within one business day. The Just Energy Group is required to post collateral with regulators in various jurisdictions where it conducts business and so it is essential that the Just Energy Group have the ability to obtain Letters of Credit to avoid any disruptions that would result from failing to post collateral when required.

**(l) Chapter 15 Case**

168. Because the Just Energy Group has operations in the U.S., and thus has assets in and valuable business and trade relationships with a number of parties in the U.S., contemporaneously with commencement of the CCAA proceeding, Just Energy intends to initiate a case under Chapter 15 of Title 11 of the United States Code (the “**Bankruptcy Code**”) seeking an order to recognize and enforce the CCAA proceeding in the U.S. and protect against any potential adverse action taken by the Just Energy Group’s U.S. creditors and stakeholders (the “**Chapter 15 Case**”).

169. Just Energy intends to file the Chapter 15 Case in the United States Bankruptcy Court for the Southern District of Texas, where Just Energy maintains its principal place of business in the United States.



170. The Just Energy Group is a consolidated business, with offices and primary operations in both Canada and the United States which is operationally and functionally integrated in many respects. However, the Applicants' center of main interest is in Canada:

- (a) The Applicant have assets in Canada.
- (b) The operations of the Just Energy Group are directed in part from Just Energy's head office in Toronto, Ontario. In particular, decisions relating to the Just Energy Group's primary business (*i.e.*, buying, selling and hedging energy) are primarily made in Canada.
- (c) All other members of the Just Energy Group report to Just Energy.
- (d) Just Energy Corp. (a Canadian subsidiary) acts as a centralized entity providing operational and administrative functions for the Just Energy Group as a whole. These functions are performed by Canadian Just Energy Group employees and include, among other things:
  - (i) most enterprise-wide IT services;
  - (ii) enterprise-wide support for finance functions, including working capital management, credit management (including credit checks for customers), payment processing, financial reconciliations, managing business expenses, insurance, and taxation;
  - (iii) oversight for the legal, regulatory, and compliance functions across the entire Just Energy Group;

- (iv) certain enterprise-wide HR functions, such as designing in-house learning and development programs;
- (v) financial planning and analysis services, including customer enrollment, billing, customer service, and load forecasting;
- (vi) supply planning services, including creating demand models which predict the amount of energy that each entity needs to purchase from suppliers and determining the proper distributor and pipeline necessary to get the gas to the end-consumer; and
- (vii) internal audit services.

## **H. Conclusion**

171. I am confident that granting the draft Initial Order sought by the Applicants is in the best interests of the Applicants and their stakeholders. Although the Just Energy Group has made significant strides in recent years to position itself for sustainable growth as an independent industry leader, it is currently in a very challenging financial position because of the “once in a generation” Texas weather event. Without the relief requested, including the stay of proceedings, the Just Energy Group faces a cessation of going concern operations, the liquidation of its assets, and the loss of its employees’ jobs. The Just Energy Group requires the breathing space provided by CCAA protection to engage in a dialogue with and among its stakeholders with the goal of maximizing the ongoing value of the business and continuing employment for as many of its employees as is reasonably possible. The granting of the requested stay of proceedings will

maintain the “status quo” and permit an orderly restructuring and analysis of the Just Energy Group’s affairs.

SWORN BEFORE ME over video  
teleconference this 9th day of March, 2021  
pursuant to O. Reg 431/20, Administering  
Oath or Declaration Remotely. The affiant was  
located in the Town of Flower Mound, in the  
State of Texas while the Commissioner was  
located in the City Toronto, in the Province of  
Ontario.



---

Commissioner for Taking Affidavits  
Waleed Malik (LSO No. 678460)



---

Michael Carter

**Schedule "A"**

- Just Energy Ontario L.P.
- Just Energy Manitoba L.P.
- Just Energy (B.C.) Limited Partnership
- Just Energy Québec L.P.
- Just Energy Trading L.P.
- Just Energy Alberta L.P.
- Just Green L.P.
- Just Energy Prairies L.P.
- JEBPO Services LLP
- Just Energy Texas LP

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C- 36, AS AMENDED; Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC. ET AL.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at: TORONTO

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Counsel for the Applicants

**THIS IS EXHIBIT O REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**THIRD REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**September 8, 2021**

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**APPENDICES**

Appendix A	Cash Flow Forecast for the period ending January 1, 2022
Appendix B	Fee Affidavit of Paul Bishop sworn September 8, 2021
Appendix C	Fee Affidavit of Puya Fesharaki sworn September 8, 2021
Appendix D	Fee Affidavit of John Higgins sworn September 7, 2021

**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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO  
ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION,  
JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA  
CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING  
INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES  
HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC.,  
JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.)  
CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP.,  
JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK  
CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST  
ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP.,  
JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC,  
HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC,  
HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST  
ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY  
LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST  
ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP.,  
JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST  
ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**THIRD REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).

2. Pursuant to the Initial Order, among other things:
  - (a) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”);
  - (b) the protections of the Initial Order, including the stay of proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”);
  - (c) FTI Consulting Canada Inc. (“**FTI**”) was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”);
  - (d) a debtor-in-possession interim financing facility was approved (the “**DIP Facility**”) in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021; and
  - (e) certain charges were granted with priority over all encumbrances on the Just Energy Entities’ property, including two third-ranking charges on a *pari passu* basis in favour of: (A) the DIP Lenders to secure all Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time up to the maximum amount of the Obligations (the “**DIP Lenders’ Charge**”); and (B) each Commodity/ISO Supplier that has executed a Qualified Support Agreement in an amount equal to the value of the Priority Commodity/ISO Obligations (the “**Priority Commodity/ISO Charge**”).
3. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*.

4. On March 19, 2021, at the comeback hearing in the CCAA Proceedings, the Court granted the Amended and Restated Initial Order (the “**First A&R Initial Order**”), which, among other things:
  - (a) extended the Stay Period to June 4, 2021;
  - (b) approved a key employee retention plan (“**KERP**”) and the KERP Charge in respect of certain Key Employees (each term as defined below);
  - (c) increased the amount of the Administration Charge, FA Charge and Directors’ Charge;
  - (d) granted the Cash Management Charge in favour of the Cash Management Banks to secure Cash Management Obligations;
  - (e) confirmed that any obligations secured by a valid, enforceable and perfected security interest shall continue to be secured by the Property, including any Property acquired after the date of the applicable security agreement; and
  - (f) authorized the Just Energy Entities to provide cash collateral to third parties where so doing is necessary to operate the Business in the normal course, with the consent of the Monitor and subject to the terms of the Definitive Documents (as defined in the Amended and Restated Initial Order).
  
5. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States.
  
6. On May 26, 2021, the Court granted the Second Amended and Restated Initial Order (the “**Second A&R Initial Order**”) which, among other things:
  - (a) amended the definition of “Qualified Commodity/ISO Supplier” in the Initial Order to include counterparties to a Commodity Agreement or ISO Agreement executed after the Filing Date;

- (b) amended the definition of “Commodity Agreement” to include contracts entered into by a Just Energy Entity for protection against fluctuations in foreign currency exchanges rates; and
  - (c) amended the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021 without obtaining Court authorization in certain limited circumstances.
7. Also on May 26, 2021, the Court granted the Stay Extension Order which, among other things:
- (a) extended the Stay Period to September 30, 2021;
  - (b) approved the Monitor’s previous reports to the Court and activities described therein;
  - (c) relieved Just Energy of any obligation to call and hold an annual meeting of its shareholders until further Order of the Court; and
  - (d) authorized, but did not obligate, Just Energy (U.S.) Corp. (“**Just Energy U.S.**”) to repatriate funds to the Just Energy Entities operating in Canada should it become necessary to do so to ensure sufficient working capital is held by such entities to fund their ongoing operations, which repatriation was permitted to be by way of repayment of certain intercompany indebtedness, including interest.
8. This Report should be read in conjunction with the Affidavit of Michael Carter sworn September 8, 2021 (the “**Carter Affidavit**”), which is accessible on the Monitor’s Website (as defined below).
9. All references to monetary amounts in this Third Report of the Monitor (the “**Third Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Second A&R Initial Order.

10. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, are available on the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy/> (the "**Monitor's Website**").
11. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, are available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

## PURPOSE

12. The purpose of this Third Report is to provide information to the Court with respect to the following:
  - (a) the Monitor's activities since the date of the Monitor's Second Report to the Court dated May 21, 2021 (the "**Second Report**");
  - (b) certain contract disclaimers issued by the Just Energy Entities with the consent of the Monitor pursuant to the CCAA;
  - (c) certain energy-related legislative developments in the state of Texas and their potential impact on the Just Energy Entities;
  - (d) details regarding a lift of the Stay of Proceedings for a limited purpose with the consent of the Just Energy Entities and the Monitor in accordance with the Second A&R Initial Order;
  - (e) details regarding discussions with commodity suppliers and agreements executed;
  - (f) details regarding the status of the Intercreditor Dispute and the Resolution Process (both as defined below);
  - (g) the status of the Just Energy Entities' restructuring initiatives;
  - (h) the relief sought by the Applicants in their proposed Order (the "**Claims Procedure Order**"), including the following relief, among other things:

- (i) approving a claims process for the identification, quantification, and resolution of Claims (as defined below) as against the Just Energy Entities and their respective directors and officers (the “**Claims Process**”);
  - (ii) authorizing the Just Energy Entities, the Monitor, the Claims Agent and the Claims Officer (each as defined below) to perform their respective obligations under the Claims Procedure Order; and
  - (iii) establishing the Claims Bar Date and the Restructuring Period Claims Bar Date (each as defined below);
- (i) the relief sought by the Applicants in their proposed Order (the “**Stay Extension and Other Relief Order**”), including approval of the following, among other things:
- (i) modifying the KERP approved in the First A&R Initial Order to permit the Just Energy Entities, in consultation with the Monitor, to reallocate unpaid KERP funds originally allocated to Key Employees (as defined below) who have resigned, or will resign, from their employment with the Just Energy Entities, or have declined, or will decline to receive payment(s) under the KERP, to remaining Key Employees or other employees of the Just Energy Entities that the Just Energy Entities, in consultation with the Monitor, identify as critical to their ongoing business;
  - (ii) authorizing the Just Energy Entities to enter into blocked account control agreements with respect to new bank accounts opened in the ordinary course of business as part of the Just Energy Entities’ Cash Management System, provided that the blocked account control agreements and the exercise of any and all rights thereunder shall be subject to (a) the terms of the DIP Term Sheet and the rights of the DIP Agent and the DIP Lenders thereunder; and (b) the terms of the Second A&R Initial Order, including the priority of the security interests in the Property granted to holders of the various Charges pursuant to the Second A&R Initial Order; and
  - (iii) extending the Stay Period to December 17, 2021;
- (j) the Monitor’s recommendations in respect of the foregoing, as applicable;

- (k) the Just Energy Entities' actual cash receipts and disbursements for the 15-week period ending August 28, 2021 and a comparison to the cash flow forecast (the "**Revised Cash Flow Forecast**") attached as Appendix "A" to the Second Report, along with an updated cash flow forecast for the period ending December 31, 2021 (the "**Updated Cash Flow Forecast**");
- (l) approving the fees and disbursements of the Monitor and its counsel incurred in the CCAA Proceedings for the period from March 9, 2021 to August 27, 2021; and
- (m) approving the Third Report and the actions, conduct and activities of the Monitor described herein.

### TERMS OF REFERENCE AND DISCLAIMER

13. In preparing this Third Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities' books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the "**Information**").
14. Except as otherwise described in this Third Report:
  - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Third Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
15. Future-oriented financial information reported in or relied on in preparing this Third Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.



16. The Monitor has prepared this Third Report to provide information to the Court in connection with the relief requested by the Applicants. The Third Report should not be relied on for any other purpose.

### **MONITOR'S ACTIVITIES SINCE THE SECOND REPORT**

17. In accordance with its duties as outlined in the Initial Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Second Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
  - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors, regarding, among other things, the CCAA Proceedings, communications with stakeholders and business operations;
  - (c) participating in multiple discussions with the Just Energy Entities, the DIP Lenders, the agent under the Credit Agreement (the “**CA Agent**”), BP Energy Company (“**BP**”) and Shell Energy North America (Canada) Inc. and certain of its related parties (collectively, “**Shell**”) and their respective counsel and advisors in respect of, among other things, the Intercreditor Dispute (as defined below) and facilitating development of an intercreditor dispute resolution process (the “**Resolution Process**”) with the input of such stakeholders;
  - (d) maintaining the service list for the CCAA Proceedings with the assistance of Thornton Grout Finnigan LLP (“**TGF**”), counsel for the Monitor, a copy of which is posted on the Monitor’s Website;
  - (e) monitoring the receipts and disbursements of the Just Energy Entities;
  - (f) working with the Just Energy Entities, their advisors, and TGF, as applicable, to, among other things:
    - (i) provide stakeholders with financial and other information;
    - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to possible exit strategies from the CCAA Proceedings,

- including assisting with the preparation of related cash flow forecasts and presentations;
- (iii) assist the Just Energy Entities in the preparation of the claims procedure set out in the Claims Procedure Order, including a preliminary review of potential claims by category and classification, and claims procedure design considerations;
  - (iv) determine amendments to the KERP to account for the resignations of Key Employees and the availability of funds thereunder;
  - (v) assist the Just Energy Entities in their discussions with financial institutions in respect of entering into blocked account control agreements;
  - (vi) ensure compliance with the requirements of regulators in applicable jurisdictions; and
  - (vii) consider a request to lift the Stay of Proceedings to permit recourse to the Just Energy Entities' insurance policy;
- (g) reviewing and, where applicable, approving the Just Energy Entities' disclaimers of certain contracts;
  - (h) pursuant to the terms of the Second A&R Initial Order, consulting regularly with the advisors to the CA Agent with respect to payments being made by the Just Energy Entities with the consent of the Monitor for amounts owing for goods and services rendered to the Just Energy Entities prior to the CCAA Proceedings;
  - (i) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
  - (j) responding to creditor and other stakeholder inquiries;
  - (k) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Initial Order; and
  - (l) preparing this Third Report.

## CONTRACT DISCLAIMER UPDATE

18. On May 21, 2021, Just Energy U.S. disclaimed a master subscription agreement and related order form dated July 31, 2018 between it and Vlocity, Inc. as contract counterparty (the “**Vlocity Contract**”) for certain subscription-based services to enhance sales and marketing, customer experience, billing management, and other initiatives.
19. On June 2, 2021, Just Solar Holdings Corp. (“**Solar**”), a Just Energy Entity, disclaimed an Agreement of Lease dated August 30, 2016 between it, as tenant, and RA 660 White Plains Road, LLC, as landlord (the “**Solar Lease**”). The Solar Lease was sub-leased by Solar to a sub-tenant, which sub-tenant agreed to vacate the premises upon the Solar Lease being disclaimed.
20. Both the Vlocity Contract and the Solar Lease disclaimers were carried out in accordance with the provisions of the CCAA and with the consent of the Monitor. The Monitor found both disclaimers to be fair and reasonable in the circumstances, as they benefited the Just Energy Entities and enhanced the prospect of a viable restructuring. The counterparties to the disclaimed contracts have not filed an objection with the Court within the 15-day objection period specified under the CCAA.
21. The Just Energy Entities have advised the Monitor that they are continuing to consider the viability of other agreements and may seek to disclaim additional agreements subject to the Monitor’s review and approval.

## TEXAS LEGISLATIVE DEVELOPMENTS

22. On June 16, 2021, the Governor of Texas signed House Bill 4492 (“**HB 4492**”), which provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including the Just Energy Entities, during the Texas weather event in February 2021.
23. HB 4492 addresses the securitization of (i) ancillary service charges above the system-wide offer cap of US \$9,000/MWh during the weather event; (ii) reliability deployment price adders charged by the Electric Reliability Council of Texas, Inc. (“**ERCOT**”) during the weather event; and (iii) non-payment of amounts owed to ERCOT due to defaults by

competitive market participants, resulting in short payments to market participants, including Just Energy (collectively, the “Costs”).

24. Consistent with the requirements of HB 4492, ERCOT requested that the Public Utility Commission of Texas (the “**Commission**”) establish securitization financing mechanisms for the payment of the Costs incurred by load-serving entities, including Just Energy. The Commission is currently considering ERCOT’s request.
25. The total amount that the Just Energy Entities may recover through the mechanisms authorized in HB 4492 will depend on a number of factors, including: (i) details of financing order(s) issued by the Commission; (ii) additional ERCOT resettlements; (iii) the aggregate amount of funds sought under HB 4492 by market participants; (iv) the outcome of the dispute process initiated by the Just Energy Entities with ERCOT; and (v) any potential challenges to the HB 4492 scheme. There is therefore no assurance that Just Energy will recover all the Costs it seeks to recover through HB 4492. Just Energy continues to evaluate the potential benefits and impact of HB 4492 on an on-going basis as new or updated information becomes available.

#### **LIFTING THE STAY OF PROCEEDINGS TO ALLOW RECOURSE TO INSURANCE**

26. On June 22, 2021, the Monitor consented to lift the Stay of Proceedings in accordance with paragraph 17 of the Second A&R Initial Order and paragraph 23 of the Final Recognition Order, for the limited purpose of permitting an insurance provider to certain Just Energy Entities’ to issue payment for the reimbursement of approximately US\$400,000 of legal defense costs paid by the Just Energy Entities prior to the filing date in relation to one action in Texas and two actions in Ontario. Such consent was required to lift the Stay of Proceedings as recognized in the United States under the Final Recognition Order to enable reimbursement of the legal defence costs to the Just Energy Entities.
27. The Monitor is of the view that lifting the Stay of Proceedings for such limited purposes was fair, reasonable and beneficial to the estate of the Just Energy Entities in the circumstances.

## COMMODITY SUPPLIERS

### *Update on Discussions with Commodity Suppliers and Agreements Executed*

28. As detailed in the Second Report, the Just Energy Entities are of the view that an expanded supply base would be beneficial to the longer-term viability of their business and have canvassed the market for potential suppliers with a goal of securing a diversified and competitive group of suppliers.
29. In addition to the ISDA Master Agreement with Mercuria Energy America, LLC previously entered into by the Just Energy Entities for the supply of electricity and natural gas, the Just Energy Entities have been successful in further diversifying their commodity supply arrangements and have entered into the following arrangements for the supply of electricity and natural gas in the United States – both of which require Just Energy U.S. to provide financial support under a letter of credit or to post cash collateral:
  - (a) an ISDA Master Agreement dated April 15, 2019 as amended on July 19, 2021 with corresponding schedules and related agreements with J. Aron & Company LLC; and
  - (b) an ISDA Master Agreement dated July 30, 2021 with corresponding schedules and related agreements with Hartree Partners, LP.
30. Going forward, the Just Energy Entities intend to continue actively managing their commodity supplier arrangements to enhance the longer-term viability of the business, and will continue to identify and engage in discussions with additional potential commodity suppliers as opportunities arise.

### *Dispute with Commodity Suppliers*

31. After the Filing Date, Skyview Finance Company, LLC (“**Skyview**”), a counterparty that previously traded in renewable energy credits with Just Energy U.S., terminated its forward contracts with Just Energy U.S. and disputed certain amounts that the Applicants contend are owing to Just Energy U.S. The Just Energy Entities and Skyview have agreed on a process to resolve their dispute and the parties have completed preparation of their

materials in this process. The Monitor is being kept apprised of the developments in the dispute process and will provide a further update to the Court at a later date.

### **INTERCREDITOR DISPUTE**

32. As described in the Monitor's earlier reports, certain of the Just Energy Entities are party to an intercreditor agreement (the "**Intercreditor Agreement**") between certain secured commodity and ISO service suppliers (each, a "**Secured Supplier**"), including BP and Shell, and the CA Agent on behalf of certain secured lenders. The Intercreditor Agreement, among other things, sets out the relative priority of the parties' security interests.
33. Prior to the commencement of these proceedings, Just Energy was advised by BP, a Secured Supplier and a party to the Intercreditor Agreement, that it disagreed with the characterization of certain amounts due to BP as Tier 2 and Tier 3 obligations and considered such amounts to be Tier 1 obligations. The Just Energy Entities have advised BP that they consider any dispute regarding the ranking of amounts due to BP under the Intercreditor Agreement to be an intercreditor dispute (the "**Intercreditor Dispute**") and that the Just Energy Entities do not intend to take a position on the Intercreditor Dispute.
34. The Monitor understands that the potential quantum of the amount under dispute is approximately US\$200 million.
35. In order to avoid lengthy and costly litigation, the Monitor facilitated extensive discussions with, among others, BP, Shell, the CA Agent, the DIP Lenders, the Just Energy Entities and their respective financial and legal advisors (collectively, the "**Interested Parties**"), all of whom expressed an interest in the Intercreditor Dispute in order to understand the positions of such parties in respect of the Intercreditor Dispute and establish a process to resolve same.
36. The Monitor has not taken, and will not take, a position on the substance of the Intercreditor Dispute, and has assisted the Interested Parties in its capacity as an independent officer of the Court to develop the Resolution Process.
37. During the negotiation of the Resolution Process, the Monitor was advised that an entity or entities related to the DIP Lender had acquired the claim of BP against the Just Energy

Entities, which claim included the amount that was the subject of the Resolution Process. Following consultation with the Just Energy Entities, the DIP Lenders and the Monitor, the Interested Parties agreed to put the Resolution Process in abeyance while a potential restructuring solution is pursued.

38. Prior to putting the Resolution Process in abeyance, one point of dispute remained between the Interested Parties dealing with an issue regarding a potential post-award judicial review. In light of the abeyance, the Monitor is of the view that it is neither necessary to seek approval of the Resolution Process nor deal with the remaining point in dispute at this time. In the event that the discussions on the potential restructuring solution are no longer proving fruitful, or the resolution of the Intercreditor Dispute becomes otherwise required, the Monitor, in consultation with the Interested Parties now excluding BP, may bring the Resolution Process or a revised version of it before this Court for consideration.

#### **UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES**

39. Pursuant to the DIP Term Sheet, the Just Energy Entities delivered their business plan on May 18, 2021 to the DIP Lenders and other stakeholders as required.
40. Since that time, the Just Energy Entities with the assistance of legal counsel and the Financial Advisor, and in consultation with the Monitor and the DIP Lenders, have continued their restructuring efforts with a focus on developing a restructuring plan that facilitates emergence from the CCAA Proceedings, preserves the going concern value of the business, maintains customer service and relationships, and preserves employment and critical vendor relationships – all for the benefit of the Just Energy Entities’ stakeholders.
41. To provide sufficient time to further restructuring efforts, the Just Energy Entities have negotiated extensions to certain milestone deadlines provided for in the DIP Term Sheet including the following:
- (a) October 7, 2021 – deadline for delivery of a term sheet for a recapitalization transaction reasonably acceptable to the DIP Lenders (the “**Recapitalization Plan**”);

- (b) November 5, 2021 – deadline for the CCAA Court to grant an order approving one or more meetings for a vote on the Recapitalization Plan and related materials, if applicable;
  - (c) December 8, 2021 – deadline for the meeting(s) to vote on the Recapitalization Plan, if applicable;
  - (d) December 17, 2021 – deadline for the CCAA Court to grant an order approving and sanctioning the Recapitalization Plan, if applicable;
42. Pursuant to the DIP Term Sheet and in connection with the restructuring efforts noted above, the Just Energy Entities with the assistance of the Financial Advisor and in consultation with the Monitor have been working to develop a recapitalization term sheet (the “**Recapitalization Term Sheet**”).
43. The Monitor understands that the Just Energy Entities are in the process of broadening the scope of such discussions to include other key stakeholders as the Recapitalization Term Sheet and the Recapitalization Plan develop.

#### **CLAIMS PROCEDURE ORDER**

44. For the purpose of this section only, any capitalized terms not defined herein have the meanings ascribed thereto in the proposed Claims Procedure Order.
45. The Just Energy Entities and the Monitor have developed the Claims Process to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their Directors and Officers in a flexible, fair, comprehensive, and expeditious manner. The Claims Process is described in detail in the Carter Affidavit. Intercreditor disputes, including the Intercreditor Dispute described above, are specifically omitted from the Claims Process.

#### *Types of Claims*

46. The following is a summary of Claims that the Just Energy Entities are soliciting in the Claims Process:



- (a) **Prefiling Claims**: any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever of such Just Energy Entity that was in existence on the Filing Date. Such Pre-Filing Claims may include, but are not limited to:
- (i) **General trade creditor claims**: any claim by contractual counterparties with respect to goods or services supplied by such counterparties to the Just Energy Entities;
  - (ii) **Customer claims**: any right or claim of any customer against any of the Just Energy Entities;
  - (iii) **Employee claims**: any right or claim of any current or former employee against any of the Just Energy Entities including, but not limited to, any claim for termination or severance pay;
  - (iv) **Litigation or class action claims**: any claim of any proposed plaintiff with respect to any potential litigation, or proposed or confirmed representative plaintiff on behalf of a class in any class action, against any of the Just Energy Entities;
  - (v) **Commodity Agreement claims**: any claim by counterparties to a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement;
  - (vi) **Tax claims**: any claim of Her Majesty the Queen in Right of Canada or of any province or territory or municipality or any other taxation authority in any Canadian or non-Canadian jurisdiction, including, without limitation, amounts which may arise or have arisen under any current or future notice of assessment, notice of objection, notice of reassessment, notice of appeal,

audit, investigation, demand or similar request from any taxation authority (“**Assessments**”);

- (vii) Equity claims: any claim in respect of an equity interest, including a claim for a dividend or similar payment, a return of capital, a redemption or retraction obligation, a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission of a purchase or sale of an equity interest, or a claim for contribution or indemnity with respect to any of the foregoing; and
- (viii) Funded debt claims: any claim in respect of funded debt for which any of the Just Energy Entities is liable.

- (b) **Restructuring Period Claims**: any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Just Energy Entity to such Person out of the restructuring, disclaimer, resiliation, termination or breach by such Just Energy Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral, and including any claim with respect to any Assessment;
- (c) **Pre-Filing D&O Claims**: any right or claim of any Person against one or more Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date, including with respect to any Assessments or any claims brought by any proposed or confirmed representative plaintiff on behalf of a class in a class action; and
- (d) **Restructuring Period D&O Claims**: any right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date, including with respect to any Assessments.

47. The Claims Process does not apply to the following (collectively, “**Excluded Claims**”):
- (a) any Claim that may be asserted by any beneficiary of the Charges provided for by the Second A&R Initial Order, or any other charges granted by the Court within the CCAA Proceedings, with respect to such charge(s);

- (b) any Claim that may be asserted by any federal or provincial energy regulators, including provincial regulators of consumer sales that have authority with respect to energy sales, U.S. municipal, state, federal or other foreign energy regulatory bodies or agencies, local energy transmission and distribution companies, regional transmission organizations or independent system operators;
  - (c) the three class action lawsuits, including any claim for contribution or indemnity in respect of or related to such actions, enumerated within the definition of “Specified Equity Class Action Claim” in the proposed Claims Procedure Order, which claims were channeled to insurance under the CBCA Plan of Arrangement (as defined below);
  - (d) any Intercompany Claim that may be asserted against any of the Just Energy Entities by or on behalf of any of the Applicants or any of their affiliated companies, partnerships, or other corporate entities; and
  - (e) any Claim that may be asserted by any of the Just Energy Entities against any Directors and/or Officers.
48. In addition to the Excluded Claims, the definition of “Claim” also does not include any right or claim of any Person that was previously released, barred, estopped, stayed and/or enjoined pursuant to the amended and restated plan of arrangement dated September 2, 2020 (the “**CBCA Plan of Arrangement**”) under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, which arrangement was approved by a final order of the Court on application by Just Energy and 12175592 Canada Inc.

#### *Claims Process and Notice*

49. The Claims Process contains a negative notice process as detailed below. This process covers a majority of the Claims in terms of number of Claimants. The Claims Procedure Order sets out the categories of Claims that shall be subject to the negative notice process. All other Claimants (or potential Claimants) will be required to file a Proof of Claim as prescribed by the proposed Claims Procedure Order.
50. The negative notice process was designed to streamline the Claims Process for the Claimants and the Just Energy Entities. While the Just Energy Entities anticipate that the

vast majority of Claimants will receive Negative Notice Packages, certain Claimants may hold Claims more readily quantified directly by the Claimant. The Claims Process provides the Just Energy Entities and the Monitor with the appropriate flexibility to issue a General Claims Package, rather than a Negative Notice Claims Package, as appropriate given the size and complexity of the Just Energy Entities' business in pursuit of a fair and efficient notice process with respect to each Claimant.

51. The Monitor, or Omni Agent Solutions as claims and noticing agent (the “**Claims Agent**”), will send out a Negative Notice Claims Package to every Negative Notice Claimant. This will include a Statement of Negative Notice Claim, which sets out the Negative Notice Claimant's Claim, according to the books and records of the Just Energy Entities. Any Negative Notice Claimant that wishes to dispute the amount set out in the notice is required to dispute that claim by delivering a Notice of Dispute of Claim in accordance with the Claims Process. If the Negative Notice Claimant does not dispute the Negative Notice Claim set out in its statement, such Negative Notice Claim will be deemed accepted in accordance with the Claims Process and all dispute rights of such Negative Notice Claimant shall be forever extinguished and barred.
52. For all other Claims, a general claims process is being conducted that requires a Claimant to file its Proof of Claim and/or D&O Proof of Claim (as used herein, together “**Proof of Claim**”) with the Monitor or Claims Agent (as set out in the Claims Procedure Order and the Carter Affidavit).
53. With respect to notice, and in addition to the mailings and delivery of claims packages (either negative or general) to known potential Claimants based on the books and records of the Just Energy Entities, the parties on the Service List, and any other person who requests a claims package, the Just Energy Entities will also provide additional noticing of the Claims Process to the following (the “**Additional Notice Parties**”):
  - (a) all current employees via posting of a notice on the employee intranet site advising of the existence of the Claims Process and providing information on steps to be taken if they may hold a claim against the Just Energy Entities; and

- (b) all active vendors of the Just Energy Entities listed in their books and records as not having any existing claim against the Just Energy Entities (i.e. are owed \$0) will be sent either a General Claims Package (as defined below) or a notice advising of the existence of the Claims Process which will include instructions for accessing a General Claims Package available on the websites of the Monitor and the Claims Agent.
54. Despite the Additional Notice Parties not holding Claims pursuant to the books and records of the Just Energy Entities, the additional noticing is being undertaken for completeness purposes and to ensure the most exhaustive approach is undertaken by the Just Energy Entities for the provision of notice to interested stakeholders of the Claims Process.
55. As a final measure to ensure all Persons holding or wishing to assert a Claim against the Just Energy Entities, the Monitor shall cause notices to be put in *The Globe and Mail* (National Edition), the *Wall Street Journal*, the *Houston Chronicle*, and the *Dallas Morning News*, as soon as practicable after the date of the Claims Procedure Order. The claims package will be made available on the websites of the Monitor and the Claims Agent.
56. The Claims Process will be conducted entirely pursuant to the CCAA Proceedings, and any U.S. Claimants will be required to file their Claims in accordance with the Claims Process.

*Claims Agent and Claims Officer*

57. In order to assist the Just Energy Entities and the Monitor to administer the Claims Process, and to allow Claims to be submitted electronically in an expeditious and efficient manner, the Just Energy Entities have retained the Claims Agent. The Claims Agent is familiar with the matter as it is currently the U.S. noticing agent in the Chapter 15 proceedings and was also retained by the Monitor for the purpose of providing administrative support services in association with the CCAA Proceedings.
58. The Claims Agent, together with the Monitor, as applicable, will be responsible for: (a) disseminating Negative Notice Claims Packages and General Claims Packages in

accordance with the Claims Procedure Order; (b) receiving and tracking Notices of Dispute of Claim submitted by a Negative Notice Claimant disputing a Statement of Negative Notice Claim; and (c) receiving and tracking Proofs of Claim. In addition, the Claims Agent and Monitor are required under the Claims Procedure Order to post the Notice to Claimants, the General Claims Package and a blank form of Notice of Dispute of Claim to their respective websites.

59. The Claims Agent will also be responsible for opening the online claims submission portals on its website to enable the electronic submission of Proofs of Claim, and Notices of Dispute by Claimants. Claimants will be encouraged to submit documents through the Claims Agent's customized website, which will provide an efficient platform for both Claimants to submit Claims, and the Just Energy Entities, the Monitor and the Claims Agent to review, record and categorize all Claims.
60. The proposed Claims Procedure Order also seeks to appoint Mr. Edward Sellers, and such further and other persons as may be appointed from time to time by this Court on a motion by the Just Energy Entities or the Monitor, as claims officers (each, a "**Claims Officer**") for the Claims Process. Mr. Sellers is President & Managing Director of Black Swan Advisors Inc., one of Canada's pre-eminent restructuring advisors, and has extensive experience in the restructuring space. Mr. Sellers was formerly a partner with the Applicants' counsel. He ceased to be a partner with the Applicants' counsel in January of 2016.
61. The proposed Claims Procedure Order gives the Just Energy Entities, in consultation with the Monitor, the discretion to determine whether a disputed Claim should be adjudicated by the Court or by a Claims Officer. If referred to a Claims Officer, the proposed Claims Procedure Order provides that the Claims Officer shall: (a) determine the amount and characterization of the disputed Claim in accordance with the Claims Procedure Order; (b) determine whether any Claim or part thereof constitutes an Excluded Claim; (c) provide written reasons for his or her determination of the matter; and (d) determine all procedural matters which may arise in respect of his or her determination of the disputed Claim, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. In addition, the Claims Procedure Order provides the Claims

Officer with the discretion to mediate any dispute and to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid. Each party to the dispute, any other stakeholder (if applicable) and the Monitor may appeal any determination by the Claims Officer to the Court within ten (10) days of such party receiving notice of the Claims Officer's determination.

#### *Claims Bar Dates*

62. The proposed Claims Procedure Order provides that any Person asserting a Pre-Filing Claim or Pre-Filing D&O Claim or disputing a Negative Notice Claim provided to them be required to deliver to the Claims Agent or the Monitor a Proof of Claim or Notice of Dispute of Claim (in the case of Negative Notice Claimants) on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the “**Claims Bar Date**”).
63. The proposed Claims Procedure Order further provides that any person asserting a Restructuring Period Claim or Restructuring Period D&O Claim be required to deliver to the Claims Agent or the Monitor a Notice of Dispute of Claim (in the case of Negative Notice Claimants) or a Proof of Claim before the later of: (i) 30 days after the date on which the Monitor or Claims Agent sends a Negative Notice Claims Package or General Claims Package, as applicable, and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).
64. The Claims Bar Date and the Restructuring Period Claims Bar Date were selected by the Just Energy Entities, in consultation with the Monitor. The Claims Bar Date and the Restructuring Period Claims Bar Date provide sufficient time for potential Claimants to evaluate and submit any Proof of Claim or Notice of Dispute of Claim and will permit the process to continue expeditiously while the Just Energy Entities concurrently develop their restructuring plan.
65. The proposed Claims Procedure Order provides that:
  - (a) any Negative Notice Claimant who does not submit a Notice of Dispute of Claim by the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, is deemed to have accepted the amount and characterization of its Claim as set out in the Statement of Negative Notice Claim, and all rights of the Negative Notice

Claimant to dispute the Claim or otherwise assert or pursue such Claim other than as set out in the Statement of Negative Notice Claim are extinguished and barred; and

- (b) any potential Claimant (other than a Negative Notice Claimant) that does not submit a Proof of Claim by the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, is: (i) forever barred, estopped and enjoined from asserting or enforcing such Claim against the Just Energy Entities and/or their Directors and Officers, as applicable; (ii) not permitted to vote at any meeting on account of such Claim; (iii) not entitled to receive further notice with respect to the Claims Process or these CCAA Proceedings with respect to such Claim; and (iv) not permitted to participate in any distributions under any plan of arrangement or compromise or otherwise on account of such Claim.
66. Pursuant to the proposed Claims Procedure Order, the Monitor, in consultation with the Just Energy Entities, may use its reasonable discretion to determine whether to agree to accept a Claim submitted after the applicable Bar Date.

#### *Adjudication of Claims*

67. The Just Energy Entities, in consultation with the Monitor, will review and record all Notices of Dispute of Claim and Proofs of Claim that are received on or before the applicable Bar Date. If the Just Energy Entities, in consultation with the Monitor, determine that it is necessary to finally determine the amount and characterization of any or all Claims against the Just Energy Entities (or any of them) or their Directors and Officers, the Just Energy Entities, in consultation with the Monitor, will review and finally determine the amount and characterization of all such Claims asserted in any Proof of Claim or for which a Notice of Dispute of Claim has been received on or before the applicable Bar Date. Such review and determination will be completed in accordance with the adjudication and resolution process set out in the Claims Procedure Order.
68. It is not presently known whether the Just Energy Entities will be required to finally determine the amount and characterization of all Claims. The necessity to undertake such exercise will depend, among other things, on the restructuring transaction ultimately



contemplated by the Just Energy Entities, and the nature and quantum of any proposed distributions sought to be made to creditors within the CCAA Proceedings. The proposed Claims Procedure Order accordingly incorporates flexibility for the Just Energy Entities to review and, in consultation with the Monitor, finally determine all Claims on an “as needed” basis at the appropriate time.

69. In the event the Just Energy Entities, in consultation with the Monitor, determine that it is appropriate and necessary to review and finally determine the amount and characterization of any Claims, the following process will apply:
- (a) In respect of any Notice of Dispute of Claim submitted by a Negative Notice Claimant:
    - (i) if the Just Energy Entities, in consultation with the Monitor, disagree with a Claim set out in a Notice of Dispute of Claim, the Just Energy Entities and the Monitor will attempt to resolve such dispute and settle the purported Claim;
    - (ii) in the event that a dispute is not settled, the Just Energy Entities will, in consultation with the Monitor, refer the dispute to a Claims Officer or the Court for adjudication; and
    - (iii) the Monitor will send written notice of such referral to the Negative Notice Claimant.
  - (b) In respect of any Proof of Claim submitted by a Claimant:
    - (i) if the Just Energy Entities, in consultation with the Monitor with respect to a Proof of Claim, and in consultation with both the Monitor and the Directors and Officers with respect to a D&O Proof of Claim, as applicable, agree with the amount and characterization of a Claim set out in a Proof of Claim, the Monitor or Claims Agent will notify such Claimant of the acceptance of its Claim by the Just Energy Entities;
    - (ii) if the Just Energy Entities, in consultation with the Monitor, disagree with the amount or characterization of a Claim set out in a Proof of Claim, the Just Energy Entities, the Monitor and any applicable Directors and Officers

will attempt to resolve such dispute and settle the purported Claim with the Claimant;

- (iii) if the Just Energy Entities and the Monitor intend to revise or reject a Claim, the Monitor will notify the applicable Claimant that its Claim has been revised or rejected, and the reasons for such revision or rejection, by sending a Notice of Revision or Disallowance to the Claimant;
- (iv) any Claimant who wishes to dispute a Notice of Revision or Disallowance must deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for its dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to in writing by the Monitor, in consultation with the Just Energy Entities. Failure to deliver a Notice of Dispute of Revision or Disallowance within the required time period will result in the Claimant's Claim being deemed to be as determined in the Notice of Revision or Disallowance;
- (v) upon receipt of a Notice of Dispute of Revision or Disallowance, and unless the dispute is settled, the Just Energy Entities will, in consultation with the Monitor and any applicable Directors and Officers, refer the dispute to a Claims Officer or the Court for adjudication; and
- (vi) the Monitor will send written notice of such election to the Claimant.

70. Pursuant to the proposed Claims Procedure Order, the Just Energy Entities are not permitted to accept or revise any portion of a D&O Claim absent the consent of the applicable Directors and Officers, or further Order of the Court.

71. Pursuant to the proposed Claims Procedure Order, the Just Energy Entities, in consultation with the Monitor, may consult with and/or provide reporting to the Consultation Parties in the review, adjudication and/or resolution of any Claims. Further, the Just Energy Entities are required to provide seven days' prior written notice to the Consultation Parties of the details of any proposed settlement or allowance of any Claim in an amount exceeding \$5 million, and any Consultation Party may seek the direction of the Court regarding any such

proposed resolution of the Claim. The Consultation Parties include the DIP Lenders and their affiliates holding secured Claims against any of the Just Energy Entities, the CA Agent and CA Lenders, Shell, and their respective counsel and financial advisors.

*Summary of the Claims Process*

72. The Just Energy Entities have prepared the following summary table of the Claims Process that highlights the important dates and timelines:

<b><u>Timeframe</u></b>	<b><u>Activity</u></b>
September 15, 2021	Motion for approval of Claims Procedure Order.
~ September 17, 2021 [as soon as practicable after the granting of the Claims Procedure Order]	Monitor to cause the Notice to Claimants (or a condensed version thereof) to be published in required newspapers.
~ September 17, 2021 [as soon as practicable after the granting of the Claims Procedure Order]	Monitor to cause the Notice to Claimants, the General Claims Package, and a blank form of Notice of Dispute of Claim to be posted on the Monitor's Website.
~ September 17, 2021 [as soon as practicable after the granting of the Claims Procedure Order]	Claims Agent to cause the Notice to Claimants, the General Claims Package, and a blank form of Notice of Dispute of Claim to be posted on the Claims Agent's Website.  Claims Agent to open the online claims submission portal on the Claims Agent's Website.
September 29, 2021 [10th Business Day following date of the Claims Procedure Order]	Deadline for the Monitor or Claims Agent, as applicable, to cause a Negative Notice Claims Package to be sent to every Negative Notice Claimant.
September 29, 2021 [10th Business Day following date of the Claims Procedure Order]	Deadline for the Monitor or the Claims Agent, as applicable, to cause a General Claims Package to be sent to applicable Persons.
November 1, 2021	Claims Bar Date.
Later of the following: (i) November 1, 2021; or, (ii) 30 days after the date on which the Monitor or Claims Agent sends	Restructuring Period Claims Bar Date.

<u>Timeframe</u>	<u>Activity</u>
a Negative Notice Claims Package or General Claims Package with respect to a Restructuring Period Claim or Restructuring Period D&O Claim	

73. The Just Energy Entities developed the Claims Process in consultation with its advisors and the Monitor. The Monitor is of the view that the Claims Process is fair and reasonable in the circumstances, will assist the Just Energy Entities with the development of its restructuring plan, and help to facilitate an orderly exit of the Just Energy Entities from the CCAA. Accordingly, the Monitor supports approval of the Claims Process including the appointments of the Claims Agent and Claims Officer, and recommends its approval by the Court.

#### AMENDMENTS TO THE KERP

74. The First A&R Initial Order approved a KERP and the granting of a Court-ordered charge (the “**KERP Charge**”) as security for payments under the KERP. Among other things, the KERP authorized payments in three installments to certain senior management and other key employees of the Just Energy Entities who are required to guide the business through the restructuring process. In total, the approved KERP contemplated payments to 42 employees (the “**Key Employees**”) totaling approximately \$6.90 million.
75. Since the approval of the KERP, two Key Employees have resigned from the Just Energy Entities and one Key Employee declined to receive any payments under the KERP (collectively, the “**KERP Departees**”). The total of such foregone payments by the KERP Departees is approximately US\$0.4 million.
76. The Just Energy Entities are seeking this Court’s approval to permit the reallocation of the funds previously authorized for distribution under the KERP and foregone by the KERP Departees, in consultation with the Monitor, to either: (i) remaining Key Employees who have taken on additional responsibilities as a result of employee resignations, or (ii) other employees that the Just Energy Entities identify as critical to their ongoing business

(collectively, the “**Revised Key Employees**”). Subject to this Court’s approval, any re-allocated funds will be paid on the same terms and on the same dates or milestones as set out in the KERP.

77. The requested relief is consistent with the purpose and spirit of the KERP, and the requested reallocation of some or all of the foregone payments by the KERP Departees in consultation with the Monitor will have no financial impact on the stakeholders as the Just Energy Entities are not looking to increase the KERP or the KERP Charge. The Monitor views the relief requested by the Just Energy Entities regarding the KERP as fair and reasonable in the circumstances, and in the best interest of the Just Energy Entities. Accordingly, the Monitor supports the relief sought by the Applicants with respect to the approval of the revisions to the KERP.

#### **BLOCKED ACCOUNT CONTROL AGREEMENTS**

78. Pursuant to the terms of the Intercreditor Agreement and certain other loan agreements, the Just Energy Entities and their affiliates are barred from opening any new bank accounts, without first causing the financial institution with whom such account is maintained to enter into a blocked account control agreement (“**Account Control Agreement**”).
79. Interactive Energy Group LLC (“**IEG**”), an indirect, wholly owned subsidiary of Just Energy (U.S.) Corp., intends to establish separate bank accounts in the United States and Canada to receive and track revenues. Further new bank accounts may also be required by the Just Energy Entities in the normal course of business during the pendency of these CCAA Proceedings for similar purposes.
80. The Applicants are seeking authority for the Just Energy Entities, in consultation with the Monitor, to enter into Account Control Agreements in the ordinary course of business as part of the Just Energy Entities’ Cash Management System, provided that the Account Control Agreements and the exercise of any and all rights thereunder shall be subject to (i) the terms of the DIP Term Sheet and the rights of the DIP Agent and the DIP Lenders thereunder; and (ii) the terms of the Second A&R Initial Order, including the priority of the security interests granted to holders of the various Charges pursuant to the Second A&R Initial Order.

81. The Monitor supports the Applicants' request to enter into Account Control Agreements in the ordinary course of business subject to the conditions set out in the preceding paragraph. In the Monitor's view, the requested relief is fair and reasonable in the circumstances.

## RECEIPTS AND DISBURSEMENTS FOR THE 15-WEEK PERIOD ENDED AUGUST 28, 2021

82. The Just Energy Entities' actual net cash flow for the 15-week period from May 16, 2021 to August 28, 2021, was approximately \$41.4 million better than the Revised Cash Flow Forecast appended to the Second Report as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
<b>RECEIPTS</b>			
Sales Receipts	\$744.9	\$729.9	(\$15.0)
Miscellaneous Receipts	3.8	1.9	(1.9)
<i>Total Receipts</i>	\$748.7	\$731.7	(\$17.0)
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$688.4)	(\$651.9)	\$36.4
Payroll	(25.7)	(25.3)	0.4
Taxes	(39.8)	(27.5)	12.3
Commissions	(30.1)	(27.4)	2.6
Selling and Other Costs	(52.5)	(45.9)	6.6
<i>Total Operating Disbursements</i>	(\$836.5)	(\$778.1)	\$58.4
<b>OPERATING CASH FLOWS</b>	(\$87.8)	(\$46.3)	\$41.5
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(11.6)	(11.0)	0.6
<i>Restructuring Disbursements</i>			
Professional Fees	(11.1)	(11.8)	(0.7)
<b>NET CASH FLOWS</b>	<b>(\$110.5)</b>	<b>(\$69.1)</b>	<b>\$41.4</b>
<b>CASH</b>			
Beginning Balance	\$216.9	\$234.1	\$17.2
Net Cash Inflows / (Outflows)	(110.5)	(69.1)	41.4
Other (FX)	-	9.7	9.7
<b>ENDING CASH</b>	<b>\$106.5</b>	<b>\$174.8</b>	<b>\$68.3</b>

83. Explanations for the main variances in actual receipts and disbursements as compared to the Revised Cash Flow Forecast are as follows:

- (a) The unfavourable variance of approximately \$15.0 million in Sales Receipts is primarily comprised of the following:
  - (i) A permanent unfavourable variance of approximately \$3.1 and \$13.3 million for U.S. residential and commercial customers, respectively, primarily due to lower than anticipated energy demand as a result of mild spring and early summer weather; and
  - (ii) A permanent favourable variance of approximately \$1.4 million primarily due to higher than forecast Canadian residential and commercial customer billings relative to the Revised Cash Flow Forecast;
- (b) The unfavourable timing variance of approximately \$1.9 million of Miscellaneous Receipts is primarily due to the delayed collection of certain sales tax refunds, which are expected to be collected in a future period;
- (c) The favourable variance of approximately \$36.4 million for Energy and Delivery Costs as compared to the Revised Cash Flow Forecast is primarily driven by the following:
  - (i) A favourable variance of approximately \$42.5 million primarily due to lower commodity payments related in part to lower customer electricity usage as noted in the cash receipts comments above and higher than forecast commodity receivables collections, which were partially reduced by the set-off of approximately US\$6.1 million for certain commodity receivables;
  - (ii) A permanent favourable variance of approximately \$3.6 million due to lower than forecast transportation and delivery payments in the Revised Cash Flow Forecast due in part to lower energy transmission volumes and normal course fluctuations relative to the Revised Cash Flow Forecast; and
  - (iii) An unfavourable timing variance of approximately \$9.6 million related to credit support forecasted to be posted prior to the current 15-week period but which was actually paid in the current 15-week period;

- (d) The favourable variance of approximately \$0.4 million for Payroll is due to normal course fluctuations for various payroll tax remittances and sale incentive payments relative to the Revised Cash Flow Forecast;
- (e) The favourable variance of approximately \$12.3 million for Taxes is primarily due to the timing of estimated tax payments including an estimated sales tax reassessment payment owing by the Just Energy Entities of approximately \$7.8 million that was forecast, but not paid, during the period. The exact timing of when this amount will be paid remains unknown, but payment at a future date will continue to be carried forward in the forecast;
- (f) The permanent favourable variance of approximately \$2.6 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions relative to the Revised Cash Flow Forecast;
- (g) The favourable timing variance of approximately \$6.6 million for Selling and Other Costs is primarily due to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors;
- (h) The favourable variance of \$0.6 million for Interest Expense & Fees is primarily due to lower than forecast interest and fees owed on the Just Energy Entities' credit facilities;
- (i) The unfavourable timing variance of \$0.7 million for Professional Fees is due to higher than forecast payments of professional fee invoices during the current 15-week period; and
- (j) The favourable variance of approximately \$17.2 million in the opening cash balance is due to the variances identified in the Second Report that covered the initial two-week period of the Revised Cash Flow Forecast.

*Reporting Pursuant to the DIP Term Sheet*

84. The variances shown and described herein compare the Revised Cash Flow Forecast, as appended to the Second Report, with the actual performance of the Just Energy Entities over the 15-week period noted.



85. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended May 29, 2021, June 26, 2021, July 24, 2021, and August 21, 2021. All variances reported were within the required permitted variances.
86. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders’ approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the “**DIP Cash Flow Forecasts**”). The Just Energy Entities provided the required cash flow forecasts, which were approved by the DIP Lenders for the 13-week periods beginning May 30, 2021, June 27, 2021, July 25, 2021, and August 22, 2021.
87. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the Revised Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the Revised Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
88. Since the Second Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
- (a) Delivery of a Priority Supplier Payables Certificate weekly and monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;
  - (c) Delivery of a Cash Management Charge update monthly;
  - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;

- (e) Delivery of a Marked to Market Calculation monthly;
- (f) Delivery of the consolidated financial statements for fiscal 2021, Management's discussion and analysis on the consolidated financial statements, and related compliance certificate annually;
- (g) Delivery of the Gross Margin Calculation Certificate quarterly; and
- (h) Delivery of the modified (quarterly presentation) consolidated financial statements and related compliance certificate quarterly.

### **CASH FLOW FORECAST FOR THE PERIOD ENDING JANUARY 1, 2022**

89. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 19-week period ending January 1, 2022 (the “**September Cash Flow Forecast**”), which encompasses the requested stay extension to December 15, 2021. The September Cash Flow Forecast is attached hereto as **Appendix “A”**, and is summarized on the subsequent page:

<i>(CAD\$ in millions)</i>	13-Week Period	19-Week Period
	Ending November 20, 2021	Ending January 1, 2022
<b>Forecast Week</b>	<b>Total</b>	<b>Total</b>
<b>RECEIPTS</b>		
Sales Receipts	\$666.1	\$920.2
Miscellaneous Receipts	6.6	6.6
<i>Total Receipts</i>	\$672.7	\$926.8
<b>DISBURSEMENTS</b>		
<i>Operating Disbursements</i>		
Energy and Delivery Costs	(\$508.9)	(\$741.5)
ERCOT Resettlements	0.8	0.8
Payroll	(29.2)	(44.7)
Taxes	(32.0)	(42.8)
Commissions	(28.5)	(41.8)
Selling and Other Costs	(47.6)	(69.0)
<i>Total Operating Disbursements</i>	(\$645.3)	(\$939.0)
<b>OPERATING CASH FLOWS</b>	\$27.4	(\$12.2)
<i>Financing Disbursements</i>		
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -
Interest Expense & Fees	(10.5)	(16.9)
<i>Restructuring Disbursements</i>		
Professional Fees	(11.3)	(16.4)
<b>NET CASH FLOWS</b>	<b>\$5.5</b>	<b>(\$45.4)</b>
<b>CASH</b>		
Beginning Balance	\$142.0	\$142.0
Net Cash Inflows / (Outflows)	5.5	(45.4)
Other (FX)	-	-
<b>ENDING CASH</b>	<b>\$147.5</b>	<b>\$96.6</b>

90. The Revised Cash Flow Forecast indicates that during the 19-week period ending January 1, 2022, the Just Energy Entities will have net cash outflows from operating activities of approximately \$12.2 million with total receipts of approximately \$926.8 million and total disbursements of approximately \$939.0 million, before interest expense and fees of approximately \$16.9 million and professional fees of approximately \$16.4 million, such that net cash outflows are forecast to be approximately \$45.4 million. The Monitor notes that the September Cash Flow Forecast has not incorporated actual results for the week ending August 28, 2021 for presentation purposes as it reflects the current approved DIP Cash Flow Forecast. As a result, the actual ending cash balance reported in the budget to actual section above as at August 28, 2021 will not agree to the forecast cash balance reflected in the September Cash Flow Forecast as at the same date.

91. Generally, the underlying assumptions and methodology utilized in the Just Energy Entities' Cash Flow Forecast have remained the same for this Revised Cash Flow Forecast; however, the Monitor notes the following:
- (a) The forecast period was extended from the week ending October 2, 2021 to the week ending January 1, 2022;
  - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the Revised Cash Flow Forecast, which include:
    - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends and analysis;
    - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
    - (iii) Certain disbursements not incurred during the period ending August 21, 2021 have been moved forward as they are expected to be incurred in future weeks;
    - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
    - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates;
    - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period; and
    - (vii) The Just Energy Entities' forecast cash receipts and disbursements have been refined generally to reflect updated seasonality expectations where energy and delivery costs increase leading into and during the peak summer period. The higher energy and delivery costs during the peak period result in higher customer receipts during the later summer and early fall months as customer billings for the peak period are collected.

(c) Pursuant to the DIP Term Sheet, the DIP Facility shall be available until the earlier of certain milestone dates and December 31, 2021. For purposes of the September Cash Flow Forecast, it is assumed that the DIP Facility is not repaid and applicable arrangements will be in place to extend the DIP Facility for an additional term if so required. The Monitor understands that preliminary discussions between the Just Energy Entities and the DIP Lenders are underway should such an extension be required, and the Monitor will provide further updates in its future reports.

92. The Revised Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities have sufficient liquidity to continue funding their operations during the CCAA Proceedings to January 1, 2022.

### **STAY EXTENSION**

93. The Stay Period will expire on September 30, 2021, and the Applicants are seeking an extension to the Stay Period up to and including December 15, 2021.

94. The Monitor supports extending the Stay Period to December 15, 2021 for the following reasons:

- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to consider and develop their restructuring process in an effort to achieve a going concern solution in consultation with the Financial Advisor, the Monitor and other key stakeholders;
- (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to give the Just Energy Entities the flexibility required in order to have the best possible chance to implement a successful restructuring;
- (c) as indicated by the Updated Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
- (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and

- (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

#### **APPROVAL OF THE ACTIVITIES OF THE MONITOR AND THE FEES OF THE MONITOR AND ITS COUNSEL**

95. The Stay Extension and Other Relief Order also seeks approval of: (i) the actions, conduct, and activities of the Monitor since the date of the Stay Extension Order; (ii) the Third Report; and, (iii) the fees and disbursements of the Monitor and its counsel from the Filing Date to August 27, 2021.
96. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Second Report have been carried out in good faith and in accordance with the provisions of the orders issued therein, and should therefore be approved.
97. Pursuant to paragraphs 42 and 43 of the Second A&R Initial Order, the Monitor, TGF and Porter Hedges LLP as the Monitor's U.S. legal counsel shall: (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of the Initial Order, by the Just Energy Entities as part of the costs of the CCAA Proceedings; and (ii) pass their accounts from time to time before this Court.
98. Since the Filing Date, the Monitor and its counsel have maintained detailed records of their professional time and costs. The total fees and disbursements of the Monitor for the period from March 9, 2021 to August 27, 2021 total \$3,107,636.36, including fees in the amount of \$2,741,828.00, disbursements in the amount of \$8,292.62, and Harmonized Sales Tax ("HST") in the amount of \$357,515.74, as more particularly described in the Affidavit of Paul Bishop sworn September 8, 2021 (the "**Bishop Affidavit**"), a copy of which is attached hereto as **Appendix "B"**.

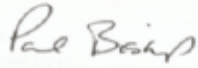
99. The total fees and disbursements of the Monitor's counsel, TGF, from March 9, 2021 to August 27, 2021 total \$1,537,317.14, including fees in the amount of \$1,315,267.50, disbursements in the amount of \$50,734.49, and HST in the amount of \$171,315.15, as more particularly described in the Affidavit of Puya Fesharaki sworn September 8, 2021 (the "**Fesharaki Affidavit**", together with the Bishop Affidavit, the "**Fee Affidavits**"), a copy of which is attached hereto as **Appendix "C"**.
100. The total fees and disbursements of the Monitor's U.S. counsel, Porter Hedges LLP, from March 9, 2021 to August 27, 2021 total US\$157,201.37, including fees in the amount of US\$152,375.00 and disbursements in the amount of US\$4,826.37, as more particularly described in the Affidavit of John Higgins sworn September 7, 2021 (the "**Higgins Affidavit**", together with the Bishop Affidavit and Fesharaki Affidavit, the "**Fee Affidavits**"), a copy of which is attached hereto as **Appendix "D"**.
101. The Monitor respectfully submits that the fees and disbursements incurred by the Monitor and its counsel, as described in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Initial Order, First A&R Initial Order and Second A&R Initial Order. Accordingly, the Monitor respectfully requests the approval of the fees and disbursements of the Monitor and its counsel as set out in the Fee Affidavits.

## CONCLUSION

102. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
103. Accordingly, the Monitor respectfully recommends that the proposed Claims Procedure Process Order, and the Stay Extension and Other Relief Order be granted.

The Monitor respectfully submits to the Court this Third Report dated this 8th day of September, 2021.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor of  
Just Energy Group Inc. *et al*,  
and not in its personal or corporate capacity



Per: \_\_\_\_\_

Paul Bishop  
Senior Managing Director



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 **JUST ENERGY GROUP INC. et al**  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**THIRD REPORT OF THE MONITOR**

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Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.

**THIS IS EXHIBIT P REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**SECOND REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**May 21, 2021**

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## APPENDICES

Appendix A      Cash Flow Forecast for the Period Ending October 2, 2021

**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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**SECOND REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).

2. Pursuant to the Initial Order, among other things:
  - (a) a stay of proceedings was granted until March 19, 2021 (the “**Stay Period**”);
  - (b) the protections of the Initial Order, including the stay of proceedings, was extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”);
  - (c) FTI Consulting Canada Inc. (“**FTI**”) was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”);
  - (d) a debtor-in-possession interim financing facility was approved (the “**DIP Facility**”) in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities that are borrowers thereunder (the “**Just Energy DIP Borrowers**”) and Alter Domus (US) LLC (the “**DIP Agent**”), as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021; and
  - (e) certain charges were granted with priority over all encumbrances on the Just Energy Entities’ property, including two third-ranking charges on a *pari passu* basis in favour of: (A) the DIP Lenders to secure all Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time up to the maximum amount of the Obligations (the “**DIP Lenders’ Charge**”); and (B) each Commodity/ISO Supplier that has executed a Qualified Support Agreement in an amount equal to the value of the Priority Commodity/ISO Obligations (the “**Priority Commodity/ISO Charge**”).
3. Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Initial Order.
4. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*.

5. At the comeback hearing on March 19, 2021 in the CCAA Proceedings, the Court granted the Amended and Restated Initial Order (the “**A&R Initial Order**”), which, among other things:
  - (a) extended the Stay Period to June 4, 2021;
  - (b) approved a key employee retention plan and associated charge;
  - (c) increased the amount of the Administration Charge, FA Charge and Directors’ Charge;
  - (d) granted the Cash Management Charge in favour of the Cash Management Banks to secure Cash Management Obligations;
  - (e) confirmed that any obligations secured by a valid, enforceable and perfected security interest shall continue to be secured by the Property, including any Property acquired after the date of the applicable security agreement; and
  - (f) authorized the Just Energy Entities to provide cash collateral to third parties where so doing is necessary to operate the Business in the normal course, with the consent of the Monitor.
6. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States.
7. This Report should be read in conjunction with the Affidavit of Michael Carter sworn May 19, 2021 (the “**Carter Affidavit**”), which is accessible on the Monitor’s Website (as defined below).
8. All references to monetary amounts in this Second Report of the Monitor (the “**Second Report**”) are in Canadian dollars unless otherwise noted.
9. Further information regarding the CCAA Proceedings, including the A&R Initial Order and all materials publicly filed in connection with these proceedings, are available on the

Monitor's website at <http://cfcanada.fticonsulting.com/justenergy/> (the "**Monitor's Website**").

10. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, are available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

## **PURPOSE**

11. The purpose of this Second Report is to provide information to the Court with respect to the following:
  - (a) the Monitor's activities since the date of the Monitor's First Report to the Court dated March 18, 2021 (the "**First Report**");
  - (b) certain developments in the CCAA Proceedings since the First Report;
  - (c) certain developments relating to the dispute of resettlement invoices delivered by the Electric Reliability Council of Texas ("**ERCOT**") in relation to the February weather event in Texas;
  - (d) certain contract disclaimers issued by the Just Energy Entities with the consent of the Monitor pursuant to the CCAA;
  - (e) the Just Energy Entities' ongoing discussions with various commodity suppliers and agreements that they have executed with same since the First Report;
  - (f) the status of the Intercreditor Dispute (as defined below);
  - (g) the Just Energy Entities' business plan;
  - (h) the Just Energy Entities' actual cash receipts and disbursements for the 9-week period ending May 15, 2021 and a comparison to the cash flow forecast (the "**Cash Flow Forecast**") attached as Appendix "A" to the Pre-Filing Report of the Monitor dated March 9, 2021 (the "**Pre-Filing Report**"), along with an updated cash flow forecast for the period ending October 2, 2021;



- (i) the relief sought by the Applicants in their proposed Order (the “**May Stay Extension Order**”), including, among other things:
  - (i) extending the Stay Period in favour of the Just Energy Entities up to and including September 30, 2021;
  - (ii) relieving Just Energy of any obligation to call and hold an annual meeting of its shareholders until further Order of the Court;
  - (iii) approving the Pre-Filing Report, the First Report and this Second Report and the Monitor’s activities and conduct to the date of the May Stay Extension Order; and
  - (iv) authorizing, but not requiring, Just Energy (U.S.) Corp. (“**Just Energy U.S.**”) to repatriate funds to the Just Energy Entities operating in Canada should it become necessary to do so to ensure sufficient working capital is held by such entities to fund their ongoing operations, which repatriation may be by way of repayment of certain intercompany indebtedness, including interest;
- (j) the relief sought by the Applicants in their proposed Second Amended and Restated Initial Order (the “**Second A&R Initial Order**”), amending:
  - (i) the definition of “Qualified Commodity/ISO Supplier” in the Initial Order to include counterparties to a Commodity Agreement or ISO Agreement executed after the Filing Date;
  - (ii) the definition of “Commodity Agreement” to include contracts entered into by a Just Energy Entity for protection against fluctuations in U.S. dollar to Canadian dollar foreign currency exchanges; and
  - (iii) the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021 without obtaining Court authorization in certain limited circumstances; and
- (k) the Monitor’s recommendations in respect of the foregoing, as applicable.

## TERMS OF REFERENCE AND DISCLAIMER

12. In preparing this Second Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities' books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the "**Information**").
13. Except as otherwise described in this Second Report:
  - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Second Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
14. Future-oriented financial information reported in or relied on in preparing this Second Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
15. The Monitor has prepared this Second Report in connection with the relief requested by the Applicants in the proposed May Stay Extension Order and the proposed Second A&R Initial Order. The Second Report should not be relied on for any other purpose.

## MONITOR'S ACTIVITIES SINCE ITS APPOINTMENT

16. In accordance with its duties as outlined in the Initial Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the First Report have included the following:
  - (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;

- (b) consulting with the Just Energy Entities with respect to the support agreement dated March 18, 2021 (the “**Lender Support Agreement**”) among the Just Energy Entities and the lenders under the ninth amended and restated credit agreement dated September 28, 2020 (the “**Credit Facility Lenders**”), the terms of which were described in the Supplementary Affidavit of Michael Carter sworn March 18, 2021 (the “**Supplementary Carter Affidavit**”);
- (c) consulting with the Just Energy Entities with respect to the amendment to the DIP Term Sheet dated March 18, 2021 (the “**DIP Amendment**”), the terms of which are discussed below and were described in the Supplementary Carter Affidavit;
- (d) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors, regarding, among other things, the CCAA Proceedings, communications with stakeholders, business operations and a restructuring process;
- (e) participating in discussions with the DIP Agent and its counsel;
- (f) participating in discussions with the Credit Facility Lenders, their advisors and counsel, including, among other things, in respect of the Intercreditor Dispute;
- (g) participating in discussions with BP Energy Company (“**BP**”) and its counsel in respect of the Intercreditor Dispute;
- (h) maintaining the Service List with the assistance of Thornton Grout Finnigan LLP, counsel for the Monitor in the CCAA Proceedings, a copy of which is posted on the Monitor’s Website;
- (i) monitoring the receipts and disbursements of the Just Energy Entities;
- (j) working with the Just Energy Entities and their advisors to provide stakeholders with financial and other information;
- (k) reviewing and, where applicable, approving the Just Energy Entities’ disclaimers of certain contracts;
- (l) pursuant to paragraph 10(d) of the A&R Initial Order, consulting regularly with the advisors to the Credit Agreement (as defined therein) with respect to payments being made by the Just Energy Entities with the consent of the Monitor for amounts

owing for goods and services rendered to the Just Energy Entities prior to the CCAA Proceedings;

- (m) attending meetings of the Board of Directors of Just Energy;
- (n) responding to creditor and other stakeholder inquiries;
- (o) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Initial Order; and
- (p) preparing this Second Report.

### **ERCOT RESETTLEMENT INVOICES AND DISPUTE**

17. As described in the Pre-Filing Report and the First Report, the Just Energy Entities sought CCAA protection in response to a severe short-term liquidity shortfall resulting from the February weather event in Texas that led to the receipt of invoices from ERCOT requiring payment of significant amounts within two business days of receipt of the invoice.
18. To date, the Just Energy Entities have received and paid invoices from ERCOT totaling more than US\$336 million relating to the weather event, of which approximately US\$48 million in resettlement invoices were received and paid after the date of the First Report. While the Just Energy Entities continue to pay invoices issued by ERCOT, it should be noted that they are disputing the resettlement statements pursuant to ERCOT's protocols. One of the grounds on which the Just Energy Entities continue to protest the fees charged to them by ERCOT is Unaccounted for Energy ("UFE"). UFE is the difference between total metered electricity load for a settlement period, adjusted for transmission and distribution losses, and the total ERCOT system net generation. The manner in which ERCOT charges market participants their respective shares of UFE is a matter of dispute with respect to the total dollar value of UFE across the market and how shares are calculated.
19. The Monitor understands that ERCOT has dismissed one of the disputes filed by the Just Energy Entities. The Just Energy Entities expect a similar response to the other disputes they have filed in respect of resettlements. Pursuant to ERCOT's protocols, the Just Energy Entities may commence an alternative dispute resolution process within 45 days from

receipt of the dismissal notice from ERCOT, failing which ERCOT considers the dispute “closed”.

20. The Just Energy Entities are considering the rights and remedies available to them. Additionally, the Monitor understands that the Just Energy Entities, along with other participants in the Texas electricity market that were affected by the February weather event, are pursuing potential legislative solutions to address the financial hardships caused by the February weather event. In respect of such efforts, Just Energy’s Board of Directors formed a Legislative and Regulatory Affairs Committee to assist the Board of Directors in seeking such legislative remedies. The activities of this committee are further described in the Carter Affidavit.

### CONTRACT DISCLAIMERS

21. Since the date of the First Report, the Just Energy Entities have disclaimed the following agreements pursuant to the provisions of the CCAA with the consent of the Monitor (collectively, the “**Disclaimers**”):
- (a) on March 30, 2021, certain of the Just Energy Entities disclaimed a services agreement and addendum with Hampstead Co. Limited and related persons (collectively, “**Hampstead**”);
  - (b) on March 31, 2021, certain of the Just Energy Entities disclaimed six lease agreements in respect of underutilized or unutilized properties across the United States;
  - (c) on April 2, 2021, certain of the Just Energy Entities disclaimed service agreements and related contracts with Red Ventures, LLC, Save On Energy, LLC and certain of their affiliates (collectively, “**Red Ventures**”); and
  - (d) on May 14, 2021, certain of the Just Energy Entities disclaimed a lease agreement in respect of a property in Irving, Texas.
22. The Monitor approved each of the Disclaimers, finding them to be fair and reasonable in the circumstances as they benefited the Just Energy Entities and enhanced the prospect of a viable restructuring.

23. Hampstead and Red Ventures requested written reasons for the Disclaimers that affected them, which reasons were delivered by the Just Energy Entities in accordance with the CCAA. Neither Hampstead nor Red Ventures applied to the Court to object to the subject disclaimers within the 15-day objection period specified under the CCAA.
24. The Just Energy Entities have advised the Monitor that they are continuing to consider the viability of other agreements and may seek to disclaim additional agreements subject to the Monitor's review and approval.

## DEVELOPMENTS WITH COMMODITY SUPPLIERS

### *Qualified Support Agreements*

25. The Initial Order provides the benefit of the Priority Commodity/ISO Charge to counterparties to a Commodity Agreement (such counterparties, the “**Commodity Suppliers**”) or an ISO Agreement as of the Filing Date that enter into a Qualified Support Agreement. Since the date of the Initial Order, the Just Energy Entities have been in consultation with other Commodity Suppliers in an effort to preserve existing contractual relationships and maintain uninterrupted going concern operations. In addition to BP, Shell Energy North America (Canada) Inc. and Shell Energy North America (US), LP, each of which entered into Qualified Support Agreements with the Just Energy Entities prior to the Filing Date, Macquarie Energy LLC and Macquarie Energy Canada Ltd. (together, “**Macquarie**”) and certain of the Just Energy Entities executed a Qualified Support Agreement dated March 30, 2021 (the “**Macquarie Support Agreement**”). Pursuant to the Macquarie Support Agreement, Macquarie has continued to supply electricity and gas to the Just Energy Entities in accordance with their existing agreements.
26. The Just Energy Entities' remaining Commodity Suppliers have not executed a Qualified Support Agreement, and all but one have terminated their agreements with the Just Energy Entities.
27. The Just Energy Entities are of the view that an expanded supply base would be beneficial to the longer-term viability of their business, and accordingly have canvassed the market for potential suppliers with a goal of securing a diversified and competitive group of

suppliers beyond the three current providers that have entered into Qualified Support Agreements.

28. To date, the Just Energy Entities have entered into an ISDA Master Agreement with Mercuria Energy America, LLC for the supply of electricity and natural gas. This arrangement requires Just Energy U.S. to provide financial support under a letter of credit or to post cash collateral.
29. Additionally, the Just Energy Entities are in active discussions with potential commodity suppliers. As discussed below, the proposed Second A&R Initial Order sought by the Just Energy Entities amends the definition of “Qualified Commodity/ISO Supplier” in the Initial Order to include parties that may execute a Commodity Agreement and Qualified Support Agreement with a Just Energy Entity after the Filing Date. The Monitor supports these amendments as it is in the Just Energy Entities’ best interests to source energy through a diversified supplier network, which these changes will facilitate while potentially allowing the Just Energy Entities to enter into supply arrangements without tying up financial collateral.

#### *Disputes with Commodity Suppliers*

30. After the Filing Date, a Commodity Supplier, Skyview Finance Company, LLC (“**Skyview**”), a counterparty that previously traded in renewable energy credits with Just Energy U.S., terminated its forward contracts with Just Energy U.S. and has disputed amounts owing to its obligation to pay Just Energy U.S. in respect of the net mark-to-market value of the forward contracts on the termination date. The Monitor understands that the Just Energy Entities and Skyview have agreed on a process which is intended to resolve the dispute in an efficient manner.

#### **INTERCREDITOR DISPUTE**

31. As described in the First Report, an intercreditor agreement (the “**Intercreditor Agreement**”) has been entered into between certain secured Commodity Suppliers (the “**Secured Suppliers**”), the agent for the Credit Facility Lenders and certain of the Just

Energy Entities. The Intercreditor Agreement, among other things, sets out the relative priority of the parties' security interests.

32. The Intercreditor Agreement includes a waterfall of priorities that provides for the following tiered ranking: (i) accounts payable owing to the Secured Suppliers rank first (i.e. Tier 1); (ii) on a *pari passu* basis, the “mark to market” liability owing to the Secured Suppliers, the amounts owing to the Credit Facility Lenders and the amounts owing to the providers under the ISO Agreements up to a cap of US\$75 million rank second on a *pari passu* basis (i.e. Tier 2); and (iii) amounts owing to the providers under the ISO Agreements above a US\$75 million cap rank third (i.e. Tier 3). There are other tiers that are in priority to these tiers under the Intercreditor Agreement waterfall; however, they are not the subject of the Intercreditor Dispute and therefore not described herein.
33. Prior to the commencement of these proceedings Just Energy was advised by BP, a Secured Supplier and a party to the Intercreditor Agreement, that it disagreed with Just Energy's characterization of certain amounts due to BP as Tier 2 and Tier 3 obligations and that it considered such amounts to be Tier 1 obligations. The Just Energy Entities have advised BP that they consider any dispute regarding the ranking of amounts due to BP to be an intercreditor dispute among the parties to the Intercreditor Agreement (the “**Intercreditor Dispute**”) and that the Just Energy Entities do not intend to take a position on the Intercreditor Dispute (though they have provided and will continue to provide information requested by the Monitor and other applicable key stakeholders with respect to the Intercreditor Dispute).
34. The Monitor has engaged in discussions with, among others, the Just Energy Entities, BP, the Credit Facility Lenders, and the DIP Agent, to understand the Intercreditor Dispute and the positions of the various interested parties. The Monitor has not taken and will not take a position on the Intercreditor Dispute, and it understands that the potential quantum of the amount under dispute could be approximately US\$200 million. The Monitor in consultation with the Just Energy Entities is currently drafting a process for the timely and efficient resolution of the Intercreditor Dispute for consideration by the affected parties. Given the magnitude of the dispute, the Monitor is aware of the need to resolve this dispute in a timely manner and will provide an update on this matter in its next report to the Court.



## **DEVELOPMENT OF JUST ENERGY'S BUSINESS PLAN**

35. In accordance with the requirements of the DIP Term Sheet, the Just Energy Entities have been preparing a detailed business plan, detailing, among other things, operational and financial projections, near and longer-term liquidity requirements, and anticipated business operations during and upon emergence from the CCAA Proceedings. It is anticipated that the business plan will facilitate the development of a restructuring process for emergence from the CCAA Proceedings in a manner that optimizes value for the benefit of all stakeholders.
36. The Monitor understands that the business plan has been approved by Just Energy's Board of Directors and was distributed to key stakeholders on May 18, 2021.

## **CORPORATE GOVERNANCE MATTERS**

37. As described in the Carter Affidavit, Just Energy has appointed Mr. Anthony Horton (previously Chairman of the Board of Directors of Just Energy) as its Executive Chairman effective March 1, 2021. In this role, Mr. Horton will guide the Just Energy Entities' restructuring process, with the assistance of the Monitor and the Just Energy Entities' financial advisors.
38. Mr. Horton's compensation for such role is described in the Carter Affidavit and is comprised of a base fee of US\$600,000, payable on a monthly basis in increments of US\$50,000 over a twelve-month period. Mr. Horton will not receive regular board fees during this time. If the Just Energy Entities successfully restructure prior to the end of the twelve-month period, a lump sum payment equal to the remaining amount of the base fee (less applicable deductions and withholdings) will be paid to Mr. Horton. The Monitor participated in the meeting of the Board of Directors in which this new role and compensation structure was discussed and concurs with the appointment and related remuneration.

## **UPDATE ON DIP FACILITY**

39. As described in the Supplementary Carter Affidavit, the Just Energy Entities have entered into the DIP Amendment since the date of the First Report. Pursuant to the DIP

Amendment, among other things: (i) reference to the Lender Support Agreement was added, (ii) the Just Energy Entities agreed to certain additional reporting requirements consistent with the Lender Support Agreement, and (iii) the scope of permitted priority liens was amended to authorize the Just Energy Entities to provide cash collateral to the Cash Management Banks in accordance with the Initial Order.

40. Since the date of the First Report, the Just Energy Entities have drawn down the remaining availability under the DIP Facility in the amount of US\$25 million. Accordingly, the DIP Facility is now fully drawn.
41. Certain of the DIP Lenders requested the consent of the Just Energy DIP Borrowers to the grant of temporary silent participation rights in their respective interests under the DIP Facility. In accordance with the terms of the DIP Facility, the DIP Lenders are entitled to grant such participation rights with the consent of the DIP Borrowers provided they furnish certain necessary information under the DIP Facility, including to the Monitor. The Just Energy Entities provided their consent to the requested participation on May 20, 2021. The Monitor understands that the granting of the silent participation rights is expected to be temporary and does not change the terms of the DIP Facility.

#### **RECEIPTS AND DISBURSEMENTS FOR THE NINE-WEEK PERIOD ENDED MAY 15, 2021**

42. The Just Energy Entities' actual net cash flow for the 9-week period from March 15, 2021 to May 15, 2021, was approximately \$65 million better than the Cash Flow Forecast as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
<b>RECEIPTS</b>			
Sales Receipts	\$422.4	\$449.1	\$26.7
Miscellaneous Receipts	8.0	6.0	(2.0)
<i>Total Receipts</i>	\$430.5	\$455.2	\$24.7
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$251.1)	(\$232.0)	\$19.1
Payroll	(13.3)	(15.1)	(1.8)
Taxes	(29.2)	(18.7)	10.6
Commissions	(19.7)	(13.9)	5.9
Selling and Other Costs	(34.8)	(25.9)	8.9
<i>Total Operating Disbursements</i>	(\$348.1)	(\$305.5)	\$42.7
<b>OPERATING CASH FLOWS</b>	<b>\$82.3</b>	<b>\$149.7</b>	<b>\$67.4</b>
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$31.5	\$31.0	(\$0.5)
Interest Expense & Fees	(2.7)	(4.6)	(1.9)
<i>Restructuring Disbursements</i>			
Professional Fees	(11.7)	(11.6)	0.1
<b>NET CASH FLOWS</b>	<b>\$99.5</b>	<b>\$164.4</b>	<b>\$65.0</b>
<b>CASH</b>			
Beginning Balance	\$51.2	\$77.7	\$26.5
Net Cash Inflows / (Outflows)	99.5	164.4	65.0
Other (FX)	-	(8.0)	(8.0)
<b>ENDING CASH</b>	<b>\$150.6</b>	<b>\$234.1</b>	<b>\$83.5</b>

43. Explanations for the main variances in actual receipts and disbursements as compared to the Cash Flow Forecast are as follows:

- (a) The favourable variance of approximately \$26.7 million in Sales Receipts is comprised of the following:
  - (i) A permanent favourable variance of approximately \$16.3 million due to the receipt of payments from U.S. residential customers which had been assumed to be uncollectible in the Cash Flow Forecast;
  - (ii) A permanent favourable variance of approximately \$4.6 million due to the receipt of payments from U.S. commercial customers related to higher billed revenue than was estimated in the Cash Flow Forecast; and

- (iii) A permanent favourable variance of approximately \$5.8 million due to the receipt of payments from Canadian residential and commercial customers related to higher billed revenue than was estimated in the Cash Flow Forecast;
- (b) The unfavourable variance of approximately \$2.0 million of Other Receipts is due to the delayed collection of certain sales tax refunds of approximately \$2.0 million, timing of the receipt of such refunds is unknown at this time;
- (c) The favourable variance of approximately \$19.1 million for Energy and Delivery Costs as compared to the Cash Flow Forecast is driven by the following:
  - (i) A permanent unfavourable variance of approximately \$43.4 million is due to payment of Real Time Market (“**RTM**”) Final Statements to ERCOT on the 55th day following each operating day during the Texas weather event (the “**Resettlement Invoices**”). The Just Energy Entities were not provided with any advance warning by ERCOT for the large quantum of these Resettlement Invoices, as mentioned above, and are disputing the amounts. The Monitor understands that ERCOT may also issue an RTM True-Up Statement at the end of the 180th day following each operating day during the Texas weather event, and that an estimate for these charges cannot be reasonably estimated at this time;
  - (ii) A favourable variance of approximately \$28.4 million due to lower commodity payments and higher commodity receivables during the period than contemplated in the Cash Flow Forecast;
  - (iii) A permanent favourable variance of approximately \$11.6 million due to lower than forecast transportation and delivery payments in the Cash Flow Forecast; and
  - (iv) A favourable variance of approximately \$22.6 million related to lower credit support being required in certain circumstances combined with lower than forecast collateral postings during the period;

- (d) The unfavourable variance of approximately \$1.8 million for Payroll is due to higher than forecast quarterly sale incentive payments and the payment of certain payroll tax remittances during the period;
- (e) The favourable variance of approximately \$10.6 million for Taxes is primarily due to an estimated sales tax reassessment payment owing by the Just Energy Entities of approximately \$7.8 million that was forecast, but not paid, during the period. Exact timing of when this amount will be paid remains unknown, but payment at a future date will continue to be rolled forward in the forecast;
- (f) The permanent favourable variance of approximately \$5.9 million for Commissions is primarily due to lower than forecast payments as a result of the termination of certain independent commission contractors and the disclaimer of certain commission contracts;
- (g) The favourable variance of approximately \$8.9 million for Selling and Other Costs is primarily due to the Just Energy Entities' successful negotiation of payment terms and go-forward arrangements with its vendors;
- (h) The permanent unfavourable variance of approximately \$0.5 million of Credit Facility Borrowings relates to the difference in the USD / CAD foreign exchange rate assumed in the Cash Flow Forecast versus the foreign exchange rate at the time of borrowing as borrowings are denominated in USD. Total borrowings during the period totaled US\$25 million, which resulted in the \$125 million DIP credit facility becoming fully drawn as contemplated in the Cash Flow Forecast; and
- (i) The favourable variance of approximately \$26.5 million in the opening cash balance is due to the variances noted during the initial 6-day period after the Filing Date as discussed in the First Report.

#### ***Reporting Pursuant to the DIP Term Sheet***

44. The variances shown and described herein compared the Cash Flow Forecast, as included as Appendix "A" in Pre-Filing Report, with the actual performance of the Just Energy Entities over the 9-week period noted.

45. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended April 3, 2021 and May 1, 2021. All variances reported were within the required permitted variances.
46. Also in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders’ approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the “**DIP Cash Flow Forecasts**”). The Just Energy Entities provided the required cash flow forecasts, which were approved by the DIP Lenders for the 13-week periods beginning April 4, 2021 and May 2, 2021 (the “**May 2 Forecast**”).
47. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above comparing actual results to the Cash Flow Forecast.
48. The Revised Cash Flow Forecast (defined below) incorporates the May 2 Forecast approved by the DIP Lenders for the initial 13-week period and has been extended to cover the period through to the week encompassing the requested stay extension of September 30, 2021 in support of the relief requested by the Just Energy Entities. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
49. Since the First Report of the Monitor, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Initial Order as amended and restated, and other documents including certain support agreements. These reporting obligations include the following:
- (a) Delivery of a Priority Supplier Payables Certificate weekly and monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;

- (c) Delivery of a Cash Management Charge update monthly; and
- (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly.

### CASH FLOW FORECAST FOR THE PERIOD ENDING OCTOBER 2, 2021

50. The Just Energy Group, with the assistance of the Monitor, has reviewed and updated its weekly cash flow forecast for the 22-week period ending October 2, 2021 (the “**Revised Cash Flow Forecast**”), which encompasses the requested stay extension to September 30, 2021. The Revised Cash Flow Forecast is attached hereto as **Appendix “A”**, and is summarized below:

<i>(CAD\$ in millions)</i>	13-Week Period Ending July 31, 2021	22-Week Period Ending October 2, 2021
Forecast Week	Total	Total
<b>RECEIPTS</b>		
Sales Receipts	\$618.4	\$1,098.8
Miscellaneous Receipts	3.8	3.8
<i>Total Receipts</i>	\$622.2	\$1,102.6
<b>DISBURSEMENTS</b>		
<i>Operating Disbursements</i>		
Energy and Delivery Costs	(\$582.3)	(\$946.2)
ERCOT Resettlements	-	-
Payroll	(22.7)	(40.2)
Taxes	(33.4)	(51.3)
Commissions	(25.1)	(41.2)
Selling and Other Costs	(47.3)	(78.5)
<i>Total Operating Disbursements</i>	(\$710.9)	(\$1,157.5)
<b>OPERATING CASH FLOWS</b>	(\$88.7)	(\$54.9)
<i>Financing Disbursements</i>		
Credit Facility - Borrowings / (Repayments)	\$-	\$-
Interest Expense & Fees	(11.7)	(22.3)
<i>Restructuring Disbursements</i>		
Professional Fees	(9.9)	(16.1)
<b>NET CASH FLOWS</b>	<b>(\$110.2)</b>	<b>(\$93.3)</b>
<b>CASH</b>		
Beginning Balance	\$213.3	\$213.3
Net Cash Inflows / (Outflows)	(110.2)	(93.3)
Other (FX)	5.0	5.0
<b>ENDING CASH</b>	<b>\$108.0</b>	<b>\$125.0</b>

51. The Revised Cash Flow Forecast indicates that during the 22-week period ending October 2, 2021, the Just Energy Entities will have net cash outflows from operating activities of approximately \$54.9 million with total receipts of approximately \$1,102.6 million and total disbursements of approximately \$1,157.5 million, before interest expense and fees of approximately \$22.3 million and professional fees of approximately \$16.1 million, such that net cash outflows are forecast to be approximately \$93.3 million. Please note that the Revised Cash Flow Forecast has not incorporated actual results for the weeks ending May 8, 2021 and May 15, 2021 for presentation purposes as it reflects the current approved DIP Cash Flow Forecast. As a result, the actual ending cash balance reported in the budget to actual section above as at May 15, 2021 will not agree to the forecast cash balance reflected in the Revised Cash Flow Forecast as at the same date.
52. Generally, the underlying assumptions and methodology utilized in the Just Energy Entities' Cash Flow Forecast have remained the same for this Revised Cash Flow Forecast; however, the Monitor notes the following:
- (a) The forecast period was extended from the week ending June 6, 2021 to the week ending October 2, 2021;
  - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the Revised Cash Flow Forecast, which include:
    - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent historical trends;
    - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
    - (iii) Certain disbursements not incurred during the 9-week period ended May 15, 2021 have been moved forward as they are expected to be incurred in future weeks;



- (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
  - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates;
  - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period; and
  - (vii) The Just Energy Entities forecast cash receipts and disbursements have been refined generally to reflect updated seasonality expectations where energy and delivery costs increase leading into and during the peak summer season while resulting in higher customer receipts follow during the later summer and early fall months as customer billings for peak summer months are collected.
53. The Revised Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities have sufficient liquidity to continue funding their operations during the CCAA Proceedings to October 2, 2021.

## **RELIEF SOUGHT IN THE PROPOSED ORDERS**

### ***Second A&R Initial Order***

#### ***Qualified Commodity/ISO Suppliers***

54. As discussed above, the Just Energy Entities are seeking new supply sources for the benefit of the Just Energy Entities and their stakeholders. The A&R Initial Order currently provides for the Priority Commodity/ISO Charge in favour of those counterparties to a Commodity Agreement with a Just Energy Entity entered into prior to the Filing Date that have also executed a Qualified Support Agreement. Given that one or more Just Energy Entities are in discussions with potential suppliers regarding entering into a new Commodity Agreement, the Just Energy Entities are seeking to expand the definition of "Qualified Commodity/ISO Supplier" in the Initial Order to include parties that may execute a Commodity Agreement with a Just Energy Entity after the Filing Date, subject

to execution of a Qualified Support Agreement. It is anticipated that this expanded definition will encourage potential new suppliers to trade without requiring the Just Energy Entities to provide collateral. There are no remaining counterparties to Commodity Agreements extant as of the Filing Date.

55. Additionally, the Just Energy Entities propose to limit the number of Qualified Support Agreements that may be covered by the Priority Commodity/ISO Charge to eight, the same number of eligible suppliers that could have entered into a Qualified Support Agreement as at the Filing Date.
56. The Monitor supports this relief sought by the Just Energy Entities, as it would provide flexibility for new counterparties to execute a Qualified Support Agreement and provide the benefit of the Priority Commodity/ISO Charge without requiring the Just Energy Entities to post financial collateral in respect of such counterparties.

#### Commodity Agreements

57. The Just Energy Entities are seeking to amend the definition of “Commodity Agreement” in the Initial Order to include contracts entered into for protection against fluctuations in U.S. dollar to Canadian dollar foreign currency exchange rates related to certain customer obligations. This will ensure that the Just Energy Entities continue to be able to manage fluctuations in currency exchange rates consistent with the Just Energy Entities’ ordinary course risk management policy.

#### Termination of Commodity Agreement or Qualified Support Agreement

58. Lastly, the Just Energy Entities are seeking to amend the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021 without obtaining Court authorization in certain limited circumstances, specifically: (i) if an Order is granted in the CCAA Proceedings permitting the DIP Agent and DIP Lenders to exercise their rights and remedies against the Just Energy Entities or the Property; or (ii) the CCAA Proceedings or Chapter 15 Proceedings are dismissed or converted to a liquidation proceeding (including a receivership, bankruptcy or proceeding under Chapter 7 of the United States Bankruptcy Code). These amendments are being sought by the Just

Energy Entities in response to certain concerns raised by potential new commodity suppliers.

59. The Monitor supports such amendments as these circumstances are narrow in scope and, in the Monitor's view, appropriate in the circumstances. Further, such changes will facilitate the Just Energy Entities' ability to enter into potential new Commodity Agreements, which is critical for the reasons outlined above.

### ***May Stay Extension Order***

#### *Annual Meeting of Shareholders*

60. Pursuant to the provisions of the *Canada Business Corporation's Act*, Just Energy, as a public company, is required to call an annual meeting of its shareholders by no later than September 30, 2021. Just Energy's executive management team is currently focusing its efforts and resources on the CCAA Proceedings and the Just Energy Entities' restructuring generally. The work required to prepare for and hold an annual meeting would require significant work by the Just Energy Entities' management team and detract from its focus on restructuring efforts. Accordingly, the Just Energy Entities are seeking an order relieving Just Energy of its obligations to call an annual meeting of shareholders until further order of the Court. The Monitor views this request as reasonable and supports such relief in these circumstances and notes that substantial financial information concerning the Just Energy Entities has been made publicly available through the CCAA Proceedings.

#### *Repatriation of Cash and Intercompany Transfers*

61. As described in the Carter Affidavit, the Just Energy Entities previously made certain intercompany payments and advances, which the Monitor understands include the following:
- (a) In August 2018, Just Energy subscribed for newly issued shares of Just Energy Financing Holdings Inc. ("**JE Finance**") (one of its Canadian subsidiaries) in the amount of US\$235 million;
  - (b) JE Finance then advanced US\$235 million to Just Energy (Finance) Hungary ZRT ("**Just Energy Hungary**") by way of a convertible, non-interest bearing loan, payable on demand (the "**Convertible Loan**"); and

- (c) Just Energy Hungary then advanced US\$235 million to Just Energy U.S. (the “**Just Energy U.S. Loan**”).
62. As a pre-emptive measure in the event that the Canadian Just Energy Entities require liquidity to fund their ongoing operations within the CCAA Proceedings, the Just Energy Entities are seeking authorization for Just Energy to repatriate funds on an “as needed” basis to Canada. The Canadian Just Energy Entities currently have sufficient liquidity to fund their operations, however, they are concerned that they may be required to post additional cash collateral or letters of credit which would deplete available liquidity in Canada. Further, the DIP Facility is fully drawn with the result that there are no available funds remaining thereunder.
63. The proposed repatriation of funds is to be affected through a repayment of the Just Energy U.S. Loan by Just Energy U.S. to Just Energy Hungary, and a subsequent repayment of the Convertible Loan by Just Energy Hungary to JE Finance. The Monitor understands that the proposed structure for the repayment of the intercompany indebtedness is tax efficient, which is in the best interest of all stakeholders.
64. The above transactions would provide necessary liquidity to Just Energy and its Canadian subsidiaries for their ongoing operations and restructuring efforts. Without such transactions, going concern value may be lost. For this reason, the Monitor supports this relief sought by the Just Energy Entities.

*Extension of the Stay Period*

65. The Stay Period will expire on June 4, 2021, and the Applicants are seeking an extension to the Stay Period up to and including September 30, 2021.
66. The Monitor supports extending the Stay Period to September 30, 2021 for the following reasons:
- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to consider and develop their restructuring process in an effort to achieve a going concern solution in consultation with the Financial Advisor, the Monitor and other key stakeholders;

- (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to give the Just Energy Entities the flexibility required in order to have the best possible chance to implement a successful restructuring;
- (c) as indicated by the Cash Flow Forecast, Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
- (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
- (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

## CONCLUSION

67. The Monitor is of the view that the relief requested by the Just Energy Entities pursuant to the proposed May Stay Extension Order and Second A&R Initial Order is necessary, reasonable and justified in the circumstances.
68. Accordingly, the Monitor respectfully recommends that the Just Energy Entities' request for the proposed relief be granted.

The Monitor respectfully submits to the Court this Second Report dated this 21st day of May, 2021.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor of  
Just Energy Group Inc. et al., and not in its  
personal or corporate capacity



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Per: Paul Bishop  
Senior Managing Director

**THIS IS EXHIBIT Q REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**FOURTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**November 5, 2021**

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## APPENDICES

Appendix A	Cash Flow Forecast for the period ending February 19, 2022
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Appendix D	Fee Affidavit of John Higgins sworn November 4, 2021



Court File No. CV-21-00658423-00CL

**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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO  
ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION,  
JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA  
CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING  
INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES  
HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC.,  
JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.)  
CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP.,  
JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK  
CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST  
ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP.,  
JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC,  
HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC,  
HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST  
ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY  
LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST  
ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP.,  
JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST  
ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**FOURTH REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**”) and in reference to the proceedings, the “**CCAA Proceedings**”).

2. Pursuant to the Initial Order, among other things:
  - (a) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”);
  - (b) the protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”);
  - (c) FTI Consulting Canada Inc. (“**FTI**”) was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”);
  - (d) a debtor-in-possession interim financing facility was approved (the “**DIP Facility**”) in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021; and
  - (e) certain charges were granted with priority over all encumbrances on the Just Energy Entities’ property, including two third-ranking charges on a *pari passu* basis in favour of: (A) the DIP Lenders to secure all Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time up to the maximum amount of the Obligations; and (B) each Commodity/ISO Supplier that has executed a Qualified Support Agreement in an amount equal to the value of the Priority Commodity/ISO Obligations.
3. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*.

4. On March 19, 2021, at the comeback hearing in the CCAA Proceedings, the Court granted the Amended and Restated Initial Order (the “**First A&R Initial Order**”), which, among other things:
  - (a) extended the Stay Period to June 4, 2021;
  - (b) approved a key employee retention plan (“**KERP**”) and an associated charge as security for payments under the KERP (the “**KERP Charge**”) in respect of certain key employees of the Applicants (the “**Key Employees**”) deemed critical to the continued operation and stability of the Just Energy Entities;
  - (c) increased the amount of the Administration Charge, FA Charge and Directors’ Charge;
  - (d) granted the Cash Management Charge in favour of the Cash Management Banks to secure Cash Management Obligations;
  - (e) confirmed that any obligations secured by a valid, enforceable and perfected security interest shall continue to be secured by the Property, including any Property acquired after the date of the applicable security agreement; and
  - (f) authorized the Just Energy Entities to provide cash collateral to third parties where so doing is necessary to operate the Business in the normal course, with the consent of the Monitor and subject to the terms of the Definitive Documents (as defined in the First A&R Initial Order).
  
5. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the First A&R Initial Order in the United States.
  
6. On May 26, 2021, the Court granted the Second Amended and Restated Initial Order (the “**Second A&R Initial Order**”) which, among other things:

- (a) amended the definition of “Qualified Commodity/ISO Supplier” in the Initial Order to include counterparties to a Commodity Agreement or ISO Agreement executed after the Filing Date;
  - (b) amended the definition of “Commodity Agreement” to include contracts entered into by a Just Energy Entity for protection against fluctuations in foreign currency exchanges rates; and
  - (c) amended the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021 without obtaining Court authorization in certain limited circumstances.
7. Also on May 26, 2021, the Court granted an Order (the “**May Order**”) which, among other things, (a) extended the Stay Period to September 30, 2021, and (b) authorized, but did not obligate, Just Energy (U.S.) Corp. (“**Just Energy U.S.**”) to repatriate funds to the Just Energy Entities operating in Canada should it become necessary to do so to ensure sufficient working capital is held by such entities to fund their ongoing operations, which repatriation was permitted to be by way of repayment of certain intercompany indebtedness, including interest.
8. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) which approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”). Additionally, on September 15, 2021, the Court granted an order, which among other things, extended the Stay Period to December 17, 2021.
9. This Report should be read in conjunction with the Affidavit of Michael Carter sworn November 3, 2021 (the “**Carter Affidavit**”), which is accessible on the Monitor’s Website (as defined below).
10. All references to monetary amounts in this Fourth Report of the Monitor (the “**Fourth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not

otherwise defined herein have the meanings attributed to them in the Second A&R Initial Order.

11. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, are available on the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy/> (the "**Monitor's Website**").
12. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, are available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

## **PURPOSE**

13. The purpose of this Fourth Report is to provide information to the Court with respect to the following:
  - (a) the Monitor's activities since the date of the Monitor's Third Report to the Court dated September 8, 2021 (the "**Third Report**");
  - (b) certain energy-related legislative developments in the state of Texas, including an update on House Bill 4492, and their impact on the Just Energy Entities;
  - (c) the Just Energy Entities' restructuring initiatives;
  - (d) the Claims Procedure;
  - (e) the announced sale transaction of ecobee Inc. in which Just Management Corp. holds a minority equity position;
  - (f) the relief sought by the Applicants in their proposed Order (the "**Proposed Order**"), which includes, among other things:
    - (i) authorizing the Just Energy Entities to enter into the Fifteenth Amendment to the DIP Term Sheet dated November 3, 2021 (the "**DIP Amendment**"), a copy of which is attached to the Carter Affidavit;

- (ii) approving the wind-up of Just Energy Finance Holding Inc. (“**JE Finance**”) into Just Energy and the associated transactions as described below, including the eventual dissolution of JE Finance;
- (iii) approving a second key employee retention plan (the “**Second KERP**”) for the Key Employees, as further described below, which shall be secured by the existing KERP Charge, and sealing the summary of the proposed Second KERP, which is attached as a confidential exhibit to the Carter Affidavit, pending further order of the Court;
- (iv) extending the Stay Period to February 17, 2022;
- (v) approving the fees and disbursements of the Monitor and its Canadian and U.S. counsel incurred in the CCAA Proceedings for the period from August 28, 2021 to October 29, 2021; and
- (vi) approving the Fourth Report and the actions, conduct and activities of the Monitor described herein;
- (g) the Monitor’s recommendations in respect of the foregoing, as applicable; and
- (h) the Just Energy Entities’ actual cash receipts and disbursements for the 9-week period ending October 30, 2021 and a comparison to the cash flow forecast attached as Appendix “A” to the Third Report, along with an updated cash flow forecast for the period ending February 19, 2022.

#### **TERMS OF REFERENCE AND DISCLAIMER**

14. In preparing this Fourth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
15. Except as otherwise described in this Fourth Report:

- (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Fourth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
16. Future-oriented financial information reported in or relied on in preparing this Fourth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
17. The Monitor has prepared this Fourth Report to provide information to the Court in connection with the relief requested by the Applicants. The Fourth Report should not be relied on for any other purpose.

#### **MONITOR'S ACTIVITIES SINCE THE THIRD REPORT**

18. In accordance with its duties as outlined in the Initial Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Third Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
  - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors, regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;
  - (c) maintaining the service list for the CCAA Proceedings with the assistance of Thornton Grout Finnigan LLP ("TGF"), counsel for the Monitor, a copy of which is posted on the Monitor's Website;
  - (d) monitoring the cash receipts and disbursements of the Just Energy Entities;

- (e) working with the Just Energy Entities, their advisors, and TGF, as applicable, to, among other things:
  - (i) provide stakeholders with financial and other information;
  - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to possible exit strategies from the CCAA Proceedings, including assisting with the preparation of related cash flow forecasts and presentations;
  - (iii) consider and provide input on the proposed Second KERP;
  - (iv) ensure compliance with the requirements of regulators in applicable jurisdictions;
  - (v) establish the online submission claims portal hosted by Omni Agent Solutions in its capacity as claims agent (the “**Claims Agent**”) in connection with the Claims Procedure, and finalize and issue all notices in accordance with the Claims Procedure; and
  - (vi) administer the Claims Procedure, and collect and record filed Claims;
- (f) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (g) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (h) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor’s Website in accordance with the terms of the Second A&R Initial Order; and
- (i) preparing this Fourth Report.

## TEXAS LEGISLATIVE DEVELOPMENTS

19. As discussed in the Third Report, the Governor of Texas signed House Bill 4492 (“**HB 4492**”) on June 16, 2021, which provides a mechanism for the partial recovery of costs



incurred by certain Texas energy market participants, including certain of the Just Energy Entities, during the Texas weather event in February 2021.

20. HB 4492 addresses the securitization of (i) ancillary service charges above the system-wide offer cap of US\$9,000/MWh during the weather event; (ii) reliability deployment price adders charged by the Electric Reliability Council of Texas, Inc. (“**ERCOT**”) during the weather event; and (iii) non-payment of amounts owed to ERCOT due to defaults by competitive market participants, resulting in short payments to market participants, including Just Energy (collectively, the “**Costs**”).
21. Consistent with the requirements of HB 4492, ERCOT requested that the Public Utility Commission of Texas (“**PUCT**”) establish securitization financing mechanisms for the payment of the Costs incurred by load-serving entities, including certain of the Just Energy Entities. On October 13, 2021, PUCT signed a final order (the “**PUCT Order**”) approving the securitization and authorized ERCOT to issue \$2.1 billion of securitization bonds, the proceeds of which will be used to repay the Costs. No party appealed the PUCT order by the November 1, 2021 deadline and therefore, the PUCT Order is considered non-appealable. The Monitor understands that parties wishing to opt-out of receiving any securitization proceeds from ERCOT, as well as receiving future charges from ERCOT to pay the securitization bonds, must elect to do so by November 29, 2021.
22. The Just Energy Entities have advised the Monitor that they anticipate recovering at least US\$100 million of the Costs from ERCOT; however, this is dependant on several factors including the number of entities that opt-out of the ERCOT financing and the outcome of any dispute resolution process initiated by the Just Energy Entities with ERCOT. There is therefore no assurance that Just Energy will recover all the Costs it seeks to recover from ERCOT. Just Energy continues to evaluate the potential benefits and impact of HB 4492 on an on-going basis as new or updated information becomes available.

## UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

23. As mentioned in the Third Report, pursuant to the DIP Term Sheet, the Just Energy Entities delivered their business plan on May 18, 2021 to the DIP Lenders and other stakeholders as required.
24. Since that time, the Just Energy Entities with the assistance of legal counsel and BMO Nesbitt Burns Inc. as financial advisor (the “**Financial Advisor**”), and in consultation with the Monitor and the DIP Lenders, have continued their restructuring efforts with a focus on developing a restructuring plan that facilitates emergence from the CCAA Proceedings, preserves the going concern value of the business, maintains customer service and relationships, and preserves employment and critical vendor relationships – all for the benefit of the Just Energy Entities’ stakeholders.
25. The Monitor, while not a party to all discussions, has been kept apprised of developments as these restructuring efforts have continued to advance. The Just Energy Entities with their counsel and the Financial Advisor, in consultation with the DIP Lenders, the Credit Facility Lenders, Shell, and their respective legal and financial advisors, have made significant progress in developing a recapitalization term sheet (the “**Recapitalization Term Sheet**”) that provides a framework for the recapitalization of the Just Energy Entities and their respective businesses.
26. To provide sufficient time to advance restructuring efforts and finalize the Recapitalization Term Sheet, the Just Energy Entities have negotiated extensions to certain milestone deadlines provided for in the DIP Term Sheet including the following (the “**Amended Milestones**”):
  - (a) November 30, 2021 (extended from October 7, 2021) – deadline for delivery of the settled Recapitalization Term Sheet (the “**Recapitalization Plan**”);
  - (b) December 21, 2021 (extended from November 5, 2021) – deadline for the CCAA Court to grant an order approving one or more meetings for a vote on the Recapitalization Plan and related materials, if applicable, and December 29, 2021

(extended from November 8, 2021) being the deadline to mail the meeting materials;

- (c) February 9, 2022 (extended from December 8, 2021) – deadline for the meeting(s) to vote on the Recapitalization Plan, if applicable; and
- (d) February 18, 2022 (extended from December 17, 2021) – deadline for the CCAA Court to grant an order approving and sanctioning the Recapitalization Plan, if applicable.

- 27. The Amended Milestones are reflected in the DIP Amendment, which is further discussed below.
- 28. The Monitor understands that the Just Energy Entities are in the process of broadening the scope of such discussions to include other key stakeholders as the Recapitalization Term Sheet and the Recapitalization Plan develop.

#### **UPDATE ON CLAIMS PROCEDURE**

- 29. For the purpose of this section only, any capitalized terms not defined herein have the meanings ascribed thereto in the Claims Procedure Order.
- 30. As discussed in detail in the Third Report, the Just Energy Entities, in consultation with the Monitor and the Claims Agent, developed the Claims Procedure to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their Directors and Officers in a flexible, fair, comprehensive, and expeditious manner.
- 31. Since the Third Report, the Monitor has, with the assistance of the Claims Agent and the Just Energy Entities, (a) prepared and issued the Negative Notice Claims Packages and General Claims Packages; (b) finalized and caused to be published on September 21, 2021, a Notice to Claimants in The Globe and Mail (National Edition), the Wall Street Journal, the Houston Chronicle, and the Dallas Morning News (copies of which are attached to the Carter Affidavit); and (c) created a section within the Case Website for information and forms in support of the Claims Procedure.

32. The Monitor has also engaged in discussions with numerous stakeholders in respect of questions that arose, in certain circumstances, in respect of their Negative Notice Claims Package and the Claims Procedure generally.
33. The Monitor and Claims Agent are in the process of recording and categorizing all Notices of Dispute of Claim and Proofs of Claim that were received before, on, or after the Claims Bar Date (being November 1, 2021). A further update on the Claims Procedure will be provided in a future Report to the Court.

### **ECOBEE TRANSACTION**

34. As discussed in the Carter Affidavit, it was announced on November 1, 2021 that ecobee Inc. (“**ecobee**”), a private company in which Just Management Corp. (“**JMC**”) owns approximately an 8% equity interest, has agreed to sell all of its issued and outstanding shares (the “**ecobee Transaction**”) to 13462234 Canada Inc. (“**Generac**”), a wholly-owned subsidiary of Generac Power Systems, Inc., which is in turn a wholly-owned subsidiary of Generac Holdings Inc. (“**Generac Holdings**”). Generac Holdings stock trades on the New York Stock Exchange under the symbol GNRC. The proposed sale is intended to be effected pursuant to a court approved arrangement under the *Canada Business Corporations Act*.
35. As consideration for the ecobee Transaction, Generac will pay (or cause to be paid) to the sellers of the ecobee shares US\$200 million cash on closing, subject to customary adjustments, and US\$450 million in Generac Holdings common stock. Additionally, upon achievement of certain performance targets between closing of the transaction and June 30, 2023, the sellers may receive a further amount up to an aggregate of US\$120 million in shares of Generac Holdings common stock.
36. The ecobee Transaction will result in Just Energy (following a proposed corporate transaction between Just Energy and JMC) receiving approximately \$61 million, comprised of \$18 million in cash and \$43 million of Generac Holdings stock (which can increase by approximately \$10 million in 2022 and 2023 if the performance targets noted above are met). The Monitor understands that, once the Ontario Superior Court of Justice

has authorized ecobee to call a meeting of affected securityholders to vote on the plan of arrangement, the Just Energy Entities will bring a motion before the Court to seek approval (i) to enter into a support agreement with Generac to vote in favour of the ecobee Transaction, and (ii) of certain restructuring steps proposed to be taken by the Just Energy Group to ensure that the sale of stock owned by JMC can be completed in a tax efficient manner. The Monitor will provide a further report to the Court in connection with such approval motion.

### **DIP AMENDMENT**

37. Notwithstanding the significant efforts expended by the Just Energy Entities with the assistance of the Monitor and key stakeholders to develop a restructuring plan since the Filing Date, for the reasons set out in the Carter Affidavit, the discussions have taken longer than expected. The DIP Facility is currently set to mature on December 31, 2021.
38. Given the status and progress of the Just Energy Entities' restructuring efforts, the DIP Lenders have agreed to the Amended Milestones as set out above and have agreed to extend the maturity date for the DIP Facility to September 30, 2022. The DIP Amendment provides for an amendment and extension fee equal to 1.0% (the "**Extension Fee**") of the existing commitment, which is equal to US\$1.25 million. The Monitor has reviewed and compared the Extension Fee to fees of other senior-secured debtor-in-possession facilities in comparable restructuring proceedings in both Canada and the United States. The Monitor is of the view that the Extension Fee is reasonable based on the length of the extension, the size of the facility, and the circumstances of the Just Energy Entities in the CCAA Proceedings.
39. The above noted terms are set out in the DIP Amendment for which the Applicants are seeking this Court's approval. A copy of the DIP Amendment is attached as Exhibit "A" to the Carter Affidavit.
40. The DIP Amendment also prohibits the Just Energy Entities from (i) disclaiming any material agreement, or (ii) settling any Claims in an amount greater than \$15 million

(except for those Claims subject to the Intercreditor Agreement), in each case, without the prior consent of the DIP Lenders.

41. Additionally, the DIP Amendment permits an increase in the cash collateral posting limitations that the Just Energy Entities are entitled to provide to certain providers pursuant to the terms of the DIP Term Sheet, up to the maximum amount of \$80 million (which is an increase from \$30 million as previously permitted), and permits cash collateral to be posted in favour of new approved commodity providers limited to the aggregate amount of \$65 million (which is an increase from the \$15 million previously permitted), subject to certain restrictions as set out in the DIP Amendment.
42. As discussed in the Third Report, the Just Energy Entities have negotiated agreements for the supply of electricity and natural gas with new providers, thereby reducing the risk associated with single source or limited source supply arrangements. Each of the new commodity agreements requires that credit support be posted for mark-to-market and accounts payable exposure, the amount of which varies in accordance with the price of power and gas. The quantum of such collateral can be significant. Given that the Just Energy Entities continue to add volume to their supply portfolio to support their ongoing businesses, they require the proposed increase to the cash collateral posting limitations as set out in the DIP Term Sheet.
43. The Amended Milestones, extended maturity date and increase to the cash collateral posting limits, will ensure the continued stability of the Just Energy Entities' business into 2022 and provide the requisite assurances to the Just Energy Entities' customers, suppliers, employees, regulators and other stakeholders that the businesses remain stable and that the Just Energy Entities are committed to emerging from the CCAA Proceedings as a long-term, financially viable enterprise.
44. The Monitor has reviewed the terms of the DIP Amendment and, for the foregoing reasons, the Monitor is supportive of the DIP Amendment.

## JE FINANCE WIND UP

45. Subject to Court approval, the Just Energy Entities intend to wind up JE Finance and complete certain loan settlements as between JE Finance, Just Energy (Finance) Hungary ZRT (“**Just Energy Hungary**”) and Just Energy U.S. (the “**JE Finance Transaction**”) in order to (i) realize certain tax losses in Just Energy Hungary, (ii) simplify redundancies in Just Energy’s corporate structure, and (iii) settle/transfer various intercompany loans as between these entities to result in one loan from Just Energy to Just Energy U.S.
46. As described in the Carter Affidavit, the existing intercompany structure and loans are as follows:
- (a) Just Energy formed JE Finance in August 2018, as a wholly owned Canadian subsidiary, and made capital advances to JE Finance in the amount of US\$235 million;
  - (b) JE Finance then formed Just Energy Hungary and advanced a convertible, non-interest-bearing loan to Just Energy Hungary in the amount of US\$235 million (the “**Convertible Loan**”), of which US\$213 million is currently outstanding;
  - (c) Just Energy Hungary then advanced an interest-bearing loan to Just Energy U.S. in the amount of US\$235 million (the “**IB Loan**”) of which US\$235 million is currently outstanding.
47. The proposed steps of the wind up of the JE Finance Transaction are largely dependant on the expected timing for closing the transaction. If the JE Finance Transaction can close before November 30, 2021, the Just Energy Entities propose to complete the transaction in the following steps (the “**First Transaction Structure**”):
- (a) settle some or all of the Convertible Loan by transferring the IB Loan and any right of Just Energy Hungary to receive any tax installment refund to JE Finance, thereby resulting in JE Finance becoming the holder of the IB Loan; and
  - (b) wind-up of JE Finance into Just Energy, resulting in the transfer of all assets of JE Finance to Just Energy and Just Energy becoming the holder of the IB Loan and the end beneficiary of any tax refunds received by Just Energy Hungary.

48. If the JE Finance Transaction closes after November 30, 2021, the Just Energy Entities propose to complete the transaction in the following steps (the “**Second Transaction Structure**”):
- (a) wind-up JE Finance into its parent corporation, Just Energy, and transfer the Convertible Loan, the shares of Just Energy Hungary and any other incidental property of JE Finance to Just Energy; and
  - (b) settle some or all of the Convertible Loan (which will then be held by Just Energy) by transferring the IB Loan and any right to receive any tax installment refund received by Just Energy Hungary to Just Energy, thereby resulting in Just Energy becoming the holder of the IB Loan and the end beneficiary of any tax refunds received by Just Energy Hungary.
49. In both the First Transaction Structure and the Second Transaction Structure, Just Energy becomes the ultimate holder of the IB Loan, the shares of Just Energy Hungary, the right of Just Energy Hungary to receive tax installment refunds, and other incidental property held by JE Finance.
50. The wind up of JE Finance and the completion of the JE Finance Transaction will allow Just Energy to realize a capital loss on the settlement of the Convertible Loan to the extent that the value received (i.e., the value of the IB Loan and the tax refund) is less than the Convertible Loan receivable. Additionally, the Monitor understands that Just Energy Hungary will realize a loss on the disposition of the IB Loan and a gain from the settlement of the Convertible Loan in the current tax period, resulting in an overall net loss for Hungarian tax purposes and an expected refund of all amounts paid in tax installments by Just Energy Hungary in respect of the 2021 taxation year (which the Monitor understands is expected to be approximately US\$1.3 million).
51. In light of the JE Finance Transaction, the Applicants are also seeking an amendment to the May Order to reflect the optional repatriation of funds being from Just Energy U.S. to Just Energy (rather than to Just Energy Hungary and, in turn, JE Finance). The Applicants are also seeking to amend the title of proceeding once the JE Finance Transaction has been completed, to remove JE Finance as an Applicant in the CCAA Proceedings.



52. The Monitor also understands that, in order for JE Finance to effect its dissolution, pursuant to section 238(1) the *Ontario Business Corporations Act* it must either have no debts, obligations or liabilities or its debts, obligations or liabilities must have been provided for in accordance with subsection (3) (which addresses unknown creditors) or its creditors must consent to its dissolution.
53. The Monitor understands that the only liabilities of JE Finance and Just Energy Hungary are in their capacities as guarantors under the Credit Facility, the DIP Facility, the Court-ordered charges in the CCAA Proceedings, and to applicable secured suppliers, along with the Term Loan and the Convertible Loan, respectively. Aside from the Convertible Loan, each of the Just Energy Entities are jointly and severally liable for the above obligations. Further, the Monitor is not aware of any Proofs of Claim filed in the Claims Procedure against JE Finance or Just Energy Hungary by the Bar Date apart from those directly related to the foregoing. Once the wind-up of JE Finance is completed in accordance with the First Transaction Structure or Second Tax Transaction Structure, as outlined in the Carter Affidavit, the Monitor understands that it is Just Energy's position that JE Finance's debts, obligations and liabilities will have been provided for, as required under the applicable statute.
54. The JE Finance Transaction is expected to result in a net benefit to Just Energy and its stakeholders, while not prejudicing any stakeholder, all of whom were given notice of the proposed JE Finance Transaction. Given that JE Finance is an Applicant in the within CCAA Proceedings, the Applicants are therefore seeking the authorization of this Court pursuant to the Court's general powers under section 11 of the CCAA to complete the JE Finance Transaction (pursuant to either the First Transaction Structure or Second Tax Transaction Structure, as applicable) including to file articles of dissolution for JE Finance, once the wind-up is complete and to remove JE Finance as an Applicant in this proceeding.
55. Accordingly, the Monitor is supportive of the JE Finance Transaction and recommends that the Court authorize and empower the Just Energy Entities to take all steps to effect the JE Finance Transaction.

**SECOND KERP**

56. As mentioned above, the KERP and KERP Charge were approved in the First A&R Initial Order. The KERP authorized payments in three installments to the Key Employees of the Just Energy Entities who are required to guide or support the business through the restructuring process. The KERP payments previously approved by the Court total approximately CAD\$2.0 million and US\$3.9 million and were payable to 42 Key Employees in total: 8 executive employees and 34 non-executive employees.
57. Under the KERP, non-executive KERP recipients receive: (i) 40% of their KERP on the 180th day after the Filing Date (which payments were made on September 8, 2021); (ii) 40% of their KERP on the 270th day after the Filing Date (December 4, 2021); and (iii) the remaining 20% of their KERP on the date that is the earlier of 15 months after the Filing Date (June 9, 2022) or the completion of a Successful Restructuring (as defined in the Affidavit of Michael Carter sworn March 16, 2021). If a Successful Restructuring occurs before the date on which any remaining KERP payments are due, the full amount of any remaining KERP payments become payable on that date.
58. Pursuant to the KERP, executive KERP recipients receive: (i) 25% of their KERP on the 180th day after the Filing Date (which payments were made on September 8, 2021), (ii) 25% of their total KERP on the 270th day after the Filing Date (December 4, 2021), and (iii) 50% of their KERP only upon the completion of a Successful Restructuring.
59. Accordingly, on December 4, 2021, the Applicants will have paid 80% of the total KERP entitlements to non-executive Key Employees, and 50% of the total KERP entitlements to executive Key Employees. In order to retain the Key Employees throughout the pendency of the CCAA Proceedings, given the increased workload required from such Key Employees, the high turnover rates experienced in the labour market over the recent months (as described in detail in the Carter Affidavit) and the longer than anticipated period of time required to complete a successful restructuring, the Applicants are seeking approval of the Second KERP. The Just Energy Entities are concerned that, absent the approval of the Second KERP, there is a risk that Key Employees will resign.

60. The proposed payments under the Second KERP total approximately CAD\$4.4 million (US\$2.4 million and CAD\$1.3 million) and if approved, would be payable to 41 Key Employees in total: 9 executive employees and 32 non-executive employees. The proposed Second KERP payments are calculated as follows:<sup>1</sup>
- (a) non-executive Second KERP recipients will receive, subject to this Court's approval, installment payments in March and September 2022, each in the amount of approximately CAD\$1.3 million, for an aggregate total of CAD\$2.6 million. Under the Second KERP, non-executive recipients receive: (i) 50% of their Second KERP amount payable on March 1, 2022; and (ii) 50% of their Second KERP payment on September 1, 2022. If a Successful Restructuring occurs before the date on which any remaining Second KERP payments are due, the full amount of the remaining KERP payments become payable on that date. The variance in non-executive amounts payable under the KERP of CAD\$1,445,409 and Second KERP of CAD\$1,269,577 as set out in the table below is primarily due to the resignation of certain Key Employees under the KERP, the addition of certain new Key Employees to the Second KERP, and the change in status of two Key Employees from non-executive positions to executive positions.
  - (b) executive Second KERP recipients will receive, subject to this Court's approval, installment payments in March 2022 and upon the completion of a Successful Restructuring, each in the amount of approximately CAD\$0.9 million, for an aggregate total of CAD\$1.8 million. Under the Second KERP, executive Second KERP recipients receive: (i) 50% of their Second KERP on March 1, 2022, and (ii) 50% of their Second KERP only upon the completion of a Successful Restructuring. If a Successful Restructuring occurs before the date on which any remaining Second KERP payments are due, the full amount of the remaining KERP payments become payable on that date. The executive amounts payable under the KERP of CAD\$767,937 and Second KERP of CAD\$921,390 as stated in the table below are

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<sup>1</sup> Note: Amounts stated below in this paragraph are presented in Canadian dollars or Canadian dollar equivalent for summary purposes.

different primarily due to the resignation of one executive KERP recipient and the addition of two new executive Second KERP recipients.

61. A summary of payments made to date and approved but not yet paid under the KERP, and the proposed additional payments to be made under the Second KERP, is set out below. All amounts set out below are presented in Canadian dollars or Canadian dollar equivalent for U.S. dollar payments for comparison purposes. KERP and Second KERP payments will be made in both Canadian dollars and U.S. dollars as applicable.

<i>(all amounts stated in CAD or CAD equivalent for comparison purposes)</i>	September 2021	December 2021	March 2022	June 2022	September 2022	Successful Restructuring	TOTAL
<b>Status of payment:</b>	<i>Paid</i>	<i>Pending</i>	<i>Pending</i>	<i>Pending</i>	<i>Pending</i>	<i>Pending</i>	
<b>KERP:</b>							
Executive	767,937	767,937	-	-	-	1,535,875	3,071,749
Non-Executive	1,445,409	1,445,409	-	717,058	-	-	3,607,876
<b>Total - KERP</b>	<b>2,213,346</b>	<b>2,213,346</b>	<b>-</b>	<b>717,058</b>	<b>-</b>	<b>1,535,875</b>	<b>6,679,625</b>
							<b>A</b>
<b>Second KERP:</b>							
Executive	-	-	921,390	-	-	921,390	1,842,780
Non-Executive	-	-	1,269,577	-	1,269,577	-	2,539,154
<b>Total - Second KERP</b>	<b>-</b>	<b>-</b>	<b>2,190,967</b>	<b>-</b>	<b>1,269,577</b>	<b>921,390</b>	<b>4,381,934</b>
							<b>B</b>
<b>TOTAL - KERP and Second KERP</b>	<b>2,213,346</b>	<b>2,213,346</b>	<b>2,190,967</b>	<b>717,058</b>	<b>1,269,577</b>	<b>2,457,265</b>	<b>11,061,559</b>
							<b>=A+B</b>
<b>Cumulative payments pending - KERP and Second KERP</b>		<b>8,848,213</b>	<b>6,634,867</b>	<b>4,443,900</b>	<b>3,726,842</b>	<b>2,457,265</b>	<b>C</b>
<b>KERP Charge:</b>							
CAD amount		2,012,100	2,012,100	2,012,100	2,012,100	2,012,100	
USD amount		3,876,024	3,876,024	3,876,024	3,876,024	3,876,024	
<b>Total KERP Charge - CAD equivalent</b>		<b>6,895,890</b>	<b>6,895,890</b>	<b>6,895,890</b>	<b>6,895,890</b>	<b>6,895,890</b>	<b>D=CAD+(USD*1.26)</b>
<b>Excess/(deficiency) of KERP Charge</b>		<b>(1,952,323)</b>	<b>261,023</b>	<b>2,451,990</b>	<b>3,169,048</b>	<b>4,438,625</b>	<b>=D-C</b>

62. As shown above, the current KERP Charge in the amounts of CAD\$2,012,100 and US\$3,876,024 securing KERP and proposed Second KERP payments will be sufficient to cover payments proposed in the Second KERP after the December 2021 payment under the KERP is made. As noted in the Carter Affidavit, and should the Court approve the Second KERP, the Applicants are not requesting an increase to the KERP Charge to cover the temporary deficiency until the December 2021 payment under the KERP is made.

63. A summary of the Second KERP is attached as Confidential Exhibit “Q” to the Carter Affidavit, which contains commercially sensitive information as well as personal information relating to the Key Employees. Accordingly, the Applicants are seeking an order that this exhibit be sealed and not form part of the Court record pending further order of the Court. The Monitor supports such relief and notes that such treatment is consistent with the treatment of the previous KERP summary.
64. The requested relief is consistent with the purpose and spirit of the previously approved KERP and reflects the additional length of time anticipated to be required to achieve a successful restructuring. The Second KERP was developed in consultation with, and reflects feedback provided by, the Monitor. The Monitor views the relief requested by the Just Energy Entities regarding the Second KERP as fair and reasonable in the circumstances, and in the best interest of the Just Energy Entities. Accordingly, the Monitor supports the relief sought by the Applicants with respect to the approval of the Second KERP.

**RECEIPTS AND DISBURSEMENTS FOR THE 9-WEEK PERIOD ENDED OCTOBER 30, 2021**

65. The Just Energy Entities’ actual net cash flow for the 9-week period from August 29, 2021 to October 30, 2021, was approximately \$88.2 million better than the Cash Flow Forecast appended to the Third Report (the “**September Cash Flow Forecast**”) as summarized below:

<i>(CAD\$ in millions)</i>	<b>Forecast</b>	<b>Actuals</b>	<b>Variance</b>
<b>RECEIPTS</b>			
Sales Receipts	\$466.0	\$498.4	\$32.4
Miscellaneous Receipts	6.6	0.8	(5.8)
<i>Total Receipts</i>	\$472.6	\$499.2	\$26.6
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$450.2)	(\$421.4)	\$28.8
<i>ERCOT Resettlements</i>	-	-	-
Payroll	(18.5)	(16.2)	2.3
Taxes	(31.0)	(14.2)	16.9
Commissions	(19.3)	(14.9)	4.3
Selling and Other Costs	(33.5)	(26.3)	7.2
<i>Total Operating Disbursements</i>	(\$552.6)	(\$493.0)	\$59.5
<b>OPERATING CASH FLOWS</b>	<b>(\$80.0)</b>	<b>\$6.2</b>	<b>\$86.2</b>
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$-	\$-	\$-
Interest Expense & Fees	(9.3)	(9.1)	0.2
<i>Restructuring Disbursements</i>			
Professional Fees	(8.9)	(7.1)	1.9
<b>NET CASH FLOWS</b>	<b>(\$98.2)</b>	<b>(\$10.0)</b>	<b>\$88.2</b>
<b>CASH</b>			
Beginning Balance	\$162.4	\$174.8	\$12.3
Net Cash Inflows / (Outflows)	(98.2)	(10.0)	88.2
Other (FX)	-	(0.1)	(0.1)
<b>ENDING CASH</b>	<b>\$64.2</b>	<b>\$164.7</b>	<b>\$100.5</b>

66. Explanations for the main variances in actual receipts and disbursements as compared to the September Cash Flow Forecast are as follows:

- (a) The favourable variance of approximately \$32.4 million in Sales Receipts is primarily comprised of the following:
  - (i) A permanent favourable variance of approximately \$16.5 and \$6.9 million for U.S. residential and commercial customers, respectively, primarily due to higher than anticipated energy demand and customer acquisitions, which is partially offset by higher Energy and Delivery costs in current and future periods;
  - (ii) A permanent favourable variance of approximately \$9.1 million primarily due to higher than forecast Canadian residential and commercial customer

billings relative to the September Cash Flow Forecast, which is partially offset by higher Energy and Delivery costs in current and future periods;

- (b) The unfavourable temporary variance of approximately \$5.8 million of Miscellaneous Receipts is primarily due to the delayed return of collateral supporting a bond posted in connection with litigation that had been pending appeal. The collateral is expected to be returned in a future period;
- (c) The favourable variance of approximately \$28.8 million for Energy and Delivery Costs as compared to the September Cash Flow Forecast is primarily driven by the following:
  - (i) A favourable timing variance of approximately \$38.8 million primarily due to lower commodity payments related in part to lower than anticipated credit support to commodity trading counterparties; and
  - (ii) A permanent unfavourable variance of approximately \$9.2 million due to higher than forecasted transportation and delivery payments in the September Cash Flow Forecast due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations relative to the September Cash Flow Forecast. These higher costs offset some of the favourable variances in sales receipts described above;
- (d) The favourable variance of approximately \$2.3 million for Payroll is due to normal course fluctuations for various payroll tax remittances and sale incentive payments relative to the September Cash Flow Forecast;
- (e) The favourable variance of approximately \$16.9 million for Taxes is primarily due to the timing of estimated tax payments including an estimated sales tax reassessment payment owing by the Just Energy Entities of approximately \$7.8 million that was forecast, but not paid, during the period. The exact timing of when this amount will be paid remains unknown, but payment at a future date will continue to be carried forward in the forecast;

- (f) The permanent favourable variance of approximately \$4.3 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions relative to the September Cash Flow Forecast;
- (g) The favourable timing variance of approximately \$7.2 million for Selling and Other Costs is primarily due to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors;
- (h) The favourable variance of \$0.2 million for Interest Expense & Fees is primarily due to lower than forecast interest and fees owed on the Just Energy Entities' credit facilities; and
- (i) The favourable timing variance of \$1.9 million for Professional Fees is due to lower than forecast payments of professional fee invoices during the current 9-week period.

*Reporting Pursuant to the DIP Term Sheet*

- 67. The variances shown and described herein compare the September Cash Flow Forecast, as appended to the Third Report, with the actual performance of the Just Energy Entities over the 9-week period noted.
- 68. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the "**DIP Variance Reports**"). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended May 29, 2021, June 26, 2021, July 24, 2021, August 21, 2021, September 18, 2021, and October 16, 2021. All variances reported were within the required permitted variances.
- 69. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the



“**DIP Cash Flow Forecasts**”). The Just Energy Entities provided the required cash flow forecasts, which were approved by the DIP Lenders for the 13-week periods beginning May 30, 2021, June 27, 2021, July 25, 2021, August 22, 2021, September 19, 2021, and October 17, 2021.

70. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the September Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the September Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
71. Since the Third Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
- (a) Delivery of a Priority Supplier Payables Certificate monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;
  - (c) Delivery of a Cash Management Charge update monthly;
  - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;
  - (e) Delivery of a Marked to Market Calculation monthly; and
  - (f) Delivery of Electricity and Natural Gas Portfolio Reports, Hedging Exposure and Supply/Demand Projections quarterly.

#### **CASH FLOW FORECAST FOR THE PERIOD ENDING FEBRUARY 19, 2022**

72. The Just Energy Group, with the assistance of the Monitor, has updated and extended its weekly cash flow forecast for the 18-week period ending February 19, 2022 (the “**November Cash Flow Forecast**”), which encompasses the requested stay extension to February 17, 2022. The November Cash Flow Forecast is attached hereto as **Appendix “A”**, and is summarized below:

<i>(CAD\$ in millions)</i>	13-Week Period	18-Week Period
	Ending January 15, 2022	Ending February 19, 2022
<b>Forecast Week</b>	<b>Total</b>	<b>Total</b>
<b>RECEIPTS</b>		
Sales Receipts	\$620.7	\$905.4
Miscellaneous Receipts	67.6	67.6
<i>Total Receipts</i>	\$688.2	\$972.9
<b>DISBURSEMENTS</b>		
<i>Operating Disbursements</i>		
Energy and Delivery Costs	(\$554.8)	(\$758.9)
<i>ERCOT Resettlements</i>	-	-
Payroll	(33.4)	(41.8)
Taxes	(35.5)	(53.7)
Commissions	(25.0)	(35.0)
Selling and Other Costs	(50.8)	(66.2)
<i>Total Operating Disbursements</i>	(\$699.6)	(\$955.7)
<b>OPERATING CASH FLOWS</b>	(\$11.3)	\$17.2
<i>Financing Disbursements</i>		
Credit Facility - Borrowings / (Repayments)	\$-	\$-
Interest Expense & Fees	(12.8)	(13.8)
<i>Restructuring Disbursements</i>		
Professional Fees	(11.6)	(14.8)
<b>NET CASH FLOWS</b>	<b>(\$35.7)</b>	<b>(\$11.3)</b>
<b>CASH</b>		
Beginning Balance	\$260.0	\$260.0
Net Cash Inflows / (Outflows)	(35.7)	(11.3)
Other (FX)	-	-
<b>ENDING CASH</b>	<b>\$224.4</b>	<b>\$248.7</b>

73. The November Cash Flow Forecast indicates that during the 18-week period ending February 19, 2022, the Just Energy Entities will have net cash inflows from operating activities of approximately \$17.2 million with total receipts of approximately \$972.9 million and total disbursements of approximately \$955.7 million, before interest expense and fees of approximately \$13.8 million and professional fees of approximately \$14.8 million, such that net cash outflows are forecast to be approximately \$11.3 million. The Monitor notes that the November Cash Flow Forecast has not incorporated actual results for the weeks ending October 23 and October 30, 2021 for presentation purposes as it reflects the current approved DIP Cash Flow Forecast. As a result, the actual ending cash balance reported in the budget to actual section above as at October 30, 2021 will not agree

to the forecast cash balance reflected in the November Cash Flow Forecast as at the same date.

74. The underlying assumptions and methodology utilized in the September Cash Flow Forecast have largely remained the same for this November Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending January 1, 2022 to the week ending February 19, 2022;
- (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the November Cash Flow Forecast, which include:
  - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
  - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
  - (iii) Estimated sale proceeds totaling approximately \$61.0 million from the announced ecobee Transaction have been included in the Miscellaneous Receipts line item;
  - (iv) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
  - (v) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
  - (vi) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
  - (vii) Professional fee estimates have been updated to reflect expected activity during the forecast period.

75. The November Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to February 19, 2022.

### **STAY EXTENSION**

76. The Stay Period will expire on December 17, 2021, and the Applicants are seeking an extension to the Stay Period up to and including February 17, 2022.
77. The Monitor supports extending the Stay Period to February 17, 2022 for the following reasons:
- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to consider and develop their restructuring proposal in an effort to achieve a going concern solution in consultation with the Financial Advisor, the Monitor and key stakeholders;
  - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to give the Just Energy Entities the flexibility and time required in order to develop and implement a successful restructuring;
  - (c) as indicated by the November Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
  - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
  - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

**APPROVAL OF THE ACTIVITIES OF THE MONITOR AND THE FEES OF THE MONITOR AND ITS COUNSEL**

78. The Proposed Order also seeks approval of: (i) the actions, conduct, and activities of the Monitor since the date of Third Report; (ii) the Fourth Report; and (iii) the fees and disbursements of the Monitor and its counsel from August 28, 2021 to October 29, 2021.
79. As outlined in the Monitor’s previous reports to the Court (all of which are available on the Monitor’s Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Third Report have been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.
80. Pursuant to paragraphs 42 and 43 of the Second A&R Initial Order, the Monitor, TGF and Porter Hedges LLP as the Monitor’s U.S. legal counsel shall: (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of the Initial Order, by the Just Energy Entities as part of the costs of the CCAA Proceedings; and (ii) pass their accounts from time to time before this Court.
81. Since the Third Report, the Monitor and its counsel have maintained detailed records of their professional time and costs. The total fees and disbursements of the Monitor for the period from August 28, 2021 to October 29, 2021 total \$989,957.02, including fees in the amount of \$864,065.00, disbursements in the amount of \$12,003.15, and Harmonized Sales Tax (“**HST**”) in the amount of \$113,888.87, as more particularly described in the Affidavit of Paul Bishop sworn November 4 2021 (the “**Bishop Affidavit**”), a copy of which is attached hereto as **Appendix “B”**.
82. The total fees and disbursements of the Monitor’s counsel, TGF, from August 28, 2021 to October 29, 2021 total \$377,229.44, including fees in the amount of \$332,872.50, disbursements in the amount of \$962.07, and HST in the amount of \$43,394.87, as more

particularly described in the Affidavit of Puya Fesharaki sworn November 3, 2021 (the “**Fesharaki Affidavit**”), a copy of which is attached hereto as **Appendix “C”**.

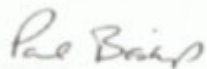
83. The total fees and disbursements of the Monitor’s U.S. counsel, Porter Hedges LLP, from August 28, 2021 to October 29, 2021 total US\$18,217.50, including fees in the amount of US\$18,170.00 and disbursements in the amount of US\$47.50, as more particularly described in the Affidavit of John Higgins sworn November 4, 2021 (the “**Higgins Affidavit**”, together with the Bishop Affidavit and Fesharaki Affidavit, the “**Fee Affidavits**”), a copy of which is attached hereto as **Appendix “D”**.
84. The Monitor respectfully submits that the fees and disbursements incurred by the Monitor and its counsel, as described in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Second A&R Initial Order. Accordingly, the Monitor respectfully requests the approval of the fees and disbursements of the Monitor and its counsel as set out in the Fee Affidavits.

## CONCLUSION

85. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
86. Accordingly, the Monitor respectfully recommends that the Proposed Order and requested relief therein be granted.

The Monitor respectfully submits to the Court this Fourth Report dated this 5th day of November, 2021.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor of  
Just Energy Group Inc. *et al*,  
and not in its personal or corporate capacity



Per: \_\_\_\_\_

Paul Bishop  
Senior Managing Director

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 **JUST ENERGY GROUP INC. et al**  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**FOURTH REPORT OF THE MONITOR**

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Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.



**THIS IS EXHIBIT R REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**FIFTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**February 4, 2022**

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## APPENDICES

- Appendix “A” Second Amended and Restated Initial Order dated May 26, 2021
- Appendix “B” Cash Flow Forecast for the period ending March 12, 2022

Court File No. CV-21-00658423-00CL

**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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**FIFTH REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things:

- (a) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”);
  - (b) the protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”);
  - (c) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”);
  - (d) a debtor-in-possession interim financing facility was approved in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021; and
  - (e) certain charges were granted with priority over all encumbrances on the Just Energy Entities’ property, including two third-ranking charges on a *pari passu* basis in favour of: (A) the DIP Lenders to secure all Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time up to the maximum amount of the Obligations; and (B) each Commodity/ISO Supplier that executed a Qualified Support Agreement in an amount equal to the value of the Priority Commodity/ISO Obligations.
3. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*.
4. On March 19, 2021, at the comeback hearing in the CCAA Proceedings, the Court granted the Amended and Restated Initial Order (the “**First A&R Initial Order**”), that, among other things:

- (a) extended the Stay Period to June 4, 2021;
  - (b) approved a key employee retention plan (“**KERP**”) and an associated charge as security for payments under the KERP in respect of certain key employees of the Applicants deemed critical to the continued operation and stability of the Just Energy Entities;
  - (c) increased the amount of the Administration Charge, FA Charge and Directors’ Charge;
  - (d) granted the Cash Management Charge in favour of the Cash Management Banks to secure Cash Management Obligations;
  - (e) confirmed that any obligations secured by a valid, enforceable and perfected security interest shall continue to be secured by the Property, including any Property acquired after the date of the applicable security agreement; and
  - (f) authorized the Just Energy Entities to provide cash collateral to third parties where so doing is necessary to operate the Business in the normal course, with the consent of the Monitor and subject to the terms of the Definitive Documents.
5. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the First A&R Initial Order in the United States, as may be further amended by the Court from time to time.
6. On May 26, 2021, the Court granted the Second Amended and Restated Initial Order (the “**Second A&R Initial Order**”) that, among other things:
- (a) amended the definition of “Qualified Commodity/ISO Supplier” in the Initial Order to include counterparties to a Commodity Agreement or ISO Agreement executed after the Filing Date;

- (b) amended the definition of “Commodity Agreement” to include contracts entered into by a Just Energy Entity for protection against fluctuations in foreign currency exchanges rates; and
  - (c) amended the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021, without obtaining Court authorization in certain limited circumstances.
7. A copy of the Second A&R Initial Order is attached hereto as **Appendix “A”**.
  8. Also on May 26, 2021, the Court granted an Order that, among other things, (a) extended the Stay Period to September 30, 2021, and (b) authorized, but did not obligate, Just Energy (U.S.) Corp. to repatriate funds to the Just Energy Entities operating in Canada should it become necessary to do so to ensure sufficient working capital is held by such entities to fund their ongoing operations, which repatriation was permitted to be by way of repayment of certain intercompany indebtedness, including interest.
  9. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”). Additionally, on September 15, 2021, the Court granted an Order that, among other things, extended the Stay Period to December 17, 2021.
  10. On November 10, 2021, the Court granted an Order that, among other things, (i) authorized the Just Energy Entities to enter into the Fifteenth Amendment to the DIP Term Sheet (with amendments 1-14 having been amendments to certain milestone deadlines set out therein approved via email); (ii) approved the JE Finance Transaction (as defined therein); (iii) approved a second KERF; and (iv) extended the Stay Period to February 17, 2022.
  11. Pursuant to an order dated November 10, 2021 (the “**ecobee Support Agreement Order**”), the Court authorized (i) Just Management Corp. (“**JMC**”) to enter into a

support agreement with Generac to vote in favour of the ecobee Transaction (as such terms are defined below) (the “**Support Agreement**”), (ii) the completion of certain restructuring steps proposed to be taken by the Just Energy Entities to ensure that the sale of stock owned by JMC could be completed in a tax efficient manner, and (iii) the sale of the ecobee shares held by Just Energy as a result of the ecobee Transaction.

12. All references to monetary amounts in this Fifth Report of the Monitor (the “**Fifth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Second A&R Initial Order.
13. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, are available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
14. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, are available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

## PURPOSE

15. The purpose of this Fifth Report is to provide information to the Court with respect to the following:
  - (a) the Monitor’s activities since the Monitor’s Fourth Report to the Court dated November 5, 2021, and the supplement thereto dated November 9, 2021 (together, the “**Fourth Report**”);
  - (b) certain energy-related legislative developments in the state of Texas, including an update on House Bill 4492, and their impact on the Just Energy Entities;
  - (c) the Just Energy Entities’ restructuring initiatives;
  - (d) the Claims Procedure;



- (e) an update on the ecobee Transaction (as defined below);
- (f) the Monitor’s views in respect of the motion for advice and direction (the “**Donin/Jordet Motion**”) filed by Canadian counsel to U.S. counsel for Fira Donin and Inna Golovan in their capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”); and
- (g) the Just Energy Entities’ actual cash receipts and disbursements for the 13-week period ending January 29, 2022, and a comparison to the cash flow forecast attached as Appendix “A” to the Fourth Report, along with an updated cash flow forecast for the period ending March 12, 2022;
- (h) the relief sought by the Applicants in their proposed Order (the “**Proposed Order**”), which includes extending the Stay Period to March 4, 2022; and
- (i) the Monitor’s views in respect of the foregoing, as applicable.

## TERMS OF REFERENCE AND DISCLAIMER

- 16. In preparing this Fifth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
- 17. Except as otherwise described in this Fifth Report:
  - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

- (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Fifth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
- 18. Future-oriented financial information reported in or relied on in preparing this Fifth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
- 19. The Monitor has prepared this Fifth Report to provide information to the Court in connection with the relief requested by the Applicants and in response to the Donin/Jordet Motion. The Fifth Report should not be relied on for any other purpose.

#### **MONITOR'S ACTIVITIES SINCE THE FOURTH REPORT**

- 20. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Fourth Report have included the following:
  - (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
  - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;
  - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of Revision or Disallowance (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;
  - (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
  - (e) assisting the Just Energy Entities to update and extend their cash flow forecasts;

- (f) working with and providing input to the Just Energy Entities and other stakeholders to assist with the development of a plan of compromise or arrangement and related draft documents;
- (g) working with the Just Energy Entities, their advisors, and the Monitor’s counsel, as applicable, to, among other things:
  - (i) provide stakeholders with financial and other information;
  - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to possible exit strategies from the CCAA Proceedings and restructuring plan, including assisting with the preparation of related cash flow forecasts and presentations; and
  - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor’s Website in accordance with the terms of the Second A&R Initial Order;
- (k) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor’s Website; and
- (l) preparing this Fifth Report.

## TEXAS LEGISLATIVE DEVELOPMENTS

21. As discussed in the Fourth Report, the Governor of Texas signed House Bill 4492 (“**HB 4492**”) on June 16, 2021, which provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including certain of the Just Energy Entities, during the Texas weather event in February 2021.

22. HB 4492 addresses the securitization of (i) ancillary service charges above the system-wide offer cap of US\$9,000/MWh during the weather event; (ii) reliability deployment price adders charged by the Electric Reliability Council of Texas, Inc. (“ERCOT”) during the weather event; and (iii) non-payment of amounts owed to ERCOT due to defaults by competitive market participants, resulting in short payments to market participants, including Just Energy (collectively, the “Costs”).
23. The Just Energy Entities had previously advised the Monitor that they anticipated recovering at least US\$100 million of the Costs from ERCOT. The Just Energy Entities have continued to monitor and evaluate the potential benefits and impact of HB 4492 and, in a press release dated December 9, 2021, announced that their expected recovery from ERCOT of the Costs has increased to approximately US\$147.5 million based on ERCOT’s calculations filed with the Public Utility Commission of Texas, representing an increase of US\$47.5 million over the previous estimate.

#### **UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES**

24. The Just Energy Entities with the assistance of their counsel and the Financial Advisor, in consultation with the DIP Lenders (in their capacity as such, and in their capacity as assignee of the secured Claim asserted by BP Energy Company and its affiliates, and the sponsor in connection with the Recapitalization Plan (as defined below)), the Credit Facility Lenders, Shell, the lenders under the non-revolving term loan established pursuant to the Term Loan Agreement as part of the Applicants’ 2020 balance sheet recapitalization transaction (the “**Term Loan Lenders**”), and their respective legal and financial advisors, have made significant progress in developing a recapitalization term sheet (the “**Recapitalization Term Sheet**”) that provides for the recapitalization of the Just Energy Entities and their respective businesses via a plan of compromise or arrangement (the “**Recapitalization Plan**”).
25. The Recapitalization Term Sheet and Recapitalization Plan are intended to facilitate emergence from the CCAA Proceedings, preserve the going concern value of the business, maintain customer relationships, and preserve employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities’ stakeholders.

26. To provide sufficient time to advance these restructuring efforts, and finalize the Recapitalization Term Sheet and Recapitalization Plan, the Just Energy Entities have negotiated extensions to certain milestone deadlines provided for in the DIP Term Sheet including the following:
- (a) February 10, 2022 – deadline for delivery of the settled Recapitalization Term Sheet, which will form the basis of the Recapitalization Plan;
  - (b) February 17, 2022 – deadline for the Court to grant an order approving one or more meetings for a vote on the Recapitalization Plan and related materials (the “**Meeting Order**”), if applicable, and February 22, 2022, being the deadline to mail the meeting materials;
  - (c) March 15, 2022 – deadline for the U.S. Court to recognize the Meeting Order, if applicable;
  - (d) March 30, 2022 – deadline for the meeting(s) to vote on the Recapitalization Plan, if applicable;
  - (e) April 7, 2022 – deadline for the Court to grant an order approving and sanctioning the Recapitalization Plan, if applicable; and
  - (f) April 21, 2022 – deadline for U.S. Court to enter an order recognizing the order approving and sanctioning the Recapitalization Plan, if applicable.
27. The Just Energy Entities and the Monitor are hopeful that agreement on the Recapitalization Term Sheet and Recapitalization Plan can be reached in the near future. To this end, the Monitor understands that the Just Energy Entities intend to bring a motion before the Court returnable on March 3, 2022, to seek the authority to file the Recapitalization Plan and request that the Court grant the Meeting Order. The Monitor will comment on the Meeting Order and Recapitalization Plan in a future report to the Court. The Monitor notes that March 3, 2022 is after the milestone dates currently established for the Meeting Order. The Monitor understands that it is the intention of the Just Energy Entities to negotiate for an extension of the applicable milestone.

## UPDATE ON CLAIMS PROCEDURE

### *Claims Procedure Overview*

28. As noted in the Monitor's Third Report to the Court dated September 8, 2021 (a copy of which is available on the Monitor's Website), the Just Energy Entities, in consultation with the Monitor and the Claims Agent, developed the Claims Procedure to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their Directors and Officers in a flexible, fair, comprehensive, and expeditious manner. Subject to certain exceptions, the deadline to file a Proof of Claim or a Notice of Dispute of Claim (in the case of Negative Notice Claimants) was November 1, 2021 (Toronto time) (the “**Claims Bar Date**”). For the purpose of this section, any capitalized terms not defined herein have the meanings ascribed thereto in the Claims Procedure Order.
29. The Claims Procedure Order incorporated a negative notice claims process for known and quantified Claims generally, while all other Claimants not included within the definition of “Negative Notice Claimant” were required to file a Proof of Claim. To the extent that a party received a Statement of Negative Notice Claim and failed to file a Notice of Dispute of Claim, the Negative Notice Claimant’s Claim was deemed to be the amount set forth in the Statement of Negative Notice Claim.
30. Pursuant to noticing requirements and obligations of the Monitor contained within the Claims Procedure Order, the Monitor, with the assistance of the Claims Agent and the Just Energy Entities, has:
  - (a) issued approximately 1,000 Negative Notice Claims Packages to 835 Negative Notice Claimants;
  - (b) issued approximately 15,100 General Claims Packages to: (i) each person on the Service List (except Persons that are likely to assert only Excluded Claims); (ii) any Person who has requested a Proof of Claim and was not sent a Statement of Negative Notice Claim; (iii) any Person known to the Just Energy Entities or the Monitor as having a potential Claim that is not captured in any Statement of Negative Notice Claim; and (iv) any Person with a Claim arising out of the

- restructuring, disclaimer, termination or breach on or after the Filing Date of any contract, lease or other agreement;
- (c) issued approximately 3,700 notices advising of the existence of the Claims Procedure (which contained instructions for accessing a General Claims Package) to all active vendors of the Just Energy Entities listed in their books and records but not having any known Claims against the Just Energy Entities;
  - (d) caused the Notice to Claimants to be published on September 21, 2021, in the following printed publications: (i) the Global and Mail (National Edition); (ii) the Wall Street Journal; (iii) the Houston Chronicle; and (iv) the Dallas Morning News;
  - (e) posted all relevant documents with respect to the Claims Procedure on the Monitor's Website, including, but not limited to (i) the Notice to Claimants, (ii) the General Claims Package, (iii) a blank Notice of Dispute of Claim form, (iv) a blank Proof of Claim form, and (v) a blank D&O Proof of Claim form;
  - (f) received, reviewed, recorded and categorized all Notices of Dispute of Claim and Proofs of Claim that were received before, on, or after the Claims Bar Date;
  - (g) issued several Notices of Revision or Disallowance in respect of disallowed Claims prepared by the Applicants, in consultation with the Monitor;
  - (h) notified creditors of certain Claims accepted by the Just Energy Entities in consultation with the Monitor;
  - (i) engaged in numerous discussions and correspondence with various creditors that filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant, where appropriate; and
  - (j) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.
31. The Monitor has also engaged with numerous stakeholders in respect of questions that have arisen in respect of their Negative Notice Claims Package and the Claims Procedure generally.

32. The Just Energy Entities, with assistance from and in consultation with the Monitor, are in the process of completing a review of the Notices of Dispute of Claim and Proofs of Claim received, and are actively working to review, investigate, and/or resolve the various Claims as applicable.

### Overview of Claims

33. Statements of Negative Notice Claim were issued to 835 Claimants, of which 15 subsequently submitted a Notice of Dispute of Claim. Additionally, there were 515 Claimants who submitted a Proof of Claim.
34. A summary of the Claims segregated by Statement of Negative Notice Claim, Notice of Dispute of Claim, Proof of Claim and category of claim, is presented in the table below. Please note that the amounts presented are inclusive of potential duplicate and/or erroneous claims and represent the total Claims recorded by the Monitor.

Category	Statement of Negative Notice		Notice of Dispute of Claim		Proof of Claim		Total Claims		
	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	TOTAL
<i>(amounts stated in millions of CAD)</i>									
Funded Debt	\$ 331	\$ 289	-	\$ 13	-	-	\$ 331	\$ 302	\$ 633
Commodity & Financial	472	2	2	-	377	2	852	3	855
Litigation	-	-	-	-	-	10,015	-	10,015	10,015
Tax & Unclaimed Property	-	5	-	-	0	90	0	95	95
Trade & Other	-	8	-	0	26	490	26	498	524
D&O	-	-	-	-	-	1,545	-	1,545	1,545
<b>Total Claims Pool (Exl. Withdrawn &amp; Rescinded Claims)</b>	<b>804</b>	<b>304</b>	<b>2</b>	<b>14</b>	<b>403</b>	<b>12,140</b>	<b>1,209</b>	<b>12,458</b>	<b>13,667</b>
Withdrawn & Rescinded Claims	-	0	-	0	-	994	-	994	994
<b>Total Claims Received</b>	<b>\$ 804</b>	<b>\$ 304</b>	<b>\$ 2</b>	<b>\$ 14</b>	<b>\$ 403</b>	<b>\$ 13,134</b>	<b>\$ 1,209</b>	<b>\$ 13,452</b>	<b>\$ 14,661</b>

35. The following provides an overview of the types of Claims contained within each category:
- (a) Funded Debt: Funded Debt claims total approximately \$633 million and include all aggregate claims that relate to the Credit Facility Lenders, the Term Loan Lenders, and the Claims of the Noteholders;



- (b) Commodity & Financial: Commodity & Financial claims total approximately \$855 million and include all aggregate Claims of Commodity Suppliers as well as Claims relating to financial hedges or the purchase of renewable energy certificates;
- (c) Litigation: Litigation claims total approximately \$10,015 million and include all aggregate Claims pertaining to on-going and settled litigation;
- (d) Tax & Unclaimed Property: Tax & Unclaimed Property claims total approximately \$95 million and include all aggregate Claims of various government bodies for taxes owing at the local, state/province, and/or federal level, and also includes all claims with respect to unclaimed property owed to various U.S. states. For the Just Energy Entities, unclaimed property typically represents cheques issued prior to each state's established dormancy period, which represents the date by which a payee must deposit a cheque – generally 2 or more years;
- (e) Trade & Other: Trade & Other claims total approximately \$524 million and include all aggregate Claims of trade vendors, IT vendors, former employees, commission vendors, landlords and other. In this category, it is estimated that there are approximately \$435 million of Claims that are duplicative, which could reduce the total Claims to be resolved to approximately \$89 million if such Claims are withdrawn or successfully resolved; and
- (f) D&O Claims: D&O Claims include all Claims filed against the Directors and Officers of the Just Energy Entities. Approximately 302 D&O Proofs of Claim (including 193 “marker claims”) were recorded totaling approximately \$1,545 million. The Monitor understands that all of these D&O Claims are disputed by the Just Energy Entities. In fact, approximately \$1,436 million of these claims have now been disallowed by the Just Energy Entities, in consultation with the Monitor, and pursuant to which the deadline to file a Notice of Dispute has lapsed, resulting in \$109 million of D&O Claims remaining to be resolved.

36. As of January 31, 2022, secured claims initially recorded by the Monitor total approximately \$1,209 million, which is comprised primarily of the Just Energy Entities secured funded debt obligations and other secured supplier obligations pursuant to the

Intercreditor Agreement. Based on the review of secured claims completed by the Just Energy Entities and the Monitor and subject to final resolution of all secured claims, if necessary, pursuant to the Claims Procedure Order, it is estimated that there are approximately \$309 million of secured claims that are potentially duplicative or erroneous, which would reduce the total secured claims to be resolved to approximately \$900 million if such Claims are withdrawn or successfully resolved.

37. As of January 31, 2022, unsecured claims initially recorded by the Monitor total approximately \$13,452 million. Counsel for each of the Plaintiffs in the Donin Action and the Jordet Action filed a Proof of Claim each in the amount of US\$3,662 million, or approximately \$4,615 million (together, the “**Donin/Jordet Claims**”). Based on the review of unsecured claims completed by the Just Energy Entities and the Monitor and subject to final resolution of all unsecured claims, if necessary, pursuant to the Claims Procedure Order, it is estimated that there are approximately \$6,362 million of unsecured claims recorded (including one of the contingent Donin/Jordet Claims in the amount mentioned above) that are duplicative or erroneous. Net of withdrawn and rescinded claims of \$994 million and if the estimated duplicative or erroneous Claims of \$6,362 million are withdrawn or successfully resolved, the total unsecured Claims to be resolved would be approximately \$6,096 million.
38. The Just Energy Entities, with the assistance of the Monitor, are working to facilitate the voluntary withdrawal of duplicate and erroneous Claims submitted in an expeditious manner where possible. As of January 31, 2022, approximately \$994 million of Claims have been withdrawn or rescinded. Of the \$14,661 million total Claims received less withdrawn and rescinded Claims of \$994 million, the total remaining Claims pool is \$13,667.
39. In addition to the dollar value Claims listed in the above table and D&O “marker claims”, there are an additional 275 Proofs of Claim which are recorded as “marker claims” for amounts yet to be determined. Of these “marker claims”, 261 Proofs of Claim pertain to Claims filed by individuals who have sought to assert tort and/or similar Claims against the Just Energy Entities in relation to the Texas weather event. The

Monitor understands that all of these Claims are disputed by the Just Energy Entities. The remaining 14 “marker claims” generally pertain to Claims filed by certain governmental organizations and taxation bodies. The Just Energy Entities, in consultation with the Monitor, are working to determine and resolve these Claims.

40. The Monitor received 21 Claims totaling approximately \$9 million after the applicable Claims Bar Date (the “**Late-Filed Claims**”). The Monitor and the Just Energy Entities are in the process of reviewing the Late-Filed Claims. To the extent any further late-filed claims are submitted, the Just Energy Entities, in consultation with the Monitor, will assess those claims in light of the circumstances existing at that time.
41. The Just Energy Entities, in consultation with the Monitor, continue to assess the nature, quantum and validity of the Claims with a view to either accepting or disputing each Claim based on its merits. The Monitor will provide an update regarding the status of the Claims in a future report.

#### UPDATE ON ECOBEE TRANSACTION

42. As discussed in the Fourth Report, it was announced on November 1, 2021 that ecobee Inc. (“**ecobee**”), a private company in which JMC owned approximately an 8% equity interest, had agreed to sell all of its issued and outstanding shares (the “**ecobee Transaction**”) to 13462234 Canada Inc. (“**Generac**”), a wholly-owned subsidiary of Generac Power Systems, Inc., which is in turn a wholly-owned subsidiary of Generac Holdings Inc. (“**Generac Holdings**”). Generac Holdings stock trades on the New York Stock Exchange under the symbol GNRC. The sale was intended to be effected pursuant to a court approved arrangement under the *Canada Business Corporations Act*.
43. As consideration for the ecobee Transaction, Generac agreed to pay to the sellers of the ecobee shares US\$200 million cash on closing, subject to customary adjustments, and US\$450 million in Generac Holdings common stock. Additionally, upon achievement of certain performance targets between closing of the transaction and June 30, 2023, the sellers may receive a further amount up to an aggregate of US\$120 million in shares of Generac Holdings common stock.

44. Subsequent to the issuance of the ecobee Support Agreement Order, the Just Energy Entities entered into the Support Agreement with Generac and voted in favour of the ecobee Transaction.
45. The ecobee Transaction closed on or around December 1, 2021. At closing, the Just Energy Entities received approximately \$16 million in cash, which was net of certain adjustments totalling approximately \$2 million, and approximately 80,281 common shares of Generac Holdings common stock. Commencing on December 7 through December 20, 2021, as authorized pursuant to the ecobee Support Agreement Order, the Just Energy Entities monetized the common shares of Generac Holdings common stock received for cash proceeds of \$29 million, resulting in a combined total cash and share sale proceeds realized of \$45 million.

## **DONIN/JORDET MOTION**

### ***Background***

46. As mentioned above, the Donin/Jordet Motion was filed by the plaintiffs in the Donin Action and the Jordet Action (collectively, the “**Plaintiffs**”), who purport to represent a class of putative claimants. The Plaintiffs submitted two overlapping claims against the Just Energy Entities each in the amount of approximately US\$3.66 billion, or US\$7.32 billion combined, based on the proposed and uncertified class actions. The Monitor understands that the Plaintiffs are only claiming US\$3.66 billion for the two overlapping claims, notwithstanding the fact that two duplicative claims were submitted, and that the Plaintiffs acknowledge that the damages calculation of US\$3.66 billion is a joint and composite damages claim encompassing both the Donin Action and the Jordet Action.
47. The Donin Action claims damages on behalf of a putative class of “all Just Energy customers in the United States [...] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment”. The Jordet Action claims damages on behalf of a putative class of all “Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to present”.

48. The Donin Action was filed against Just Energy and Just Energy New York Corp., and the Jordet Action was filed against Just Energy Solutions, Inc.
49. In both the Jordet Action and the Donin Action, the only claims that remain are allegations that the applicable Just Energy Entities' actions breached contractual provisions to consider "business and market conditions" and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and (in the case of the Donin Action only) electricity. All other causes of action asserted in the Donin/Jordet Actions were dismissed as part of summary dismissal orders issued by the New York Courts dated September 24, 2021 (in the Donin Action) and December 7, 2021 (in the Jordet Action).
50. In accordance with the Claims Procedure Order, counsel for each of the Plaintiffs in the Donin Action and the Jordet Action filed the Donin/Jordet Claims, which are appended as Exhibits F and G, respectively, to the Affidavit of Robert Tannor sworn January 17, 2022 (the "**Tannor Affidavit**") included in the Donin/Jordet Motion. Upon review of the Donin/Jordet Claims, and in consultation with the Monitor, the Just Energy Entities prepared Notices of Disallowance or Revision and disallowed the Donin/Jordet Claims in their entirety for the reasons set out in such notices, which are attached as Exhibits Q and R to the Tannor Affidavit. Further details regarding the basis for the disallowances are set out in the Affidavit of Michael Carter sworn February 2, 2022 (the "**Carter Affidavit**").

#### *Discussions with the Monitor and Responses to Information Requests*

51. The Monitor has had several meetings and discussions with U.S. and Canadian counsel representing the Plaintiffs in the Donin/Jordet Actions (collectively, "**Litigation Counsel**"), and a representative of Tannor Capital Management LLC ("**Tannor Capital**"), the Plaintiffs' financial advisor, to discuss the Donin/Jordet Claims. Further, counsel to the Just Energy Entities and the Monitor received a comprehensive list of information requests on December 13, 2021 from Litigation Counsel and Tannor Capital (the "**Information Requests**"). The Information Requests are attached as Exhibit M to the Tannor Affidavit.

52. Although omitted from the Tannor Affidavit, the Monitor, in consultation with the Just Energy Entities, did prepare and provide a comprehensive and detailed response to the Information Requests, despite most of the information being publicly available. The Monitor's responses to the Information Requests were promptly provided to Litigation Counsel and Mr. Tannor on December 23, 2021, a copy of which is attached as Confidential Appendix "G" to the Carter Affidavit.

### ***Donin/Jordet Motion***

53. In the Donin/Jordet Motion, the Plaintiffs are seeking an order, among other things, declaring that they are to be unaffected by the CCAA Proceedings. In the alternative, they are seeking, among other things, (a) an order directing the implementation of a litigation schedule and process leading to the final adjudication of the Donin/Jordet Claims prior to any consideration by the Court of any plan of compromise or arrangement put forth by the Just Energy Entities, and (b) an order directing the Just Energy Entities to provide the Plaintiffs with access to any data room and access to information, or in the alternative directing the production of specified documents and information listed.
54. The Monitor does not support the Plaintiffs' request to be treated as unaffected by the CCAA Proceedings. Given the quantum of the Donin/Jordet Claims, the Monitor is of the view that these Claims (and all other litigation claims) must be affected and dealt with as part of the CCAA Proceedings to allow the Just Energy Entities to emerge from these CCAA Proceedings as a successfully restructured business. The Monitor has also been informed by the DIP Lenders (who are also the Plan Sponsor) that under no circumstances will they support a CCAA Plan which leaves these uncertified contingent claims as unaffected. The Plaintiffs are contingent creditors and there is no basis for them to be treated differently than the other contingent creditors in these CCAA Proceedings.

*Adjudication Process*

55. The Monitor has attempted to facilitate discussions between parties to reach a settlement on a litigation schedule and process to resolve the Donin/Jordet Claims. The Monitor has continued these efforts after the date Litigation Counsel served their motion record. A consensus has not been reached as of the date of this Fifth Report.
56. With respect to the proposed litigation schedule set out in the Donin/Jordet Motion, the Monitor understands that there are several steps that would need to take place prior to the final determination or resolution of the Donin/Jordet Claims, including, without limitation, the following:
- (a) discovery and production in respect of the Jordet Action;
  - (b) the exchange of any expert reports;
  - (c) a summary judgment motion or motions;
  - (d) a class certification hearing prior to a determination on the merits, as the putative class actions are currently uncertified;
  - (e) pre-trial steps, such as a pre-trial case conference;
  - (f) a trial on the merits; and
  - (g) the exercise of any potential appeal rights.
57. Given the complex nature and the early stages of the underlying litigation and size of the claims being alleged, the Monitor is of the view that the adjudication timeline proposed by the Plaintiffs is far too brief and not achievable from the outset. Rather, the Monitor is supportive of a more realistic adjudication schedule spanning approximately twelve months before a Claims Officer, as was proposed by the Just Energy Entities.
58. Further, the Monitor is of the view that it is unreasonable to delay the entire restructuring process of the Just Energy Entities to resolve one outstanding contingent litigation claim.

59. The Just Energy Entities' business is complex and requires diligent, focused management. The CCAA Proceedings have imposed considerable additional demands and responsibilities on management as they combine day to day responsibilities with the pursuit of a restructuring of the Just Energy Entities. In the Monitor's view, seeking adjudication of the Donin/Jordet Claims on the timeline proposed by the Plaintiffs would unduly impede the ability of management and key employees to focus their time and attention on achieving a successful restructuring for the benefit of all stakeholders.
60. Accordingly, the Monitor does not support the proposed adjudication process set forth in the Donin/Jordet Motion.

*Information Requests and Recapitalization Plan Discussions*

61. With respect to the documents and other information requested by the Plaintiffs, the Monitor intends to work with the Just Energy Entities and the Plaintiffs to facilitate and resolve such outstanding information and document requests as may be reasonable and appropriate in the circumstances.
62. The Plaintiffs have requested to be privy to the Recapitalization Plan discussions. The Monitor understands that only the Just Energy Entities' key stakeholders (which comprise the DIP Lenders, the Credit Facility Lenders, Shell and other key non-contingent creditors including the Term Loan Lenders) are privy to such discussions at this time. Further, the Plaintiffs are contingent uncertified creditors and the Monitor confirms that no contingent litigation creditor is privy to the discussions in respect of the Recapitalization Plan. Rather, the Plaintiffs will have the benefit of reviewing and considering any such Recapitalization Plan when it is put forth to all creditors for consideration. The Monitor notes that it is not a requirement that a debtor in a CCAA proceeding involve all of its creditors when developing a restructuring proposal and does not support the Plaintiffs' request for such involvement.



## RECEIPTS AND DISBURSEMENTS FOR THE 13-WEEK PERIOD ENDED JANUARY 29, 2022

63. The Just Energy Entities' actual net cash flow for the 13-week period from October 31, 2021 to January 29, 2022, was approximately \$33.9 million worse than the Cash Flow Forecast appended to the Fourth Report (the "November Cash Flow Forecast") as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
<b>RECEIPTS</b>			
Sales Receipts	\$614.2	\$599.4	(\$14.7)
Miscellaneous Receipts	67.6	52.2	(15.3)
<i>Total Receipts</i>	\$681.7	\$651.7	(\$30.1)
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$491.3)	(\$548.3)	(\$57.0)
ERCOT Resettlements	-	-	-
Payroll	(32.5)	(29.0)	3.5
Taxes	(31.8)	(22.6)	9.2
Commissions	(24.0)	(23.8)	0.3
Selling and Other Costs	(49.9)	(35.4)	14.5
<i>Total Operating Disbursements</i>	(\$629.5)	(\$659.1)	(\$29.6)
<b>OPERATING CASH FLOWS</b>	<b>\$52.2</b>	<b>(\$7.4)</b>	<b>(\$59.6)</b>
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(12.8)	(11.0)	1.8
<i>Restructuring Disbursements</i>			
Professional Fees	(10.8)	(14.8)	(4.0)
<b>NET CASH FLOWS</b>	<b>\$28.7</b>	<b>(\$33.2)</b>	<b>(\$61.8)</b>
<b>CASH</b>			
Beginning Balance	\$137.1	\$164.7	\$27.6
Net Cash Inflows / (Outflows)	28.7	(33.2)	(61.8)
Other (FX)	-	0.4	0.4
<b>ENDING CASH</b>	<b>\$165.8</b>	<b>\$131.9</b>	<b>(\$33.9)</b>

64. Explanations for the main variances in actual receipts and disbursements as compared to the November Cash Flow Forecast are as follows:

- (a) The unfavourable variance of approximately \$14.7 million in Sales Receipts is primarily comprised of the following:
- (i) An unfavourable variance of approximately \$19.4 million in respect of U.S. residential customers, respectively, related to timing and also related to lower than anticipated energy demand and customer acquisitions;
  - (ii) A permanent favourable variance of approximately \$10.8 million in respect of U.S. commercial customers, primarily driven by the impact of higher market prices on variable rate customer contracts, offset by higher Energy & Delivery Costs; and
  - (iii) A permanent unfavourable variance of approximately \$6.1 million primarily due to lower than forecast Canadian residential and commercial customer billings;
- (b) The unfavourable permanent variance of approximately \$15.3 million of Miscellaneous Receipts is primarily due to lower than anticipated proceeds from the sale of stock received in the ecobee Transaction due to a decline in the stock price of Generac;
- (c) The unfavourable variance of approximately \$57 million in respect of Energy and Delivery Costs is primarily driven by the following:
- (i) An unfavourable variance of approximately \$40.3 million primarily due to higher than forecast commodity and collateral payments related to increased pricing during the period; and
  - (ii) A permanent unfavourable variance of approximately \$16.7 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;
- (d) The favourable variance of approximately \$3.5 million in respect of Payroll is due to normal course fluctuations for various payroll tax remittances and sale incentive payments;

- (e) The favourable variance of approximately \$9.2 million in respect of Taxes is primarily due to the timing of estimated tax payments including an estimated sales tax reassessment payment owing by the Just Energy Entities of approximately \$7.8 million that was forecast, but not paid, during the period. This payment will be removed from future forecasts since it is now expected to be resolved as part of the Claims Procedure;
- (f) The permanent favourable variance of approximately \$0.3 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions;
- (g) The favourable timing variance of approximately \$14.5 million in respect of Selling and Other Costs is primarily due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors;
- (h) The favourable variance of \$1.8 million in respect of Interest Expense & Fees is primarily due to lower than forecast interest and fees owed on the Just Energy Entities' credit facilities; and
- (i) The unfavourable timing variance of \$4.0 million in respect of Professional Fees is due to higher than forecast payments of professional fee invoices during the current 13-week period primarily resulting from increased services rendered by professionals with respect to the development and negotiation of the Restructuring Plan and adjudication of Claims pursuant to the Claims Procedure.

*Reporting Pursuant to the DIP Term Sheet*

- 65. The variances shown and described herein compare the November Cash Flow Forecast, as appended to the Fourth Report, with the actual performance of the Just Energy Entities over the 13-week period noted.
- 66. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of

Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended May 29, 2021; June 26, 2021; July 24, 2021; August 21, 2021; September 18, 2021; October 16, 2021; November 13, 2021; December 11, 2021; and January 8, 2022. All variances reported were within the permitted variances.

67. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the "**DIP Cash Flow Forecasts**"). The Just Energy Entities provided the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week periods beginning May 30, 2021; June 27, 2021; July 25, 2021; August 22, 2021; September 19, 2021; October 17, 2021; November 14, 2021; December 12, 2021; and January 9, 2022.
68. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the November Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the November Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
69. Since the Fourth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
  - (a) Delivery of a Priority Supplier Payables Certificate monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;
  - (c) Delivery of a Cash Management Charge update monthly;
  - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;

- (e) Delivery of a Gross Margin Calculation Certificate update quarterly;
- (f) Delivery of Consolidated Financial Statements and related documents update quarterly;
- (g) Delivery of a Marked to Market Calculation monthly; and
- (h) Delivery of Electricity and Natural Gas Portfolio Reports, Hedging Exposure and Supply/Demand Projections quarterly.

#### **CASH FLOW FORECAST FOR THE PERIOD ENDING MARCH 12, 2022**

70. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 6-week period ending March 12, 2022 (the “**February Cash Flow Forecast**”), which encompasses the requested stay extension to March 4, 2022. The February Cash Flow Forecast is attached hereto as **Appendix “B”**, and is summarized below:

<i>(CAD\$ in millions)</i>	6-Week Ending March 12, 2022
<b>Forecast Week</b>	<b>Total</b>
<b>RECEIPTS</b>	
Sales Receipts	\$349.1
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$349.1
<b>DISBURSEMENTS</b>	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$257.3)
Payroll	(15.7)
Taxes	(11.2)
Commissions	(12.0)
Selling and Other Costs	(19.1)
<i>Total Operating Disbursements</i>	(\$315.3)
<b>OPERATING CASH FLOWS</b>	<b>\$33.8</b>
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(1.9)
<i>Restructuring Disbursements</i>	
Professional Fees	(8.4)
<b>NET CASH FLOWS</b>	<b>\$23.5</b>
<b>CASH</b>	
Beginning Balance	\$131.9
Net Cash Inflows / (Outflows)	23.5
Other (FX)	-
<b>ENDING CASH</b>	<b>\$155.4</b>

71. The February Cash Flow Forecast indicates that during the 6-week period ending March 12, 2022, the Just Energy Entities will have operating cash inflows of approximately \$33.8 million with total receipts of approximately \$349.1 million and total disbursements of approximately \$315.3 million, before interest expense and fees of approximately \$1.9 million and professional fees of approximately \$8.4 million, such that net cash inflows are forecast to be approximately \$23.5 million.
72. Generally, the underlying assumptions and methodology utilized in the November Cash Flow Forecast have remained the same for this February Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending February 19, 2022 to the week ending March 12, 2022;
  - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the February Cash Flow Forecast, which include:
    - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
    - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
    - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
    - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
    - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
    - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
73. The February Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to March 4, 2022.

#### **STAY EXTENSION**

74. The Stay Period will expire on February 17, 2022, and the Applicants are seeking a short extension to the Stay Period up to and including March 4, 2022.

75. The Monitor supports extending the Stay Period to March 4, 2022 for the following reasons:
- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to consider and hopefully finalize the Recapitalization Plan in an effort to achieve a going concern solution in consultation with the Financial Advisor, the Monitor and key stakeholders, including potentially seeking an order from the Court approving a creditors' meeting to vote on same;
  - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to give the Just Energy Entities the flexibility and time required in order to develop and commence steps to implement a successful restructuring;
  - (c) as indicated by the February Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
  - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
  - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

#### **APPROVAL OF THE ACTIVITIES OF THE MONITOR**

76. The Proposed Order also seeks approval of the Fifth Report and the actions, conduct, and activities of the Monitor since the date of Fourth Report.
77. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Fourth Report have been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.



**CONCLUSION**

78. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
79. Accordingly, the Monitor respectfully supports the requested relief in the Proposed Order and recommends that such Order be granted.
80. Further, the Monitor respectfully does not support the relief requested in the Donin/Jordet Motion and recommends that such motion be dismissed.

The Monitor respectfully submits to the Court this Fifth Report dated this 4th day of February, 2022.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor of  
Just Energy Group Inc. *et al*,  
and not in its personal or corporate capacity



Per: \_\_\_\_\_

Paul Bishop  
Senior Managing Director

## **APPENDIX “A”**

**Second Amended and Restated Initial Order dated May 26, 2021**

## APPENDIX "A"

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 26 <sup>TH</sup>
	)	
JUSTICE KOEHNEN	)	DAY OF MAY, 2021

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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**SECOND AMENDED AND RESTATED INITIAL ORDER**

(amending the Initial Order dated March 9, 2021, as amended and restated on March 19, 2021)

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCA**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.



**ON READING** the affidavit of Michael Carter sworn March 9, 2021 and the Exhibits thereto (the “**First Carter Affidavit**”), the affidavit of Michael Carter sworn March 16, 2021 and the Exhibits thereto (the “**Second Carter Affidavit**”), the affidavit of Michael Carter sworn March 18, 2021 and the Exhibits thereto (the “**Third Carter Affidavit**”), the affidavit of Margaret Munnelly sworn March 16, 2021 and the Exhibits thereto (the “**Munnelly Affidavit**”), the affidavit of Michael Carter sworn May 19, 2021 and the Exhibits thereto, the pre-filing report of the proposed monitor, FTI Consulting Canada Inc. (“**FTI**”), dated March 9, 2021, the First Report of FTI in its capacity as the Court-appointed monitor of the Applicants (the “**Monitor**”) dated March 18, 2021, the Second Report of the Monitor dated May 21, 2021, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed in Schedule “A” hereto (the “**JE Partnerships**”, and collectively with the Applicants, the “**Just Energy Entities**”), the Monitor, Alter Domus (US) LLC (the “**DIP Agent**”), as administrative agent for the lenders (the “**DIP Lenders**”) under the DIP Term Sheet (as defined below), the DIP Lenders and such other counsel who were present, and on reading the consent of FTI to act as the Monitor,

## **SERVICE**

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

## **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in Schedule “B” hereto or the First Carter Affidavit, as applicable, if they are not otherwise defined herein.

## **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, the JE Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

## PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”)

## POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Just Energy Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Just Energy Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Just Energy Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, staffing agencies, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that:

- (a) the Just Energy Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the First Carter Affidavit or, with the consent of the Monitor, the DIP Agent and the DIP Lenders, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System (a “**Cash Management Bank**”) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Just Energy Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Just Energy Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash

Management System, an unaffected creditor under any Plan with regard to Cash Management Obligations. All present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever to a Cash Management Bank under, in connection with, relating to or with respect to any and all agreements and arrangements evidencing or in respect of treasury facilities and cash management products (including, without limitation, all pre-authorized debit banking services, electronic funds transfer services, overdraft balances, corporate credit cards, merchant services and pre-authorized debits) provided by a Cash Management Bank to any Just Energy Entity, and any unpaid balance thereof, are collectively referred to herein as the “**Cash Management Obligations**”;

- (b) during the Stay Period (as defined below), no Cash Management Bank shall, without leave of this Court: (i) exercise any sweep remedy under any applicable documentation (provided, for greater certainty, that the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts held by the U.S. Bank Account Holders may continue in the ordinary course); (ii) exercise or claim any right of set-off against any account included in the Cash Management System, other than set-off permitted pursuant to paragraph 8 against applicable Authorized Cash Collateral solely in respect of any Cash Management Obligations; or (iii) subject to paragraph 6(d)(ii), modify the Cash Management System;
- (c) any of the Cash Management Banks may rely on the representations of the applicable Just Energy Entities with respect to whether any cheques or other payment order drawn or issued by the applicable Just Energy Entity prior to, on, or subsequent to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for: (i) relying on such representations by the applicable Just Energy Entities as provided for herein; or (ii) honouring any cheque (whether made before, on or after the date hereof) in a good faith belief that the Court has authorized such cheque or item to be honoured;
- (d) (i) those certain existing deposit agreements between the Just Energy Entities and the Cash Management Banks shall continue to govern the post-filing cash management relationship between the Just Energy Entities and the Cash Management Banks, and

- that all of the provisions of such agreements shall remain in full force and effect; (ii)(A) changes to the Cash Management System in accordance with the Lender Support Agreement shall be permitted; and (B) the Just Energy Entities, with the consent of the Monitor, the DIP Agent, the majority of the DIP Lenders and the Cash Management Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, where such changes are not otherwise implemented pursuant to paragraph 6(d)(ii)(A); (iii) all control agreements in existence prior to the date of this Order shall apply; and (iv) the Cash Management Banks are authorized to debit the Just Energy Entities' accounts in the ordinary course of business in accordance with the Cash Management System arrangements without the need for further order of this Court for all undisputed Cash Management Obligations owing to the Cash Management Banks;
- (e) the Cash Management Banks shall be entitled to the benefit of and are hereby granted a charge (the “**Cash Management Charge**”) on the Property to secure the Cash Management Obligations due and owing and that have not been paid in accordance with the applicable Cash Management Arrangements (as defined in the Lender Support Agreement). The Cash Management Charge shall have the priority set out in paragraphs 53-55 herein; and
- (f) the Just Energy Entities are authorized but not directed to continue to operate under the merchant processing agreements with JPMorgan Chase Bank, N.A., Paymentech, LLC (“**Paymentech**”) (collectively and as amended, restated, supplemented, or otherwise modified from time to time, the “**Merchant Processing Agreement**”). The Just Energy Entities are authorized to pay or reimburse Paymentech for fees, charges, refunds, chargebacks, reserves and other amounts due and owing from the Just Energy Entities to Paymentech (the “**Merchant Services Obligations**”) whether such obligations are incurred prior to, on or after the date hereof, and Paymentech is authorized to receive or obtain payment for such Merchant Services Obligations, as provided under, and in the manner set forth in, the Merchant Processing Agreement, including, without limitation, by way of recoupment or set-off without further order of the Court.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Just Energy Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Just Energy Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided, however, that the Just Energy Entities, until further order of this Court, are hereby permitted, subject to the terms of the Definitive Documents: (i) with the consent of the Monitor, to provide cash collateral (“**Authorized Cash Collateral**”) to third parties (the “**Collateral Recipients**”), including to the Cash Management Banks in accordance with the Lender Support Agreement, with respect to obligations incurred before, on or after the date hereof, and to grant security interests in such Authorized Cash Collateral in favour of the Collateral Recipients, where so doing is necessary to operate the Business in the normal course during these proceedings; (ii) subject to the terms of the Lender Support Agreement, to reimburse the reasonable documented fees and disbursements of one Canadian legal counsel, one U.S. legal counsel, one local counsel in Texas and one financial advisor to the agent (the “**CA Agent**”) and the lenders (the “**CA Lenders**”) under the Credit Agreement, whether incurred before or after the date of this Order; (iii) subject to the terms of the Lender Support Agreement, to pay all non-default interest and fees to the CA Agent and the CA Lenders in accordance with its terms; and (iv) to repay advances under the Credit Agreement solely for the purpose of creating availability under the Revolving Facilities in order for the Just Energy Entities to request the issuance of Letters of Credit under the Revolving Facilities to continue to operate the Business in the ordinary course during these proceedings, subject to: (A) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit under the Revolving Facilities; and (B) receipt of written confirmation from the applicable CA Lender(s) under the Credit Agreement that such CA Lender(s) will issue a Letter of Credit of equal value within one (1) Business Day thereafter. Capitalized terms used but not otherwise defined in this paragraph shall have the meanings ascribed thereto in the Credit Agreement.

8. **THIS COURT ORDERS** that the holders of cash collateral provided by the Just Energy Entities prior to the date hereof or any Collateral Recipients of Authorized Cash Collateral (the foregoing, collectively, “**Cash Collateral**”) shall be authorized to exercise any available rights of



set-off in respect of such Cash Collateral with respect to obligations secured thereby, whether incurred before, on or after the date hereof.

9. **THIS COURT ORDERS** that the Charges (as defined below) shall rank junior in priority to any liens, security interests and charges attached to Cash Collateral in favour of the holders thereof, and shall attach to the Cash Collateral only to the extent of any rights of any Just Energy Entity to the return of such Cash Collateral.

10. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as hereinafter defined), the Just Energy Entities shall be entitled but not required to pay the following amounts whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages (including, without limitation, the Q3 bonus described in the Munnely Affidavit), salaries, commissions, employee benefits, contributions in respect of retirement or other benefit arrangements, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) all outstanding and future amounts owing to or in respect of other workers providing services in connection with the Business and payable on or after the date of this Order, incurred in the ordinary course of business and consistent with existing arrangements;
- (c) the fees and disbursements of any Assistants retained or employed by the Just Energy Entities in respect of these proceedings at their standard rates and charges, which, in the case of the Financial Advisor (as defined below) shall be the amounts payable in accordance with the Financial Advisor Agreement (as defined below);
- (d) with the consent of the Monitor in consultation with the agent under the Credit Agreement (or its advisors), amounts owing for goods or services actually provided to any of the Just Energy Entities prior to the date of this Order by third parties, if, in the opinion of the Just Energy Entities, such third party is critical to the Business and ongoing operations of the Just Energy Entities;
- (e) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) not covered by paragraph 12 of this Order, and whereby the nonpayment of

- which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such nonpayment; and
- (f) taxes related to revenue, State income or operations incurred or collected by a Just Energy Entity in the ordinary course of business.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Just Energy Entities shall be entitled but not required to pay all reasonable expenses incurred by the Just Energy Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Just Energy Entities following the date of this Order.

12. **THIS COURT ORDERS** that the Just Energy Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Just Energy Entities in connection with the sale of goods and services by the Just Energy Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Just Energy Entities.

## **RESTRUCTURING**

13. **THIS COURT ORDERS** that the Just Energy Entities shall, subject to such requirements as are imposed by the CCAA and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Just Energy Entities to proceed with an orderly restructuring of the Just Energy Entities and/or the Business (the “**Restructuring**”).

## **LEASES**

14. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Just Energy Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Just Energy Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. **THIS COURT ORDERS** that the Just Energy Entities shall provide each of the relevant landlords with notice of the relevant Just Energy Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Just Energy Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Just Energy Entity, or by further Order of this Court upon application by the Just Energy Entities on at least two (2) days notice to such landlord and any such secured creditors. If any Just Energy Entity disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

16. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (i) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Just Energy Entity and the Monitor 24 hours' prior written notice, and (ii) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Just Energy Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE JUST ENERGY ENTITIES, THE BUSINESS OR THE PROPERTY**

17. **THIS COURT ORDERS** that until and including June 4, 2021 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process before any court, tribunal, agency or other legal or, subject to paragraph 18, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Just Energy Entities or the

Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Just Energy Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Just Energy Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, foreign regulatory body or agency or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Just Energy Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Just Energy Entities to carry on any business which the Just Energy Entities are not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. **THIS COURT ORDERS** that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales against or in respect of the Just Energy Entities or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court on notice to the Service List.

#### **NO INTERFERENCE WITH RIGHTS**

20. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Just Energy Entities except with

the written consent of the Just Energy Entities and the Monitor, leave of this Court or as permitted under any Qualified Support Agreement or the Lender Support Agreement.

### **CONTINUATION OF SERVICES**

21. **THIS COURT ORDERS** that during the Stay Period, except as permitted under any Qualified Support Agreement or the Lender Support Agreement, all Persons having oral or written agreements with any Just Energy Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Just Energy Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Just Energy Entities, and that the Just Energy Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Just Energy Entities in accordance with normal payment practices of the Just Energy Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Just Energy Entity and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

22. **THIS COURT ORDERS** that, subject to paragraph 30 but notwithstanding any other paragraphs of this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Just Energy Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **KEY EMPLOYEE RETENTION PLAN**

23. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Second Carter Affidavit and attached as Confidential Appendix “Q” thereto, is

hereby approved and the Just Energy Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

24. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “**KERP Charge**”), which charge shall not exceed the aggregate amount of C\$2,012,100 for Canadian dollar payments and US\$ 3,876,024 for U.S. dollar payments, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 53-55 herein.

#### **LENDER SUPPORT AGREEMENT**

25. **THIS COURT ORDERS** that the Lender Support Agreement is hereby ratified and approved and that, upon the occurrence of a termination event under the Lender Support Agreement, the CA Lenders may exercise the rights and remedies available to them under the Lender Support Agreement in accordance with the terms thereof.

#### **PRE-FILING SECURITY INTERESTS**

26. **THIS COURT ORDERS** that any obligations secured by a valid, enforceable and perfected security interest upon or in respect of any of the Property pursuant to a security agreement which includes as collateral thereunder any Property acquired after the date of the applicable security agreement (“**After-Acquired Property**”), shall continue to be secured by the Property (including After Acquired Property that may be acquired by the applicable Just Energy Entities after the commencement of these proceedings) notwithstanding the commencement of these proceedings, subject to the priority set out in paragraphs 53-55 herein.

#### **COMMODITY SUPPLIERS**

27. **THIS COURT ORDERS** that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the “**Priority Commodity/ISO Charge**”) on the Property in an amount equal to the value of the Priority Commodity/ISO Obligations. The value of the Priority Commodity/ISO Obligations shall be determined in accordance with the terms of the existing agreements or arrangements between the applicable Just Energy Entity and the Qualified Commodity/ISO Supplier or, in the event of any dispute, by the

Court. The Priority Commodity/ISO Charge shall have the priority set out in paragraphs 53-55 herein.

28. **THIS COURT ORDERS** that the Commodity/ISO Supplier Support Agreements are hereby ratified, approved and deemed to be Qualified Support Agreements.

29. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver up to eight (8) Qualified Support Agreements.

30. **THIS COURT ORDERS** that upon the occurrence of an event of default under a Qualified Support Agreement, the applicable Qualified Commodity/ISO Supplier may exercise the rights and remedies available to it under its Qualified Support Agreement, or upon five (5) days' notice to the Just Energy Entities, the Monitor and the Service List, may apply to this Court to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to its Commodity Agreement or ISO Agreement and the Priority Commodity/ISO Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities provided that a Qualified Commodity/ISO Supplier may, unless otherwise ordered by the Court, terminate any Commodity Agreements and Qualified Support Agreements entered into after May 26, 2021 without obtaining the Court's authorization in the event that: (i) an Order is granted in these proceedings that authorizes the exercise of rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge (as defined below); or (ii) these proceedings or the recognition proceedings under Chapter 15 of the United States Bankruptcy Code are dismissed or converted to a liquidation proceeding, including a receivership, bankruptcy, proceeding under Chapter 7 of the United States Bankruptcy Code or otherwise.

31. **THIS COURT ORDERS** that the Monitor shall provide a report on the value of the Priority Commodity/ISO Obligations as of the last day of each calendar month by posting such report on the Monitor's Website (as defined below) within three (3) Business Days of such calendar month end.



## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

32. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Just Energy Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Just Energy Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Just Energy Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Just Energy Entities or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

33. **THIS COURT ORDERS** that each of the Just Energy Entities shall jointly and severally indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Just Energy Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

34. **THIS COURT ORDERS** that the directors and officers of the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of C\$44,100,000, as security for the indemnity provided in paragraph 33 of this Order. The Directors' Charge shall have the priority set out in paragraphs 53-55 herein.

35. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the Just Energy Entities' 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 that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 33.

**APPOINTMENT OF MONITOR**

36. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Just Energy Entities with the powers and obligations set out in the CCAA or set forth herein and that the Just Energy Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Just Energy Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Just Energy Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Just Energy Entities, to the extent required by the Just Energy Entities, in their dissemination to the DIP Agent, the DIP Lenders and their counsel of financial and other information in accordance with the Definitive Documents;
- (d) advise the Just Energy Entities in their preparation of the Just Energy Entities' cash flow statements and reporting required by the DIP Agent and DIP Lenders, which information shall be reviewed with the Monitor and delivered to the DIP Agent and DIP Lenders and their counsel in accordance with the Definitive Documents;
- (e) advise the Just Energy Entities in their development of a Plan and any amendments to a Plan;
- (f) assist the Just Energy Entities, to the extent required by the Just Energy Entities, with the holding and administering of creditors' or shareholders' meeting for voting on the Plan;

- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Just Energy Entities, wherever located and to the extent that is necessary to adequately assess the Just Energy Entities' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

38. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Just Energy Entities and the DIP Agent and the DIP Lenders with information provided by the Just Energy Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Just Energy Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

41. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor (including both U.S. and Canadian counsel for all purposes of this Order), and counsel to the Just Energy Entities (including both U.S. and Canadian counsel for all purposes of this Order) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the Just Energy Entities as part of the costs of these proceedings. The Just Energy Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the Just Energy Entities' counsel on a weekly basis.

43. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **ADMINISTRATION CHARGE**

44. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$3,000,000 as security for their professional fees and disbursements incurred at their standard

rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 53-55 herein.

## **DIP FINANCING**

45. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, pursuant a credit facility from the DIP Agent and the DIP Lenders in order to finance the Just Energy Entities' working capital requirements and other general corporate purposes, all in accordance with the Cash Flow Statements (as defined in the DIP Term Sheet) and Definitive Documents, provided that borrowings under such credit facility shall not exceed US\$125,000,000 unless permitted by further Order of this Court.

46. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities, the DIP Agent and the DIP Lenders dated as of March 9, 2021 and attached as Appendix "DD" to the First Carter Affidavit (as may be amended or amended and restated from time to time, the "**DIP Term Sheet**").

47. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet and the Cash Flow Statements, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Just Energy Entities are hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order. Notwithstanding any other provision in this Order, all payments and other expenditures to be made by any of the Just Energy Entities to any Person (except the Monitor and its counsel) shall be in accordance with the terms of the Definitive Documents, including in respect of payments in satisfaction of Priority Commodity/ISO Obligations.

48. **THIS COURT ORDERS** that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Lenders’ Charge**”) on the Property, which DIP Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders’ Charge shall have the priority set out in paragraphs 53-55 hereof.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Agent on behalf of the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders’ Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lenders’ Charge, the DIP Agent or the DIP Lenders, as applicable, may immediately cease making advances or providing any credit to the Just Energy Entities and shall be permitted to set off and/or consolidate any amounts owing by the DIP Agent or the DIP Lenders to the Just Energy Entities against the obligations of the Just Energy Entities to the DIP Agent and the DIP Lenders under the Definitive Documents or the DIP Lenders’ Charge, make demand, accelerate payment and give other notices with respect to the obligations of the Just Energy Entities to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Lenders’ Charge, or to apply to this Court on five (5) days’ notice to the Just Energy Entities, the Monitor and the Service List to seek the Court’s authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders’ Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities; and
- (c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Just Energy Entities or the Property.

50. **THIS COURT ORDERS AND DECLARES** that the DIP Agent, the DIP Lenders, the Qualified Commodity/ISO Suppliers and the Cash Management Banks shall be treated as

unaffected in any Plan filed by the Applicants or any of them under the CCAA, or any proposal filed by the Applicants or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents, the Priority Commodity/ISO Obligations or the Cash Management Obligations, as applicable.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

51. **THIS COURT ORDERS** that the agreement dated February 20, 2021 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to the Just Energy Entities and attached as Confidential Appendix “FF” to the First Carter Affidavit (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and the Just Energy Entities are authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

52. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$8,600,000 as security for the fees and disbursements and other amounts payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 53-55 herein.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

53. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, as among them, shall be as follows:

First – Administration Charge and FA Charge (to the maximum amount of C\$3,000,000 and C\$8,600,000, respectively), on a *pari passu* basis;

Second – Directors’ Charge (to the maximum amount of C\$44,100,000);

Third – KERP Charge (to the maximum amounts of C\$2,012,100 and US\$3,876,024);

Fourth – DIP Lenders’ Charge (to the maximum amount of the Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time) and the Priority Commodity/ISO Charge, on a *pari passu* basis; and

Fifth – Cash Management Charge.

54. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge or the Cash Management Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

55. **THIS COURT ORDERS** that, subject to paragraph 9, each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person (including those commodity suppliers listed in Schedule “A” hereto).

56. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Just Energy Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Just Energy Entities also obtain the prior written consent of the Monitor, the DIP Agent on behalf of the DIP Lenders and the beneficiaries of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, or further Order of this Court.

57. **THIS COURT ORDERS** that the Charges, the agreements and other documents governing or otherwise relating to the obligations secured by the Charges, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Agent or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made



pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Just Energy Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any Just Energy Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Just Energy Entities entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of any of the other Definitive Documents; and
- (c) the payments made by the Just Energy Entities pursuant to this Order or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Just Energy Entities’ interest in such real property leases.

#### **SERVICE AND NOTICE**

59. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Just Energy Entities, a notice to every known creditor who has a claim against the Just Energy Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the

prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

60. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

61. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL - <http://cfcanada.fticonsulting.com/justenergy> (the “**Monitor’s Website**”).

62. **THIS COURT ORDERS** that the Just Energy Entities, the DIP Agent or the DIP Lenders and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal deliver, facsimile or other electronic transmission to the Just Energy Entities’ creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

### **FOREIGN PROCEEDINGS**

63. **THIS COURT ORDERS** that the Applicant, Just Energy Group Inc. (“**JEGI**”) is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

64. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

### **GENERAL**

65. **THIS COURT ORDERS** that any interested party may apply to this Court to amend or vary this Order on not less than seven (7) days’ notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set out in paragraphs 53-55 hereof, including with respect to any fees, expenses and disbursements incurred and in respect of advances made under the Definitive Documents or pursuant to the Qualified Support Agreement, as applicable, until the date this Order may be amended, varied or stayed. For the avoidance of doubt (i) no payment in respect of any obligations secured by the Priority Commodity/ISO Charge or the Cash Management Charge or made to the CA Lenders pursuant to the Lender Support Agreement, and (ii) none of the Authorized Cash Collateral, shall be subject to the terms of any intercreditor agreement, including any “turnover” or “waterfall” provision(s) therein.

66. **THIS COURT ORDERS** that, notwithstanding paragraph 65 of this Order, the Just Energy Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

67. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Just Energy Entities, the Business or the Property.

68. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Just Energy Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to JEGI, in any foreign proceeding, or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

69. **THIS COURT ORDERS** that each of the Just Energy Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that JEGI is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

70. **THIS COURT ORDERS** that Confidential Appendices “FF” and “GG” to the First Carter Affidavit and Confidential Appendix “Q” to the Second Carter Affidavit shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

71. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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**SCHEDULE “A”****JE Partnerships****Partnerships:**

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

**Commodity Suppliers:**

- EXELON GENERATION COMPANY, LLC
- BRUCE POWER L.P.
- SOCIÉTÉ GÉNÉRALE
- EDF TRADING NORTH AMERICA, LLC
- NEXTERA ENERGY POWER MARKETING, LLC
- MACQUARIE BANK LIMITED
- MACQUARIE ENERGY CANADA LTD.
- MACQUARIE ENERGY LLC
- MORGAN STANLEY CAPITAL GROUP

- BP CANADA ENERGY MARKETING CORP.
- BP ENERGY COMPANY
- BP CORPORATION NORTH AMERICA INC.
- BP CANADA ENERGY GROUP ULC
- SHELL ENERGY NORTH AMERICA (CANADA) INC.
- SHELL ENERGY NORTH AMERICA (US), L.P.

## SCHEDULE “B”

### DEFINITIONS

“**Commodity Agreement**” means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement.

“**ISO Agreement**” means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

“**Lender Support Agreement**” means that certain Accommodation and Support Agreement dated as of March 18, 2021 and attached as Exhibit “A” to the Third Carter Affidavit, among the CA Agent, the CA Lenders and the Just Energy Entities, which agreement shall not be amended, restated or modified in any manner without the consent of the majority of the DIP Lenders and the Monitor.

“**Priority Commodity/ISO Obligation**” means amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under an ISO Agreement on or before the date of this Order, whether or not yet due).

“**Qualified Commodity/ISO Supplier**” means any counterparty to a Commodity Agreement or ISO Agreement that has executed or executes a Qualified Support Agreement with a Just Energy Entity and refrained from exercising any available termination rights, under the Commodity

Agreement as a result of the commencement of the Proceedings absent an event of default under such Qualified Support Agreement.

**“Qualified Support Agreement”** means a support agreement between a Just Energy Entity and a counterparty to a Commodity Agreement, in form and substance satisfactory to the Just Energy Entities and the DIP Lenders, acting reasonably, which includes, among other things: (i) that such counterparty shall apply to the Court on five (5) days’ notice to the Just Energy Entities, the Monitor and the Service List prior to exercising any termination rights under a Qualified Support Agreement, except as expressly provided for herein; (ii) the obligation to supply physical and financial power and natural gas and other related services pursuant to any confirmations or transactions executed pursuant to a Commodity Agreement; and (iii) an agreement to refrain from exercising termination rights as a result of the commencement of these proceedings absent an event of default under such support agreement.



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 **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceedings commenced at Toronto

**FIFTH REPORT OF THE MONITOR**

**Thornton Grout Finnigan LLP**  
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**Puya Fesharaki** (LSO# 70588L)  
Email: [pfesharaki@tgf.ca](mailto:pfesharaki@tgf.ca) / Tel: (416) 304-7979  
Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.

**THIS IS EXHIBIT S REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**SEVENTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**March 22, 2022**

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## APPENDICES

Appendix “A” Cash Flow Forecast for the 6-week period ending April 30, 2022

**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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST  
ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP.,  
JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA  
INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC.,  
8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,  
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST  
ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST  
ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST  
ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY  
MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY  
SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY  
GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING  
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL  
ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC,  
JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT  
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND  
JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**SEVENTH REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the

protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and most recently on May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. On February 9, 2022, the Court denied certain relief, with reasons to follow, requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan in their capacity

as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The Court’s reasons for the dismissal are set out in the written reasons dated February 23, 2022 (the “**McEwen Endorsement**”), which is available on the Monitor’s Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement on February 24, 2022.

7. On March 3, 2022, the Court granted an Order extending the Stay Period until March 25, 2022 and appointing the Honourable Justice Dennis O’Connor as Claims Officer with respect to claims relating to the Donin/Jordet Actions.
8. All references to monetary amounts in this Seventh Report of the Monitor (the “**Seventh Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Second A&R Initial Order.
9. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
10. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

## PURPOSE

11. The purpose of this Seventh Report is to provide information to the Court with respect to the following:
  - (a) the Monitor’s activities since the Monitor’s Sixth Report to the Court dated March 2, 2022 (the “**Sixth Report**”);
  - (b) the restructuring activities of the Just Energy Entities since the date of the Sixth Report with respect to the development of a recapitalization plan (the “**Plan**”);

- (c) an update on the Claims Procedure and the resolution of Claims pursuant to the Claims Procedure Order;
- (d) the Just Energy Entities' actual cash receipts and disbursements for the 3-week period ending March 19, 2022, and a comparison to the cash flow forecast attached as Appendix "C" to the Sixth Report, along with an updated cash flow forecast for the period ending April 30, 2022;
- (e) the relief sought by the Applicants in their proposed Order (the "**Proposed Order**") to extend the Stay Period to April 22, 2022; and
- (f) the Monitor's views in respect of the foregoing, as applicable.

#### **TERMS OF REFERENCE AND DISCLAIMER**

12. In preparing this Seventh Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities' books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the "**Information**").
13. Except as otherwise described in this Seventh Report:
  - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Seventh Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
14. Future-oriented financial information reported in or relied on in preparing this Seventh Report is based on assumptions regarding future events. Actual results will vary from these forecasts, and such variations may be material.



15. The Monitor has prepared this Seventh Report to provide information to the Court in connection with the relief requested by the Applicants. This Seventh Report should not be relied on for any other purpose.

#### **MONITOR'S ACTIVITIES SINCE THE SIXTH REPORT**

16. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Sixth Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
  - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;
  - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;
  - (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
  - (e) assisting the Just Energy Entities to update and extend their cash flow forecasts;
  - (f) working with and providing input to the Just Energy Entities and other stakeholders to assist with the development of a plan of compromise or arrangement (the "**Plan**");
  - (g) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
    - (i) provide stakeholders with financial and other information as appropriate in the circumstances;

- (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts and presentations; and
- (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) facilitating responses by the Just Energy Entities to information requested by counsel to the representative plaintiffs in the Donin/Jordet Actions;
- (k) attending a case conference before the Honourable Justice O'Connor to determine procedural and other matters in connection with the adjudication of the Donin/Jordet Actions;
- (l) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (m) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (n) preparing this Seventh Report.

#### **UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES**

17. The Just Energy Entities continue to advance the development of the Plan and have consulted and worked extensively with key stakeholders to seek a viable going-concern solution for the business.
18. The Plan is intended to facilitate the Just Entity Entities' emergence from the CCAA Proceedings while preserving the going concern value of the business, maintaining

customer relationships, and preserving employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities’ stakeholders.

19. In its Fifth Report to the Court dated February 4, 2022 (the “**Fifth Report**”), the Monitor noted that the Just Energy Entities intended to bring a motion before the Court on March 3, 2022 to seek the authority to file the Plan and request that the Court grant a Meeting Order. As noted in the Sixth Report, despite the best efforts of the Just Energy Entities and key stakeholders, which the Monitor has been closely observing, the Just Energy Entities were not yet in a position to present the Plan to the Court at that date.
20. Since that time, in consultation with the Monitor, discussions and negotiations with the Just Energy Entities’ key stakeholders with respect to the Plan have continued in earnest; however, the Just Energy Entities are not yet in a position to present the Plan to the Court.
21. The Just Energy Entities are at a critical juncture of their Plan negotiations and discussions with key stakeholders and require additional time to finalize and file the Plan. The Just Energy Entities are therefore seeking an additional short extension of the Stay Period and intend to file a Plan during the proposed extension. If, notwithstanding the Just Energy Entities’ best efforts, they are unable to file a motion seeking a Meeting Order prior to April 22, 2022, they intend to seek direction from the Court regarding their ongoing restructuring efforts and the CCAA Proceedings.
22. Should the Stay Period be extended to April 22, 2022, the Monitor will provide an update to the Court regarding the status of the Plan discussions and any progress in the negotiations, on April 7, 2022.

#### **UPDATE ON CLAIMS PROCEDURE**

23. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Claims Procedure Order.
24. The Monitor last reported on the Claims Procedure in the Fifth Report. Since the date of the Fifth Report, the Monitor, with assistance of the Claims Agent and the Just Energy

Entities, has taken the following steps with respect to the Claims received by the Monitor:

- (a) reviewed, recorded, and categorized all Claims including any additional Claims which were received after the date of the Fifth Report;
- (b) continued to review and attempt to determine and/or resolve Claims received to date;
- (c) issued several Notices of Revision or Disallowance, as prepared by the Just Energy Entities, in consultation with the Monitor, in respect of disallowed Claims;
- (d) notified creditors of certain Claims accepted by the Just Energy Entities;
- (e) engaged in numerous discussions and correspondence with various creditors who filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant where appropriate; and
- (f) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.

#### *Overview of Claims*

25. A summary of the Claims submitted in the Claims Procedure segregated by priority and category of the Claim is presented in the table below. Amounts presented are inclusive of potential duplicate and/or erroneous Claims and represent the total Claims received by the Just Energy Entities and recorded by the Monitor.

Category	Total Claims		
	Secured	Unsecured	TOTAL
<i>(amounts stated in millions of CAD)</i>			
Funded Debt	\$ 331	\$ 1,168	\$ 1,499
Commodity & Financial	852	119	970
Litigation	-	10,024	10,024
Tax & Unclaimed Property	0	95	95
Trade & Other	26	511	537
D&O	-	1,554	1,554
<b>Total Claims Received</b>	<b>\$ 1,209</b>	<b>\$ 13,471</b>	<b>\$ 14,680</b>

26. Since the date of the Fifth Report, the Monitor has recorded an additional \$19 million in Claims. The following provides an overview of these additionally recorded Claims, all of which were filed as unsecured:
- two Late-Filed Claims (as defined in the Fifth Report) were submitted by government bodies for taxes owing and have been recorded in the Tax & Unclaimed Property category;
  - one Restructuring Claim filed by a former employee of the Just Energy Entities was recorded in the Trade & Other category; and
  - sixty-eight Claims previously recorded as marker claims were amended as part of a Dispute of a Notice of Revision or Disallowance to now assert a dollar value totaling approximately \$19 million. These amended Claims pertain to individuals who have sought to assert tort and/or similar Claims against the Just Energy Entities in relation to the Texas weather event. These Claims were recorded in the Litigation category.

*Resolution status of Claims*

27. The Just Energy Entities, with assistance from and in consultation with the Monitor, are in the process of reviewing the Negative Notice Claims, Notices of Dispute of Claim, Proofs of Claim, and Disputes of Notices of Revision or Disallowance received in accordance with the Claims Procedure Order and are actively working to investigate, and/or resolve the Claims as applicable. A summary of the current resolution status of the Claims is presented in the table below:

Category	Accepted or Deemed Accepted	Under Review	Dispute Resolution in Process	Sub-total Claims Pool	Duplicative Claims or Claim Value Reductions	Total Claims Pool	Disallowed	Rescinded Negative Notices / Withdrawn	Total Claims
(amounts stated in millions of CAD)	A	B	C	D= A+ B+ C	E	F= D+ E	G	H	= F+ G+ H
Funded Debt	\$ 620	\$ 13	\$ -	\$ 633	\$ -	\$ 633	\$ -	\$ 866	\$ 1,499
Commodity & Financial	484	61	0	545	310	855	-	115	970
Litigation	-	1	4,836	4,836	4,828	9,665	359	0	10,024
Tax & Unclaimed Property	2	73	-	75	20	95	0	-	95
Trade & Other	11	47	3	62	433	495	3	40	537
D&O	-	0	118	118	0	118	1,436	-	1,554
<b>Total Claims Received</b>	<b>\$ 1,117</b>	<b>\$ 196</b>	<b>\$ 4,956</b>	<b>\$ 6,269</b>	<b>\$ 5,591</b>	<b>\$ 11,860</b>	<b>\$ 1,799</b>	<b>\$ 1,021</b>	<b>\$ 14,680</b>

28. The following provides an overview of the current resolution status of the Claims:

- (a) Accepted or Deemed Accepted: “Accepted or Deemed Accepted” Claims total approximately \$1,117 million of which approximately \$304 million are unsecured amounts;
- (b) Under Review: “Under Review” Claims total approximately \$196 million and include Claims where no formal response has yet been issued to the Claimant. Approximately \$135 million of the “Under Review” Claims are unsecured;
- (c) Dispute Resolution in Process: “Dispute Resolution in Process” Claims relate to Claims where the Monitor, in consultation with the Just Energy Entities, has issued a Notice of Revision or Disallowance and in which a Notice of Dispute of Revision or Disallowance was subsequently received from the respective Claimants or where the dispute period has not yet elapsed. These Claims are unsecured and total approximately \$4,956 million;
- (d) Duplicative Claims or Claim Value Reductions: “Duplicative Claims or Claim Value Reductions” include Claims which have yet to be fully resolved and have been either (i) identified as potentially being duplicative of another Claim recorded by the Monitor, and/or (ii) the unresolved Claim amount has been reduced through the resolution process described in the Claims Procedure Order. These Claims total approximately \$5,591 million and are expected to be excluded from the final Claims pool. Approximately \$5,282 million of these Claims are unsecured;
- (e) Disallowed: “Disallowed Claims” total approximately \$1,799 million and relate to resolved Claims where the full Claim or a portion of the Claim has been disallowed by the Just Energy Entities, in consultation with the Monitor, and where the Claimants have not responded with a Dispute of Notice of Revision or Disallowance within the applicable time period; and
- (f) Rescinded Negative Notices / Withdrawn: “Rescinded Negative Notices / Withdrawn Claims” total approximately \$1,021 million and relate to fully resolved Claims which have been withdrawn by the Claimant or where the Just Energy Entities, in consultation with the Monitor, have rescinded a Negative Notice Claim for various reasons (most commonly in connection with the disallowance of a duplicative Claim filed by the Claimant).

29. The Just Energy Entities, in consultation with the Monitor, continue to review and adjudicate the Claims received in accordance with the Claims Procedure Order and intend to provide further updates to this Court as these proceedings progress.

## RECEIPTS AND DISBURSEMENTS FOR THE 3-WEEK PERIOD ENDED MARCH 19, 2022

30. The Just Energy Entities' actual net cash flow for the 3-week period from February 27, 2022 to March 19, 2022, was approximately \$92.3 million better than the Cash Flow Forecast appended to the Sixth Report (the "March Cash Flow Forecast") as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
<b>RECEIPTS</b>			
Sales Receipts	\$152.4	\$192.0	\$39.6
Miscellaneous Receipts	-	-	-
<i>Total Receipts</i>	\$152.4	\$192.0	\$39.6
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$116.8)	(\$69.1)	\$47.8
Payroll	(6.1)	(5.2)	0.9
Taxes	(6.2)	(6.0)	0.2
Commissions	(5.3)	(4.1)	1.2
Selling and Other Costs	(8.4)	(5.6)	2.8
<i>Total Operating Disbursements</i>	(\$142.8)	(\$90.0)	\$52.8
<b>OPERATING CASH FLOWS</b>	<b>\$9.6</b>	<b>\$102.0</b>	<b>\$92.3</b>
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(1.6)	(1.1)	0.5
<i>Restructuring Disbursements</i>			
Professional Fees	(2.2)	(3.4)	(1.2)
<b>NET CASH FLOWS</b>	<b>\$5.8</b>	<b>\$97.5</b>	<b>\$91.6</b>
<b>CASH</b>			
Beginning Balance	\$118.7	\$119.6	\$0.9
Net Cash Inflows / (Outflows)	5.8	97.5	91.6
Other (FX)	-	(0.3)	(0.3)
<b>ENDING CASH</b>	<b>\$124.5</b>	<b>\$216.8</b>	<b>\$92.3</b>

31. Explanations for the main variances in actual receipts and disbursements as compared to the March Cash Flow Forecast are as follows:
- (a) The favourable variance of approximately \$39.6 million in Sales Receipts is primarily comprised of the following:
    - (i) A favourable variance of approximately \$18.6 million due to higher than forecast sales receipts due to timing, which offset lower receipts in prior periods, in respect of U.S. residential customers;
    - (ii) A favourable variance of approximately \$14.5 million due to higher than forecast sales receipts due to timing, which offset lower receipts in prior periods, in respect of U.S. commercial customers; and
    - (iii) A favourable variance of approximately \$6.5 million primarily due to higher than forecast sales receipts due to timing, which offset lower receipts in prior periods, in respect of Canadian residential and commercial customer billings;
  - (b) The favourable variance of approximately \$47.8 million in respect of Energy and Delivery Costs is primarily driven by the following:
    - (i) A favourable timing variance of approximately \$26.4 million due to commodity payments being made the week after instead of the last week of the 3-week forecast period;
    - (ii) A permanent unfavourable variance of approximately \$1.8 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations; and
    - (iii) A favourable timing variance of \$23.1 million due to cash collateral not being posted during the 3-week forecast period;
  - (c) The permanent favourable variance of approximately \$1.2 million for Commissions is primarily due to normal course fluctuations related to customer signups and associated commissions;



- (d) The permanent favourable variance of approximately \$2.8 million in respect of Selling and Other Costs is primarily due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors; and
- (e) The unfavourable variance of \$1.2 million in respect of Professional Fees due to higher than forecast payment of professional fee invoices during the current 3-week forecast period primarily resulting from increased services rendered by professionals with respect to the continued development and negotiation of the Plan.

*Reporting Pursuant to the DIP Term Sheet*

- 32. The variances shown and described herein compare the March Cash Flow Forecast, as appended to the Sixth Report, with the actual performance of the Just Energy Entities over the 3-week period noted.
- 33. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week period ended February 5, 2022 and March 5, 2022. All variances reported were within the permitted variances.
- 34. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the “**DIP Cash Flow Forecasts**”). The Just Energy Entities provided the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week periods beginning February 6, 2022 and March 6, 2022.
- 35. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the March Cash Flow Forecast for the same period, the DIP Variance Reports differed

from the variance analysis above that compares actual results to the March Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.

36. Since the Sixth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
- (a) Delivery of a Priority Supplier Payables Certificate monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;
  - (c) Delivery of a Cash Management Charge update monthly;
  - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly; and
  - (e) Delivery of a Marked to Market Calculation monthly.

#### **CASH FLOW FORECAST FOR THE 6-WEEK PERIOD ENDING APRIL 30, 2022**

37. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 6-week period ending April 30, 2022 (the “**April Cash Flow Forecast**”), which encompasses the requested extension of the Stay Period to April 22, 2022. The April Cash Flow Forecast is attached hereto as **Appendix “A”**, and is summarized below:

<i>(CAD\$ in millions)</i>	6-Week Period Ending April 30, 2022
<b>Forecast Week</b>	<b>Total</b>
<b>RECEIPTS</b>	
Sales Receipts	\$342.1
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$342.1
<b>DISBURSEMENTS</b>	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$350.0)
Payroll	(16.0)
Taxes	(17.6)
Commissions	(13.5)
Selling and Other Costs	(19.0)
<i>Total Operating Disbursements</i>	(\$416.0)
<b>OPERATING CASH FLOWS</b>	<b>(\$73.9)</b>
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$-
Interest Expense & Fees	(8.3)
<i>Restructuring Disbursements</i>	
Professional Fees	(10.4)
<b>NET CASH FLOWS</b>	<b>(\$92.6)</b>
<b>CASH</b>	
Beginning Balance	\$216.8
Net Cash Inflows / (Outflows)	(92.6)
Other (FX)	-
<b>ENDING CASH</b>	<b>\$124.2</b>

38. The April Cash Flow Forecast indicates that during the 6-week period ending April 30, 2022, the Just Energy Entities will have operating cash outflows of approximately \$73.9 million with total receipts of approximately \$342.1 million and total operating disbursements of approximately \$416.0 million, before interest expense and fees of approximately \$8.3 million and professional fees of approximately \$10.4 million, such that total net cash outflows are forecast to be approximately \$92.6 million.
39. Generally, the underlying assumptions and methodology utilized in the March Cash Flow Forecast have remained the same for this April Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending April 2, 2022 to the week ending April 30, 2022;
  - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the April Cash Flow Forecast, which include:
    - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
    - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
    - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
    - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
    - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
    - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
40. The April Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to April 22, 2022.

#### **STAY EXTENSION**

41. The Stay Period will expire on March 25, 2022, and the Applicants are seeking an extension to the Stay Period up to and including April 22, 2022.

42. The Monitor supports extending the Stay Period to April 22, 2022 for the following reasons:
- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to finalize the Plan in an effort to achieve a going concern solution in consultation with the Monitor and key stakeholders, including potentially seeking an order from the Court approving a creditors' meeting to vote on same;
  - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with the flexibility and time required to develop and commence steps to implement a successful restructuring;
  - (c) as indicated by the April Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
  - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
  - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

#### **APPROVAL OF THE ACTIVITIES OF THE MONITOR**

43. The Proposed Order also seeks approval of this Seventh Report and the actions, conduct, and activities of the Monitor since the date of the Sixth Report.
44. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Sixth Report have been carried out in good faith and in accordance with the provisions of the orders issued in these CCAA Proceedings and should therefore be approved.

**CONCLUSION**

45. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
46. Accordingly, the Monitor respectfully supports the requested extension of the Stay Period in the Proposed Order and recommends that such Order be granted.

The Monitor respectfully submits to the Court this Seventh Report dated this 22<sup>nd</sup> day of March, 2022.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor of  
Just Energy Group Inc. *et al*,  
and not in its personal or corporate capacity



Per: \_\_\_\_\_  
Paul Bishop, Senior Managing Director

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 **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**SEVENTH REPORT OF  
FTI CONSULTING CANADA INC., IN ITS  
CAPACITY AS COURT-APPOINTED MONITOR**

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Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.

**THIS IS EXHIBIT T REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

**AFFIDAVIT OF MICHAEL CARTER**

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH  
AND SAY:

1. I have been Just Energy Group Inc.'s ("**Just Energy**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of Just Energy and its subsidiaries in these CCAA proceedings (collectively, the "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as defined below) to which the protections and authorizations of the Initial Order were

extended (collectively with the Applicants, the “**Just Energy Entities**”). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Just Energy Entities. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Just Energy Group’s senior management team and their financial and legal advisors.

2. I make this affidavit in support of a motion by the Applicants for:
  - (a) an Order substantially in the form of the draft order attached at Tab 4 of the Applicants’ Motion Record (the “**Authorization Order**”), *inter alia*:
    - (i) approving the Plan Support Agreement, dated May 12, 2022 (as may be amended from time to time, the “**Support Agreement**”) among the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors (as each of those terms is defined below);
    - (ii) declaring that notwithstanding the stay of proceedings imposed by the Initial Order (as defined below), a counterparty to the Support Agreement may exercise any termination right that may become available to it pursuant to the Support Agreement, provided that such termination right is exercised in accordance with the Support Agreement;

- (iii) approving the Backstop Commitment Letter, dated May 12, 2022 among Just Energy (U.S.) Corp. (“**Just Energy U.S.**”) and the Initial Backstop Parties (as defined below) (the “**Backstop Commitment Letter**”);
- (iv) approving the issuance of the Backstop Commitment Fee Shares to the Backstop Parties (as defined below) in the manner and circumstances described in the Backstop Commitment Letter;
- (v) approving the Termination Fee (as defined below) and authorizing Just Energy U.S. (or another Just Energy Entity organized in the United States) to pay the Termination Fee to the Initial Backstop Parties and any Additional Backstop Parties (as defined below) in the circumstances and manner described in the Backstop Commitment Letter;
- (vi) granting a Court-ordered charge (the “**Termination Fee Charge**”) in favour of the Initial Backstop Parties as security for payment of the Termination Fee, with the priority set out in the proposed Authorization Order;
- (vii) amending the Claims Procedure Order granted by the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) on September 15, 2021 (the “**Claims Procedure Order**”) to permit the Just Energy Entities to request that any Claim that arises from or relates primarily to the winter storm that occurred in Texas in February 2021 and that was submitted by a Claimant who lives in the U.S. (or lived in the U.S. at the time of such winter storm (each, a “**Winter Storm Claim**”)) be adjudicated and determined by

- the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Bankruptcy Court**”), at its discretion, in each case at the election of the Just Energy Entities in consultation with the Monitor;
- (viii) extending the Stay Period (as defined in the Second Amended and Restated Initial Order, granted May 26, 2021 (the “**Second ARIO**”)) to August 19, 2022; and
  - (ix) directing that the unredacted copies of the Support Agreement and the Backstop Commitment Letter (attached as **Confidential Exhibits “D”** and **“F”** hereto) be treated as confidential and sealed, and not form part of the public record, pending further order of this Court;
- (b) an Order substantially in the form of the draft order attached at Tab 5 of the Applicants’ Motion Record (the “**Meetings Order**”), *inter alia*:
- (i) accepting the filing of the Just Energy Entities’ Plan of Compromise and Arrangement, dated May 26, 2022 and attached as **Exhibit “A”** hereto (as may be amended from time to time, the “**Plan**”);
  - (ii) authorizing the Just Energy Entities to establish two classes of creditors for the purpose of considering and voting on the Plan: (i) the Secured Creditor Class; and (ii) the Unsecured Creditor Class;
  - (iii) authorizing the Just Energy Entities to call, hold and conduct virtual meetings of the Secured Creditor Class and the Unsecured Creditor Class (the “**Creditors’ Meetings**”) to consider and vote on resolutions to approve

the Plan, and approving the voting and other procedures to be followed with respect to the Creditors' Meetings; and

- (iv) setting a date for the hearing of the Just Energy Entities' motion for an order sanctioning the Plan (the "**Plan Sanction Hearing**") should the Plan be accepted for filing and approved by the Required Majorities of creditors at the Creditors' Meetings.

3. Capitalized terms used in this affidavit but not defined have the meaning given to them in the Plan and in the proposed Meetings Order. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.<sup>1</sup>

**A. HISTORY OF THE CCAA PROCEEDINGS**

4. On March 9, 2021 (the "**Filing Date**"), the Applicants obtained protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the CCAA Court. The Applicants' filing for protection under the CCAA was precipitated by the acute and unforeseen liquidity challenge caused by the unprecedented winter storm in February 2021 in Texas (the "**Weather Event**") and the Texas regulators' response to same.

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<sup>1</sup> As the monetary amounts referenced herein are denominated in both Canadian and United States currencies, a table of all quantified Claims and new equity amounts discussed herein is attached at **Schedule "A"** showing all such amounts both in their original denominated currency and as converted into the other currency at an exchange rate of C\$1.27 per \$1.00 USD.

5. On the Filing Date, the Court approved the CCAA Interim Debtor-in-Possession Financing Term Sheet (the “**DIP Term Sheet**”) pursuant to which the DIP Lenders<sup>2</sup> provided access to emergency financing of US\$125 million (together with all accrued and outstanding fees, costs and interest, the “**DIP Lenders’ Claim**”). The DIP Term Sheet contained, among other terms, a requirement that the Just Energy Entities meet certain restructuring milestones for the development and implementation of a plan of arrangement. Such milestones have been extended by the DIP Lenders from time to time during the CCAA proceedings.

6. The Initial Order has twice been amended and restated. The CCAA Court granted an Amended and Restated Initial Order (the “**ARIO**”) on March 19, 2021, and the Second ARIO on May 26, 2021.

7. On April 2, 2021, the U.S. Bankruptcy Court granted a Final Recognition Order under Chapter 15 of the U.S. Bankruptcy Code (the “**Final Recognition Order**”) which, among other things, granted the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the CCAA Court, full force and effect on a final basis with respect to the Just Energy Entities’ property located within the United States.<sup>3</sup>

8. On September 15, 2021, the CCAA Court granted the Claims Procedure Order establishing a process to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their respective Directors and Officers. The Claims Procedure Order established a Claims Bar Date of November 1, 2021. Since the Claims Bar Date, the Just Energy Entities have been working

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<sup>2</sup> The DIP Lenders are: LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC and OC II LVS XIV LP (the “**DIP Lenders**”).

<sup>3</sup> The Final Recognition Order also provided that, “All parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding.”

in consultation with the Monitor to review, record, dispute and, where appropriate, finally determine the amount and characterization of Claims against the Just Energy Entities and their respective Directors and Officers.

9. On November 10, 2021, the CCAA Court granted an Order that, among other things, approved an amendment to the DIP Term Sheet to extend the maturity date thereunder from December 31, 2021 to September 30, 2022, and extended the Stay Period to February 17, 2022. In granting such relief, the CCAA Court recognized that:

The company has been moving in good faith towards a plan, but the business is of such a complexity that it has taken longer than initially anticipated. This is not surprising. The company is subject to a myriad of regulatory regimes across the United States and Canada. It has complex commercial arrangements with suppliers and a number of secured and unsecured lenders, the integrity of which in turn depends on Just Energy's compliance with regulatory requirements.

10. On February 9, 2022, the CCAA Court heard a Motion for Advice and Directions filed by U.S. counsel to the proposed representative plaintiffs in *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB (PC-11175-1) and in *Fira Donin and Inna Golovan v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB (PC-11177-1) (together, the “**Putative Class Actions**”). At the conclusion of the February 9<sup>th</sup> hearing, the CCAA Court dismissed the Motion for Advice and Directions (the “**Putative Class Action Dismissal Order**”). A copy of the Putative Class Action Dismissal Order and the Honourable Justice McEwen's handwritten reasons, dated February 23, 2022, are attached hereto as **Exhibit “B”**.

11. On February 24, 2022, U.S. counsel to the proposed representative plaintiffs filed a Notice of Motion for Leave to Appeal the Putative Class Action Dismissal Order.

12. On March 3, 2022, the CCAA Court appointed the Honourable Justice Dennis O'Connor as Claims Officer (as defined in the Claims Procedure Order) for purposes of adjudicating the Putative Class Actions in accordance with the Claims Procedure Order.

13. On February 9, March 3, March 24, and April 21, 2022, the CCAA Court granted short extensions to the Stay Period until and including March 4, March 25, April 22, and May 26, 2022, respectively, to permit the Just Energy Entities to, among other things, work towards finalizing the Plan and filing a motion seeking the Authorization Order and the Meetings Order.

#### **B. BACKGROUND TO THE PROPOSED RESTRUCTURING PLAN**

14. Throughout the past months, the Just Energy Entities, with the assistance of their legal and financial advisors, and in consultation with the Monitor, have been working in earnest to advance their restructuring and continue their extensive engagement with their key stakeholders, including (i) the entities who are DIP Lenders and significant lenders under the First Amended and Restated Loan Agreement dated as of September 28, 2020 (as amended from time to time, the “**Term Loan Agreement**” and the lenders thereunder, the “**Term Loan Lenders**”), (ii) the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy U.S., dated as of September 28, 2020 (as amended from time to time, the “**Credit Agreement**” and the lenders thereunder, the “**Credit Facility Lenders**”), and (iii) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, “**Shell**”), regarding a framework for the recapitalization and restructuring of the Just Energy Entities and their respective businesses. Such extensive and ongoing engagement has been productive and resulted in:



- (a) the Just Energy Entities, the Plan Sponsor<sup>4</sup>, CBHT Energy I LLC (in its capacity as assignee of all secured Pre-Filing Claims previously held by BP, “**CBHT**”)<sup>5</sup>, Shell, the Credit Facility Lenders (in their capacity as signatories to the Support Agreement, the “**Supporting Secured CF Lenders**”), and certain Term Loan Lenders (in their capacity as signatories to the Support Agreement, the “**Supporting Unsecured Creditors**”) reaching consensus on the terms of a comprehensive recapitalization and restructuring transaction, and executing the Support Agreement in respect thereof;
- (b) the Just Energy Entities and the Initial Backstop Parties executing the Backstop Commitment Letter;
- (c) the Just Energy Entities and the New Credit Facility Lenders (as defined below) negotiating and finalizing a term sheet for the New Credit Facility (as defined below), and the Just Energy Entities, New Credit Facility Lenders, and applicable Commodity Suppliers negotiating and finalizing a term sheet for the New Intercreditor Agreement (as defined below); and
- (d) the Just Energy Entities finalizing the Plan for which a Meetings Order is being sought.

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<sup>4</sup> The Plan Sponsor is comprised of the same investment funds that are DIP Lenders and, together with an affiliated limited partner, the holders of substantially all of the Term Loan Claim (as defined below).

<sup>5</sup> CBHT is an affiliate of the DIP Lenders and is the holder and assignee of all secured Pre-Filing Claims previously held by BP Canada Energy Group ULC and BP Energy Company (together, “**BP**”) (defined below as the “**BP Commodity/ISO Services Claim**”).

15. The Support Agreement, the Backstop Commitment Letter, the Plan and other related agreements (discussed further below) are the result of extensive efforts by the Just Energy Entities to restructure for the benefit of their stakeholders. Those efforts commenced with the preparation and distribution of a business plan to the DIP Lenders, Shell, BP, and the Credit Facility Lenders on May 18, 2021 (the “**Business Plan**”). The detailed Business Plan accounted for changes caused by the Weather Event to the businesses of the Just Energy Entities and was intended to assist these key stakeholders in understanding, among other things, the operational projections, near and longer-term liquidity requirements, financial projections, and anticipated business operations of the Just Energy Entities during, and upon emergence from, the current CCAA and Chapter 15 proceedings. The Business Plan was created by the Just Energy Entities to facilitate the participation of key stakeholders in the development of a restructuring plan.

16. Since the Business Plan was circulated in May 2021, the Just Energy Entities have been working diligently to reach consensus with their key stakeholders regarding the terms and structure of a restructuring plan to facilitate the Just Energy Entities’ emergence from the current CCAA and Chapter 15 proceedings in a manner that, among other things: (a) recapitalizes the Just Energy Entities and in so doing preserves the going concern value of the businesses for the benefit of all stakeholders; (b) maintains relations with Commodity Suppliers<sup>6</sup> to ensure uninterrupted supply of energy to the Just Energy Entities’ customers; (c) preserves the ongoing employment of most of the Just Energy Entities’ more than 1000 employees; (d) maintains critical regulatory and licensing relationships between the Just Energy Entities and its market regulators across Canada

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<sup>6</sup> Any counterparty to a gas supply agreement, electricity supply agreement or other agreement with any of the Just Energy Entities for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement (each, a “**Commodity Supplier**”).

and the United States; and (e) sustains relationships with the hundreds of other vendors with whom the Just Energy Entities transact for goods and services, and other business-critical stakeholders.

17. The lengthy and determined efforts of the Just Energy Entities to develop restructuring terms which achieve the foregoing objectives were successful and resulted in the development of the Plan and the execution of the Support Agreement, Backstop Commitment Letter, and other transaction-related documents by the Just Energy Entities, the Plan Sponsor, and other key stakeholders in May 2022. The Plan is being presented on a consolidated basis on behalf of all the Just Energy Entities. As discussed further in my affidavit sworn March 9, 2021 in support of the Initial Order, the business and operations of the Just Energy Entities are heavily intertwined. The Credit Facility Claim, the BP Commodity/ISO Services Claim and the Commodity Supplier Claims are secured against the assets of all of the Just Energy Entities pursuant to the Intercreditor Agreement and various security agreements. In addition, all of the Just Energy Entities are either borrowers or guarantors of the Term Loan Claim.

18. The combined effect of the Plan and these arrangements will result in a recapitalization of the Just Energy Entities by the conversion of certain secured priority claims and certain unsecured claims to equity and the injection of new capital into the Just Energy Entities by means of the New Equity Offering (as defined below) and the New Credit Facility. Among other things, CBHT has agreed to convert its secured, priority claim of approximately US\$229.5 million and C\$0.2 million, plus all accrued and unpaid interest thereon through to the Effective Date, to preferred equity, the Plan Sponsor has agreed to backstop the US\$192.55 million New Equity Offering, and the New Credit Facility Lenders have agreed to (i) advance the New Credit Facility, (ii) permit all issued but undrawn letters of credit under the current Credit Agreement to continue under the New Credit Facility or be replaced with new or replacement letters of credit issued under the New Credit

Facility, and (iii) permit up to \$20 million of the current Credit Facility Claim (as defined below) to remain outstanding and be transferred as an initial outstanding principal amount to the New Credit Agreement. In addition, the New Credit Facility Lenders and Shell have agreed to the terms of the New Intercreditor Agreement, which permits for the addition of new commodity suppliers as parties thereto, thereby preserving and protecting the Just Energy Entities' ability to secure ongoing business-critical commodity supply. All of the foregoing is to the direct benefit of the Just Energy Entities and their stakeholders.

19. The recapitalization will be considered at the Creditors' Meetings and, if approved at such meetings by the Required Majorities, by the Court at the Plan Sanction Hearing. As discussed further below, the milestones provided under the Support Agreement and Meetings Order establish an approximately two-month period (defined below as the "Voting Period") for potentially interested parties to propose a superior alternative transaction for the Just Energy Entities to that provided in the Plan, Support Agreement and other transaction-related documents. The Just Energy Entities believe that the stability provided to the restructuring process by having a going concern Plan that will be considered by creditors and the CCAA Court, while also providing the flexibility for Alternative Restructuring Proposals (as defined below) to be presented and considered, is in the best interests of the Just Energy Entities and their stakeholders and will provide the best result possible in these CCAA proceedings.

20. A summary of the Support Agreement, Backstop Commitment Letter and other transaction-related documents, together with a description of the Plan, is provided below.

**C. SUPPORT AGREEMENT**

21. On May 12, 2022, the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors entered into the Support Agreement, subject to Court approval. As discussed above:

- (a) the Plan Sponsor is comprised of the same investment funds that are DIP Lenders and, together with a related limited partner, the holders of substantially all of the Term Loan Claim (the “**Plan Sponsor**”). The Plan Sponsor also comprises all of the “Initial Backstop Parties” under the Backstop Commitment Letter (discussed further below);
- (b) the Supporting Unsecured Creditors are the same entities that comprise the Plan Sponsor in their capacity as significant Term Loan Lenders;
- (c) CBHT is an affiliate of the Plan Sponsor and the holder and assignee of all BP Commodity/ISO Services Claims;
- (d) Shell is the largest commodity supplier to, and a significant secured creditor of, the Just Energy Entities; and
- (e) the Supporting Secured CF Lenders are the Credit Facility Lenders.

22. Under the terms of the Support Agreement, the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors have agreed to cooperate with each other in good faith and use commercially reasonable efforts with respect to the pursuit, approval, implementation, and consummation of the transactions

contemplated by the Support Agreement, the Backstop Commitment Letter and the Plan (the “**Restructuring**”) as well as the negotiation, drafting, execution, and delivery of the Definitive Documents (as defined in the Support Agreement) to implement the Restructuring. The parties to the Support Agreement account for more than \$1 billion of the Just Energy Entities’ secured and unsecured debt. A redacted copy of the Support Agreement is attached hereto as **Exhibit “C”**. The Support Agreement attaches a copy of the Restructuring Term Sheet outlining the terms of the proposed Restructuring as Exhibit C thereto.

23. Under the Support Agreement, and unless inconsistent with the Plan Sponsor’s obligations or rights under the financing advanced pursuant to the DIP Term Sheet, the Plan Sponsor agreed and committed, among other things, to:

- (a) support the Restructuring and vote and exercise any powers or rights available to it in favour of any matter requiring approval to the extent necessary to implement the Restructuring;
- (b) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities’ other stakeholders;
- (c) act in good faith and take all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the U.S. Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and consummation of all transactions and implementation steps provided for or contemplated in the Restructuring;

- (d) not object to, delay, impede, or take any other action to interfere with sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Restructuring, the Plan or the Support Agreement;
  - (e) not file any motion, pleading, or other document with the CCAA Court, the U.S. Bankruptcy Court or any other court that, in whole or in part, is not materially consistent with the Restructuring; and
  - (f) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims against the Just Energy Entities.
24. Similar support and good faith commitments and agreements are provided by each of CBHT, Shell, the Supporting Secured CF Lenders and the Supporting Unsecured Creditors under the Support Agreement.
25. In turn, subject to the terms of the Support Agreement, the Just Energy Entities agreed and committed that they would, among other things:
- (a) support and use commercially reasonable efforts to complete the Restructuring as set forth in the Plan and the Support Agreement, including making commercially reasonable efforts to complete the Restructuring in accordance with each Milestone (as defined below) provided in the Support Agreement;
  - (b) not file any motion, pleading, or Definitive Documents with the CCAA Court, the U.S. Bankruptcy Court, or any other court that, in whole or in part, is inconsistent with the Support Agreement or the Plan or undertake any action that is inconsistent

with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Restructuring;

- (c) take commercially reasonable efforts to ensure that all consents and approvals necessary for the implementation of the Restructuring have been obtained to the satisfaction of the Plan Sponsor, National Bank of Canada, as administrative agent under the Credit Agreement (the “**Credit Facility Agent**”), and the Just Energy Entities prior to the Effective Date (the day on which the conditions precedent to the implementation of the Plan are satisfied or otherwise waived in accordance with the Plan and the Monitor delivers the required certificates to the Just Energy Entities’ counsel and the Plan Sponsor’s counsel, the “**Effective Date**”);
- (d) pay the reasonable and documented fees and expenses of all parties to the Support Agreement incurred in connection with the Restructuring and in accordance with the arrangements in place as of the date of the Support Agreement, including as set forth in the DIP Term Sheet or, with respect to any additional fees and expenses, as otherwise agreed to by the Plan Sponsor;
- (e) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with the Support Agreement, and use commercially reasonable efforts to preserve intact the Just Energy Entities’ business, organization and relationships with third parties and employees (including not disclaiming or terminating any employment or consulting agreement with an officer, director, or member of senior management other than “for cause” without the prior written consent of the Plan Sponsor); and



- (f) keep the Plan Sponsor, the Supporting Secured CF Lenders, the Credit Facility Agent, and the Supporting Unsecured Creditors informed about the operations of the Just Energy Entities and provide each of the parties to the Support Agreement with any material information reasonably requested regarding the Just Energy Entities (in accordance with the terms therein, including on a confidential basis).

26. In addition, the Just Energy Entities agreed in the Support Agreement that they would not directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal<sup>7</sup>. Importantly, the foregoing commitment is expressly subject to two material caveats to provide the opportunity for interested parties that may wish to advance an Alternative Restructuring Proposal within the CCAA process to do so for the benefit of the Just Energy Entities' stakeholders.

27. First, the milestones set out in the Support Agreement incorporate a 62-day period between the milestone for mailing of the Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022) (the "**Voting Period**"). The Voting Period allows any interested parties that may wish to propose a restructuring transaction more favourable than the Plan or otherwise to submit a bid for all or some of the Just Energy Entities' property to complete due diligence and submit their proposal. While the Just Energy Entities are prohibited from

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<sup>7</sup> Any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity's material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the Restructuring (each, an "**Alternative Restructuring Proposal**").

soliciting Alternative Restructuring Proposals under the Support Agreement, they are expressly permitted to:

- (a) consider and respond to any Alternative Restructuring Proposals;
- (b) provide any person with access to non-public information concerning the Just Energy Entities pursuant to a confidentiality or non-disclosure agreement or enter into confidentiality agreements or non-disclosure agreements with any person that has made an Alternative Restructuring Proposal;
- (c) engage in, maintain, or continue discussions or negotiations with respect to Alternative Restructuring Proposals, including facilitating the due diligence process in connection with any Alternative Restructuring Proposal;
- (d) cooperate with, assist, or participate in any unsolicited inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals;
- (e) enter into or continue discussions or negotiations with holders of Claims against, or interests in, a Just Energy Entity (including any party to the Support Agreement), any other party in interest in the CCAA or Chapter 15 proceedings, or any other entity regarding the Restructuring or an Alternative Restructuring Proposal; and
- (f) enter into an agreement with respect to an Alternative Restructuring Proposal if, following receipt of legal and financial advice, and having regard to the approvals that would be required to implement such transaction, the board of directors of Just Energy (the “**Just Energy Board**”) determines that the terms of such Alternative Restructuring Proposal are more favourable to the Just Energy Entities and their

stakeholders than the Restructuring (a “**Superior Proposal**”). A further description of the Support Agreement can be found in the Information Statement at pages 31-34 (a copy of which is attached as Exhibit “BB” hereto).

28. Second, the Support Agreement includes a “fiduciary out” provision which permits the Just Energy Board to terminate the Support Agreement (subject to the Termination Fee discussed below) if it determines, following receipt of advice from outside legal counsel and financial advisors, (a) that proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law or (b) in the exercise of its fiduciary duties, to pursue a Superior Proposal. Importantly, the “fiduciary out” does not terminate on expiration of the Voting Period, but continues until termination of the Support Agreement or sanction of the Plan.

29. When taken together, the Voting Period, coupled with the “fiduciary out” provided in the Support Agreement, ensures not only that interested parties have an opportunity to complete due diligence and make an Alternative Restructuring Proposal to the Just Energy Entities should they wish to do so, but also that the Just Energy Entities have the ability to respond to any due diligence requests, cooperate with and assist interested parties in their consideration and formulation of an Alternative Restructuring Proposal, negotiate any Alternative Restructuring Proposals received and, if determined to be a Superior Proposal to the current Restructuring, enter into a binding agreement with respect to same.

30. These provisions ensure that the ongoing restructuring process being undertaken by the Just Energy Entities is fair and transparent, provides the opportunity for interested parties to advance an Alternative Restructuring Proposal, and ensures the achievement of the best transaction possible in the circumstances for the Just Energy Entities and their respective businesses for the

benefit of all stakeholders. BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the “**Financial Advisor**”), has confirmed that in its experience, and based on its knowledge of the business, the 62-day Voting Period provided under the Support Agreement is sufficient for interested parties to complete the necessary due diligence and submit an Alternative Restructuring Proposal.

31. During the CCAA proceedings, the Just Energy Entities and the Financial Advisor were proactively approached on a confidential basis by third parties with respect to potential acquisition opportunities for all or some of the Just Energy Entities’ business. The Just Energy Entities entered into non-disclosure agreements with three of the third parties, following which the Just Energy Entities proceeded to facilitate due diligence by the third parties, including multiple rounds of non-public information disclosure, and discussions with the Just Energy Entities’ finance, operations, tax, risk management and other groups. While the Just Energy Entities engaged in extensive discussions with two of the three third parties, these discussions did not result in any opportunities that were superior to the Restructuring, taking into account the regulatory conditions and other risks associated with the opportunities. As a result, the Just Energy Entities entered into the Support Agreement and related documents.

32. In addition, as set out in the documents publicly disclosed by Just Energy in connection with the Plan of Arrangement (defined below), in 2019 and 2020, the Just Energy Entities undertook a formal review process to evaluate strategic alternatives for the business with a view to the best interests of the Just Energy Entities and all their stakeholders (the “**Strategic Review**”). The Strategic Review was announced by Just Energy on June 6, 2019, following the receipt of expressions of interest from a number of parties concerning potential transactions involving Just Energy. The Just Energy Board appointed a Special Committee comprised of independent directors

(the “**Special Committee**”) to oversee the Strategic Review with the assistance of Guggenheim Partners, LLC and National Bank Financial Inc. (collectively, the “**Sale Advisors**”).

33. With the assistance of the Sale Advisors, Just Energy undertook an extensive sale process to identify a potential transaction for its business. During this process, Just Energy solicited a range of potential acquirors, set up a data room with due diligence materials, provided access to the data room to parties that signed non-disclosure agreements (“**NDA**s”), and engaged in discussions with various parties. The Sale Advisors contacted 19 potential bidders, which included both publicly traded strategic generation and retail businesses, as well as private equity companies with experience in these sectors. Just Energy entered into NDAs with 15 different parties.

34. Notwithstanding the receipt of various non-binding offers during phase I of the sale process, no binding bids were submitted before the phase II bid deadline and, as a result, the sale process did not result in any executable transactions.

35. Following the conclusion of the sale process in August 2019, Just Energy continued engaging with parties that had expressed interest during the sale process regarding a potential acquisition transaction. Such discussions continued between September 2019 and April 2020, and again in June 2020 when an additional non-binding proposal was received. Ultimately, Just Energy concluded that the proposals did not offer sufficient returns for stakeholders to be viable or acceptable and, on September 28, 2020, Just Energy instead completed a balance sheet recapitalization transaction through a plan of arrangement under section 192 of the *Canada Business Corporations Act* (the “**Plan of Arrangement**”).

36. As a result, over the past approximately 2.5 years, the business of the Just Energy Entities has been marketed broadly and extensively. While certain interest has been expressed by third

parties in a potential acquisition transaction both within, and prior to commencement of, the CCAA proceedings, no binding or executable offers have been received, nor have any discussions to date identified any proposals which are superior to the Plan, taking into account the current circumstances and regulatory requirements. Importantly, the pool of likely potential purchasers for the Just Energy Entities is limited in light of the capital-intensive and highly specialized nature of the Just Energy Entities' business.

37. Notwithstanding the foregoing, the Just Energy Entities believed it was appropriate that a final opportunity for interested parties to present any Alternative Restructuring Proposals be preserved within the construct of the Support Agreement and the Plan. As a result, the "fiduciary out" provision and the Voting Period were negotiated to be included in the Support Agreement.

38. In addition to the milestones establishing the 62-day Voting Period between mailing of the Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022), the Support Agreement establishes the following milestones for the remainder of the CCAA and Chapter 15 proceedings (as may be extended in accordance with the Support Agreement, the "**Milestones**"):

<b>Milestone</b>	<b>Date</b>
Authorization Order and Meetings Order granted	May 26, 2022
Solicitation Materials mailed with respect to the Creditors' Meetings	June 1, 2022
Order(s) of the U.S. Bankruptcy Court granted recognizing the Authorization Order (the " <b>Authorization Recognition Order</b> "), the Meetings Order (the " <b>Meetings Recognition Order</b> ") and the Claims Procedure Order (" <b>Claims Procedure Recognition Order</b> ")	June 22, 2022
Creditors' Meetings held	August 2, 2022
Sanction Order granted	August 12, 2022

Milestone	Date
Motion filed for an Order of the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (“ <b>Recognition and Enforcement Motion</b> ”)	~ August 16, 2022 (2 business days after Sanction Order)
Hearing set before the U.S. Bankruptcy Court on the Recognition and Enforcement Motion	no later than September 9, 2022
Recognition and Enforcement Motion granted by the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (the “ <b>Sanction Recognition Order</b> ”)	September 15, 2022
Outside date for the Effective Date of the Plan to occur, unless extended by the Plan Sponsor (or, if the only outstanding condition is receipt of regulatory approval(s), as automatically extended by an additional 60 days) (the “ <b>Outside Date</b> ”)	September 30, 2022

39. The previous milestones under the DIP Term Sheet have been amended by the DIP Lenders and the Just Energy Entities to align with the aforementioned Milestones under the Support Agreement.

40. The Support Agreement may be terminated by the Plan Sponsor, the Just Energy Entities, or any of the parties thereto upon the occurrence of certain specified events unless waived or cured by the applicable party in accordance with the terms of the Support Agreement. In the case of the Plan Sponsor, such termination events include: (a) any failure by the Just Energy Entities to meet any of the Milestones, unless such failure is the result of any act, omission, or delay on the part of the Plan Sponsor; and (b) any determination by the Just Energy Entities to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal in accordance with the Support Agreement. In the case of Shell and the Supporting Secured CF Lenders, such termination events include if the Effective Date of the Plan has not occurred by:

- (a) November 15, 2022 with respect to the Supporting Secured CF Lenders, provided that if the Effective Date of Plan has not occurred by November 15, 2022, solely as a result of all required Transaction Regulatory Approvals not having been obtained,

then the date will automatically be extended until December 31, 2022 upon written notice from the Just Energy Entities or the Plan Sponsor that there is a reasonable expectation that the condition will be satisfied by December 31, 2022; and

- (b) January 31, 2023 with respect to Shell, unless further extended in accordance with the Support Agreement.

41. In addition, neither Shell nor the Supporting Secured CF Lenders have any obligations under the Support Agreement unless the Authorization Order is granted by the CCAA Court on or before May 26, 2022 (unless such date is extended in accordance with the Support Agreement).

42. The Just Energy Entities seek approval of the Support Agreement and authorization to perform their obligations thereunder. In the Just Energy Entities' view, the Support Agreement represents an important achievement in launching the next stage of their going concern Restructuring, and appropriately balances advancement of the Plan while maintaining both a process for the Just Energy Entities to respond to and negotiate an Alternative Restructuring Proposal, and the ability of the Just Energy Entities to accept a Superior Proposal.

43. Since the commencement of the CCAA proceedings, the Just Energy Board has been kept apprised of the status of restructuring efforts, discussions with interested parties and, more recently, negotiation of the Support Agreement, the Plan, and related documents. The Just Energy Board has met to receive financial and legal advice regarding the Restructuring, and to review and evaluate the terms of the Support Agreement (including all attachments thereto), the Backstop Commitment Letter and the Plan. The Just Energy Board approved of the Just Energy Entities seeking the approval of the CCAA Court to file the Plan and to pursue solicitation and approval thereof. The Just Energy Board also approved of the Just Energy Entities entering into the Support



Agreement, the Backstop Commitment Letter and related documents and, subject to approval of the CCAA Court, performing their obligations thereunder.

44. An unredacted copy of the Support Agreement is attached as **Confidential Exhibit “D”** hereto. The Support Agreement contains confidential, commercially sensitive information relating to the Plan Sponsor’s contact information and the holding percentages of the Plan Sponsor in the Term Loan Claim and the DIP Lenders’ Claim which the Support Agreement requires be kept confidential and not publicly disclosed. The Just Energy Entities therefore seek an order that Confidential Exhibit D be sealed and not form part of the court record pending further order of the Court.

**D. BACKSTOP COMMITMENT LETTER**

45. The Support Agreement attaches the Backstop Commitment Letter as Exhibit D thereto. A redacted copy of the Backstop Commitment Letter is attached as **Exhibit “E”** hereto. Any termination of the Backstop Commitment Letter also constitutes a termination event under the Support Agreement entitling each of the Plan Sponsor, the Just Energy Entities, Shell, and the Supporting Secured CF Lenders to terminate the Support Agreement upon the provision of written notice to the others.

46. The purpose of the Backstop Commitment Letter is to ensure that the Just Energy Entities are able to secure the necessary funds required to implement the Plan, subject to various assumptions and forecasted financial projections leading up to the Effective Date (as discussed further below). Participation in the Backstop Commitment Letter is open to all holders of the Term Loan Claim as of 5:00 p.m. (Toronto time) on May 11, 2022 (the “**Term Loan Record Date**”). The same four funds which comprise the DIP Lenders and, together with the related limited

partner, the Plan Sponsor and significant Term Loan Lenders (collectively, the “**Initial Backstop Parties**”)<sup>8</sup> and Just Energy U.S. are party to the Backstop Commitment Letter. In addition, the Backstop Commitment Letter permits:

- (a) each holder of the Term Loan Claim as of the Term Loan Record Date (that is not an Initial Backstop Party) to become party to the Backstop Commitment Letter, subject to compliance with all applicable securities laws, delivery of the required joinder agreement and participation form within fifteen (15) Business Days of the date of a notice from Just Energy U.S., and funding of all required commitments (each such holder of the Term Loan Claim that meets applicable securities law requirements, executes and delivers the joinder agreement and funds the required amounts, an “**Additional Backstop Party**”); and
- (b) each Initial Backstop Party and Additional Backstop Party may designate one or more of its Affiliates to (i) perform its obligations or assign its rights and obligations under the Backstop Commitment Letter and/or (ii) receive some or all of the New Common Shares it is entitled to receive pursuant to the Plan and Backstop Commitment Letter, upon the execution by such affiliate of a joinder agreement in accordance with the Backstop Commitment Letter and compliance with all applicable securities laws (each such Affiliate that executes and delivers a joinder agreement and meets applicable securities law requirements, an “**Assignee**”); and

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<sup>8</sup> The “Initial Backstop Parties” are LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP and OC III LFE I LP.

**Backstop Party**”, and together with the Initial Backstop Parties and the Additional Backstop Parties, the “**Backstop Parties**”).<sup>9</sup>

47. Under the Plan, the Just Energy Entities will be reorganized such that upon implementation of the Plan, Just Energy U.S., or such other corporation or limited or unlimited liability company organized in the United States as determined by the Just Energy Entities and the Plan Sponsor (the “**New Just Energy Parent**”), will be the ultimate parent of the Just Energy Entities. On the Effective Date of the Plan, the New Just Energy Parent will complete an equity offering pursuant to which 80% of the newly issued common shares of the New Just Energy Parent (the “**New Common Shares**”) will be issued in exchange for a new money investment of US\$192.55 million (the “**New Equity Offering**”), subject to dilution by the equity issued or issuable pursuant to the Management Incentive Plan (“**MIP**”), discussed further below.

48. The New Equity Offering is open for participation to each person that as of the Term Loan Record Date is (a) a Beneficial Term Loan Claim Holder, or permitted designee thereof, and (b) a Backstop Party, which in each case is permitted to participate under applicable securities laws (each a “**New Equity Offering Eligible Participant**”).

49. Pursuant to the Backstop Commitment Letter, each Backstop Party has agreed to subscribe for and receive: (a) its pro rata share of the New Equity Offering available to it pursuant to the Plan; (b) its pro rata share of any unsubscribed New Common Shares issued under the New Equity Offering, if any, and (c) its pro rata share of any New Common Shares for which a New Equity Offering Eligible Participant subscribes but otherwise fails to fulfill its subscription obligations by

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<sup>9</sup> Each of the Initial Backstop Parties or Additional Backstop Parties that assigns its rights and obligations under the Backstop Commitment Letter to an Assignee Backstop Party remains jointly and severally liable with the Assignee Backstop Party for performing their obligations thereunder.

the New Equity Participation Deadline (5:00 p.m. (Toronto time) on August 23, 2022 or such other date agreed to by the Just Energy Entities and the Plan Sponsor, each acting reasonably).

50. The Backstop Commitment Letter ensures that the whole New Equity Offering proposed by the New Just Energy Parent will be taken up in full and funded either by the New Equity Offering Eligible Participants, or by the Backstop Parties, or some combination thereof, thereby ensuring that the Just Energy Entities raise the necessary funds to pay all required amounts under the Plan (subject to various assumptions and forecasted financial projections leading up to the Effective Date, as discussed further below).

51. The commitments of the Backstop Parties under the Backstop Commitment Letter terminate on the earlier of: (a) the Effective Date of the Plan; (b) the termination of the Backstop Commitment Letter by Just Energy U.S. and/or the Backstop Parties in accordance with the terms thereof; or (c) the Outside Date.

52. In consideration of the Initial Backstop Parties executing and delivering the Backstop Commitment Letter, Just Energy U.S. agreed that:

- (a) the New Just Energy Parent will issue and deliver to the Backstop Parties, in the aggregate, New Common Shares representing 10% of the outstanding New Common Shares on the Effective Date, subject to dilution by the equity issued or issuable pursuant to the MIP (the “**Backstop Commitment Fee Shares**”) pursuant to the Backstop Commitment Letter and the Plan; and
- (b) a Just Energy Entity organized in the United States (which may be Just Energy U.S.) will pay to the Initial Backstop Parties and the Additional Backstop Parties

(if any), in the aggregate, a cash fee in an amount equal to US\$15 million (the “**Termination Fee**”) if (and only if): (i) the Just Energy Entities terminate the Support Agreement on the basis that the Restructuring would be inconsistent with the exercise of the Just Energy Board’s fiduciary duties or applicable law or to pursue a Superior Proposal, or (ii) the Plan Sponsor terminates the Support Agreement based on the Just Energy Board making the determination to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal. The Termination Fee is payable concurrently with the consummation of an Alternative Restructuring Proposal and is deemed automatically waived by the Initial Backstop Parties and the Additional Backstop Parties upon the consummation of the transactions contemplated by the Backstop Commitment Letter or if the Support Agreement is terminated for any other reason.

53. The quantum of the Termination Fee was derived taking into account (i) the aggregate subscription amount for the New Common Shares to be issued by the New Just Energy Parent under the New Equity Offering (US\$192.55 million), plus (ii) the New Preferred Shares being issued to CBHT (defined in the Plan as the “BP Commodity/ISO Services Claimholder”), in its capacity as assignee of all secured Pre-Filing Claims previously held by BP (the “**BP Commodity/ISO Services Claim**”), under the Plan (such shares being issued in full satisfaction of a secured claim in the amount of US\$229.5 million and C\$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date). The New Equity Offering represents additional liquidity being made available to the Just Energy Entities, while the New Preferred Shares being issued to CBHT represent the conversion of the BP Commodity/ISO Services Claim to preferred equity which would otherwise be payable in cash were it not for the terms of the Restructuring.

Both comprise the new value contribution by the Plan Sponsor and CBHT to the Restructuring under the Support Agreement and Plan.

54. Accordingly, in the event the Support Agreement is terminated based on one of the enumerated grounds triggering entitlement to payment of the Termination Fee, the Termination Fee can be analyzed as a percentage of the foregoing value contributions. The US\$15 million Termination Fee equates to 3.4%<sup>10</sup> of the additional value contribution of the Plan Sponsor and CBHT.

55. The Termination Fee is proposed to be secured in favour of the Initial Backstop Parties by a Court-ordered charge (the “**Termination Fee Charge**”) on all of the Property (as defined in the Second ARIO) of the Just Energy Entities. The Termination Fee Charge will have priority over all other security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings.

56. An unredacted copy of the Backstop Commitment Letter is attached as **Confidential Exhibit “F”** hereto. The Backstop Commitment Letter contains confidential, commercially sensitive information relating to the ownership percentages of, and contact information for, the various entities comprising the Plan Sponsor that the Support Agreement requires be kept confidential and not publicly disclosed. The Just Energy Entities therefore seek an order that Confidential Exhibit F be sealed and not form part of the court record pending further order of the Court.

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<sup>10</sup> US\$15 million Termination Fee / (US\$192.55 million (New Equity Offering) + C\$315.7 million (the BP Commodity/ISO Services Claim including all accrued and unpaid interest to September 30, 2022, converted at a rate of C\$1.27 per US\$1.00) = 3.4%.

**E. THE CCAA PLAN**

**(a) OVERVIEW OF THE PLAN**

57. The Just Energy Entities seek authority to file the Plan and call, hold and conduct the Creditors' Meetings to allow Affected Creditors to consider and vote on resolutions to approve the Plan. A copy of the Plan is attached as **Exhibit "A"** hereto. A copy of the Press Release issued by the Just Energy Entities announcing the proposed Plan and their execution of the Support Agreement and Backstop Commitment Letter is attached as **Exhibit "G"** hereto.

58. The Plan includes the following elements:

- (a) the operations of the Just Energy Entities are intended to continue in the normal course without disruption following implementation of the Plan;
- (b) the Just Energy Entities will be reorganized such that upon implementation of the Plan, the New Just Energy Parent will be the ultimate parent of the Just Energy Entities;
- (c) the New Just Energy Parent will be the issuer of the New Preferred Shares (as defined below) and the New Common Shares to be issued pursuant to the Plan;
- (d) on the Effective Date, the New Just Energy Parent will complete the New Equity Offering in the aggregate amount of US\$192.55 million, which will be backstopped by the Backstop Parties in accordance with the Backstop Commitment Letter and the Plan. Participation in the New Equity Offering will be open to all New Equity Offering Eligible Participants;

- (e) on the Effective Date, Just Energy U.S. and Just Energy Ontario L.P. will enter into an amended and restated credit agreement (the “**New Credit Agreement**”) with the Credit Facility Lenders (the “**New Credit Facility Lenders**”) pursuant to which a first lien revolving credit facility in the amount of \$250 million will be made available to the Just Energy Entities and (i) the principal amount of up to \$20 million of the Credit Facility Claim (the “**Credit Facility Remaining Debt**”), if any, will remain outstanding as an initial outstanding principal amount under the New Credit Agreement, and (ii) the letters of credit issued by the Credit Facility Lenders but which remain undrawn under the current Credit Agreement will continue under the New Credit Facility or be replaced with new or replacement letters of credit issued under the New Credit Facility (the “**New Credit Facility**”);
- (f) a new Intercreditor Agreement (which may be an amendment and restatement of the current Intercreditor Agreement) (the “**New Intercreditor Agreement**”) will be executed by the Just Energy Entities, the New Credit Facility Lenders (or the Credit Facility Agent on their behalf), Shell and the applicable Commodity Suppliers;
- (g) on the Effective Date:
- (i) the DIP Lenders will receive an amount equal to the DIP Lenders’ Claim in cash in full and final satisfaction of the DIP Lenders’ Claim; and
  - (ii) CBHT (as the BP Commodity/ISO Services Claimholder) will receive 100% of the New Preferred Shares of New Just Energy Parent in full satisfaction of the BP Commodity/ISO Services Claim;



- (h) on or prior to the Effective Date, the Just Energy Entities will deliver or cause to be delivered to the Monitor the aggregate amount of: (i) \$1.9 million (the “**Administrative Expense Reserve**”); and (ii) \$10 million (the “**General Unsecured Creditor Cash Pool**”, and together with the Administrative Expense Reserve, the “**Plan Implementation Fund**”);
- (i) two Classes of Creditors will be established for purposes of voting on and receiving distributions (or other treatment) under the Plan: (i) the Secured Creditor Class, consisting of the Credit Facility Lenders in respect of all amounts owing under the current Credit Agreement as of the Effective Date, excluding any Cash Management Obligations (as defined in the Second ARIO), Commodity Supplier Claim, or any letters of credit issued but undrawn under the Credit Agreement (the “**Credit Facility Claim**”); and (ii) the Unsecured Creditor Class, consisting of holders of the Term Loan Claim, General Unsecured Creditor Claims, the Subordinated Note Claim and Convenience Claims (all as defined below);
- (j) on the Effective Date, in full satisfaction of the Credit Facility Claim: (i) the Just Energy Entities will pay, or cause to be paid, to the Credit Facility Agent an amount equal to the Credit Facility Claim in full in cash, less the Credit Facility Remaining Debt, if any, which will remain outstanding; and (ii) the New Credit Agreement (and New Credit Facility Documents) will become effective;
- (k) within the Unsecured Creditor Class:
  - (i) on the Effective Date, in full satisfaction of its Term Loan Claim, each Beneficial Term Loan Claim Holder will receive its pro rata share of 10%

of the total New Common Shares of the New Just Energy Parent, subject to dilution by the equity issued or issuable pursuant to the MIP, and each Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant will be entitled to participate in the New Equity Offering;

(ii) from and after the Effective Date, the Monitor will pay from the General Unsecured Creditor Cash Pool:

(A) each Convenience Claim (as defined below);

(B) the reasonable and documented fees and disbursements (plus any applicable taxes thereon) incurred by the Just Energy Entities' legal, financial, or other advisors, the Monitor and its legal counsel, or any other Person retained by the Just Energy Entities or the Monitor, in connection with post-Effective Date matters (other than the Monitor Administration Expenses (as defined below)) relating to the Plan and the CCAA proceedings, including in connection with the implementation of the Plan, the administration of the Plan Implementation Fund, the continued administration of the claims process provided for in the Claims Procedure Order (the "**Claims Process**") and the resolution of Disputed Claims thereunder, and the termination of the CCAA proceeding and the Chapter 15 proceeding following the Effective Date; and

- (C) after deduction of the foregoing amounts, each General Unsecured Creditor with an Accepted Claim, its pro rata share of the remaining portion of the General Unsecured Creditor Cash Pool (subject to the terms of the Trust Indenture between Just Energy and Computershare Trust Company of Canada, dated as of September 28, 2020 (the “**Subordinated Note Indenture**”), a copy of which is attached hereto as **Exhibit “H”**), and the “turnover” provisions set forth in the Subordinated Note indenture and in the Plan and described further below.
- (l) the following claims, among others, are Unaffected Claims under the Plan:
- (i) claims secured by a CCAA Charge;
  - (ii) all Pre-Filing Claims of Commodity Suppliers that are party to the Intercreditor Agreement (determined as of the Effective Date) in respect of a Commodity Agreement, plus any interest thereon to the Effective Date, after provision for any resettlements that are known by the Just Energy Entities as of the Effective Date, but excluding any BP Commodity/ISO Services Claim (the “**Commodity Supplier Claims**”); and
  - (iii) any Claims for sales, use, or other Taxes by a U.S. Taxing Authority which could result in a responsible person associated with a Just Energy Entity being held personally liable for any non-payment (each, a “**Responsible Person Claim**”);

- (m) holders of Accepted Claims that are less than \$10 (each, a “**De Minimis Claim**”) will not receive any distributions under the Plan on account of their De Minimis Claims, which De Minimis Claims will be fully and finally cancelled and discharged; and
- (n) holders of Equity Claims will not receive any distribution under the Plan on account of their Existing Equity or Equity Claims, which will be transferred to the New Just Energy Parent or cancelled and extinguished as of the Effective Date without return of capital or other payment.

59. A summary of stakeholder treatment under the Plan (which is discussed further below) is as follows:

<b>Stakeholder</b>	<b>Plan Treatment</b>
DIP Lenders’ Claim	Repaid in full in cash (US\$125 million plus accrued and outstanding fees, costs and interest through Effective Date)
Commodity Supplier Claims	Repaid in full in cash (including all accrued and unpaid interest up to the Effective Date)
BP Commodity/ISO Services Claim	Issued 100% of the New Preferred Shares of the New Just Energy Parent in exchange for secured claim in the amount of approximately US\$229.5 million and C\$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date
Credit Facility Claim	Funded debt in the estimated amount of US\$43.3 million and C\$96.4 million, plus accrued default interest through the Effective Date, less the Credit Facility Remaining Debt (if any), repaid in full in cash  Letters of credit which are issued but undrawn at the Effective Date rolled into the New Credit Agreement
Term Loan Claim	Receive pro rata share of 10% of the New Common Shares of the New Just Energy Parent and the ability to participate in the New Equity Offering in satisfaction of the Term Loan Claim in the principal amount of US\$208.6 million plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement (and, with respect

Stakeholder	Plan Treatment
	to Non-Participating Term Loan Claim Holders, their pro rata share of the Turnover Amounts)
General Unsecured Creditor Claim	Receive pro rata share of the General Unsecured Creditor Cash Pool, less payments made to Convenience Creditors and permitted professional fees for post-Effective Date services relating to the Plan and the CCAA proceedings
Convenience Claims	Paid in full up to the maximum amount of \$1,500
Subordinated Note Claim	Notionally receive pro rata share of the General Unsecured Creditor Cash Pool, subject to turnover requirements in Subordinated Note Indenture and the Plan
De Minimis Claims	No recovery
Equity Claims	No recovery

60. The Plan is the result of extensive negotiations and consultation with the Just Energy Entities' key stakeholders over a more than 11-month period (since circulation of the Business Plan in May 2021). Absent receipt of a Superior Proposal during the Voting Period, the Plan provides the best available result for the Just Energy Entities' stakeholders in all of the circumstances and is better than the alternatives available to the Just Energy Entities, including a forced liquidation of their assets.

61. If approved by the Just Energy Entities' Affected Creditors and the CCAA Court (and if recognized and given effect by the U.S. Bankruptcy Court), the Plan will permit the Just Energy Entities to exit these CCAA and Chapter 15 proceedings with a significantly deleveraged balance sheet by eliminating the Just Energy Entities' funded debt and providing a minimum \$75 million of liquidity through the New Equity Offering and the New Credit Facility.

62. Importantly, the Plan is based on various assumptions and projections regarding, among other things, the financial performance of the Just Energy Entities over the coming months, forecasted commodity prices for natural gas and electricity, and minimum liquidity requirements

for operation of the business and implementation of the Plan. As a result, various inputs will impact the Just Energy Entities' cash position as at the Effective Date which, in turn, may impact the Just Energy Entities' ability to complete all transactions under the Plan if inputs deviate materially from those forecasted. The Plan incorporates some margin for deviations in the Just Energy Entities' financial projections between now and the Effective Date. Any significant differences between the assumptions and forecasts underlying the economics of the Plan and actual financial results may pose a risk to the Just Energy Entities' abilities to close the transaction detailed in the Plan. There is a risk that more capital may be required in order for the Just Energy Entities to be able to implement the Plan. The Just Energy Entities have no certainty that such capital will be available, the terms on which it may be provided, or the impact it will have on other stakeholders.

63. The Plan is supported by a number of the Just Energy Entities' key stakeholders including, importantly, the DIP Lenders, the Credit Facility Lenders, Shell, CBHT, and significant holders of the Term Loan Claim.

64. The US\$125 million advanced by the DIP Lenders, as approved by the Initial Order, permitted the Just Energy Entities to continue as going concerns and to meet their obligations to the Electric Reliability Council of Texas, Inc. ("ERCOT") arising from the Weather Event (which obligations precipitated the CCAA and Chapter 15 filings), avoid suspension of the Just Energy Entities' market participation rights in Texas and the likely transfer of their customers to another retail energy provider called a "Provider of Last Resort", and therefore preserve the going concern value of their businesses for the benefit of all stakeholders. In addition, a potential litigation of an intercreditor dispute among the Just Energy Entities' lenders and certain of its significant secured creditors arose during the early stages of these CCAA proceedings. That litigation had the potential to significantly affect the Just Energy Entities' restructuring efforts. Subsequently, CBHT acquired

the BP Commodity/ISO Services Claim (approximately US\$229.5 million and C\$0.2 million) which effectively resolved the need to litigate the dispute, which litigation was suspended pending further developments in the CCAA proceedings. The Plan Sponsor/DIP Lenders (in its various capacities) have supported the Just Energy Entities throughout these CCAA and Chapter 15 proceedings. They support the Plan and have executed the Support Agreement.

65. In addition to the Plan Sponsor/DIP Lenders, the Plan is supported by the Credit Facility Lenders and Shell, all of whom have executed the Support Agreement. In accordance with the Plan, the Credit Facility Lenders have agreed to advance the New Credit Facility to the Just Energy Entities (subject to the completion of definitive documentation and applicable conditions), and have agreed both to continue to provide necessary letters of credit to allow the Just Energy Entities to continue to operate in their highly regulated industry, and to permit up to \$20 million of the current Credit Facility Claim to remain outstanding as initial principal under the New Credit Agreement. Shell has agreed, among other things, to continue to provide commodity supply in accordance with existing agreements between Shell and the Just Energy Entities (as may be amended, restated, supplemented and/or replaced) and to enter into the New Intercreditor Agreement.

66. Both Shell and the Credit Facility Lenders have supported the Just Energy Entities throughout these CCAA and Chapter 15 proceedings. Shell executed a Qualified Support Agreement immediately prior to the Filing Date (which agreement was approved and ratified by the CCAA Court in the Initial Order) agreeing to continue providing the Just Energy Entities with business-critical commodity supply that had been contracted prior to the CCAA proceedings, notwithstanding the CCAA and Chapter 15 proceedings. The Credit Facility Lenders signed an Accommodation and Lender Support Agreement on March 18, 2021 (which agreement was

approved and ratified by the CCAA Court in the ARIO, the “**Lender Support Agreement**”) agreeing to continue issuing LCs on behalf of the Just Energy Entities and providing Cash Management Arrangements (as defined in the Lender Support Agreement) to the Just Energy Entities (subject to the terms and conditions provided therein), notwithstanding the CCAA and Chapter 15 proceedings. Both support the Plan.

67. I understand that the Monitor is supportive of both the Plan and the process proposed by the Just Energy Entities to establish the Voting Period prior to the Creditors’ Meetings to allow interested parties to propose Alternative Restructuring Proposals.

68. A more detailed summary of the Plan is provided below.

**(b) CLASSIFICATION AND TREATMENT OF CREDITORS**

**(i) *Affected Creditors***

69. For purposes of considering and voting on the Plan and receiving a distribution thereunder, where applicable, the Affected Creditors are grouped into two classes: (a) the Secured Creditor Class; and (b) the Unsecured Creditor Class.

70. The Secured Creditor Class is comprised of the holders of the Credit Facility Claim. On the Effective Date, the Credit Facility Claim will be paid in full in cash (estimated to be US\$43.3 million and C\$96.4 million, plus accrued default and unpaid interest through the Effective Date), less the Credit Facility Remaining Debt (up to \$20 million), if any. In addition, on the Effective Date, the New Credit Agreement (and New Credit Facility Documents) will become effective and the Credit Facility Remaining Debt will remain outstanding as an initial outstanding principal amount under the New Credit Agreement. All letters of credit issued by the Credit Facility Lenders



but which remain undrawn under the current Credit Agreement will continue under the New Credit Facility or be replaced with new or replacement letters of credit issued under the New Credit Facility.

71. The Unsecured Creditor Class is comprised of the following:

- (a) *Term Loan Claim*: the aggregate principal amount of US\$208.6 million owing by the Just Energy Entities under the Term Loan Agreement plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement, as determined in accordance with the Claims Procedure Order (the “**Term Loan Claim**” and each registered holder thereof, a “**Term Loan Claim Holder**”, and each beneficial holder thereof, a “**Beneficial Term Loan Claim Holder**”);
- (b) *General Unsecured Creditor Claims*: all Affected Claims, as determined in accordance with the Claims Procedure Order, which are not a Term Loan Claim, an Equity Claim, a Credit Facility Claim or a BP Commodity/ISO Services Claim, and which include the Subordinated Note Claim and Convenience Claims (collectively, “**General Unsecured Creditor Claims**” and each holder thereof, a “**General Unsecured Creditor**”). Included within the group of potential General Unsecured Creditor Claims are:
  - (i) Claims asserted in one certified and two uncertified class actions in respect of which Proofs of Claim were filed in accordance with the Claims Procedure Order, the details of which are as follows:

- (A) *Haidar Omarali v. Just Energy Group Inc. et al.*, Ontario Superior Court of Justice Court File No. CV-15-527493-00CP, a certified class action proceeding filed in Ontario against Just Energy, Just Energy Corp., and Just Energy Ontario L.P. alleging that the class members were improperly classified as independent contractors instead of employees by the applicable Just Energy Entities. The representative plaintiff filed a Proof of Claim in respect of this litigation in the Claims Process in the amount of \$105.9 million, which has been denied in its entirety by those Just Energy Entities named as defendants, in consultation with the Monitor, through the delivery of a Notice of Revision or Disallowance. Despite none of the directors or officers of any Just Energy Entity being named in the underlying litigation, the representative plaintiff also filed a D&O Claim for the same amount in the Claims Process which has similarly been denied in its entirety through the delivery of a Notice of Revision or Disallowance. The representative plaintiff filed Notices of Dispute of Revision or Disallowance on February 10, 2022. Copies of the Proof of Claim, D&O Claim and corresponding Notices of Revision or Disallowance and Notices of Dispute of Revision or Disallowance are attached hereto as **Exhibits “I”** to **“N”**;
- (B) *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB, a proposed and uncertified class action proceeding

filed solely against Just Energy Solutions Inc. in the Eastern District of Pennsylvania on April 6, 2018, and subsequently transferred to the U.S. District Court in the Western District of New York on behalf of a putative class of all “Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present”. The proposed representative plaintiff has filed a Proof of Claim in respect of this litigation in the Claims Process in the amount of US\$3.7 billion (this number represents a joint damages calculation with the *Donin* claim referred to below), which has been denied in its entirety by the Just Energy Entities, in consultation with the Monitor, through the delivery of a Notice of Revision or Disallowance. The proposed representative plaintiff filed a Notice of Dispute of Revision or Disallowance on February 10, 2022. Copies of the Proof of Claim, Notice of Revision or Disallowance, and Notice of Dispute of Revision or Disallowance are attached hereto as **Exhibits “O” to “Q”**; and

- (C) *Fira Donin and Inna Golovan v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB, a proposed and uncertified class action proceeding filed in the U.S. District Court pending against Just Energy and Just Energy New York Corp. in the Western District of New York on April 27, 2018 on behalf of a putative class of “all Just Energy customers in the United States [...] who were charged a variable rate for their energy at any time from [applicable statute

of limitations period] to the date of judgment”. The proposed representative plaintiff has filed a Proof of Claim in respect of this litigation in the Claims Process in the amount of US\$3.7 billion (this number represents a joint damages calculation with the *Jordet* claim referred to above), which has been denied in its entirety by the Just Energy Entities, in consultation with the Monitor, through the delivery of a Notice of Revision or Disallowance. The proposed representative plaintiff filed a Notice of Dispute of Revision or Disallowance on February 10, 2022. Copies of the Proof of Claim, Notice of Revision or Disallowance, and Notice of Dispute of Revision or Disallowance are attached hereto as **Exhibits “R” to “T”**;

(collectively, the **“Subject Class Action Claims”**); and

- (ii) 364 claims filed on behalf of Texas customers (or alleged Texas customers - the Just Energy Entities believe that based on their records, 141 of the 364 claims were submitted by claimants who were not customers of the Just Energy Entities during the relevant time period) by legal counsel related to the Weather Event (collectively, the **“Texas Power Interruption Claim”** and together with the Subject Class Action Claims, the **“Contingent Litigation Claims”**). Most of the claims filed by legal counsel as part of the Texas Power Interruption Claim do not specify the amount being claimed and provide little to no supporting documentation from either a quantum or liability perspective. The Just Energy Entities have disallowed the Texas

Power Interruption Claim, in consultation with the Monitor, in its entirety in accordance with the Claims Procedure Order. On February 17, 2022, Notices of Dispute of Revision or Disallowance were filed by legal counsel with respect to both the Proofs of Claim and the D&O Claims filed in the Texas Power Interruption Claim which, among other things, withdrew 92 of the 364 submitted claims. Copies of the Notices of Revision or Disallowance and the Notices of Dispute of Revision or Disallowance with respect to the Texas Power Interruption Claim are attached hereto as **Exhibits “U” to “Z”**;

- (c) *Subordinated Note Claim*: the aggregate principal amount of \$13.2 million currently owing by Just Energy under the Subordinated Note Indenture, plus all accrued and outstanding fees, costs, interest, and other amounts owing pursuant to the Subordinated Note Indenture, as determined in accordance with the Claims Procedure Order (the “**Subordinated Note Claim**” and each holder thereof, a “**Subordinated Noteholder**” or “**Beneficial Subordinated Note Claim Holder**”, as applicable);
- (d) *Convenience Claims*: any Accepted Claim of a General Unsecured Creditor in an amount that is either (a) less than or equal to \$1,500; or (b) greater than \$1,500, if the relevant General Unsecured Creditor has made a valid Distribution Election not later than two (2) Business Days before the date of the Creditors’ Meetings in accordance with the Meetings Order, provided, however, that in no case shall a “Convenience Claim” include any Contingent Litigation Claims or the

Subordinated Note Claim (“**Convenience Claims**” and each holder thereof, a “**Convenience Creditor**”).

72. The Unsecured Creditor Class is treated under the Plan as follows:
- (a) (i) on the Effective Date, each Beneficial Term Loan Claim Holder will receive its pro rata share of 10% of the total New Common Shares of the New Just Energy Parent, subject to dilution by the equity issued or issuable pursuant to the MIP, in full satisfaction of the Term Loan Claim, (ii) on the Effective Date, each Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant will be entitled to participate in the New Equity Offering, and (iii) each Beneficial Term Loan Claim Holder that is not a Backstop Party or that does not participate in the New Equity Offering as a New Equity Offering Eligible Participant (each a “**Non-Participating Term Loan Claim Holder**”) will receive its pro rata share of the Turnover Amounts (as defined below); and
  - (b) from and after the Effective Date, the Monitor will pay from the General Unsecured Creditor Cash Pool:
    - (i) each Convenience Claim (in full up to a maximum of \$1,500 per Convenience Claim) which, for greater certainty, excludes De Minimis Claims;
    - (ii) the reasonable and documented fees and disbursements (plus any applicable taxes thereon) incurred by the Just Energy Entities’ legal, financial, or other advisors, the Monitor and its legal counsel, or any other Person retained by

the Just Energy Entities or the Monitor, in connection with post-Effective Date matters (as discussed further in paragraph 58(k)(ii)(B) above) relating to the Plan and the CCAA proceedings; and

- (iii) after deduction of the foregoing amounts, each General Unsecured Creditor with an Accepted Claim will receive its pro rata share of the remaining portion of the General Unsecured Creditor Cash Pool, provided, however, that with respect to the Subordinated Note Claim, the Plan restricts the Monitor from making any distribution to the Subordinated Noteholder or Beneficial Subordinated Note Claim Holders until all persons entitled to turnover of such distributions (the “**Turnover Amounts**”) pursuant to the terms of the Subordinated Note Indenture have been paid in full.

73. The Subordinated Note Indenture provides, among other things, that the Subordinated Note Claim is “subordinated and postponed and subject in right of payment...to the prior full and final payment of all existing and future Senior Indebtedness<sup>11</sup> of the Corporation [Just Energy].” The Subordinated Note Indenture further provides that upon any distribution of the assets of Just Energy on any dissolution, winding up, liquidation, or reorganization:

- (a) all Senior Indebtedness must be paid indefeasibly in full, or provision made for such payment, before any payment is made on account of the Subordinated Note Claim; and

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<sup>11</sup> “Senior Indebtedness” is defined in the Subordinated Note Indenture to include any indebtedness under the Credit Agreement, the Term Loan Agreement, or trade and other creditors of Just Energy other than indebtedness which by its terms is *pari passu* with, or subordinate to, the Subordinated Note Claim.

- (b) any payment or distribution of assets of Just Energy shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent directly to the holders of such Senior Indebtedness.

74. The Plan accordingly requires that the Monitor distribute the Turnover Amounts to the beneficiaries of the General Unsecured Creditor Cash Pool, provided however that any Turnover Amounts that are required to be paid to the Participating Term Loan Claim Holders (those Beneficial Term Loan Claim Holders that are Backstop Parties or that participate in the New Equity Offering as New Equity Offering Eligible Participants) will be contributed to the other beneficiaries of the General Unsecured Creditor Cash Pool. The applicable portion of section 3.4(4) of the Plan addressing the foregoing is reproduced below:

For certainty, the Monitor shall not make any distribution to any Subordinated Noteholder or Beneficial Subordinated Note Claim Holder until all Persons entitled to turnover of any such distribution (any such amounts, the “**Turnover Amounts**”) pursuant to the terms of the Subordinated Note Indenture have been paid in full. Instead, the Monitor shall distribute: (i) the Non-Participating Term Loan Lender Pro Rata Shares of the Turnover Amounts to the Non-Participating Term Loan Claim Holders (collectively, the “**Term Loan Turnover Amount**”); and (ii) the Turnover Amounts, less the Term Loan Turnover Amount, to the beneficiaries of the General Unsecured Creditor Cash Pool. For the purposes of this Section, with respect to any Turnover Amounts that would otherwise be required to be paid to Beneficial Term Loan Claim Holders that are not Non-Participating Term Loan Claim Holders, such amounts shall be contributed to the beneficiaries of the General Unsecured Creditor Cash Pool.

75. Holders of De Minimis Claims (less than \$10) are not entitled to receive any distributions pursuant to the Plan in respect of such De Minimis Claims, and all De Minimis Claims will be fully, finally and forever compromised, released, discharged and cancelled in accordance with the Plan.



76. As noted above, the Plan provides for the recapitalization of the Just Energy Entities, most significantly, by the conversion of certain secured and unsecured claims to equity and the injection of new capital by the Term Loan Lenders. This conversion of claims and injection of new capital will include: (a) the Term Loan Lenders receiving 10% of the New Common Shares of the New Just Energy Parent in full satisfaction and discharge of the Term Loan Claim (US\$208.6 million, plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement), (b) the New Equity Offering Eligible Participants committing new capital of US\$192.55 million for the purchase of 80% of the New Common Shares of New Just Energy Parent as part of the New Equity Offering or pursuant to the Backstop Commitment Letter, (c) the Backstop Parties receiving the Backstop Commitment Fee Shares (10% of the total New Common Shares of New Just Energy Parent); and (d) CBHT voluntarily agreeing to compromise its Claim of approximately US\$229.5 million and C\$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date, for preferred equity rather than cash recovery.<sup>12</sup>

77. As discussed in the Affidavit of Mark Caiger, sworn May 12, 2022 (the “**Caiger Affidavit**”), the enterprise value of the Just Energy Entities implied by the Plan falls within a narrow range of between 4.8 and 5.1 times the current mid-point of Just Energy Entities’ 2023 estimated EBITDA (\$115 - \$125 million).<sup>13</sup> Within this narrow range and based on the various assumptions discussed in the Caiger Affidavit, the amount of the residual cash in the General

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<sup>12</sup> The issuance of New Common Shares in each of (a), (b) and (c) is subject to dilution by the equity issued or issuable pursuant to the MIP.

<sup>13</sup> The Just Energy Entities note that the forecasted EBITDA provides a \$10 million range as the business is volatile and often difficult to predict with precision due to many risk factors including weather, commodity prices and other factors described in the Just Energy Entities’ public financial disclosure. For example, the Just Energy Entities’ originally forecasted EBITDA for the fiscal year ended March 31, 2022 to be \$107 million, however EBITDA for the fiscal year ended March 31, 2022 is now estimated to be approximately \$95 million. The variance is primarily driven by higher supply costs due to higher and more volatile commodity prices and unfavorable weather.

Unsecured Creditor Cash Pool is expected to provide equivalent (but not necessarily equal) recoveries to the General Unsecured Creditors as those realized by the Term Loan Lenders.

78. While the precise recovery rate of the General Unsecured Creditors is not known at this time because the amount of the Accepted Claims and the amount of the residual cash in the General Unsecured Creditor Cash Pool is not yet known, for purposes of considering the estimated recovery of General Unsecured Creditors under the Plan, the Just Energy Entities estimate that based on the best information available to management of the Just Energy Entities, their knowledge of the facts and issues underlying the most significant claims submitted within the Claims Process, and discussions with the Monitor:

- (a) the range of General Unsecured Claims submitted within the Claims Process that will eventually become Accepted Claims, prior to taking into account litigation claims, is between approximately \$65 million and \$68 million, and the range of litigation claims submitted within the Claims Process that are likely to become Accepted Claims is between approximately \$0.5 million and \$40 million, for a total estimated range of General Unsecured Claims (including litigation claims) that will eventually become Accepted Claims of between \$66 million and \$108 million; and
- (b) the range of permitted fees and expenses that is expected to be paid from the General Unsecured Creditor Cash Pool is between \$4 million and \$7 million, which will cover, among other things, legal fees to be incurred in litigation undertaken post-Effective Date by the holders of Disputed Claims.

79. The eventual quantum of General Unsecured Claims that become Accepted Claims may exceed the upper end of the foregoing range, and the residual cash in the General Unsecured

Creditor Cash Pool after payment of permitted fees and expenses may be higher or lower than anticipated (depending on whether the holders of Disputed Claims engage in protracted litigation or settle such Disputed Claims expediently). In either scenario, the recovery rate of the General Unsecured Creditors and the Term Loan Lenders under the Plan may change, but the equivalence as between their respective recoveries will remain consistent (subject to the assumptions and analysis contained in the Caiger Affidavit).

**(ii) *BP Commodity/ISO Services Claims***

80. On the Effective Date, CBHT will receive 100% of the New Preferred Shares of New Just Energy Parent in full satisfaction of the BP Commodity/ISO Services Claim.

**(iii) *D&O Claims***

81. All D&O Claims that are released under the Plan (discussed further below) and all corresponding claims for indemnity by any Director or Officer of the Just Energy Entities with respect to such D&O Claims are fully, finally and irrevocably compromised, released, discharged, cancelled, extinguished and barred on the Effective Date.

82. The Plan does not release:

- (a) any Responsible Person Claims, which will continue unaffected under the Plan. The Plan provides that the Sanction Order must declare that each Just Energy Entity shall indemnify any Director, Officer or other Person employed or previously employed by a Just Energy Entity for any amount for which such Person is held personally liable as a result of nonpayment of any Taxes (including, without limitation, sale, use, withholding, unemployment and excise Tax) by a Just Energy

Entity, along with any expenses or fees incurred in connection with defending any matter for which any of the foregoing Persons could be entitled to indemnification, provided that such indemnities do not apply in circumstances of fraud, gross negligence or wilful misconduct (subject to the caveat that in cases where gross negligence or wilful misconduct are requirements for a beneficiary to be held personally liable as a result of nonpayment of any Taxes by a Just Energy Entity, the Just Energy Entities must indemnify such beneficiary notwithstanding any gross negligence or wilful misconduct and, in such cases, there is no requirement that the beneficiary has reasonable grounds for believing the conduct was lawful);

- (b) any D&O Claims which are not released under the Plan (each, a “**Non-Released D&O Claim**”). All Non-Released D&O Claims will be irrevocably limited to recovery from any insurance proceeds payable in respect of such Non-Released D&O Claims pursuant to the Insurance Policies, and persons with such Non-Released D&O Claims will have no right to make any claim or seek any recoveries other than enforcing such persons’ rights to be paid from the proceeds of the applicable Insurance Policies by the applicable insurer(s). The Plan requires that from and after the Effective Date, any action for a D&O Claim may only be commenced with: (a) the consent of the Monitor; or (b) the leave of the CCAA Court on notice to the applicable Director or Officer, the Just Energy Entities, the Monitor and any applicable insurer(s), or if the action will be commenced within the United States, an Order of the U.S. Bankruptcy Court on notice to the applicable Director or Officer, the Just Energy Entities, the Monitor and any applicable insurer(s); and

- (c) any existing or future right of any Director or Officer of any Just Energy Entity as of the Effective Date against any of the Just Energy Entities which arose as a result of any D&O Claim for which such Director or Officer is entitled to be indemnified by any of the Just Energy Entities and that is: (i) a Non-Released D&O Claim, or (ii) a D&O Claim released under the Plan that is asserted by a person other than a Consenting Party (a person that is party to the Support Agreement or who submits a vote in favour of the Plan) (each, an “**Excluded D&O Indemnity Claim**”). All Excluded D&O Indemnity Claims will continue unaffected.

(iv) *Unaffected Creditors*

83. The Plan does not compromise or otherwise affect the following Claims (collectively, the “**Unaffected Claims**”):

- (a) Post-Filing Claims which will be paid or otherwise satisfied by the Just Energy Entities in the normal course;
- (b) all outstanding obligations, liabilities, fees and disbursements secured by:
- (i) the DIP Lenders’ Charge will be paid in full in cash in full and final satisfaction of the DIP Lenders’ Claim (US\$125 million plus all other accrued and outstanding fees, costs, and interest through the Effective Date) and the DIP Lenders’ Charge discharged;
- (ii) the Administration Charge will be paid in full (to the extent evidenced by invoices delivered to Just Energy as at the Effective Date) and the Administration Charge discharged. Any reasonable and documented fees

and disbursements (plus applicable taxes thereon) for any post-Effective Date Services incurred by:

- (A) the Monitor, its legal counsel and any other Person retained by the Monitor, in connection with administrative and estate matters (the “**Monitor Administration Expenses**”) will be paid from the Administrative Expense Reserve. Any unused portion of the Administrative Expense Reserve will be transferred by the Monitor to the New Just Energy Parent; and
- (B) the reasonable and documented fees and disbursements (plus any applicable taxes thereon) incurred by the Just Energy Entities’ legal, financial, or other advisors, the Monitor and its legal counsel, or any other Person retained by the Just Energy Entities or the Monitor, in connection with post-Effective Date matters (other than the Monitor Administration Expenses) relating to the Plan and the CCAA proceedings will be paid from the General Unsecured Creditor Cash Pool;
- (iii) the FA Charge will be paid in full (to the extent evidenced by invoices delivered to Just Energy as at the Effective Date) and the FA Charge will be deemed to be fully and finally satisfied and discharged;
- (iv) the Directors’ Charge will be deemed to be fully and finally satisfied and discharged and all D&O Claims (other than Responsible Person Claims,

Non-Released D&O Claims, and Excluded D&O Indemnity Claims) will be fully and finally compromised, released, and extinguished;

- (v) amounts secured by the KERP Charge will be fully paid by the Just Energy Entities to the beneficiaries thereof and the KERP Charge will be deemed to be fully and finally satisfied and discharged;
  - (vi) the Cash Management Obligations will continue unaffected and the Cash Management Charge will be deemed to be fully and finally satisfied and discharged; and
  - (vii) all other charges granted within the CCAA proceeding will be deemed to be fully and finally satisfied and discharged;
- (c) all Commodity Supplier Claims will be paid in full by the Just Energy Entities on the Effective Date;
  - (d) all Claims of Credit Facility Lenders relating to any letters of credit which are issued but undrawn immediately prior to the Effective Date will be unaffected and continue under the New Credit Facility or, if required, replaced with new letters of credit issued under the New Credit Agreement;
  - (e) Government Priority Claims outstanding as at the Filing Date or related to the period ending on the Filing Date (if any) will be paid in full by the applicable Just Energy Entities on or as soon as reasonably practicable following the Effective Date;

- (f) Employee Priority Claims due and accrued to the Effective Date (if any) will be paid in full by the applicable Just Energy Entities on the Effective Date;
- (g) any Claim that may be asserted by any Energy Regulator,<sup>14</sup> excluding any: (i) Claim with respect to the subject matter of the adversary proceeding commenced on November 12, 2021 by various of the Just Energy Entities against ERCOT and the Public Utility Commission of Texas (the “**Adversary Proceeding**”), including any Claim with respect to obligations of the Just Energy Entities underlying the invoices that are the subject of the Adversary Proceeding; and (ii) any Claim by any Taxing Authority, will continue unaffected and be addressed in the ordinary course consistent with past practice;
- (h) (i) Civil Action 20-590 *Thaddeus White, et al. v. Just Energy Group Inc., et al.*; (ii) *Gilchrist v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-627174-00CP) commenced on September 11, 2019; (iii) *Saha v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-630737-00CP); and (iv) any claim for contribution or indemnity in respect of or related to those claims, will continue unaffected as against the applicable Insurance Policies;
- (i) all or any portion of a Claim for which the applicable insurer or a court of competent jurisdiction has confirmed that the applicable Just Energy Entity or Director or

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<sup>14</sup> Any federal or provincial energy regulators, provincial regulators of consumer sales that have authority with respect to energy sales, U.S. municipal, state, federal or other foreign energy regulatory bodies or agencies, local energy transmission and distribution companies, or regional transmission organizations or independent system operators.



Officer is insured under an Insurance Policy (each, an “**Insured Claim**”) will continue unaffected as against the applicable Insurance Policies;

- (j) on or prior to the Effective Date, all intercompany claims that may be asserted against any of the Just Energy Entities by or on behalf of any of the Just Energy Entities or any of their affiliated companies, partnerships, or other corporate entities (each, an “**Intercompany Claim**”) will be addressed in accordance with the supplement to the Plan that details the manner in which the steps and compromises will be effected in the implementation of the Plan and the treatment of Intercompany Claims (the “**Restructuring Steps Supplement**”);
- (k) any Claims finally determined in accordance with the Claims Procedure Order to be a secured or priority claim against any of the Just Energy Entities and entitled to be paid in full in priority to the General Unsecured Creditor Claims and the Term Loan Claims (and which is not and does not become a Disallowed Claim) will be unaffected;
- (l) any Responsible Person Claims will continue unaffected and each Just Energy Entity will indemnify all Directors, Officers or other person employed or previously employed by a Just Energy Entities against such Responsible Person Claims;
- (m) any Excluded D&O Indemnity Claims will continue unaffected;
- (n) Claims that may be asserted by any of the Just Energy Entities against any Directors and/or Officers will continue unaffected; and

- (o) Claims enumerated in sections 5.1(2) and 19(2) of the CCAA will continue unaffected (except as otherwise provided in the Plan).

84. Persons with Unaffected Claims are not entitled to vote at any Creditors' Meeting or receive any distributions under the Plan in respect of the portion of their claim which is an Unaffected Claim, subject to the express provisions of the Plan providing for payment of certain Unaffected Claims and/or the treatment of Insurance Claims. Nothing in the Plan affects the Just Energy Entities' rights and defences with respect to any Unaffected Claim, including any rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

(v) *Equity Claims*

85. On the Effective Date, the Plan will be binding on all Equity Claimants, including the holders (the "**Existing Common Shareholders**") of existing common shares of Just Energy (the "**Common Shares**"). Equity Claimants, including the Existing Common Shareholders, will not receive a distribution or other consideration under the Plan and will not be entitled to vote on the Plan in respect of their Equity Claims or attend either of the Creditors' Meetings in such capacity. On the Effective Date: (a) all Common Shares will be mandatorily transferred to, and acquired by, the New Just Energy Parent for no consideration; and (b) all Existing Equity<sup>15</sup> (other than the Common Shares transferred or issued to the New Just Energy Parent, the New Common Shares

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<sup>15</sup> (a) all Common Shares; (b) all other Equity Interests (excluding any Intercompany Interest), including all options, warrants, rights, or similar instruments, derived from, relating to, or exercisable, convertible, or exchangeable therefor; and (c) all instruments whose value is based upon or determined by reference to any Equity Interest whether or not such instrument is exercisable, convertible, or exchangeable for such an Equity Interest, and, in all such cases, which are issued and outstanding immediately prior to the Effective Time.

and New Preferred Shares, and the Intercompany Interests<sup>16</sup>) will be cancelled and extinguished without any liability, payment or other compensation in respect thereof, and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any liability, payment or other compensation in respect thereof.

86. In proposing the Plan, the Just Energy Entities considered, in consultation with their legal and financial advisors, the legal entitlements of stakeholders in the absence of the CCAA proceedings, their expected economic recovery if no Plan is approved and their proposed treatment under the Plan. Since the value of the recoveries to be given to Affected Creditors is less than the value of their Claims, there is no residual value in Just Energy to be given to the holders of Existing Equity and/or other Equity Claims.

**(c) VOTING ENTITLEMENT**

87. The voting entitlement on the Plan is determined and calculated as follows:

- (a) *Secured Creditor Class*: each Credit Facility Lender will be entitled to one (1) vote in the amount equal to such Credit Facility Lender's pro rata share of the Credit Facility Claim that is an Accepted Claim (provided that such Credit Facility Lender delivers a Secured Creditor Proxy in accordance with the Meetings Order);
- (b) *Unsecured Creditor Class*:
  - (i) each Term Loan Claim Holder will be entitled to one (1) vote in the amount equal to such Term Loan Claim Holder's pro rata share of the Term Loan

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<sup>16</sup> Any Equity Interest held by a Just Energy Entity or New Just Energy Parent in any other Just Energy Entity or New Just Energy Parent, as applicable.

Claim in the amount that is an Accepted Claim, or if not accepted by two (2) Business Days before the date of the Meeting of the Unsecured Creditor Class, in the amount set out in the Negative Notice Claims Package in respect of the Term Loan Claim (provided that such Term Loan Claim Holder delivers an Unsecured Creditor Proxy in accordance with the Meetings Order);

- (ii) each Convenience Creditor will be deemed to vote in favour of the Plan in the amount of such Convenience Creditor's Accepted Claim;
- (iii) each General Unsecured Creditor will be entitled to one (1) vote in the amount equal to such General Unsecured Creditor's Voting Claim (provided that such General Unsecured Creditor delivers an Unsecured Creditor Proxy in accordance with the Meetings Order), provided, however, that:
  - (A) the Subordinated Noteholder will be entitled to one (1) vote in the amount equal to the Subordinated Note Claim (provided that such Subordinated Noteholder delivers an Unsecured Creditor Proxy in accordance with the Meetings Order). The Subordinated Noteholder's Voting Claim will be deemed to have been voted in proportion to the tabulation of voting instructions received from Beneficial Subordinated Note Claim Holders identifying the principal amount of the Subordinated Note Claim voting FOR or AGAINST the Plan. Neither the Beneficial Subordinated Note

Claim Holders nor Computershare Trust Company of Canada as Subordinated Note Trustee under the Subordinated Note Indenture (the “**Subordinated Note Trustee**”) will have a Voting Claim or be entitled to vote at the Unsecured Creditors’ Meeting. All Beneficial Subordinated Note Claim Holders may instruct the Subordinated Noteholder with respect to how the Subordinated Noteholder should vote its Voting Claim by completing and returning the Subordinated Noteholder VIF in accordance with the Meetings Order;

- (B) with respect to the Subject Class Action Claims, each representative plaintiff in any certified Subject Class Action Claim or each proposed representative plaintiffs in any uncertified Subject Class Action Claim (each a “**Subject Class Action Plaintiff**”) will be entitled to one (1) vote in the amount equal to its Voting Claim (valued by the Just Energy Entities for voting purposes at \$1); and
- (C) with respect to the Texas Power Interruption Claim, each of Robins Cloud LLP, Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP (collectively, the “**Texas Power Interruption Claimants’ Counsel**”) will be entitled to one (1) vote in an amount equal to its Voting Claim (valued by the Just Energy Entities for voting purposes at \$1).

88. The complexity of the unresolved Contingent Litigation Claims is such that it is not possible to carry out a summary process in relation to these claims before the Creditors’ Meetings

are held, nor is it possible to delay the Creditors' Meetings until the resolution of the Contingent Litigation Claims without jeopardizing the entire Restructuring.

89. In addition, each Affected Creditor with a Disputed Claim against the Just Energy Entities (other than the Subject Class Action Plaintiffs and the Texas Power Interruption Claimants' Counsel) will be entitled to attend the applicable Creditors' Meeting and will have one (1) vote at the Creditors' Meeting in the dollar value of such Disputed Claim as set out in the Negative Notice Claims Package or the Disputed Claim acceptance value for voting and distribution purposes, prepared in consultation with the Monitor (the "**Acceptance Value**"), as applicable, sent to the holder of the Disputed Claim or, if no Negative Notice Claims Package or Acceptance Value was sent, the value set forth in the corresponding Proof of Claim.

**(d) NEW EQUITY OFFERING AND THE NEW JUST ENERGY PARENT**

90. As detailed above, on the Effective Date, the New Just Energy Parent will complete the New Equity Offering and, immediately following issuance, the New Preferred Shares and New Common Shares (together with any equity interests outstanding under the MIP) will constitute all of the issued and outstanding shares of the New Just Energy Parent.

91. The New Preferred Shares will have a redemption amount equal to the amount of the BP Commodity/ISO Services Claim, as of the Effective Date, all converted into United States currency, plus accrued and unpaid dividends, redeemable at the Company's option or redeemable upon a change of control transaction in respect of New Just Energy Parent, plus a 5.00% exit fee. Holders of New Preferred Shares will have the right to cause New Just Energy Parent to undertake a liquidity event within six years of the Effective Date. The New Preferred Shares will have a 12.50% accreting yield with dividends as and when declared by the board of directors for the first

four (4) years, increasing 1% annually thereafter. The terms and conditions of the New Preferred Shares are discussed further in the New Preferred Shares Term Sheet attached as Exhibit 2 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit “D” to this Affidavit).

92. The material terms of the New Just Energy Entities’ corporate governance are set forth in the Corporate Governance Term Sheet for the New Just Energy Parent attached as Exhibit 3 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit “D” to this Affidavit). The initial board of directors of the New Just Energy Parent (the “**New Board**”) will consist of five (5) directors selected by the Plan Sponsor.

93. In addition, the material terms of a post-emergence MIP for management of the New Just Energy Parent are set forth in the MIP Term Sheet attached as Exhibit 4 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit “D” to this Affidavit).

**(e) NEW CREDIT AGREEMENT AND NEW INTERCREDITOR AGREEMENT**

94. On the Effective Date, Just Energy U.S. and Just Energy Ontario L.P. and the New Credit Facility Lenders will enter into the New Credit Agreement pursuant to which the New Credit Facility will be made available to the Just Energy Entities, generally in accordance with the terms set forth in the New Credit Facility Term Sheet attached as Exhibit 1 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit “D” to this Affidavit).

95. In addition, on the Effective Date, the New Intercreditor Agreement will be executed by the Just Energy Entities, the New Credit Facility Lenders, and applicable Commodity Suppliers defining the relative priorities of the various parties' security interests as between them, generally in accordance with the terms set forth in the New Intercreditor Agreement Term Sheet attached as Exhibit 5 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit "D" to this Affidavit).

**(f) RELEASES**

96. If approved by the Affected Creditors and sanctioned by the Court, the Plan provides:
- (a) *Third-Party Releases:* (a) the Just Energy Entities and their respective current and former employees, contractors, advisors, legal counsel and agents; (b) the Directors and Officers; (c) the Monitor, the Supporting Parties (all parties that have executed the Support Agreement other than the Just Energy Entities), Backstop Parties, the DIP Agent, the DIP Lenders, the Plan Sponsor, the Credit Facility Agent, the Term Loan Agent, and the Subordinated Note Trustee, and each of their respective present and former affiliates, subsidiaries, directors, officers, members, partners, employees, auditors, advisors, legal counsel and agents (the "**Released Parties**" and individually a "**Released Party**") will be released from the Released Claims (as defined below); and
  - (b) *Debtor Releases:* the Released Parties will be released by each of the Just Energy Entities and their respective current and former affiliates, and discharged from any and all Released Claims held by the Just Energy Entities as of the Effective Date, provided however that nothing limits or modifies in any way any Claim or defence



which any of the Just Energy Entities may hold or be entitled to assert against any of the Released Parties as of the Effective Date relating to any contracts, leases, agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices, or other ordinary course obligations which remain in effect following the Effective Date.

97. The requested releases are necessary to bring finality to the CCAA proceedings and to protect the Released Parties from any and all claims, demands, causes of action, dealings, occurrences (or other matters included within the definition of “Released Claims” in the Plan) which existed or took place prior to the Effective Date, or which relate to implementation of the Plan, including distributions pursuant to the Plan following the Effective Date, that constitute or are in any way related to, arise out of or in connected with (i) any Claims (including Equity Claims), any D&O Claims and any indemnification obligations with respect thereto (excluding Excluded D&O Indemnity Claims), (ii) any payments, distributions or share issuances under the Plan, (iii) the business and affairs of the Just Energy Entities whenever or however conducted, (iv) the business and assets of the Just Energy Entities, (v) the administration and/or management of the Just Energy Entities, (vi) the Affected Claims, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the Plan, the Existing Equity, the CCAA and Chapter 15 proceedings, or any document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing, (vii) any contract that has been restructured, terminated, repudiated, disclaimed, or resiliated in accordance with the CCAA, (viii) liabilities of the Directors and Officers and any alleged fiduciary or other duty, or (ix) any Claim that has been barred or extinguished by the Claims Procedure Order (subject to the exclusions described below, collectively the “**Released Claims**”).

98. The releases provided in the Plan explicitly do not release or discharge:
- (a) Insured Claims, provided that from and after the Effective Date, any person having an Insured Claim will be irrevocably limited to recovery from the proceeds of the applicable Insurance Policies;
  - (b) any obligations of any of the Released Parties under or in connection with the Plan, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the New Credit Facility Documents, the New Intercreditor Agreement, the New Common Shares, the New Preferred Shares, the MIP or the New Corporate Governance Documents;
  - (c) the Just Energy Entities from or in respect of any Unaffected Claim that has not been paid in full under the Plan, or any claim that is not permitted to be released pursuant to section 19(2) of the CCAA; or
  - (d) any Director from any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.
99. All of the Released Parties have made significant and often critical contributions to the development and implementation of the Just Energy Entities' restructuring in these CCAA proceedings. As discussed further above, the Released Parties have worked diligently towards ensuring the implementation of the restructuring of the Just Energy Entities' financial obligations and operations for the benefit of all stakeholders. Such efforts have resulted in the execution and approval of the Support Agreement and the Plan. If the Support Agreement is approved and the

transactions under the Plan are consummated, the Just Energy Entities and their businesses will continue, and their going concern value will be preserved for the benefit of stakeholders.

100. In addition to the Third-Party Releases and the Debtor Releases discussed above, the Plan also includes various exculpations which the Just Energy Entities will request be approved by the U.S. Bankruptcy Court in the Sanction Recognition Order. The Plan provides that, to the fullest extent possible under applicable law, any current officer, director, employee, and retained professional (including financial advisors, investment bankers, and attorneys) of the Just Energy Entities, the Monitor, the DIP Lenders, the Plan Sponsor, the Backstop Parties, the Supporting Parties, the DIP Agent, the Credit Facility Agent, the Term Loan Agent, and the Subordinated Note Trustee (the “**Exculpated Parties**”) are released and exculpated from any cause of action for any act or omission in connection with, relating to, or arising out of: (a) the CCAA proceedings and the Chapter 15 proceeding; (b) the formulation, preparation, dissemination, negotiation, filing, or consummation of the Support Agreement, the Backstop Commitment Letter, the Plan, any Definitive Documents, or the recognition thereof in the United States; or (c) any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the filing of the CCAA proceeding or the Chapter 15 proceeding, the pursuit of approval and/or consummation of the Plan, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement.

101. The Plan expressly does not release the Exculpated Parties from any causes of action related to any act or omission that is determined in a final order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence.

102. On the Effective Date, each Consenting Party (each person who is or becomes a party to the Support Agreement or who submits a vote in favour of the Plan) is deemed to have consented and agreed to the releases, injunctions and exculpations referred to in the Plan.

**(g) AMENDMENTS TO THE PLAN**

103. The Plan permits the Just Energy Entities, at any time prior to or at the Creditors' Meetings, to vary, modify, amend, or supplement the Plan (each a "**Plan Modification**"), with the prior consent of the Monitor, the Credit Facility Lenders, Shell and the Plan Sponsor (which consent shall not be unreasonably withheld, conditioned or delayed), provided that:

- (a) prior to the Creditors' Meetings, notice of any Plan Modification must be posted on the Monitor's Website and provided to the Service List established in the CCAA proceedings (the "**Service List**"); and
- (b) during the Creditors' Meetings, notice of any Plan Modification must be given to all Affected Creditors present (or deemed present) at such meeting in person or by proxy prior to the vote being taken, promptly posted on the Monitor's Website, promptly provided to the Service List, and filed with the Court as soon as practicable following the applicable Creditors' Meeting.

104. The Plan further permits the Just Energy Entities to effect a Plan Modification after the Creditors' Meetings (and both prior to and subsequent to the obtaining of any Sanction Order) without obtaining an Order of the CCAA Court or providing notice to the Creditors, if the Just Energy Entities, the Plan Sponsor, the Credit Facility Lenders, Shell and the Monitor, each acting reasonably, determine that such Plan Modification would not be materially prejudicial to the

interests of any Creditors under the Plan or is necessary in order to give effect to the substance of the Plan or the Sanction Order.

**(h) RESTRUCTURING STEPS SUPPLEMENT**

105. The steps, compromises and releases to be effected in the implementation of the Plan shall occur, and be deemed to have occurred in the order and manner to be set out in the Restructuring Steps Supplement. The Restructuring Steps Supplement is required to be in form and substance acceptable to the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably. The Plan requires that the Restructuring Steps Supplement not be materially prejudicial to the interests of any Creditors under the other sections of the Plan.

**(i) CONDITIONS TO IMPLEMENTATION OF THE PLAN**

106. In order for the Plan to be implemented, the following conditions, among others, must be satisfied or waived prior to or at the Effective Date:

- (a) the Plan shall have been approved by the Required Majorities in conformity with the CCAA;
- (b) the Restructuring Steps Supplement shall have been agreed to by the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably;
- (c) the Meetings Order, the Authorization Order, and the Sanction Order shall have been issued by the CCAA Court and become Final Orders;

- (d) the Meetings Recognition Order, the Authorization Recognition Order, the Sanction Recognition Order and the Claims Procedure Recognition Order shall have been entered by the U.S. Bankruptcy Court and become Final Orders;
- (e) the commitments of each of the parties to the Support Agreement shall have been satisfied in all material respects or waived;
- (f) all conditions to the Backstop Parties' commitments under the Backstop Commitment Letter shall have been satisfied or waived;
- (g) the Just Energy Entities have provided for the payment or satisfaction in full of the DIP Lenders' Claim, the Commodity Supplier Claims, the Government Priority Claims, the Employee Priority Claims and the Claims secured by the Administration Charge, the FA Charge, the Directors' Charge and the KERP Charge;
- (h) the Monitor shall have received from the Just Energy Entities the funds necessary to establish and shall have established the Plan Implementation Fund;
- (i) no proceeding shall have been commenced that could reasonably be expected to result in an injunction, and no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by the Plan, the Support Agreement or the Backstop Commitment Letter;
- (j) the New Credit Facility Documents and the New Intercreditor Agreement shall have become effective, subject only to implementation of the Plan;

- (k) Just Energy shall have satisfied all conditions or requirements necessary to cease to be a reporting issuer under the U.S. Exchange Act (or any other U.S. securities laws) and ceased to be a reporting issuer thereunder, Just Energy shall cease to be a reporting issuer under applicable Canadian Securities Laws, and no Just Energy Entity shall be deemed to have become a reporting issuer under applicable Canadian Securities Laws;
- (l) the New Board shall have been appointed in accordance with the terms of the Support Agreement and the New Corporate Governance Documents and the MIP and other new corporate governance documents shall have become effective, subject only to implementation of the Plan;
- (m) the aggregate amount of proceeds from the New Equity Offering and Cash on Hand shall be equal or greater than the total amount to be paid, distributed, or reserved for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan;
- (n) the total amounts to be paid, distributed or reserved in Canadian and US dollars for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan shall not exceed C\$170 million and US\$337 million, respectively, plus any accrued and outstanding interest with respect to such amounts;
- (o) Shell shall have provided various written confirmations regarding its Continuing Contracts;

- (p) all necessary Transaction Regulatory Approvals shall have been obtained and be in full force and effect;
- (q) all necessary corporate action and proceedings shall have been taken to approve the Plan and all agreements, resolutions, documents and other instruments reasonably necessary in order to implement the Plan have been executed and delivered;
- (r) each of the Employment Agreements<sup>17</sup> shall either remain in place or have been amended as contemplated by the Support Agreement; and
- (s) the Effective Date shall have occurred on or prior to the Outside Date.

**(j) SUMMARY**

107. The Just Energy Entities are of the view that the Plan represents the best alternative available to stakeholders of the Just Energy Entities, while allowing for the receipt, consideration and negotiation of Alternative Restructuring Proposals during the Voting Period. The Plan will enable the business of the Just Energy Entities to continue as a going concern in the expectation that a greater benefit will be derived from the continued operation of the business than would result from bankruptcy or a forced liquidation of the Just Energy Entities' assets. As discussed further above, the Plan has been developed following extensive consultation with the Just Energy Entities' key stakeholders and is supported by such stakeholders.

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<sup>17</sup> The employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the Directors, Officers and employees of any of the Just Energy Entities that, on or prior to the Effective Date, have not resigned in each case in existence on the effective date of the Support Agreement.



108. The CCAA and Chapter 15 proceedings have been ongoing for more than 13 months, and despite the relative stability created by the process, continue to generate uncertainty for employees, suppliers, regulators and other business-critical stakeholders necessary for the long-term viability of the Just Energy Entities. It is imperative that a process to facilitate the Just Energy Entities' exit from the CCAA and Chapter 15 proceedings as a going concern be put in place. In the Just Energy Entities' view, the Plan, together with the Voting Period, provides such a process.

109. The Just Energy Entities accordingly seek the relief detailed in paragraph 2 above so as to permit the Plan to be put to Affected Creditors of the Just Energy Entities for consideration (and, if the Required Majorities are obtained, the approval of the CCAA Court), and to establish the period for submission of Alternative Restructuring Proposals.

**F. MEETINGS ORDER**

110. The proposed Meetings Order authorizes the Just Energy Entities to convene virtual meetings of the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on the Plan. The Just Energy Entities propose that the Creditors' Meetings be held virtually and not in person on August 2, 2022 by means of telephonic or electronic facility using a third-party service provider given the ongoing challenges posed by the COVID-19 pandemic.

**(a) NOTIFICATION**

111. The proposed Meetings Order provides for comprehensive notification of the Creditors' Meetings to the Affected Creditors, including provision of: (a) a Notice of Meetings (the "**Notice of Meetings**"); (b) an Information Statement which provides Affected Creditors with detailed information regarding the CCAA proceedings, the Plan, approval requirements with respect to the Plan, the details of the Creditors' Meetings, voting entitlements and procedures, and certain

regulatory matters relating to the Plan (the “**Information Statement**”); and (c) one or more proxies, voting instruction forms, distribution election notices and/or new equity offering participation forms, as applicable. A copy of the Notice of Meetings is attached hereto as **Exhibit “AA”**. A Copy of the Information Statement is attached hereto as **Exhibit “BB”**.

112. The Meetings Order provides that:

- (a) the Monitor shall, within four (4) days following the date of the Meetings Order, post or cause to be posted electronic copies of the Secured Creditor Class Meeting Materials<sup>18</sup> and the Unsecured Creditor Class Meeting Materials<sup>19</sup> on the Monitor’s Website and the website of the Just Energy Entities’ noticing agent, Omni Agent Solutions (the “**Noticing Agent’s Website**”);
- (b) the Monitor shall, not later than the seventh (7<sup>th</sup>) day following the date of the Meetings Order, send or cause to be sent the Secured Creditor Class Meeting Materials by email to the Credit Facility Agent, copied to legal counsel to the Credit Facility Agent. Upon receipt, the Credit Facility Agent is required, at its option, to email the Secured Creditor Class Meeting Materials to each Credit Facility Lender, or post the Secured Creditor Class Meeting Materials to the web-based platform used by the Credit Facility Agent to manage posting of agreements, information and materials for review by the Credit Facility Lenders;

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<sup>18</sup> The Secured Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, and the Secured Creditor Proxy (the “**Secured Creditor Class Meeting Materials**”).

<sup>19</sup> The Unsecured Creditor Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, the Unsecured Creditor Proxy, the Subordinated Noteholder VIF, the Distribution Election Notice, the New Equity Offering Participation Form, and the New Shareholder Information Form (the “**Unsecured Creditor Class Meeting Materials**”).

- (c) the Monitor shall, not later than the seventh (7<sup>th</sup>) day following the date of the Meetings Order, send or cause to be sent the Unsecured Creditor Class Meeting Materials (excluding the Subordinated Noteholder VIF, the New Shareholder Information Form and the New Equity Offering Participation Form) by pre-paid ordinary mail, courier, personal delivery or email to each General Unsecured Creditor (other than holders of the Subordinated Note Claim) at the address set out in the Negative Notice Claim or Proof of Claim, as applicable, sent or submitted pursuant to the Claim Procedure Order with respect to such General Unsecured Creditor Claim (or in any other written notice that has been received by the Monitor in advance of such date regarding a change of address for a holder of a General Unsecured Creditor Claim);
- (d) the Just Energy Entities shall:
- (i) not later than the fourth (4<sup>th</sup>) day following the date of the Meetings Order, provide or cause to be provided to the Subordinated Note Trustee, by courier or delivery in person, the Unsecured Creditor Class Meeting Materials (excluding the Distribution Election Notice, the New Shareholder Information Form, and the New Equity Offering Participation Form). Not later than the third (3<sup>rd</sup>) business day following receipt of such materials, the Subordinated Note Trustee must provide or cause to be provided to the Subordinated Noteholder by pre-paid first class or ordinary mail, courier, or by delivery in person, the Unsecured Creditor Class Meeting Materials (excluding the Distribution Election Notice, the New Shareholder Information Form, and the New Equity Offering Participation Form); and

- (ii) subsequently provide or cause to be provided to Broadridge and other mailing intermediaries for delivery to Beneficial Subordinated Note Claim Holders, generally in accordance with the provisions of *National Instrument 54-101 – Communications With Beneficial Owners of Securities of a Reporting Issuer of the Canadian Securities Administrators*, the Unsecured Creditor Class Meeting Materials (excluding the Unsecured Creditor Proxy, the Distribution Election Notice, the New Shareholder Information Form and the New Equity Offering Participation Form); and
- (e) the Monitor shall, not later than the fourth (4<sup>th</sup>) day following the receipt of a list from Computershare Trust Company of Canada as Agent under the Term Loan Agreement (the "**Term Loan Agent**") providing the names, email addresses, mailing addresses, and other reasonably available contact information for each Term Loan Claim Holder, send or cause to be sent to the Term Loan Agent and each Term Loan Claim Holder, by pre-paid ordinary mail, courier, personal delivery, or email, the Unsecured Creditor Class Meeting Materials (excluding the Subordinated Noteholder VIF and the Distribution Election Notice), as well as an Additional Backstop Notice (as defined in the Backstop Commitment Letter).

113. In addition, the Meetings Order requires the Just Energy Entities to cause CDS Clearing and Depository Services Inc. ("**CDS**") to publish a bulletin to each institution that is a CDS participant holding Subordinated Notes (each, a "**Participant Holder**") outlining the particulars of the Unsecured Creditors' Meeting and the instructions for obtaining and recording voting instructions submitted by way of Subordinated Noteholder VIF or such other documentation as

the Participant Holder may customarily request for purposes of obtaining voting instructions by Beneficial Subordinated Note Claims Holders.

**(b) CONDUCT OF THE CREDITORS' MEETINGS**

114. The Meetings Order authorizes the Just Energy Entities to call, hold and conduct the Creditors' Meetings of the Secured Creditor Class on August 2, 2022 at 10:00 a.m. (EDT) (the "**Secured Creditors' Meeting**"), and the Unsecured Creditor Class on August 2, 2022 at 10:30 a.m. (EDT) (the "**Unsecured Creditors' Meeting**" and together with the Secured Creditors' Meeting (the "**Creditors' Meetings**"), for the purposes of considering and if deemed advisable by the Secured Creditor Class and the Unsecured Creditor Class, as applicable, voting in favour of, with or without variation, the Plan.

115. The Creditors' Meetings will be held entirely by electronic means using the platform, technology and services of Lumi Holdings Ltd. ("**Lumi**"). I am advised by counsel to the Just Energy Entities, Osler Hoskin & Harcourt ("**Osler**"), that Lumi's software affords all meeting participants, regardless of geographic location, an equal opportunity to observe the meeting, to ask questions, and to submit votes, all in real-time. The software is web-based, and it can be accessed from any computer or cell phone with an internet connection. There is no fee for meeting participants. Attached as **Exhibit "CC"** is a copy of Lumi's brochure describing its platform and services.

116. The Meetings Order provides that a representative of the Monitor will preside as the Chairperson of the Creditors' Meetings and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Creditors' Meetings. The Monitor may appoint scrutineers

for the supervision and tabulation of the attendance at, quorum at, and votes cast at the Creditors' Meetings. A Person designated by the Monitor will act as secretary of the Creditors' Meetings.

117. The only Persons entitled to attend the Creditors' Meetings are: (a) the Affected Creditors entitled to vote at that Creditors' Meeting (or, if applicable, any Person holding a valid Secured Creditor Proxy or Unsecured Creditor Proxy on behalf of one or more such Affected Creditors), and any such Affected Creditor's legal counsel and financial advisors; (b) the Chairperson, the scrutineers and the secretary; (c) the Monitor and the Monitor's legal counsel; (d) one or more representatives of the board and/or senior management of the Just Energy Entities, and the Just Energy Entities' legal counsel and financial advisor; and (e) the Plan Sponsor and the Plan Sponsor's legal counsel and financial advisor. Any other person may be admitted to a Creditors' Meeting on invitation of the Just Energy Entities, in consultation with the Monitor.

118. Neither Beneficial Subordinated Note Claim Holders nor the Subordinated Note Trustee are permitted to attend or vote at the Unsecured Creditors' Meeting. Beneficial Subordinated Note Claim Holders must provide any voting instructions through their Participant Holder by completing and returning a Subordinated Noteholder VIF in accordance with the Meetings Order. Only the Subordinated Noteholder is entitled to vote on the Plan on behalf of all holders of the Subordinated Note Claim using the procedures provided in the Meetings Order.

**(c) VOTING**

119. The voting procedures were designed by the Just Energy Entities, in consultation with the Monitor, to provide an opportunity for Affected Creditors to register their votes for or against the Plan. The Meetings Order and the Plan provide, *inter alia*:

- (a) at each Creditors' Meeting, the Chairperson will direct a vote using the voting options available at the virtual Creditors' Meeting or by proxy on a resolution to approve the Plan and any amendments thereto and any other resolutions that the Just Energy Entities consider appropriate with the consent of the Plan Sponsor, the Credit Facility Agent (with respect to the Secured Creditors' Meeting) and the Monitor;
- (b) the quorum required at each Creditors' Meeting is one Secured Creditor with an Accepted Claim at the Secured Creditors' Meeting, and one Unsecured Creditor with an Accepted Claim at the Unsecured Creditors' Meeting, in each case present in person (by electronic means) or by proxy;
- (c) if the requisite quorum is not present at a Creditors' Meeting, the Chairperson may adjourn the meeting, provided that any such adjournment or adjournments must be for a period of not more than 2 days in total, unless otherwise agreed to by the Just Energy Entities, the Credit Facility Agent, the Plan Sponsor and the Monitor;
- (d) each Affected Creditor (other than Beneficial Subordinated Note Claim Holders who are not entitled to attend either of the Creditors' Meetings) will be permitted to attend the applicable Creditors' Meeting itself or may appoint another person to attend the applicable Creditors' Meeting as its proxyholder in accordance with the process provided in the Meetings Order. The Meetings Order contains provisions detailing the registration requirements for voting (including the requirement that Term Loan Claim Holders, General Unsecured Creditors and the Subordinated Noteholder each submit an Unsecured Creditor Proxy, Beneficial Subordinated

Note Claim Holders each submit a Subordinated Noteholder VIF to their Participant Holders, and the Credit Facility Lenders each submit a Secured Creditor Proxy, each in accordance with the Meetings' Order) and sets out the procedures and deadlines for submitting the necessary registrations and/or proxies;

- (e) the Chairperson has the discretion to accept for voting purposes any Unsecured Creditor Proxy or Secured Creditor Proxy submitted to the Monitor in accordance with the Meetings Order notwithstanding any minor error or omission in such Unsecured Creditor Proxy or Secured Creditor Proxy;
- (f) Affected Claims may be transferred or assigned in accordance with the Plan and the Support Agreement;
- (g) as discussed further above, each Affected Creditor with a Disputed Claim against the Just Energy Entities (other than the Subject Class Action Plaintiffs and the Texas Power Interruption Claimants' Counsel) will be entitled to attend the applicable Creditors' Meeting and will have one (1) vote at the Creditors' Meeting in the dollar value of such Disputed Claim as set out in the Negative Notice Claims Package or the Acceptance Value, as applicable, sent to the holder of the Disputed Claim or, if no Negative Notice Claims Package or Acceptance Value was sent, the value set forth in the corresponding Proof of Claim, provided however, that:
  - (i) the Subject Class Action Plaintiffs will be entitled to attend the Creditors' Meeting of the Unsecured Creditor Class and will have one (1) vote per Subject Class Action Plaintiff in an amount equal to \$1.00; and



- (ii) each of the Texas Power Interruption Claimants' Counsel will be entitled to attend the Creditors' Meeting of the Unsecured Creditor Class and will have one (1) vote in an amount equal to \$1.00;
- (h) the Monitor is required to keep a separate record of votes cast by Affected Creditors with Disputed Claims and report to the CCAA Court with respect thereto at the Plan Sanction Hearing. If approval or non-approval of the Plan by Affected Creditors would be affected by the votes cast in respect of Disputed Claims, such result must be reported to the CCAA Court as soon as reasonably practicable after the Creditors' Meetings; and
- (i) Unaffected Claims, the BP Commodity/ISO Services Claim and Equity Claims are not entitled to vote at the Creditors' Meetings.

120. I have been advised by Osler that (i) the provisions of Multilateral Instrument 61 -101 "Protection of Minority Securityholders in Special Transactions", that require "minority" shareholder approval in respect of certain "related party transactions" or "business combinations" may be triggered by the Plan, and (ii) the CCAA provides that shareholders are not required to vote on the Plan unless specifically ordered by the Court.

**(d) APPROVAL AND COURT SANCTION OF THE PLAN**

121. To be approved, the Plan must receive an affirmative vote by the Required Majorities at each Creditors' Meeting. The result of any vote at the Creditors' Meetings shall be binding on all Affected Creditors in the relevant class for such Meeting, regardless of whether such Affected

Creditor was present at or voted at the applicable Creditors' Meetings) or was entitled to be present or vote at either or both of the Creditors' Meetings.

122. The Just Energy Entities propose that, in the event the Plan is approved by the Required Majorities, the Just Energy Entities will bring a motion on a date to be scheduled by the CCAA Court seeking a Sanction Order sanctioning the Plan under the CCAA.

123. The Monitor will provide a report to the Court as soon as practicable after the Creditors' Meetings with respect to: (a) the results of voting at the Creditors' Meetings; (b) whether the Required Majorities have approved the Plan; (c) the separate tabulation for Disputed Claims; and (d) in its discretion, any other matters relating to the requested Sanction Order (the "**Monitor's Report Regarding the Meetings**"). The Monitor's Report Regarding the Meetings will be served on the Service List and posted on the Monitor's Website and the Noticing Agent's Website prior to the Plan Sanction Hearing.

124. The Just Energy Entities are of the view that the proposed Meetings Order is fair and reasonable in the circumstances and will allow all Affected Creditors to fully consider the Plan and participate in the applicable Creditors' Meeting. The Just Energy Entities accordingly seek approval of the proposed Meetings Order by the CCAA Court.

**G. AMENDMENT OF THE CLAIMS PROCEDURE ORDER**

125. The Claims Procedure Order permits the Just Energy Entities, at their election and in consultation with the Monitor, to refer any dispute raised in a Notice of Dispute of Revision or Disallowance to either a Claims Officer or the CCAA Court for adjudication. A copy of the Claims Procedure Order is attached hereto as **Exhibit "DD"**.

126. Within the Claims Process, the Just Energy Entities have received one or more Winter Storm Claims which engage, and are based significantly on, the utility regulatory regime in Texas, including the Texas *Public Utility Regulatory Act*. Adjudication and determination of such Winter Storm Claims will require particularized understanding and application of the legal and regulatory framework which govern the transmission, distribution, delivery, procurement, and resale of electricity in Texas. The Winter Storm Claims raise issues of U.S. law which are specific to utility regulation in Texas and, as such, are particularly well suited for determination by the U.S. Bankruptcy Court based in Texas which has carriage of the Applicants' restructuring in the United States instead of by a Claims Officer or the CCAA Court.

127. The Just Energy Entities are accordingly seeking to amend the Claims Procedure Order to permit them, in their sole discretion and in consultation with the Monitor, to have any Winter Storm Claims adjudicated and determined by the U.S. Bankruptcy Court (subject to the entry of an Order by the U.S. Bankruptcy Court recognizing the Authorization Order) rather than by a Claims Officer or the CCAA Court.

128. Should the requested amendment to the Claims Procedure Order be granted by the CCAA Court and the Authorization Order recognized by the U.S. Bankruptcy Court, it is the intention of the Just Energy Entities to request that the Texas Power Interruption Claim be adjudicated and determined by the U.S. Bankruptcy Court.

#### **H. EXTENSION TO THE STAY PERIOD**

129. The Initial Order granted a Stay Period until and including March 19, 2021. The Stay Period has subsequently been extended on numerous occasions including, most recently, to May 26, 2022.

130. The Just Energy Entities are seeking to extend the Stay Period up to and including August 19, 2022. The Just Energy Entities believe that the extension of the Stay Period is necessary and appropriate in the circumstances to provide the Just Energy Entities with the necessary breathing room to:

- (a) satisfy all milestones dates under the Support Agreement, including the 62-day Voting Period;
- (b) call, hold and conduct the Creditors' Meetings to allow Affected Creditors to consider and vote on resolutions to approve the Plan (if no definitive Alternative Restructuring Proposal or definitive Superior Proposal is received and accepted in accordance with the terms of the Support Agreement (or the Support Agreement is not otherwise terminated));
- (c) if approved by the Required Majorities of Creditors at the Creditors' Meetings, seek the Sanction Order from the CCAA Court sanctioning the Plan and an enforcement and recognition order from the U.S. Bankruptcy Court; and
- (d) if granted, implement the Plan and emerge from the CCAA and Chapter 15 proceedings as well-capitalized, financially viable entities well positioned for long-term success.

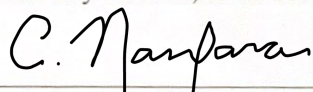
131. The extension of the Stay Period is also necessary to allow the Just Energy Entities, in consultation with the Monitor, to continue the process of reviewing and determining all necessary Claims received within the Claims Process in accordance with the Claims Procedure Order.

- 85 -

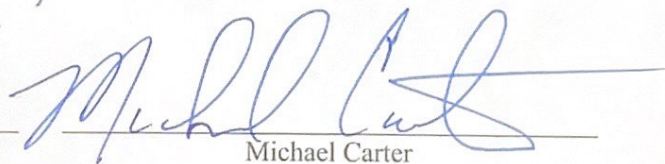
132. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Since the last extension to the Stay Period on April 21, 2022, the Just Energy Entities have worked in earnest to finalize the Plan, the Support Agreement, the Backstop Commitment Letter, the Restructuring Term Sheet, the MIP Term Sheet, the Corporate Governance Term Sheet for New Just Energy Parent, the terms of the New Credit Facility, New Intercreditor Agreement and other transaction-related agreements and documents so as to be in a position to seek the Meetings Order and Authorization Order on May 26, 2022.

133. I understand that the Monitor will file a report (the "**Monitor's Tenth Report**") which will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Just Energy Entities will have sufficient funds to continue their operations and fund these CCAA proceedings until August 19, 2022. I further understand that the Monitor's Tenth Report will recommend that the Stay Period be extended.

SWORN BEFORE ME over video  
teleconference this 12th day of May, 2022  
pursuant to O. Reg 431/20, Administering  
Oath or Declaration Remotely. The affiant was  
located in the Town of Flower Mound, in the  
State of Texas while the Commissioner was  
located in the City Toronto, in the Province of  
Ontario.



Commissioner for Taking Affidavits  
Chloe Nanfara (LSO No. 79715G)



Michael Carter

**SCHEDULE “A”**

<b>Claim<sup>20</sup></b>	<b>USD Principal Amount</b>	<b>CAD Principal Amount</b>	<b>USD/CAD Including Accrued but Unpaid Interest</b>
DIP Lenders' Claim	\$125 million	\$158.8 million	Interest paid in the normal course
BP Commodity/ISO Services Claim <sup>21</sup>	\$229.7 million	\$291.7 million	US\$248.6 million <sup>22</sup> C\$315.7 million
Credit Facility Claim <sup>23</sup>	\$119.2 million	\$151.4 million	US\$126.9 million <sup>24</sup> C\$161.1 million
Term Loan Claim	\$208.6 million	\$264.9 million	US\$218.7 million <sup>25</sup> C\$277.7 million
Subordinated Note Claim	\$10.4 million	\$13.2 million	US\$10.7 million <sup>26</sup> C\$13.6 million

<b>New Equity Offering<sup>27</sup></b>	<b>USD</b>	<b>CAD</b>
New Equity Offering	\$192.55 million	\$244.5 million

<sup>20</sup> All Claims converted at a rate of C\$1.27 per US\$1.00.

<sup>21</sup> US\$229.5 million and C\$0.2 million.

<sup>22</sup> Interest accrued to September 30, 2022.

<sup>23</sup> US\$43.3 million and C\$96.4 million.

<sup>24</sup> While interest is being paid to the Credit Facility Lenders in the normal course, default interest continues to accrue and will be paid on the Effective Date. The US\$126.9 million / C\$161.1 million reflects only accrued but unpaid default interest since regular interest is being paid in the normal course.

<sup>25</sup> Interest accrued to the Filing Date (March 9, 2021).

<sup>26</sup> Interest accrued to the Filing Date (March 9, 2021).

<sup>27</sup> All Claims converted at a rate of C\$1.27 per US\$1.00.

**THIS IS EXHIBIT U REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**TENTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**May 18, 2022**



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### APPENDICES

Appendix “A”	Plan of Compromise and Arrangement, dated May 26, 2022
Appendix “B”	Cash Flow Forecast for the period ending August 20, 2022
Appendix “C”	Fee Affidavit of Paul Bishop sworn May 17, 2022
Appendix “D”	Fee Affidavit of Rachel Nicholson sworn May 16, 2022
Appendix “E”	Fee Affidavit of John Higgins sworn May 11, 2022

Court File No. CV-21-00658423-00CL

**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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST  
ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP.,  
JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA  
INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC.,  
8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,  
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST  
ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST  
ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST  
ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY  
MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY  
SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY  
GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING  
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL  
ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC,  
JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT  
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND  
JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**TENTH REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the

protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”), commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. By order dated February 9, 2022, the Court denied, with reasons to follow, certain relief requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan in their

capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”), and Trevor Jordet in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The Court’s reasons for the dismissal are set out in the written reasons of Justice McEwen dated February 23, 2022 (the “**McEwen Endorsement**”), which is available on the Monitor’s Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement to the Court of Appeal for Ontario on February 24, 2022 (the “**Motion for Leave to Appeal**”). The Just Energy Entities filed their response to the Motion for Leave to Appeal on April 29, 2022.

7. On March 3, 2022, the Court granted an Order extending the Stay Period until March 25, 2022 and appointing the Honourable Justice Dennis O’Connor as Claims Officer (the “**Claims Officer**”) with respect to the adjudication of the Donin/Jordet Actions.
8. On March 24, 2022 and April 21, 2022, the Court granted Orders extending the Stay Period until April 22, 2022 and May 26, 2022, respectively, to provide additional time for the Just Energy Entities to file a recapitalization plan.
9. On May 5, 2022, the Court granted an Order authorizing the Foreign Representative to pursue claims under section 36.1 of the CCAA in the U.S. Court subject to the supervision of the Monitor.
10. All references to monetary amounts in this Tenth Report of the Monitor (the “**Tenth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Plan.
11. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
12. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing

agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy> (the “**Noticing Agent’s Case Website**”).

13. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan. A copy of the Plan is attached as **Appendix “A”** hereto.

## PURPOSE

14. The purpose of this Tenth Report is to provide information to the Court with respect to the following:
- (a) the Monitor’s activities since the Monitor’s Ninth Report to the Court dated April 18, 2022 (the “**Ninth Report**”);
  - (b) the relief sought by the Applicants in their proposed Order (the “**Meetings Order**”), including the following relief:
    - (i) accepting the filing of the Just Energy Entities’ Plan of Compromise and Arrangement dated May 26, 2022 (as may be amended from time to time, the “**Plan**”);
    - (ii) authorizing the Just Energy Entities to establish two classes of creditors for the purpose of considering and voting on the Plan: (A) the Secured Creditor Class; and (B) the Unsecured Creditor Class;
    - (iii) authorizing the Just Energy Entities to call, hold and conduct virtual meetings (the “**Creditors’ Meetings**”) of the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on resolutions to approve the Plan, and approving the voting and other procedures to be followed with respect to the Creditors’ Meetings;
  - (c) the relief sought by the Applicants in their proposed Order (the “**Authorization Order**”), including the following relief:
    - (i) approving the Support Agreement and the Backstop Commitment Letter (as such terms are defined herein) and related relief with respect to such agreements;

- (ii) approving the Termination Fee (as defined herein) and granting a Court-ordered charge as security for payment of the Termination Fee;
  - (iii) amending the Claims Procedure Order to permit the Just Energy Entities to elect, in consultation with the Monitor, that any Claim that arises from or relates primarily to the winter storm that occurred in Texas in February 2021 and that was submitted by a Claimant who lives in the U.S. (or lived in the U.S. at the time of such winter storm) (collectively, the “**Winter Storm Claims**”) be adjudicated and determined by the U.S. Court, at its discretion;
  - (iv) extending the Stay Period to August 19, 2022;
  - (v) approving the activities, conduct and Tenth Report of the Monitor; and
  - (vi) approving the fees and disbursements of the Monitor and its Canadian and U.S. counsel incurred in the CCAA Proceedings for the period from October 30, 2021 to May 6, 2022 and May 7, 2022, as applicable;
- (d) a contract disclaimer issued by Just Energy (U.S.) Corp. with the consent of the Monitor pursuant to the CCAA;
- (e) an update on the Claims Procedure and the resolution of Claims pursuant to the Claims Procedure Order;
- (f) the Just Energy Entities’ actual cash receipts and disbursements for the 4-week period ending May 7, 2022, a comparison to the cash flow forecast attached as Appendix “A” to the Monitor’s Ninth Report, along with an updated cash flow forecast for the period ending August 20, 2022; and
- (g) the Monitor’s recommendations in respect of the foregoing, as applicable.

## TERMS OF REFERENCE AND DISCLAIMER

15. In preparing this Tenth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and

advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).

16. Except as otherwise described in this Tenth Report:
  - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Tenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
17. The Monitor has prepared this Tenth Report to provide information to the Court in connection with the relief requested by the Applicants. This Tenth Report should not be relied on for any other purpose.

#### **MONITOR’S ACTIVITIES SINCE THE NINTH REPORT**

18. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Ninth Report have included the following:
  - (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
  - (b) participating in regular and frequent discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities’ restructuring initiatives including with respect to the Plan, the Claims Procedure, and the structure of the Creditors’ Meetings;
  - (c) participating in regular discussions with the DIP Lenders and other key stakeholders, and their respective legal counsel and other advisors regarding,

among other things, the Just Energy Entities' restructuring initiatives and the Plan;

- (d) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order), and notifying creditors of accepted Claims where applicable;
- (e) discussions with the Just Energy Entities relating to the settlement of certain state taxes;
- (f) monitoring the cash receipts and disbursements of the Just Energy Entities;
- (g) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
  - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
  - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts, analysis, and presentations; and
  - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) observing the developments and steps taken by the parties to the adjudication of the Donin/Jordet Actions, and providing assistance to the Claims Officer where requested;



- (k) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (l) maintaining the service list for the CCAA Proceedings (the "**Service List**") with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (m) preparing this Tenth Report.

### THE PROPOSED RESTRUCTURING PLAN AND MEETINGS ORDER

19. As noted in the Monitor's prior reports to the Court, the Plan has been the subject of months-long negotiations among the Just Energy Entities, in consultation with the Monitor, and key stakeholders including:
- (a) the entities that are DIP Lenders and, together with an affiliated limited partner, are holders of substantially all of the debt issued under the First Amended and Restated Loan Agreement dated as of September 28, 2020 (as amended from time to time, the "**Term Loan Agreement**", the registered lenders thereunder, the "**Term Loan Lenders**" and each beneficial holder thereof, a "**Beneficial Term Loan Claim Holder**");
  - (b) the Plan Sponsor, which is comprised of the same investment funds that constitute the DIP Lenders;
  - (c) the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy U.S. Corp. ("**Just Energy U.S.**"), dated as of September 28, 2020 (as amended from time to time, the "**Credit Agreement**", the lenders thereunder, the "**Credit Facility Lenders**", and National Bank of Canada as the administrative agent thereunder, the "**Credit Facility Agent**");
  - (d) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, "**Shell**") as secured commodity suppliers; and

- (e) CBHT Energy I LLC (“**CBHT**”), an affiliate of the DIP Lenders and the holder and assignee of all secured pre-filing claims (the “**BP Commodity / ISO Services Claims**”) previously held by BP Canada Energy Group ULC and BP Energy Company (together, “**BP**”).
20. Consensus has been reached among the Just Energy Entities and key stakeholders with respect to the Plan, in consultation with the Monitor, as demonstrated by the Support Agreement dated May 12, 2022 (the “**Support Agreement**”) entered into among the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Credit Facility Lenders, and certain Term Loan Lenders that are signatories thereto. The stakeholder parties to the Support Agreement account for more than \$1 billion of the Just Energy Entities’ secured and unsecured debt.
21. The Applicants now seek the Court’s acceptance of the filing of the Plan, and authorization and direction to call, hold and conduct the Creditors’ Meetings for the purposes of having the Affected Creditors vote on the Plan.

### *Overview of the Plan*

22. The Plan, if implemented, will permit the Just Energy Entities to exit both the CCAA Proceedings and the Chapter 15 Proceedings without any material disruption to normal business operations and with a significantly deleveraged balance sheet. Specifically, the Plan’s implementation would eliminate the Just Energy Entities’ funded debt in amounts totaling,<sup>1</sup> less any Credit Facility Remaining Debt, US\$252.0 million and \$109.6 million plus applicable fees, interest, or other amounts owing and provide a minimum \$75 million of new liquidity.
23. A high-level overview of the Plan follows:

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<sup>1</sup> Funded debt eliminated would include: (i) the Credit Facility Claim of approximately US\$43.4 million and \$96.4 million plus accrued default interest through the Effective Date less the Credit Facility Remaining Debt (if any) of up to \$20 million excluding letters of credit that are issued but undrawn at the Effective Date; (ii) the Term Loan Claim of approximately US\$208.6 million plus applicable pre-filing accrued and outstanding fees, interest, or other amounts owing; and, (iii) the Subordinated Note Claim of approximately \$13.2 million plus applicable accrued and outstanding fees, interest, or other amounts owing.

- (a) *Reorganized Corporate Structure*: the Just Energy Entities will be reorganized such that upon implementation of the Plan, Just Energy U.S. or another company organized in the U.S. will be the ultimate parent of the Just Energy Entities (the “**New Just Energy Parent**”). The New Just Energy Parent will be a private company with two classes of shares – newly issued common shares (the “**New Common Shares**”) and newly issued preferred shares (the “**New Preferred Shares**”).
- (i) *New Preferred Shares*: on the Effective Date<sup>2</sup>, CBHT, as the holder and assignee of all pre-filing secured claims previously held by BP, will receive 100% of the New Preferred Shares of the New Just Energy Parent; and
- (ii) *New Common Shares*: on the Effective Date, the New Just Energy Parent will complete an equity offering in the aggregate amount of US\$192.55 million for 80% of the New Common Shares (the “**New Equity Offering**”), subject to dilution by the equity issued or issuable pursuant to the management incentive plan contemplated by the Support Agreement (“**MIP**”). The New Equity Offering will be backstopped in accordance with the Backstop Commitment Letter (as defined herein), and will be open for participation to each Backstop Party and Beneficial Term Loan Claim Holder (as such terms are defined herein), subject to applicable securities laws;
- (b) *New Credit Agreement and Intercreditor Agreement*: on the Effective Date, applicable Just Energy Entities will enter into: (i) an amended and restated credit agreement (the “**New Credit Agreement**”) with the Credit Facility Lenders which will provide for a \$250 million first lien revolving credit

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<sup>2</sup> The day on which the conditions precedent to the implementation of the Plan are satisfied or otherwise waived in accordance with the Plan and the Monitor delivers the required certificates to the Just Energy Entities’ counsel and the Plan Sponsor’s counsel.

- facility<sup>3</sup>, and (ii) a new intercreditor agreement with the Credit Facility Lenders, Shell, and other applicable Commodity Suppliers;
- (c) *Two Classes of Creditors*: two classes of creditors will be established for purposes of voting on and receiving a distribution as provided for in the Plan – the Secured Creditor Class and the Unsecured Creditor Class (as such terms are defined herein);
- (d) *Administrative Expense Reserve and Unsecured Creditor Cash Pool*: the Just Energy Entities will deliver or cause to be delivered to the Monitor the aggregate amount of: (i) \$1.9 million (the “**Administrative Expense Reserve**”); and (ii) \$10 million (the “**General Unsecured Creditor Cash Pool**”, and together with the Administrative Expense Reserve, the “**Plan Implementation Fund**”). The fees and disbursements of the Monitor, its counsel and any other person retained by it, in connection with administrative and estate matters (the “**Monitor Administration Expenses**”) will be paid from the Administrative Expense Reserve. Any unused portion of the Administrative Expense Reserve will be transferred by the Monitor to the New Just Energy Parent;
- (e) *Secured Creditor Recoveries*: the Credit Facility Claim will be paid in full in cash on the effective date of the Plan, less up to \$20 million of the Credit Facility Remaining Debt (if any), which will remain outstanding under the New Credit Agreement;
- (f) *Unsecured Creditor Recoveries*: within the Unsecured Creditor Class:
- (i) the Term Loan Lenders will receive their *pro rata* share of 10% of the New Common Shares (subject to dilution by the MIP) and the ability to participate in the New Equity Offering;

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<sup>3</sup> Pursuant to the Plan, the Credit Facility Remaining Debt (if any) of up to \$20 million will remain as an initial outstanding principal amount under the New Credit Agreement.

- (ii) Convenience Claim (as defined herein) holders will be paid in full up to \$1,500<sup>4</sup> from the General Unsecured Creditor Cash Pool and are deemed to vote in favour of the Plan;
- (iii) General Unsecured Creditors with Accepted Claims will be paid their *pro rata* share of the balance of the General Unsecured Creditor Cash Pool after deducting for the following amounts that shall be paid in priority from the General Unsecured Creditor Cash Pool: (A) the amount required to be paid under (ii) above; and (B) the reasonable fees and disbursements of the Just Energy Entities' legal and financial advisors, the Monitor and its counsel, and any other person retained by the Just Energy Entities or the Monitor in connection with post-Effective Date matters (other than the Monitor Administration Expenses), including all costs to resolve undetermined claims such as the Contingent Litigation Claims (as defined below);
- (g) *BP Commodity/ISO Services Claimholder*: on the Effective Date, in full and final satisfaction of the BP Commodity / ISO Services Claims, New Just Energy Parent shall issue the New Preferred Shares to the BP Commodity / ISO Services Claimholder.
- (h) *De Minimis Claim*: Claims less than \$10 will not receive a distribution under the Plan (“**De Minimis Claims**”). Given that such Claims form part of the Convenience Class, Creditors holding a De Minimis Claim are deemed to vote in favour of the Plan;
- (i) *Unaffected Claims*: numerous claims are unaffected under the Plan and are not entitled to vote on, or receive any distributions under, the Plan including Post-Filing Claims, any claims secured by the CCAA Charges (which shall all be fully satisfied), Commodity Supplier Claims (as described further below), certain regulatory claims, and claims that are not capable of compromise under the CCAA;

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<sup>4</sup> Other than De Minimis Claims, as described below.

- (j) *Commodity Supplier Claims*: the pre-filing secured claims of Commodity Suppliers<sup>5</sup> shall be paid in full in cash and are treated as “unaffected” under the Plan; and
  - (k) *Equity Claims*: Equity Claims will not receive any distributions under the Plan, will be extinguished, and are not entitled to vote on the Plan.
24. The Plan relies on various assumptions and projections regarding, among other things, the financial performance of the Just Energy Entities over the coming months, including forecasted commodity prices for natural gas and electricity. If there is a material deviation from the projections, there is a risk that more capital may be required in order for the Just Energy Entities to be able to implement the Plan. The Monitor understands that the Just Energy Entities have no certainty that such capital will be available, the terms on which it may be provided, or the impact it will have on other stakeholders.
25. The proposed Meetings Order provides that the Plan may be amended (a “**Plan Modification**”) in accordance with its terms, which in-turn requires (a) the prior consent of the Monitor, the Credit Facility Lenders, Shell and the Plan Sponsor (which consent shall not be unreasonably withheld, conditioned or delayed), and (b) that any Plan Modification shall be posted on the Monitor’s Website, distributed to the Service List and provided to the Affected Creditors during the Creditors’ Meetings.

### ***Plan Releases***

26. The proposed Plan provides full and final releases from the Released Claims (as defined below) in favour of the following persons, among others (collectively, the “**Released Parties**”): the present and former affiliates, directors, officers, advisors, legal counsel and agents of such Released Parties; the Just Energy Entities, the Monitor, the parties that have executed the Support Agreement, the Backstop Parties (as defined herein), the DIP Agent, the DIP Lenders and the Plan Sponsor; the Credit Facility Agent, the Term Loan Agent, and the Subordinated Note Trustee.

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<sup>5</sup> This includes Shell’s Commodity Supplier Claim but not the BP Commodity / ISO Services Claims that are being satisfied pursuant to the issuance of the New Preferred Shares.

27. The “**Released Claims**” include any and all claims, demands, causes of action, dealings, occurrences that existed or took place prior to the Effective Date, or that relate to implementation of the Plan, including distributions pursuant to the Plan following the Effective Date, that constitute or are in any way related to, arise out of or in connection with, among other things:
- (a) any Claims and D&O Claims (as such terms are defined in the Claims Procedure Order);
  - (b) the business and affairs of the Just Energy Entities whenever or however conducted;
  - (c) the Support Agreement, the Backstop Commitment Letter, the CCAA Proceedings and Chapter 15 Proceedings, or any document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing; and
  - (d) any contract that has been restructured, terminated, repudiated, disclaimed, or resiliated in accordance with the CCAA.
28. The releases provided in the Plan do not release or discharge:
- (a) Insured Claims, provided that from and after the Effective Date, any person having an Insured Claim will be irrevocably limited to recovery from the proceeds of the applicable Insurance Policies;
  - (b) any obligations of any of the Released Parties under or in connection with the Plan, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the New Credit Facility Documents, the New Intercreditor Agreement, the New Common Shares, the New Preferred Shares, the MIP or the New Corporate Governance Documents;
  - (c) any Unaffected Claim that has not been paid in full under the Plan, or any claim that is not permitted to be released pursuant to section 19(2) of the CCAA; or
  - (d) any Director from any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

29. The Plan also includes various exculpations. Specifically, the Plan provides that the Exculpated Parties (which includes certain of the Released Parties) shall be released to the fullest extent possible under applicable laws from any cause of action for any act or omission in connection with, relating to, or arising out of the restructuring proceedings.

***Conditions Precedent***

30. The Plan is conditional on the following being satisfied or waived prior to or at the Effective Date, among other things:
- (a) the Plan shall have been approved by the Required Majorities in conformity with the CCAA;
  - (b) the Meetings Order, the Authorization Order, and the Sanction Order shall have been issued by the Court and related recognition orders shall have been entered by the U.S. Court;
  - (c) the commitments of each of the parties to the Support Agreement shall have been satisfied in all material respects or waived;
  - (d) all conditions to the Backstop Parties' commitments under the Backstop Commitment Letter shall have been satisfied or waived;
  - (e) the Monitor shall have received from the Just Energy Entities the funds necessary to establish, and shall have established, the Plan Implementation Fund;
  - (f) no proceeding shall have been commenced that could reasonably be expected to result in an injunction, and no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by the Plan, the Support Agreement or the Backstop Commitment Letter;
  - (g) Just Energy shall have satisfied all conditions or requirements necessary to cease to be a reporting issuer under the U.S. Exchange Act (or any other U.S. securities laws), and applicable Canadian Securities Laws, and no Just Energy Entity shall be deemed to have become a reporting issuer under applicable Canadian Securities Laws;



- (h) the aggregate amount of proceeds from the New Equity Offering and Cash on Hand shall be equal to or greater than the total amount to be paid, distributed, or reserved for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan;
- (i) the total amounts to be paid, distributed or reserved in Canadian and US dollars for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan shall not exceed \$170 million and US\$337 million, respectively, plus any accrued and outstanding interest with respect to such amounts;
- (j) all applicable required regulatory approvals shall have been obtained and be in full force and effect; and
- (k) the Effective Date shall have occurred on or prior to the Outside Date (as defined below).

### ***Classification of Creditors***

31. The proposed Meetings Order establishes two classes of Affected Creditors for the purposes of considering and voting on the Plan:
- (a) the “**Secured Creditor Class**”, consisting of the Credit Facility Lenders in respect of all amounts owing under the current Credit Agreement as of the Effective Date, excluding any Cash Management Obligations (as defined in the Second ARIO), any Commodity Supplier Claims, or any letters of credit issued but undrawn under the Credit Agreement;
  - (b) the “**Unsecured Creditor Class**”, consisting of both:
    - (i) *Term Loan Claimholders*: in respect of the aggregate principal amount of US\$208.6 million owing by the Just Energy Entities under the Term Loan Agreement plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement, as determined in accordance with the Claims Procedure Order; and
    - (ii) *General Unsecured Claimholders*: in respect of all Affected Claims which are not a Term Loan Claim, an Equity Claim, a Credit Facility

Claim, a Commodity Supplier Claim or a BP Commodity / ISO Services Claim.

32. The general unsecured claimholders category of the Unsecured Creditor Class includes the following claims:

- (a) one certified and two uncertified class actions (collectively, the “**Subject Class Action Claims**”) in respect of which Proofs of Claim were filed in accordance with the Claims Procedure Order:
  - (i) *Haidar Omarali v. Just Energy Group Inc. et al.*, Ontario Superior Court of Justice Court File No. CV-15-527493-00CP, a certified class action proceeding filed in Ontario alleging improper classification of employees and claiming \$105.9 million. In consultation with the Monitor, the representative plaintiff’s claims against the applicable Just Energy Entities and certain directors and officers of the Just Energy Entities have been denied in their entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff has filed corresponding Notices of Dispute of Revision or Disallowance;
  - (ii) The Jordet Action: *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB, a proposed and uncertified class action proceeding filed solely against Just Energy Solutions Inc. (“**Solutions**”) in the U.S. District Court in the Western District of New York alleging improper pricing for residential gas services and claiming US\$3.7 billion (this number represents a joint damages calculation with the *Donin* claim below). In consultation with the Monitor, the representative plaintiff’s claim against Solutions has been denied in its entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff law firm has filed a corresponding Notice of Dispute of Revision or Disallowance, and this matter is now before the Honourable

Justice Dennis O'Connor as Claims Officer pursuant to the order of the Court dated March 3, 2022;

- (iii) The Donin Action: *Fira Donin and Inna Golovan v. Just Energy Group Inc.* et al., Case No. 1:17-cv-05787-WFK-SJB, a proposed and uncertified class action proceeding filed against certain Just Energy Entities in the U.S. District Court in the Eastern District of New York alleging improper pricing for energy services and claiming US\$3.7 billion (this number represents a joint damages calculation with the *Jordet* claim above). In consultation with the Monitor, the representative plaintiff's claims against the applicable Just Energy Entities has been denied in its entirety through the delivery of Notice of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff law firm has filed a corresponding Notice of Dispute of Revision or Disallowance, and this matter is now before the Honourable Justice Dennis O'Connor as Claims Officer pursuant to the order of the Court dated March 3, 2022;
- (b) 364 claims filed on behalf of Texas customers (or alleged Texas customers) relating to the Texas winter storm weather event in February 2021 (the "**Texas Power Interruption Claim**" and together with the Class Action Claims, the "**Contingent Litigation Claims**"). In consultation with the Monitor, all such claims have been denied in their entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order, which led to the withdrawal of 92 of the 364 submitted claims. The representative plaintiff law firms have filed corresponding Notices of Dispute of Revision or Disallowance in respect of the balance of claims;
- (c) the claim with respect to the amount of \$13.2 million owing by Just Energy under the Subordinated Note Indenture dated September 28, 2020 (the "**Subordinated Note Indenture**"), plus all accrued and outstanding fees, costs, interest, and other amounts owing pursuant to the Subordinated Note Indenture, as determined in accordance with the Claims Procedure Order (the "**Subordinated Note Claim**"); and

- (d) “**Convenience Claims**”, being any Accepted Claim of a General Unsecured Creditor in an amount that is either (a) less than or equal to \$1,500; or (b) greater than \$1,500, if the relevant General Unsecured Creditor has made a valid Distribution Election in accordance with the Meetings Order, provided that in no case shall a “Convenience Claim” include any Contingent Litigation Claim or the Subordinated Note Claim.

### ***Voting Entitlements***

33. The voting entitlement on the Plan is determined and calculated as follows:
- (a) *Secured Creditor Class*: each Credit Facility Lender will be entitled to one (1) vote in the amount equal to such Credit Facility Lender’s *pro rata* share of the Credit Facility Claim that is an Accepted Claim;
- (b) *Unsecured Creditor Class*:
- (i) each Term Loan Lender will be entitled to one (1) vote in the amount equal to such Term Loan Lender’s *pro rata* share of the Term Loan Claim;
- (ii) each Convenience Creditor will be deemed to vote in favour of the Plan in the amount of such Convenience Creditor’s Accepted Claim;
- (iii) each General Unsecured Creditor will be entitled to one (1) vote in the amount equal to such General Unsecured Creditor’s Accepted Claim, provided, however, that:
- (1) the Subordinated Noteholder will be entitled to one (1) vote in the amount equal to the Subordinated Note Claim;
- (2) with respect to the Subject Class Action Claims, each representative plaintiff in any certified Subject Class Action Claim or each proposed representative plaintiffs in any uncertified Subject Class Action Claim will be entitled to one (1) vote in the amount equal to its voting claim (valued by the Just Energy Entities for voting purposes at \$1); and

- (3) with respect to the Texas Power Interruption Claim, each of the plaintiff law firms will be entitled to one (1) vote in an amount equal to its voting claim (valued by the Just Energy Entities for voting purposes at \$1).
34. In addition, each Affected Creditor with a Disputed Claim against the Just Energy Entities (other than the Subject Class Action Plaintiffs and the Texas Power Interruption Claimants' Counsel) will be entitled to attend the applicable Creditors' Meeting and will have one (1) vote at the Creditors' Meeting in the dollar value of such Disputed Claim as set out in the Negative Notice Claims Package or the Disputed Claim acceptance value for voting and distribution purposes, prepared in consultation with the Monitor (the "**Acceptance Value**"), as applicable, sent to the holder of the Disputed Claim or, if no Negative Notice Claims Package or Acceptance Value was sent, the value set forth in the corresponding Proof of Claim.

### ***The Creditors' Meetings***

#### *Date, Time and Location*

35. The proposed Meetings Order authorizes the Just Energy Entities to convene separate meetings on August 2, 2022 for the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on the Plan at 10:00 a.m. (EDT) and 10:30 a.m. (EDT), respectively. The Creditors' Meetings are intended to be held virtually using a third-party service provider given the ongoing uncertainty posed by the COVID-19 pandemic.

#### *Notice to Creditors*

36. The proposed Meetings Order provides for comprehensive notification of the Creditors' Meetings to the Affected Creditors including by delivery of the applicable portion of the Secured Creditor Class Meeting Materials<sup>6</sup> and Unsecured Creditor Class Meeting

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<sup>6</sup> The Secured Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, and the Secured Creditor Proxy (the "**Secured Creditor Class Meeting Materials**").

Materials<sup>7</sup> to the respective creditor groups. Specifically, the proposed Meetings Order provides that:

- (a) the Monitor shall:
  - (i) not later than the fourth (4th) day following the date of the Meetings Order, post copies of the Secured Creditor Class Meeting Materials and the Unsecured Creditor Class Meeting Materials on the Monitor's Website and the Noticing Agent's Case Website;
  - (ii) not later than the fourth (4th) day following receipt of the Unsecured Creditor Class Meeting Materials and the contact information for each Term Loan Claim Holder, send to Computershare Trust Company of Canada as Agent under the Term Loan Agreement and to each Term Loan Claim Holder, by mail, courier, personal delivery, or email, certain prescribed Unsecured Creditor Class Meeting Materials, as well as an Additional Backstop Notice (as defined in the Backstop Commitment Letter);
  - (iii) not later than the seventh (7th) day following the date of the Meetings Order, send the Secured Creditor Class Meeting Materials to the Credit Facility Agent;
  - (iv) not later than the seventh (7th) day following the date of the Meetings Order, send certain prescribed Unsecured Creditor Class Meeting Materials by mail, courier, personal delivery or email to each General Unsecured Creditor (other than holders of the Subordinated Note Claim);
- (b) the Just Energy Entities shall:

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<sup>7</sup> The Unsecured Creditor Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, the Unsecured Creditor Proxy, the Subordinated Noteholder VIF, the Distribution Election Notice, the New Equity Offering Participation Form, and the New Shareholder Information Form (the "Unsecured Creditor Class Meeting Materials").

- (i) not later than the fourth (4th) day following the date of the Meetings Order, provide to the Subordinated Note Trustee certain prescribed Unsecured Creditor Class Meeting Materials;
- (ii) provide to the Beneficial Subordinated Note Claim Holders, certain prescribed Unsecured Creditor Class Meeting Materials; and
- (iii) cause CDS Clearing and Depository Services Inc. (“CDS”) to publish a bulletin to each institution that is a CDS participant holding Subordinated Notes outlining the particulars of the Unsecured Creditors’ Meeting.

#### *Conduct of the Creditors’ Meetings*

37. The proposed Meetings Order provides that a representative of the Monitor will preside as the Chairperson of the Creditors’ Meetings, a person designated by the Monitor will act as secretary of the Creditors’ Meetings, and that the Monitor may appoint vote scrutineers. The Chairperson will, subject to any further Order of this Court, decide all matters relating to the conduct of the Creditors’ Meetings.
38. The proposed Creditors’ Meetings will be held entirely by electronic means using the platform, technology and services of Lumi Holdings Ltd. (“Lumi”). Lumi’s software is free to meeting participants and allows any person with an internet connection, wherever situated, to observe the meeting, ask questions, and to submit votes in real-time. The Monitor and its Canadian counsel have participated in discussions with representatives from Lumi regarding its platform and services, and the Monitor expects it will be able to complete the tasks charged to the Monitor by the proposed Meetings Order.
39. The only persons entitled to attend the Creditors’ Meetings are:
  - (a) the Affected Creditors entitled to vote at that Creditors’ Meeting or, if applicable, persons holding a valid proxy and their advisors;
  - (b) the Monitor, its counsel, the Chairperson, any scrutineers and the secretary;
  - (c) one or more representatives of the board and/or senior management of the Just Energy Entities, and the Just Energy Entities’ counsel and financial advisor;

- (d) the Plan Sponsor, and its legal counsel and financial advisor;
  - (e) the Subordinated Noteholder on behalf of all beneficial holders of the Subordinated Note Claim; and
  - (f) any other person admitted on invitation of the Just Energy Entities in consultation with the Monitor.
40. The proposed voting procedures were designed by the Just Energy Entities in consultation with the Monitor, and provide, among other things, that:
- (a) the Chairperson will direct a vote on a resolution to approve the Plan and any amendments thereto as well as any other resolutions that the Just Energy Entities consider appropriate in the circumstances with the consent of the Plan Sponsor, the Credit Facility Agent (with respect to the Secured Creditors' meeting) and the Monitor; and
  - (b) the Monitor is required to keep a separate record of votes cast by Affected Creditors with Disputed Claims and report to the Court with respect thereto at the Plan Sanction Hearing. If approval or non-approval of the Plan by Affected Creditors would be affected by the votes cast in respect of Disputed Claims, such result must be reported to the Court as soon as reasonably practicable after the Creditors' Meetings.

### ***Plan Sanction***

41. If the Plan is approved by the Required Majorities of Affected Creditors at the Creditors' Meetings, the Just Energy Entities will bring a motion seeking a Sanction Order sanctioning the Plan under the CCAA on August 12, 2022, or such later date as shall be acceptable to the Just Energy Entities, the Monitor, and the Plan Sponsor.
42. The Monitor will provide a report to the Court as soon as practicable after the Creditors' Meetings with respect to: (a) the results of voting at the Creditors' Meetings; (b) whether the Required Majorities have approved the Plan; (c) the separate tabulation for Disputed Claims; and (d) in its discretion, any other matters relating to the requested Sanction Order (the "**Monitor's Meetings Report**"). The Monitor's Meetings Report will be



served on the Service List, and posted on the Monitor's Website and the Noticing Agent's Website prior to the Plan Sanction Hearing.

***Monitor's Recommendations in Respect of the Meetings Order***

43. As set forth in the proposed Meetings Order, the Monitor will provide a report on the Plan by no later than seven business days before the date of the Creditors' Meetings in accordance with the CCAA.
44. As described in greater detail in the Affidavit of Michael Carter sworn May 12, 2022, the business of the Just Energy Entities has been marketed broadly and extensively over the past approximately two and half years, including prior to these CCAA Proceedings. These efforts were unsuccessful with no binding or executable offers being put forth. Due to the capital-intensive and highly specialized nature of the Just Energy Entities' business, the Monitor understands the potential pool of purchasers is limited.
45. During the CCAA Proceedings, the Just Energy Entities and/or the Financial Advisor have been approached on a confidential basis by interested parties with respect to potential acquisition opportunities for all or some of the Just Energy Entities' business. The Just Energy Entities entered into non-disclosure agreements with three of the interested parties and engaged in extensive discussions with two of the interested parties. The Monitor understands the discussions were unsuccessful as they did not identify any potential proposals that are superior to the Plan.
46. Consequently, the transaction contemplated by the Plan is the only viable option at this time that would allow the Just Energy Entities to emerge from these CCAA Proceedings in a timely fashion and as a going concern. The terms of the Plan have been extensively negotiated, with the involvement of the Monitor, and represent the best alternative available at this time for the Just Energy Entities' various stakeholders.
47. Importantly, and as further described herein under the heading "Alternate Restructuring Proposal and Fiduciary Out", the Support Agreement also expressly permits any interested parties to put forth alternate restructuring proposals during the more than two-month period between now and the Creditors' Meetings, and for Just Energy's board of

directors to consider and accept any such alternate restructuring proposal if it is superior to the transaction contemplated by the Plan.

48. The Monitor has been consulted with respect to the development of the alternate restructuring proposal structure and believes it permits adequate time and opportunity for an interested party to put forth a viable alternative offer that may be found to be a superior offer. Accordingly, the Monitor is of the view that the alternate restructuring proposal and “fiduciary out” structure can produce a viable superior offer if one exists, and given the extensive marketing of the Just Energy Entities’ business over the past few years, a formal sales process is not necessary in the circumstances.
49. For the purposes of voting on the Plan, section 22 of the CCAA provides that a debtor company may divide creditors into classes, and that creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest.
50. Subsection 22(2) of the CCAA provides that creditors may be included in the same class taking into account:
  - (a) the nature of the debts, liabilities or obligations giving rise to their claims;
  - (b) the nature and rank of any security in respect of their claims;
  - (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
  - (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.
51. The Monitor has considered the above factors and the jurisprudence that predates the enactment of section 22 of the CCAA. The Monitor is of the view that the Applicants’ classification of Affected Creditors based on the rights and remedies of the class of creditors (i.e. whether those creditors hold security for their claims) is appropriate in the circumstances. The Monitor further believes that any fragmentation of the contemplated classes could jeopardize a viable restructuring.

52. The proposed Meetings Order provides that the representative plaintiff, proposed representative plaintiff or plaintiff law firms in respect of the Contingent Litigation Claims shall each be entitled to one vote valued at \$1.00. The Monitor agrees with the Applicants that this is the only feasible approach in the circumstances particularly given the unliquidated nature of the Contingent Litigation Claims.
53. All of the Contingent Litigation Claims have been disallowed by the Just Energy Entities in consultation with the Monitor. Moreover, the complexity of the unresolved Contingent Litigation Claims is such that it is not possible to carry out a summary process in relation to these claims before the Creditors' Meetings are held nor is it possible to delay the Creditors' Meetings until the resolution of the Contingent Litigation Claims without jeopardizing the entire restructuring.
54. The Monitor is of the view that granting the Contingent Litigation Claims a vote based on the preliminary and inadequate legal and evidentiary grounds put forward in support of same to date would confer on these claimants outsize influence in the form of an effective veto, and would jeopardize a successful going concern restructuring for all other stakeholders, including employees, regulators, suppliers and customers.
55. Valuing the Contingent Litigation Claims at \$1.00 is similarly the only feasible option in the absence of sufficient information and evidence to properly assess and determine the value of such claims. Again, to allow a vote in the amount of the unproven claimed damages of the Contingent Litigation Claims would grant the claimholders an effective veto and diminish if not eliminate the prospects of a viable restructuring.
56. Further, this approach is consistent with the approach taken in several other CCAA proceedings, wherein unliquidated and unresolved contingent claims have been similarly valued at \$1.00 for voting purposes, with the distribution value of those claims calculated later.
57. For all of the foregoing reasons, the Monitor supports the Just Energy Entities' request to present the Plan to the Affected Creditors at the Creditors' Meetings. The Monitor is of the view that any issues of fairness should be considered at the Sanction Hearing, if the Plan is approved by the Required Majorities.

## SUPPORT AGREEMENT

58. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Support Agreement.
59. The Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Credit Facility Lenders, and certain Term Loan Lenders are parties to the Support Agreement. At a high level, pursuant to the terms of the Support Agreement:
- (a) the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors have each agreed to, among other things:
    - (i) support the transactions contemplated by the Support Agreement, the Backstop Commitment Letter and the Plan (the “**Restructuring**”) and vote and exercise any powers or rights available to it to the extent necessary to implement the Restructuring;
    - (ii) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities’ other stakeholders;
    - (iii) act in good faith and take all actions that are reasonably necessary or appropriate, and all actions required by the Court and/or the U.S. Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and all transactions and implementation steps provided for or contemplated in the Restructuring; and
    - (iv) not to exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims against the Just Energy Entities;
  - (b) the Just Energy Entities have agreed to, among other things:
    - (i) support and use commercially reasonable efforts to complete the Restructuring, including making commercially reasonable efforts to complete the Restructuring in accordance with each Milestone (as defined below) provided in the Support Agreement;

- (ii) not file any motion, pleading, or Definitive Documents (as defined and described in the Support Agreement) with the Court, the U.S. Court, or any other court that, in whole or in part, is inconsistent with the Support Agreement or the Plan or undertake any action that is inconsistent with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Restructuring;
- (iii) pay the reasonable and documented fees and expenses of all parties to the Support Agreement incurred in connection with the Restructuring and in accordance with the arrangements in place as of the date of the Support Agreement, including as set forth in the DIP Term Sheet or, with respect to any additional fees and expenses, as otherwise agreed to by the Plan Sponsor;
- (iv) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with the Support Agreement, and use commercially reasonable efforts to preserve intact the Just Energy Entities' business, organization, and relationships with third parties and employees (including not disclaiming or terminating any employment or consulting agreement with an officer, director, or member of senior management other than "for cause" without the prior written consent of the Plan Sponsor); and
- (v) not to, directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal. Importantly, the foregoing commitment is expressly subject to two material caveats, as discussed below, to provide the opportunity for interested parties that may wish to advance an Alternative Restructuring Proposal within the CCAA process to do so for the benefit of the Just Energy Entities' stakeholders.

60. The Support Agreement may be terminated by the Plan Sponsor, the Just Energy Entities, or any of the parties thereto upon the occurrence of certain specified events unless waived or cured by the applicable party. In the case of the Plan Sponsor, such

termination events include: (a) any failure by the Just Energy Entities to meet any of the Milestones, unless such failure is the result of any act, omission, or delay on the part of the Plan Sponsor; and (b) any determination by the Just Energy Entities to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal in accordance with the Support Agreement.

61. In the case of Shell and the Credit Facility Lenders such termination events include if the Effective Date of the Plan has not occurred by:
- (a) November 15, 2022 with respect to the Credit Facility Lenders, subject to certain exceptions with respect to obtaining regulatory approvals; and
  - (b) January 31, 2023 with respect to Shell, unless further extended in accordance with the Support Agreement.

***Alternate Restructuring Proposals and the “Fiduciary Out”***

62. The Support Agreement provides for a 62-day period between the milestone date for serving the Meeting Materials (June 1, 2022) and the milestone date for the Creditors’ Meetings (August 2, 2022) (the “**Voting Period**”) in addition to the 20 days between the date the proposed Meeting Materials were served on the Service List and June 1, 2022.
63. Any interested parties that wish to propose a viable restructuring transaction more favourable than the Plan, or otherwise submit a bid for all or some of the Just Energy Entities’ property, are permitted to complete their due diligence and submit an Alternative Restructuring Proposal.<sup>8</sup>
64. Pursuant to the Support Agreement, the Just Energy Entities are permitted to, with respect to any Alternative Restructuring Proposals:

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<sup>8</sup> Pursuant to the Support Agreement, “**Alternative Restructuring Proposal**” means any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity’s material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the Restructuring.

- (a) consider and respond to such Alternative Restructuring Proposals;
  - (b) provide any person with access to non-public information concerning the Just Energy Entities pursuant to a non-disclosure agreement;
  - (c) engage in, maintain, or continue discussions or negotiations with respect to Alternative Restructuring Proposals, including facilitating any due diligence;
  - (d) cooperate with, assist, or participate in any unsolicited inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals;
  - (e) enter into or continue discussions or negotiations with holders of Claims against, or interests in, a Just Energy Entity (including any party to the Support Agreement), any other party in interest in the CCAA Proceedings or Chapter 15 Proceedings, or any other entity regarding the Restructuring or an Alternative Restructuring Proposal; and
  - (f) enter into an agreement with respect to an Alternative Restructuring Proposal if, following receipt of legal and financial advice, and having regard to the approvals that would be required to implement such transaction, the board of directors of Just Energy (the “**Just Energy Board**”) determines that the terms of such Alternative Restructuring Proposal are more favourable to the Just Energy Entities and their stakeholders than the Restructuring (a “**Superior Proposal**”).
65. The Monitor notes that, under the terms of the Support Agreement, there is no contractual right for any party to match or top any Alternative Restructuring Proposal or Superior Proposal.
66. The Support Agreement includes a “fiduciary out” provision which permits the Just Energy Board to terminate the Support Agreement (subject to the Termination Fee discussed below) if it determines, following receipt of advice from outside legal counsel and financial advisors, (a) that proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law or (b) in the exercise of its fiduciary duties, to pursue a Superior Proposal. The “fiduciary out” continues until termination of the Support Agreement or sanctioning of the Plan.

67. The Monitor notes that BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the “**Financial Advisor**”), has stated that the 62-day Voting Period provided under the Support Agreement is sufficient for interested parties to complete the necessary due diligence and submit an Alternative Restructuring Proposal.
68. The Monitor understands that the Credit Facility Lenders have informed the Just Energy Entities that, unless the Credit Facility Lenders agree otherwise: (a) the exit financing contemplated by the New Credit Agreement will not be available in relation to any restructuring proposal other than the Restructuring contemplated by the Plan; and (b) the Credit Facility Lenders have agreed to provide exit financing and support the Restructuring on the basis that an Alternative Restructuring Proposal must repay in full in cash all indebtedness and obligations of the Just Energy Entities to the Credit Facility Lenders on closing of such Alternative Restructuring Proposal to be acceptable.

***Other Milestones under the Support Agreement***

69. In addition to the Voting Period milestones and subject to Court approval as applicable, the Support Agreement establishes the following milestones (as may be extended in accordance with the Support Agreement, the “**Milestones**”). The milestones under the DIP Term Sheet have been amended by the DIP Lenders and the Just Energy Entities to align with the aforementioned Milestones.

<b>Milestone</b>	<b>Date</b>
Authorization Order and Meetings Order granted	May 26, 2022
Solicitation Materials mailed with respect to the Creditors’ Meetings	June 1, 2022
Order(s) of the U.S. Bankruptcy Court granted recognizing the Authorization Order (the “ <b>Authorization Recognition Order</b> ”), the Meetings Order (the “ <b>Meetings Recognition Order</b> ”) and the Claims Procedure Order (“ <b>Claims Procedure Recognition Order</b> ”)	June 22, 2022
Creditors’ Meetings held	August 2, 2022
Sanction Order granted	August 12, 2022



Milestone	Date
Motion filed for an Order of the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (“ <b>Recognition and Enforcement Motion</b> ”)	~ August 16, 2022 (2 business days after Sanction Order)
Hearing set before the U.S. Bankruptcy Court on the Recognition and Enforcement Motion	no later than September 9, 2022
Recognition and Enforcement Motion granted by the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (the “ <b>Sanction Recognition Order</b> ”)	September 15, 2022
Outside date for the Effective Date of the Plan to occur, unless extended by the Plan Sponsor (or, if the only outstanding condition is receipt of regulatory approval(s), as automatically extended by an additional 60 days) (the “ <b>Outside Date</b> ”)	September 30, 2022

70. The Monitor was kept apprised during the negotiations that led to the execution of the extensively negotiated Support Agreement and considers its terms to be fair and reasonable in the circumstances, and critical to ensuring that the best possible outcome is achieved for the benefit of the Just Energy Entities and their stakeholders.

## BACKSTOP COMMITMENT LETTER

71. The Backstop Commitment Letter’s purpose is to ensure that the Just Energy Entities are able to secure the necessary funds under the New Equity Offering that are required to implement the Plan, subject to various assumptions. Participation in the Backstop Commitment Letter is open to all Term Loan Claim holders as of the day before service of the Meetings Order motion record (the “**Term Loan Record Date**”). The same four funds that comprise the DIP Lenders, the Plan Sponsor and significant Term Loan Lenders (collectively, the “**Initial Backstop Parties**”) and Just Energy U.S. are party to the Backstop Commitment Letter.
72. At a high level, the Backstop Commitment Letter permits:
- (a) each holder of a Term Loan Claim as of the Term Loan Record Date (that is not an Initial Backstop Party) to become party to the Backstop Commitment Letter, subject to applicable securities laws, delivery of prescribed documents and

notices, and funding of all required commitments (each such holder of the Term Loan Claim that satisfies the foregoing conditions, an “**Additional Backstop Party**”); and

- (b) each Initial Backstop Party and Additional Backstop Party may designate one or more of its Affiliates to (i) perform its obligations or assign its rights and obligations under the Backstop Commitment Letter and/or (ii) receive some or all of the New Common Shares it is entitled to receive pursuant to the Plan, upon the execution by such Affiliate of a joinder and compliance with applicable securities laws (each such Affiliate that satisfies the foregoing conditions, an “**Assignee Backstop Party**”, and together with the Initial Backstop Parties and the Additional Backstop Parties, the “**Backstop Parties**”).
73. The New Equity Offering is open for participation to each person that is, as of the Term Loan Record Date: (a) a Beneficial Term Loan Claim Holder, or permitted designee thereof; and (b) a Backstop Party, which in each case is permitted to participate under applicable securities laws (each a “**New Equity Offering Eligible Participant**”).
74. Pursuant to the Backstop Commitment Letter, each Backstop Party has agreed to subscribe for and receive: (a) its *pro rata* share of the New Equity Offering available to it; (b) its *pro rata* share of any unsubscribed New Common Shares issued under the New Equity Offering; and (c) its *pro rata* share of any New Common Shares for which a New Equity Offering Eligible Participant subscribes but otherwise fails to fulfill its subscription obligations by the New Equity Participation Deadline on August 23 , 2022, or such other date agreed to by the Just Energy Entities and the Plan Sponsor.
75. The commitments of the Backstop Parties under the Backstop Commitment Letter terminate on the earlier of: (a) the Effective Date; (b) the termination of the Backstop Commitment Letter by Just Energy U.S. and/or the Backstop Parties in accordance with the terms thereof; or (c) the Outside Date.

#### ***Backstop Commitment Fee & Termination Fee***

76. In consideration of the Initial Backstop Parties executing and delivering the Backstop Commitment Letter, Just Energy U.S. agreed that:

- (a) the New Just Energy Parent will issue and deliver to the Backstop Parties New Common Shares representing 10% of the outstanding New Common Shares on the Effective Date, subject to dilution by the equity issued or issuable pursuant to the MIP (the “**Backstop Commitment Fee Shares**”); and
  - (b) a Just Energy Entity organized in the United States (which may be Just Energy U.S.) will pay to the Initial Backstop Parties and any Additional Backstop Parties a cash fee in an aggregate amount equal to US\$15 million (the “**Termination Fee**”) if: (i) the Just Energy Entities terminate the Support Agreement on the basis that the Restructuring would be inconsistent with the exercise of the Just Energy Board’s fiduciary duties or applicable law or to pursue a Superior Proposal; or (ii) the Plan Sponsor terminates the Support Agreement based on the Just Energy Board making the determination to proceed with a definitive Alternative Restructuring Proposal or a definitive Superior Proposal. The Termination Fee is payable concurrently with the consummation of an Alternative Restructuring Proposal.
77. The quantum of the Termination Fee was derived by the Just Energy Entities taking into account (i) the aggregate subscription amount for the New Common Shares to be issued by the New Just Energy Parent (US\$192.55 million), plus (ii) the New Preferred Shares being issued to CBHT (such shares being issued in full satisfaction of a secured claim in the amount of US\$229.5 million and C\$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date).
78. The New Equity Offering represents additional liquidity being made available to the Just Energy Entities, while the New Preferred Shares being issued to CBHT represent the conversion of a secured claim to preferred equity which would otherwise be payable in cash as part of the Plan. Both comprise the new value contribution by the Plan Sponsor and CBHT to the Restructuring.
79. The US\$15 million Termination Fee equates to 3.4% of the additional value contribution of the Plan Sponsor and CBHT.

80. The Termination Fee is proposed to be secured by a Court-ordered charge (the “**Termination Fee Charge**”) in favour of the Initial Backstop Parties on all of the Property (as defined in the Second ARIO) of the Just Energy Entities. The Termination Fee Charge will have priority over all other security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings.
81. The Monitor considers the terms of the Backstop Commitment Letter to be fair and reasonable in the circumstances. The Monitor has reviewed the affidavit of Mark Caiger sworn May 12, 2022 and considered the Termination Fee, and is of the view that the quantum of the Termination Fee is not unreasonable in the circumstances based on its knowledge, experience, and having regard to the terms of backstop commitments and termination fees in similar matters.

***Amendment to the Claims Procedure Order***

82. The Claims Procedure Order provides that the Just Energy Entities, in their discretion and in consultation with the Monitor, may refer any dispute raised in a Notice of Dispute of Revision or Disallowance to either a Claims Officer or the Court for adjudication.
83. Within the Claims Process, the Just Energy Entities have received one or more claims that relate to the utility regulatory regime in Texas, including the *Texas Public Utility Regulatory Act*. These particular claims raise issues of U.S. law that are specific to Texas and, as such, appear to be appropriate for determination by the U.S. Court based in Texas, which has carriage of the Applicants’ restructuring in the United States.
84. Accordingly, the Just Energy Entities are seeking to amend the Claims Procedure Order to permit them, in consultation with the Monitor, to have the Winter Storm Claims adjudicated by the U.S. Court, in its discretion, rather than by a Claims Officer or the Court.
85. The Monitor supports the requested amendment, which it believes will provide for an efficient and orderly resolution of such claims.

## CONTRACT DISCLAIMER UPDATE

86. On February 17, 2022, Just Energy (U.S.) Corp. disclaimed a service agreement dated May 5, 2016 between it and WNS North America Inc. as contract counterparty (the "**WNS Agreement**") for certain subscription-based services relating to debt collections for residential customer accounts.
87. The WNS Agreement disclaimer was carried out in accordance with the provisions of the CCAA and with the consent of the Monitor. The Monitor found the disclaimer to be fair and reasonable in the circumstances, as it benefited the Just Energy Entities and enhanced the prospect of a viable restructuring. The counterparty to the disclaimed contract did not file an objection with the Court within the 15-day objection period specified under the CCAA.
88. The Just Energy Entities have advised the Monitor that they are continuing to consider the viability of other agreements and may seek to disclaim additional agreements subject to the Monitor's review and approval.

## UPDATE ON CLAIMS PROCEDURE

89. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Claims Procedure Order.
90. The Monitor last reported on the Claims Procedure in the Seventh Report of the Monitor dated March 22, 2022 (the "**Seventh Report**"). Since the date of the Seventh Report, the Monitor, with assistance of the Claims Agent and the Just Energy Entities, has taken the following steps with respect to the Claims received:
  - (a) reviewed, recorded, and categorized all Claims including any additional Claims which were received after the date of the Seventh Report;
  - (b) worked with the Just Energy Entities to review and attempt to determine and/or resolve Claims;

- (c) issued several Notices of Revision or Disallowance, as prepared by the Just Energy Entities in consultation with the Monitor, in respect of disallowed Claims;
- (d) notified creditors of certain Claims accepted by the Just Energy Entities;
- (e) engaged in numerous discussions and correspondence with various creditors who filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant where appropriate; and
- (f) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.

### ***Additional Noticing***

91. As part of their review of potential unclaimed property to be reported to various state governmental bodies in 2022, the Just Energy Entities identified a group of approximately 57,000 inactive customers who may be eligible for a customer credit and were inadvertently excluded from the initial noticing process for the Claims Process. To ensure awareness of the Claims Process, the Just Energy Entities, in consultation with the Monitor, instructed the Claims Agent to send notice to these potential Claimants advising them of the existence of the Claims Process, including instructions on how to access a General Claims Package and a dedicated phone number to contact the Just Energy Entities should they have any questions.
92. The Just Energy Entities also identified certain long-outstanding customer refunds that were not captured during the initial noticing process for the Claims Process. These customer refunds meet the dormancy requirements for the state in which the applicable inactive customer resided – generally a period of two years or more. Consistent with the Just Energy Entities’ prior treatment of unclaimed property Claims in the Claims Process, the Monitor is in the process of issuing approximately 40 negative notices totalling approximately \$0.9 million of unsecured claims to the applicable state governmental body.

93. As part of the Chapter 15 Proceedings, the U.S. Court opened a claims portal (the “**U.S. Bankruptcy Portal**”) to accept proofs of claim despite the Claims Process in the CCAA Proceedings not having been initiated or approved at that time. The U.S. noticing agent for the Just Energy Entities recently became aware of approximately 15 Claims totalling approximately US\$3.0 million that were submitted to the U.S. Bankruptcy Portal using generic U.S.-based proof of claim templates (each, a “**U.S. Claim**”). In consultation with the Just Energy Entities, the Monitor sent notice to each party who submitted a U.S. Claim to advise them that, for a claim to be considered and adjudicated as part of the Claims Process, it must be submitted in accordance with the Claims Procedure Order to either the Monitor or the Claims Agent using the approved forms.

### *Overview of Claims*

94. A summary of the Claims submitted in the Claims Procedure segregated by priority and category is presented in the table below. Amounts presented are inclusive of potential duplicate and/or erroneous Claims, and represent the total Claims received by the Just Energy Entities and recorded by the Monitor. Claims denominated in U.S. dollars have been converted at a rate of \$1.26 to US\$1.00 for purposes of this summary.

Category	Total Claims		
	Secured	Unsecured	TOTAL
<i>(amounts stated in millions of CAD)</i>			
Funded Debt	\$ 331	\$ 1,168	\$ 1,499
Commodity & Financial	852	119	970
Litigation	-	10,024	10,024
Tax & Unclaimed Property	0	95	95
Trade & Other	26	512	539
D&O	-	1,554	1,554
<b>Total Claims Received</b>	<b>\$ 1,209</b>	<b>\$ 13,473</b>	<b>\$ 14,682</b>

95. Since the date of the Seventh Report, the Monitor has received and recorded an additional \$2 million in Claims. Based on the preliminary review of such claims by the Just Energy Entities and the Monitor, the Claims received since the date of the Seventh Report generally fall into the following categories: (i) Late-Filed Claims (as defined in the Fifth Report); (ii) a Restructuring Claim filed in relation to the WNS Agreement disclaimed by the Just Energy Entities; and (iii) claims amended to lower amounts or a

reallocation of secured claims and unsecured claims as a result of additional review and resolution of Claims.

### ***Resolution Status of Claims***

96. The Just Energy Entities, with assistance from and in consultation with the Monitor, continue to review the Negative Notice Claims, Notices of Dispute of Claim, Proofs of Claim, and Disputes of Notices of Revision or Disallowance received in accordance with the Claims Procedure Order, and are actively working to investigate, and/or resolve the Claims as applicable.
97. A summary of the current resolution status of the Claims is presented in the table below:

Category	Accepted or Deemed Accepted		Under Review	Dispute Resolution in Process	Sub-total Claims Pool	Duplicative Claims or Claim Value Reductions	Total Claims Pool	Rescinded Negative Notices / Withdrawn		Total Claims
	A	B	C	D= A+ B+ C	E	F= D+ E	G	H	= F+ G+ H	
<i>(amounts stated in millions of CAD)</i>										
Funded Debt	\$ 620	\$ 13	\$ -	\$ 633	\$ -	\$ 633	\$ -	\$ 866	\$ 1,499	
Commodity & Financial	484	57	-	541	305	846	9	115	970	
Litigation	-	1	4,835	4,836	4,828	9,664	360	0	10,024	
Tax & Unclaimed Property	5	70	-	75	20	95	0	0	95	
Trade & Other	12	49	1	62	432	494	5	40	539	
D&O	-	0	118	118	0	118	1,436	-	1,554	
<b>Total Claims Received</b>	<b>\$ 1,121</b>	<b>\$ 190</b>	<b>\$ 4,954</b>	<b>\$ 6,265</b>	<b>\$ 5,586</b>	<b>\$ 11,851</b>	<b>\$ 1,810</b>	<b>\$ 1,021</b>	<b>\$ 14,682</b>	
<b>by Claim Priority</b>										
Secured Claims	813	57	-	870	305	1,175	8	26	1,209	
Unsecured Claims	308	133	4,954	5,395	5,281	10,676	1,802	995	13,473	
<b>Total Received</b>	<b>\$ 1,121</b>	<b>\$ 190</b>	<b>\$ 4,954</b>	<b>\$ 6,265</b>	<b>\$ 5,586</b>	<b>\$ 11,851</b>	<b>\$ 1,810</b>	<b>\$ 1,021</b>	<b>\$ 14,682</b>	

98. For a description of the categories utilized in the table above describing the status of the Claims, please refer to paragraph 28 of the Seventh Report.
99. The Monitor will continue to provide further updates regarding the Claims Procedure to the Court as the CCAA Proceedings progress.

### **RECEIPTS AND DISBURSEMENTS FOR THE 4-WEEK PERIOD ENDED MAY 7, 2022**

100. The Just Energy Entities' actual net cash flow for the 4-week period from April 10, 2022 to May 7, 2022, was approximately \$11.1 million better than the Cash Flow Forecast appended to the Ninth Report (the "May Cash Flow Forecast") as summarized below:



<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
<b>RECEIPTS</b>			
Sales Receipts	\$215.2	\$214.5	(\$0.7)
Miscellaneous Receipts	-	-	-
<i>Total Receipts</i>	\$215.2	\$214.5	(\$0.7)
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$185.5)	(\$180.2)	\$5.4
Payroll	(10.2)	(8.5)	1.7
Taxes	(12.3)	(10.9)	1.4
Commissions	(6.9)	(8.4)	(1.5)
Selling and Other Costs	(13.5)	(8.2)	5.3
<i>Total Operating Disbursements</i>	(\$228.4)	(\$216.2)	\$12.3
<b>OPERATING CASH FLOWS</b>	(\$13.2)	(\$1.7)	\$11.5
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(3.3)	(3.4)	(0.1)
<i>Restructuring Disbursements</i>			
Professional Fees	(5.4)	(5.8)	(0.3)
<b>NET CASH FLOWS</b>	<b>(\$22.0)</b>	<b>(\$10.8)</b>	<b>\$11.1</b>
<b>CASH</b>			
Beginning Balance	\$171.3	\$171.3	\$ -
Net Cash Inflows / (Outflows)	(22.0)	(10.8)	11.1
Other (FX)	-	(1.1)	(1.1)
<b>ENDING CASH</b>	<b>\$149.3</b>	<b>\$159.3</b>	<b>\$10.0</b>

101. Explanations for the main variances in actual receipts and disbursements as compared to the May Cash Flow Forecast are as follows:

- (a) the favourable variance of approximately \$5.4 million in respect of Energy and Delivery Costs is primarily driven by the following:
  - (i) a favourable timing variance of approximately \$8.6 million due to timing of cash collateral payments and the collection of commodity receivables during the 4-week forecast period; and
  - (ii) a permanent unfavourable variance of approximately \$3.3 million due to higher than forecasted transportation and delivery payments due in

part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;

- (b) the favourable variance of approximately \$1.7 million for Payroll is primarily due to normal course fluctuations for various payroll tax remittances and sales incentive payment timing;
- (c) the favourable temporary variance of approximately \$1.4 million for Taxes is primary due to normal course fluctuations in the timing of tax payments;
- (d) the permanent unfavourable variance of approximately \$1.5 million for Commissions is primarily due to normal course fluctuations related to customer signups and associated commissions; and
- (e) the favourable timing variance of \$5.3 million in respect of Selling and Other Costs is due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors.

#### ***Reporting Pursuant to the DIP Term Sheet***

- 102. The variances shown and described herein compare the May Cash Flow Forecast, as appended to the Ninth Report, with the actual performance of the Just Energy Entities over the 4-week period noted.
- 103. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Report(s)**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance report for the four-week period ended April 30, 2022. All variances reported were within the permitted variances.
- 104. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted

variance testing (the “**DIP Cash Flow Forecast(s)**”). The Just Energy Entities provided the required DIP Cash Flow Forecast, which was approved by the DIP Lenders, for the 13-week period beginning May 1, 2022.

105. As the DIP Variance Report utilizes updated underlying cash flow forecasts vis-à-vis the May Cash Flow Forecast for the same period, the DIP Variance Report differed from the variance analysis above that compares actual results to the May Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
106. Since the Ninth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
  - (a) Delivery of a Priority Supplier Payables Certificate monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;
  - (c) Delivery of a Cash Management Charge update monthly;
  - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;  
and
  - (e) Delivery of a Marked to Market Calculation monthly.

#### **CASH FLOW FORECAST FOR THE 15-WEEK PERIOD ENDING AUGUST 20, 2022**

107. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 15-week period ending August 20, 2022 (the “**Summer 2022 Cash Flow Forecast**”), which encompasses the requested stay extension to August 19, 2022. The Summer 2022 Cash Flow Forecast is attached hereto as **Appendix “B”**, and is summarized below:

<i>(CAD\$ in millions)</i>	15-Week Period Ending August 20, 2022
<b>Forecast Week</b>	<b>Total</b>
<b>RECEIPTS</b>	
Sales Receipts	\$791.2
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$791.2
<b>DISBURSEMENTS</b>	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$580.7)
Payroll	(27.5)
Taxes	(29.5)
Commissions	(29.3)
Selling and Other Costs	(45.7)
<i>Total Operating Disbursements</i>	(\$712.7)
<b>OPERATING CASH FLOWS</b>	\$78.5
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(11.5)
<i>Restructuring Disbursements</i>	
Professional Fees	(15.3)
<b>NET CASH FLOWS</b>	<b>\$51.7</b>
<b>CASH</b>	
Beginning Balance	\$159.3
Net Cash Inflows / (Outflows)	51.7
Other (FX)	-
<b>ENDING CASH</b>	<b>\$211.0</b>

108. The Summer 2022 Cash Flow Forecast indicates that during the 15-week period ending August 20, 2022, the Just Energy Entities will have operating cash inflows of approximately \$78.5 million with total receipts of approximately \$791.2 million and total operating disbursements of approximately \$712.7 million, before interest expense and fees of approximately \$11.5 million and professional fees of approximately \$15.3 million, such that total net cash inflows are forecast to be approximately \$51.7 million.
109. Generally, the underlying assumptions and methodology utilized in the May Cash Flow Forecast have remained the same for this Summer 2022 Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending June 4, 2022 to the week ending August 20, 2022;
  - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the Summer 2022 Cash Flow Forecast, which include:
    - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
    - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
    - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
    - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
    - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
    - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
110. The Summer 2022 Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to August 20, 2022.

#### **STAY PERIOD EXTENSION**

111. The Stay Period will expire on May 26, 2022, and the Applicants are seeking an extension to the Stay Period up to and including August 19, 2022.

112. The Monitor supports extending the Stay Period to August 19, 2022 for the following reasons:
- (a) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with time to:
    - (i) satisfy the Milestones under the Support Agreement and allow the 62-day Voting Period to occur;
    - (ii) call, hold and conduct the Creditors' Meetings;
    - (iii) if approved by the Required Majorities of Creditors at the Creditors' Meetings, seek the Sanction Order;
    - (iv) if granted, implement the Plan and emerge from the CCAA Proceedings and Chapter 15 Proceedings;
  - (b) as indicated by the Summer 2022 Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
  - (c) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
  - (d) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the inception of the CCAA Proceedings.

#### **APPROVAL OF THE FEES AND ACTIVITIES OF THE MONITOR**

113. The proposed Authorization Order seeks approval of (i) the activities and conduct of the Monitor since the date of Ninth Report; (ii) this Tenth Report; and (iii) the fees and disbursements of the Monitor and its counsel from October 30, 2021 to May 6, 2022 and May 7, 2022, as applicable.
114. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Ninth Report have

been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.

115. Pursuant to paragraphs 42 and 43 of the Second A&R Initial Order, the Monitor, its Canadian and U.S. counsel shall: (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of the Initial Order, by the Just Energy Entities as part of the costs of the CCAA Proceedings; and (ii) pass their accounts from time to time before this Court.
116. Since the Fourth Report to the Court dated November 5, 2021 (when the Monitor and its counsel's fees were last approved), the Monitor and its counsel have maintained detailed records of their professional time and costs. The total fees and disbursements of the Monitor for the period from October 30, 2021 to May 6, 2022 total \$3,115,514.14, including fees in the amount of \$2,755,673.50, disbursements in the amount of \$1,418.63, and Harmonized Sales Tax ("HST") in the amount of \$358,422.01, as more particularly described in the Affidavit of Paul Bishop sworn May 17, 2022 (the "**Bishop Affidavit**"), a copy of which is attached hereto as **Appendix "C"**.
117. The total fees and disbursements of the Monitor's Canadian counsel, from October 30, 2021 to May 6, 2022 total \$1,721,348.65, including fees in the amount of \$1,512,202.50, disbursements in the amount of \$12,157.62, and HST in the amount of \$196,988.53, as more particularly described in the Affidavit of Rachel Nicholson sworn May 16, 2022 (the "**Nicholson Affidavit**"), a copy of which is attached hereto as **Appendix "D"**.
118. The total fees and disbursements of the Monitor's U.S. counsel from October 30, 2021 to May 7, 2022 total US\$115,505.30, including fees in the amount of US\$113,909.50 and disbursements in the amount of US\$1,595.80, as more particularly described in the Affidavit of John Higgins sworn May 11, 2022 (the "**Higgins Affidavit**", together with the Bishop Affidavit and Nicholson Affidavit, the "**Fee Affidavits**"), a copy of which is attached hereto as **Appendix "E"**.
119. The Monitor respectfully submits that the fees and disbursements incurred by the Monitor and its counsel, as described in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the

Second A&R Initial Order. Accordingly, the Monitor respectfully requests the approval of the fees and disbursements of the Monitor and its counsel as set out in the Fee Affidavits.

## CONCLUSION

120. The Monitor is of the view that the relief requested by the Applicants is reasonable and justified in the circumstances.
121. Accordingly, the Monitor respectfully supports the requested relief and recommends that the Meetings Order and the Authorization Order be granted.

The Monitor respectfully submits to this Honourable Court this Tenth Report dated this 18<sup>th</sup> day of May, 2022.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor of  
Just Energy Group Inc. *et al*,  
and not in its personal or corporate capacity

Per:



---

**Paul Bishop**  
Senior Managing Director



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 **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**TENTH REPORT OF  
FTI CONSULTING CANADA INC., IN ITS  
CAPACITY AS COURT-APPOINTED MONITOR**

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Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.

**THIS IS EXHIBIT V REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**ELEVENTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**August 13, 2022**



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- Appendix “B” Monitor Letter to Court and Service List dated June 17, 2022
- Appendix “C” Cash Flow Forecast for the period ending November 5, 2022



**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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST  
ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP.,  
JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA  
INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC.,  
8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,  
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST  
ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST  
ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST  
ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY  
MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY  
SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY  
GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING  
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL  
ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC,  
JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT  
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND  
JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**ELEVENTH REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the



protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”), commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. By order dated February 9, 2022, the Court denied, with reasons to follow, certain relief requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan in their



capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”), and Trevor Jordet in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The Court’s reasons for the dismissal are set out in the written reasons of Justice McEwen dated February 23, 2022 (the “**McEwen Endorsement**”), which is available on the Monitor’s Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement to the Court of Appeal for Ontario on February 24, 2022 (the “**Motion for Leave to Appeal**”). The Just Energy Entities filed their response to the Motion for Leave to Appeal on April 29, 2022. On June 28, 2022, the Court of Appeal for Ontario dismissed the Motion for Leave to Appeal, with costs payable to Just Energy and the DIP Lenders.

7. On March 3, 2022, the Court granted an Order extending the Stay Period until March 25, 2022 and appointing the Honourable Justice Dennis O’Connor as Claims Officer (the “**Claims Officer**”) with respect to the adjudication of the Donin/Jordet Actions (the “**Appointment Order**”).
8. On May 5, 2022, the Court granted an Order authorizing the Foreign Representative to pursue claims under section 36.1 of the CCAA in the U.S. Court subject to the supervision of the Monitor.
9. On June 7, 2022, the Just Energy Entities brought a motion before the Court seeking a Meetings Order (the “**Meetings Order Motion**”) to accept the filing of the Just Energy Entities’ Plan of Compromise and Arrangement dated May 26, 2022 (the “**Plan**”), along with authorizing the Just Energy Entities to call and conduct a meeting of certain of their creditors to consider and vote on resolutions to approve the Plan.
10. The Meetings Order Motion was opposed by Pariveda Solutions Inc. (“**Pariveda**”) and the following contingent litigation creditors (collectively, the “**Contingent Litigation Claimants**”): (i) counsel to the proposed representative plaintiffs in the Donin/Jordet Actions (“**Putative Class Action Counsel**”); (ii) the representative plaintiff on behalf of a certified class in *Haidar Omarali v. Just Energy Group et al.*, Court File No. CV-



15-52748300CP (“**Omarali Class Action**”); and (iii) 250 alleged claimants pursuing claims for alleged loss of business, personal injury and/or property damage arising out of the winter storms in Texas in February 2021.

11. During the hearing on June 7, 2022, the Just Energy Entities also requested the Stay Period be extended to August 19, 2022. In an Order dated June 7, 2022, the Court extended the Stay Period to such date.
12. On June 10, 2022, the Court released an Endorsement (the “**First Endorsement**”), with further reasons to follow, which granted the majority of relief sought by the Just Energy Entities; however, the Court denied the Just Energy Entities’ request that each of the Claims held by the Contingent Litigation Claimants be valued at \$1 for voting purposes. Further, in the First Endorsement, the Court directed that a summary process be undertaken by the Just Energy Entities on an expedited basis to determine the validity and value of the claims held by the Contingent Litigation Claimants and Pariveda. In the First Endorsement, the Court directed the Monitor to liaise with the relevant parties to determine a process to conduct the claim determinations and valuations.
13. On June 21, 2022, the Court released its second endorsement (the “**Second Endorsement**”), which provided the reasons for the Orders and directions provided in the First Endorsement.
14. On June 23, 2022 and further to the First Endorsement, the Court released its third endorsement (the “**Third Endorsement**”) specifically addressing requested additional written submissions regarding the proposed differential compensation provided for in the Plan. The Court concluded that the appropriateness of the terms of the proposed differential compensation ought to be dealt with at the Sanction Hearing.
15. On July 4, 2022, both the representative plaintiff in the Omarali Class Action and U.S. Counsel to the claimants in the Donin/Jordet Actions filed Notices of Motion for Leave to Appeal the First Endorsement.
16. As a result of the First Endorsement, and specifically the requirement to undertake a valuation process of the Claims held by the Contingent Litigation Claimants in advance





of the proposed meetings of creditors to vote on the Plan, the Plan Sponsor withdrew its support of the Plan. Although the Just Energy Entities, in consultation with the Monitor, engaged in discussions with certain of the Contingent Litigation Claimants and Pariveda with a view to preserving the Plan, no resolution was reached.

17. The Just Energy Entities, in consultation with the Monitor, have engaged in extensive discussions with the Sponsor/DIP Lenders, Supporting Secured CF Lenders and Shell (each as defined in the SISP Support Agreement, as defined below), to discuss the terms upon which such parties would be willing to support the pursuit of a going concern solution for the Just Energy Entities. These discussions have culminated in the SISP, SISP Support Agreement and Stalking Horse Transaction Agreement, each as defined below.
18. On August 4, 2022, the Just Energy Entities served their motion for approval of the SISP, the SISP Support Agreement, and certain other relief including extension of the Stay Period to October 31, 2022 (the “**SISP Motion**”).
19. All references to monetary amounts in this Eleventh Report of the Monitor (the “**Eleventh Report**”) are in Canadian dollars unless otherwise noted.
20. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
21. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

## PURPOSE

22. The purpose of this Eleventh Report is to provide information to the Court with respect to the following:



- (a) the Monitor’s activities since the Monitor’s Tenth Report to the Court dated May 18, 2022 (the “**Tenth Report**”);
- (b) the relief sought by the Applicants in their proposed Order (the “**SISP Approval Order**”), including, among other things:
  - (i) authorizing and empowering Just Energy to enter into the definitive purchase agreement (the “**Stalking Horse Transaction Agreement**”) dated as of August 4, 2022, between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XVII LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT Energy I LLC<sup>1</sup> (collectively, the “**Sponsor**” and the transactions detailed therein, the “**Stalking Horse Transaction**”), *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor and subject to the terms of the SISP Support Agreement (as defined below);
  - (ii) approving the Break-Up Fee (as defined below) and authorizing the Just Energy Entities to pay the Break-Up Fee to the Sponsor (or as it may direct) in the circumstances and manner described in the Stalking Horse Transaction Agreement and granting a Court-ordered charge (the “**Bid Protections Charge**”) in favour of the Sponsor as security for payment of the Break-Up Fee;
  - (iii) approving the Support Agreement, dated August 4, 2022 among the Just Energy Entities, the Sponsor, Shell, and the Supporting Secured CF Lenders (the “**SISP Support Agreement**”), subject to such minor amendments as may be consented to by the Monitor and as may be acceptable to each of the parties thereto, and authorizing, empowering and directing the Just Energy Entities to enter into the SISP Support Agreement, *nunc pro tunc*, and to take all steps and actions in respect thereof;

---

<sup>1</sup> The Sponsor is comprised of (i) the investment funds that are DIP Lenders and together with a related limited partner, the holders of substantially all of the Term Loan Claim, and (ii) CBHT Energy I LLC, as the holder of the BP Commodity/ISO Services Claim.



- (iv) approving the Sale and Investment Solicitation Process (the “**SISP**”), a copy of which is attached hereto as **Appendix “A”**, and authorizing the Just Energy Entities to implement the SISP pursuant to the terms thereof;
  - (v) approving a third key employee retention plan (the “**Third KERP**”) in the maximum aggregate amount of approximately CAD\$0.4 million and US\$0.6 million for key non-executive employees of the Just Energy Entities considered critical to the continued operation and stability of the Just Energy Entities as a going concern, and to the Just Energy Entities’ efforts to restructure for the benefit of all stakeholders;
  - (vi) extending the Stay Period to October 31, 2022;
  - (vii) approving the Tenth Report, the Supplement to the Tenth Report dated June 1, 2022, and the Eleventh Report, along with the activities, conduct and decisions of the Monitor described therein; and
  - (viii) sealing the unredacted copy of the SISP Support Agreement and summary of the Third KERP, each attached as confidential exhibits to the Affidavit of Michael Carter sworn August 4, 2022 (the “**Carter Affidavit**”);
- (c) the advice and direction sought by the Just Energy Entities to suspend the ongoing claims review, determination and dispute resolution process under the Claims Procedure Order, Appointment Order, First Endorsement, and Second Endorsement pending further order of the Court, unless the adjudication of such Claims is necessary for determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered into pursuant to the SISP;
  - (d) an update on the Claims Procedure and the resolution of Claims pursuant to the Claims Procedure Order;
  - (e) the Just Energy Entities’ actual cash receipts and disbursements for the 13-week period ended August 6, 2022, a comparison to the cash flow forecast attached

as Appendix “B” to the Monitor’s Tenth Report, along with an updated cash flow forecast for the 13-week period ending November 5, 2022; and

- (f) the Monitor’s recommendations in respect of the foregoing, as applicable.

## TERMS OF REFERENCE AND DISCLAIMER

23. In preparing this Eleventh Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
24. Except as otherwise described in this Eleventh Report:
- (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Eleventh Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
25. The Monitor has prepared this Eleventh Report to provide information to the Court in connection with the relief requested by the Applicants. This Eleventh Report should not be relied on for any other purpose.

## MONITOR’S ACTIVITIES SINCE THE TENTH REPORT

26. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Tenth Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;



- (b) participating in regular and frequent discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives including with respect to negotiations surrounding the Plan and SISP, and the Claims Procedure;
- (c) participating in regular discussions with the DIP Lenders and other key stakeholders, and their respective legal counsel and other advisors regarding, among other things, the Just Energy Entities' restructuring initiatives, the Plan and SISP;
- (d) in consultation with the Just Energy Entities, administering the Claims Procedure, subject to the proposed abeyance thereto described in this Eleventh Report;
- (e) monitoring the cash receipts and disbursements of the Just Energy Entities;
- (f) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
  - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
  - (ii) assist the Just Energy Entities in negotiating the Stalking Horse Transaction Agreement, the SISP Support Agreement and the SISP; and
  - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (g) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (h) responding to stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (i) observing the developments and steps taken by the parties with respect to the adjudication of the Claim filed by NextEra Energy Marketing, LLC ("NextEra"), a portion of which is disputed by the Just Energy Entities, and providing assistance to the Claims Officer where requested;



- (j) participating in discussions between the Just Energy Entities and Putative Class Action Counsel with respect to participation in the SISP and related matters;
- (k) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (l) maintaining the service list for the CCAA Proceedings (the "**Service List**") with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (m) preparing this Eleventh Report.

## THE PROPOSED SISP AND STALKING HORSE AGREEMENT

### *Background and the SISP Support Agreement*

27. Amidst the uncertainty following the Plan Sponsor/DIP Lenders' withdrawal of support for the Plan and subsequent termination of the Plan Support Agreement, the Just Energy Entities engaged in extensive discussions with the key stakeholders that were party to the Plan Support Agreement to preserve a going concern restructuring resolution. The Monitor has participated in and been kept apprised of such discussions that culminated in the SISP Support Agreement. The Monitor has also provided input on the development of the SISP.
28. The Monitor has reviewed the terms of the SISP Support Agreement. The Monitor notes that many of the critical provisions of the Plan Support Agreement that the Monitor previously supported and that contributed to the Court's approval of the Plan Support Agreement have carried over into the SISP Support Agreement. Such critical provisions include the Supporting Secured CF Lenders' agreement to participate in a New Credit Facility and Shell's agreement to continue as a commodity supplier.
29. One difference between the SISP Support Agreement and the Plan Support Agreement is the elimination of the restriction under the Plan Support Agreement with respect to the ability of the Just Energy Entities or BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities (the "**Financial Advisor**") to actively solicit offers for the



business in the marketplace. The Just Energy Entities and the Financial Advisor are permitted to solicit offers and run the SISP, with the assistance and under the supervision of the Monitor.

30. The SISP Support Agreement provides critical support for the ongoing operations of the Just Energy Entities. The stability afforded by the SISP Support Agreement is crucial if the proposed SISP (as detailed below) is to produce the highest and best bid for the benefit of all stakeholders. The Monitor accordingly supports approval of the SISP Support Agreement in the circumstances.

### ***The Proposed SISP***

31. Capitalized terms used in this section of the Eleventh Report and not otherwise defined have the meanings given to them in the SISP or the Plan, as applicable.
32. The key provisions of the SISP are as follows:
  - (a) the Just Energy Entities will conduct the SISP under the supervision of the Monitor and with the assistance of the Financial Advisor;
  - (b) any interested party that executes a non-disclosure agreement will be permitted to access a data-room in order to conduct due diligence;
  - (c) solicitation for potential bidders commenced on August 4, 2022;
  - (d) interested parties will be asked to submit a notice of intent to bid (a “NOI”) no later than August 25, 2022;
  - (e) Qualified Bids will be determined by the Just Energy Entities in consultation with the Monitor. Qualified Bids must meet the terms and provisions of the SISP. The Stalking Horse Transaction described below shall be deemed to be a Qualified Bid;
  - (f) the Just Energy Entities shall provide information in respect of the SISP on a confidential basis to the DIP Lenders, the holder of the BP Commodity/ISO Services Claim and the Supporting CF Lenders, including copies of any NOIs and Qualified Bids;



- (g) the Just Energy Entities shall be permitted, in their discretion, to provide general updates and information in respect of the SISP to counsel to any unsecured creditor of the Just Energy Entities on a confidential basis provided that (i) the applicable creditor shall not submit any NOI or bid in the SISP, and (ii) counsel to the applicable creditor executes a confidentiality agreement satisfactory to the Just Energy Entities and the Monitor;
  - (h) if no NOI is received by the NOI Deadline, the SISP shall be deemed to have been terminated, and the Stalking Horse Transaction shall be the Successful Bid;
  - (i) the Qualified Bid Deadline is September 29, 2022, subject to (i) a one-time extension for up to seven days with the consent of the Monitor, the Sponsor and the Supporting Secured CF Lenders, or (ii) further Order of the Court. If no Qualified Bid is received by the Qualified Bid Deadline, the SISP shall be deemed to have been terminated and the Stalking Horse Transaction shall be the Successful Bid;
  - (j) if one or more Qualified Bids are received, the Just Energy Entities shall hold an Auction to determine the Successful Bid. The Auction shall be carried out in accordance with the Auction Procedures attached to the SISP under the supervision of the Monitor. The Auction will be conducted in rounds and will require minimum Overbids of US\$1 million;
  - (k) the Just Energy Entities shall apply to the Court for approval of the Successful Bid and the authority to consummate the Successful Bid; and
  - (l) any amendments to the SISP may only be made by the Just Energy Entities with the written consent of the Monitor or by further Order of the Court.
33. The SISP solicits a broad range of transactions for the assets and/or business of the Just Energy Entities, which transactions may take the form of an acquisition or an investment, including pursuant to a plan of compromise or arrangement.
34. The terms of the proposed SISP are, in the Monitor's view, generally customary for sales processes conducted under the CCAA.





The Monitor understands from its review of the Affidavit of Robert Tannor, sworn August 10, 2022, that Putative Class Action Counsel are requesting that the SISP include a mandatory return to Court following the Qualified Bid Deadline to permit the Court to determine whether the Auction should proceed or whether an alternative restructuring plan of compromise or arrangement submitted by them should be put to creditors for a vote. The Monitor is of the view that a simple, defined process that sets out a clear roadmap for potential participants, as currently provided in the SISP, will facilitate the greatest participation by third parties in the process, all for the benefit of the Just Energy Entities' stakeholders. The Monitor is of the view that the uncertainty that would be introduced into the process by the proposed amendment may dissuade otherwise interested participants in the SISP from devoting the necessary resources to develop a bid for the Company. The Monitor does not support this proposed amendment to the SISP.

35. The SISP is to be conducted under the supervision of the Monitor, and the Just Energy Entities are required to consult with the Monitor on all significant steps and developments throughout the SISP process. In addition, the Successful Bid(s) generated by the SISP will come back before the Court for its consideration and approval. This oversight and supervision will ensure an efficient and fair SISP process.
36. With no prospect of implementing the Plan given the loss of stakeholder support for same, the Monitor is of the view that the proposed SISP is now the only viable option for the Company and represents the appropriate next step in these CCAA Proceedings to achieve a timely going concern restructuring resolution. The SISP has significant support amongst the Just Energy Entities' stakeholders including, as noted above, the Supporting Secured CF Lenders and Shell who provide business-critical commodity supply, letters of credit, and a credit facility to the Just Energy Entities.
37. The Monitor has noted in its previous reports to the Court its concerns about the delays in the progression of these CCAA Proceedings. Such delays have caused and continue to cause uncertainty for the Just Energy Entities' employees, vendors and stakeholders. The proposed SISP provides a pathway for the timely emergence of the Just Energy Entities and the termination of these CCAA Proceedings.



38. The timelines under the proposed SISP are reasonable in the circumstances given that:  
(a) there has been extensive formal and informal marketing of the Just Energy Entities' business both prior to and during the course of these CCAA Proceedings, all as more fully described in the Carter Affidavit; (b) the Financial Advisor has been involved in devising such timelines and has determined that they are appropriate in the circumstances; and (c) solicitation of potential bidders by the Financial Advisor has already commenced.
39. The Monitor is of the view that the proposed SISP provides for a broad, open, fair and transparent process with an appropriate level of independent supervision. The proposed SISP provides a reasonable opportunity for bidders to submit offers superior to the Stalking Horse Transaction which, when combined with the SISP, establishes a basis for maximizing the potential realizable value for the Just Energy Entities.
40. Likewise, the Monitor is of the view that the proposed Auction process will, if required, serve to maximize recoveries to the benefit of all stakeholders and is a fair and transparent process with the appropriate level of supervision.
41. As noted above, the SISP requires that the Just Energy Entities provide information in respect of the bids received in the SISP to the DIP Lenders and CBHT. Accordingly, the Sponsor will be privy to such information. Given that the Stalking Horse Transaction Agreement has already been finalized and disclosed to all potential bidders, the provision of bidder information to the Sponsor allows for symmetry of disclosure. The Monitor is of the view that the provision of such information to the DIP Lenders will not adversely affect the results of the SISP.
42. The Monitor has been privy to numerous discussions between the Just Energy Entities and Putative Class Action Counsel with respect to the SISP. The Just Energy Entities shared an advance copy of the SISP with Putative Class Action Counsel on July 30, 2022 in an attempt to be transparent and, following execution of a non-disclosure agreement, provided early access to the SISP data room on July 20, 2022 to Putative Class Action Counsel and their financial advisor. Putative Class Action Counsel's



proposed financier was subsequently granted access to the data room on August 4, 2022 following execution of a non-disclosure agreement.

43. Nevertheless, the Monitor understands that there are matters that remain unresolved as between the Just Energy Entities and certain of the Contingent Litigation Claimants with respect to the terms of the SISP. In the absence of a consensual resolution of such issues, the Monitor is of the view that the SISP is fair and reasonable. The Contingent Litigation Claimants have the opportunity to submit a bid in the proposed SISP process, including through a plan of arrangement, if they think the Stalking Horse Transaction undervalues the Just Energy Entities.

#### ***The Stalking Horse Transaction Agreement and Break-Up Fee***

44. Any capitalized terms used in this section of the Eleventh Report but not defined herein have the meanings given to them in the Stalking Horse Transaction Agreement or Plan, as applicable.
45. The Stalking Horse Transaction Agreement shares many similarities with the Plan. However, it differs from the Plan in a few important respects highlighted in this Eleventh Report. Principally, it does not contemplate a \$10 million General Unsecured Creditor Cash Pool or any share issuance or other compensation for the Term Loan Lenders. Accordingly, no amounts will be available for distribution to the Just Energy Entities' General Unsecured Creditors, including the Contingent Litigation Claimants and Term Loan Lenders. This is, therefore, a less favourable recovery outcome for such parties than that put forth under the Plan.
46. The Stalking Horse Transaction has been the subject of extensive discussions between the Just Energy Entities, the Sponsor, the Supporting Secured CF Lenders and Shell, which discussions the Monitor was either a party to or kept apprised of.
47. The Stalking Horse Transaction is intended to be effected pursuant to a reverse vesting order, which, among other benefits, would preserve the various regulatory licenses and permits the Just Energy Entities hold across various jurisdictions in Canada and the U.S.



48. A brief overview of the key provisions of the Stalking Horse Transaction Agreement follow:
- (a) the Sponsor, as purchaser, will ultimately acquire all newly-issued equity in Just Energy (U.S.) Corp., which will acquire all of the newly-issued equity in Just Energy. All other previously existing equity interests in Just Energy (U.S.) Corp. and Just Energy will be extinguished. Just Energy will cease to be a reporting issuer;
  - (b) as consideration for its acquisition, the Sponsor shall:
    - (i) pay US\$184.9 million in cash, plus up to an additional \$10 million to the extent required to pay all required amounts under the Stalking Horse Transaction Agreement and the Vesting Order;
    - (ii) credit bid the BP Commodity/ISO Services Claim in the amount of US\$252.7 million, including accrued interest to November 30, 2022; and (iii) assume the Assumed Liabilities (collectively, the “**Purchase Price**”), which include all:
      - (i) Post-Filing Claims;
      - (ii) liabilities of the Just Energy Entities arising from and after the Closing Date;
      - (iii) Claims of any Credit Facility Lender with respect to issued but undrawn letters of credit, if any;
      - (iv) Cash Management Obligations;
      - (v) Energy Regulator Claims relating to the Just Energy Entities; and
      - (vi) Employee Priority Claims;
  - (c) all Claims, debts and obligations save and except for the Assumed Liabilities shall be Excluded Liabilities;
  - (d) all Excluded Assets and Excluded Liabilities will be vested in entities to be organized in Canada and the U.S. (collectively, the “**Residual Cos.**”);
  - (e) the Just Energy Entities (except to the extent included within the definition of “Excluded Assets”) will emerge from these CCAA Proceedings and the Residual Cos. shall become Applicants in the CCAA Proceedings;
  - (f) all Priority Payments will be paid by the Just Energy Entities from cash on hand and the cash portion of the purchase price;



- (g) a \$1.9 million Administration Expense Amount shall be an Excluded Asset and shall be used by the Monitor to deal with the Residual Cos, among other things, with any remaining balance repaid to Just Energy; and
  - (h) if an Alternative Restructuring Proposal is consummated or Just Energy terminates the SISP Support Agreement on one of the permitted grounds enumerated therein, a Just Energy Entity organized in the U.S. shall pay the Sponsor a break-up fee in the cash amount of US\$14.66 million (the “**Break-Up Fee**”). The Break-Up Fee is proposed to be secured by a Court-ordered Bid Protection Charge over all of the Property of the Just Energy Entities. The Bid Protection Charge will have priority over all contractual or statutory security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings.
49. The Break-Up Fee was determined on a similar basis as the Termination Fee under the Backstop Commitment Letter, which was supported by the Monitor and approved by the Court in the First Endorsement, being the “new value contribution” by the Sponsor pursuant to the payment of the Purchase Price. Similar to the previously-approved Termination Fee, the Break-Up Fee equals 3.4% of the Purchase Price, exclusive of the Assumed Liabilities and the \$10 million payable by the Sponsor in the event of a shortfall. If the Assumed Liabilities and the \$10 million are included in the percentage calculation, the 3.4% would be further reduced.
50. The Monitor notes that the Just Energy Entities are seeking authorization to enter into the Stalking Horse Transaction Agreement and are not seeking the Court’s approval of the Stalking Horse Transaction as the Successful Bid at this juncture. Nevertheless, the support for the Stalking Horse Transaction by the parties to the SISP Support Agreement demonstrates significant stakeholder approval of its terms should the Stalking Horse Transaction be determined to be the Successful Bid pursuant to the SISP.
51. There is also a benefit in having a Stalking Horse Transaction set a “benchmark” as part of the proposed SISP, including providing certainty to stakeholders (including employees, customers, regulators and vendors) of a going-concern transaction that can close in a timely fashion.



52. The Monitor recognizes that the Stalking Horse Transaction Agreement, if implemented, will result in an inferior recovery for the General Unsecured Creditors when compared to the terminated Plan. However, the Monitor is of the view that the proposed SISP establishes a process that will test the market and allow for the best possible going concern restructuring resolution in the current market conditions.
53. The Monitor is also of the view that the proposed Break-Up Fee is reasonable in the circumstances, will not “chill” the submission of other prospective bids and supports its approval. The Monitor’s view is based on its review of break fees in similar sales transactions carried out under the CCAA and in restructuring proceedings in the United States under Chapter 15 of the United States Bankruptcy Code. The Monitor understands that the Break-Up Fee is an important component of the Stalking Horse Transactions that provides stability and certainty that there will be a going concern resolution to these CCAA Proceedings. In addition, the Monitor has reviewed the Carter Affidavit and notes that the Financial Advisor has confirmed its view that the Break-Up Fee is in line with market terms, is consistent with market practice and is reasonable in all of the circumstances.

### **THIRD KERP**

54. The Court previously approved a key employee retention plan (the “**KERP**”) on March 19, 2021, which provided for certain payments to non-executive and executive KERP participants. Under the KERP, non-executive KERP recipients received three installment payments, and executive KERP recipients received 50% of their KERP through two KERP installment payments, with the balance payable upon the completion of a Successful Restructuring (as defined in the Affidavit of Michael Carter sworn March 16, 2021).
55. The Court also granted a Court-ordered charge (the “**KERP Charge**”) as security for payments under the KERP in the amounts of \$2,012,100 for Canadian dollar payments and US\$3,876,024 for U.S. dollar payments. The initial KERP was formulated on the expectation that the Just Energy Entities would conclude their restructuring by the end of 2021.



56. However, the Just Energy Entities required additional time to implement a restructuring transaction and accordingly, the Court approved a second KERP (the “**Second KERP**”) on November 10, 2021, which provided for two installment payments for non-executive KERP recipients and one installment payment for executive KERP recipients, along with a success-based payment upon the completion of a Successful Restructuring. The KERP Charge was not increased.
57. Payments made under the KERP and Second KERP to date total approximately \$7.4 million. Final payments to non-executive key employees under the KERP were made in June 2022. The final payment to non-executive key employees under the Second KERP will be made on September 9, 2022.
58. The Just Energy Entities are seeking approval of the Third KERP solely for key non-executive employees who are considered critical to the continued operation and stability of the Just Energy Entities as a going concern. The proposed Third KERP is in the maximum aggregate amount of approximately CAD\$0.4 million and US\$0.6 million, payable upon emergence from the CCAA and Chapter 15 Proceedings or within 30 days thereof, and if approved, would be payable to 30 key non-executive employees. The Just Energy Entities are not seeking any increase to the KERP Charge in connection with the proposed Third KERP as the KERP Charge is sufficient to cover the remaining payments payable under the original and Second KERP, along with the proposed Third KERP. No change to the Executive KERP is proposed.
59. The Monitor understands that the Third KERP is intended to provide financial motivation for key non-executive employees to continue their employment with the Just Energy Entities, despite the highly competitive job market, the additional workload required by such key employees and the extended uncertainty and strain on such key employees as a result of the extended duration of the restructuring proceedings. The Just Energy Entities are concerned that, absent the approval of the Third KERP, there is a risk that key employees will resign.
60. A summary of the Third KERP is attached as Confidential Exhibit “L” to the Carter Affidavit, which contains commercially sensitive information as well as personal



information relating to the non-executive key employees. Accordingly, the Applicants are seeking an order that this exhibit be sealed and not form part of the Court record pending further order of the Court. The Monitor supports such relief and notes that such treatment is consistent with the treatment of the previous KERP summaries.

61. The requested relief is consistent with the purpose and spirit of the previously approved KERP and Second KERP and reflects the additional length of time anticipated to be required to achieve a successful restructuring. The Monitor views the relief requested by the Just Energy Entities regarding the Third KERP as fair and reasonable in the circumstances, and in the best interest of the Just Energy Entities. Accordingly, the Monitor supports the relief sought by the Applicants with respect to the approval of the Third KERP.

#### **UPDATE ON CLAIMS PROCEDURE**

62. Capitalized terms used but not otherwise defined in this section of the Eleventh Report have the meanings attributed to them in the Claims Procedure Order.
63. Since the Tenth Report and in accordance with the Claims Procedure Order, the Just Energy Entities have continued to provide notice of the Claims Procedure to any potential Claimants identified. Subsequent to and as contemplated in paragraph 92 of the Tenth Report, the Just Energy Entities in consultation with the Monitor issued approximately 40 negative notices to certain state governmental bodies totaling approximately \$0.9 million of new unsecured claims with respect to unclaimed property claims (the “**Unclaimed Property Negative Notices**”).
64. As mentioned above, the First Endorsement required the Monitor to forthwith engage with the Contingent Litigation Claimants and Pariveda to determine a process to conduct the claim determinations and valuations. By letter dated June 17, 2022, the Monitor advised the CCAA Court and Service List that the parties had agreed that such directed process be temporarily postponed given the ongoing discussion at such time between the Just Energy Entities, Pariveda, and certain of the Contingent Litigation Claimants, and requested the Court’s indulgence that such process be put in abeyance. A copy of the Monitor’s letter is attached hereto as **Appendix “B”**.





65. As previously noted, the Stalking Horse Transaction does not provide recovery for General Unsecured Creditors (which includes the Term Loan Lenders), the Just Energy Entities are seeking advice and direction from the Court regarding the suspension of the Claims Procedure, Appointment Order and direction to facilitate the adjudication of certain Claims as set out in the First Endorsement, unless the adjudication of such Claims is necessary for determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered into pursuant to the SISP.
66. For example, the Just Energy Entities have engaged the Claims Officer to commence the adjudication of the Disputed Claim filed by NextEra, given that such Claim is a secured Claim and is required to be paid pursuant to the Stalking Horse Transaction Agreement. Counsel for the Just Energy Entities, NextEra, the DIP Lenders and the Monitor attended an initial case conference before the Claims Officer on August 9, 2022, to determine a litigation timetable in respect of the adjudication of such Disputed Claim.
67. In the circumstances, the Monitor is supportive of the Just Energy Entities' request that the Claims Procedure be held in abeyance with very limited exceptions while the SISP is conducted. The Monitor is of the view that continuing with the adjudication of remaining Claims may result in unnecessary costs and consumption of other resources given it is currently unknown whether any value will be available to such creditors. If a continued determination of Claims is required for the purposes of determining entitlement to proceeds to be distributed based on the results of the SISP, the Just Energy Entities will so advise the Court and proceed with same.
68. The Monitor understands Putative Class Action Counsel is continuing to request that the validity and value of the Claims submitted with respect to the Donin/Jordet Actions be determined in an expedited fashion. The Monitor does not support such requested determination process because: (a) there is no reason to expend the time and resources required to determine the validity and value of the Donin/Jordet Actions be incurred until it is known whether a superior bid will be received in the SISP that will provide value to General Unsecured Creditors; and (b) the focus of the Just Energy Entities' key



employees should be on conducting the SISP and running the business to ensure the availability of a going concern solution. The time and resources of such key employees are already taxed. The Monitor accordingly supports the Just Energy Entities' request that the entirety of the Claims Procedure be held in abeyance

69. The Monitor last reported on the Claims Procedure in the Tenth Report. A summary of the current resolution status of the Claims as at August 5, 2022 is presented in the table below. Please note that amounts presented are inclusive of potential duplicate and/or erroneous Claims, and represent the total Claims received by the Just Energy Entities and recorded by the Monitor. Claims denominated in U.S. dollars have been converted at a rate of CAD\$1.26 to US\$1.00 for purposes of this summary:

Category	Accepted or Deemed Accepted	Under Review	Dispute Resolution in Process	Sub-total Claims Pool	Duplicative Claims or Claim Value Reductions	Total Claims Pool	Disallowed	Rescinded Negative Notices / Withdrawn	Total
<i>(amounts stated in millions of CAD)</i>	A	B	C	D= A+ B+ C	E	F= D+ E	G	H	I= F+ G+ H
Funded Debt	620	13	-	633	-	633	-	866	1,499
Commodity & Financial	502	9	28	540	17	557	9	405	970
Litigation	-	1	4,836	4,836	4,827	9,664	361	0	10,024
Tax & Unclaimed Property	6	1	-	7	0	7	0	89	96
Trade & Other	13	34	27	74	441	515	5	40	559
D&O	-	0	118	118	0	118	1,436	-	1,554
<b>Total Claims Received</b>	<b>\$ 1,142</b>	<b>\$ 58</b>	<b>\$ 5,008</b>	<b>\$ 6,208</b>	<b>\$ 5,286</b>	<b>\$ 11,494</b>	<b>\$ 1,811</b>	<b>\$ 1,400</b>	<b>\$ 14,704</b>
<b>by Claim Priority</b>									
Secured Claims	832	9	28	869	17	886	8	315	1,209
Unsecured Claims	310	49	4980	5,339	5268	10,607	1803	1084	13,495
<b>Total Received</b>	<b>\$ 1,142</b>	<b>\$ 58</b>	<b>\$ 5,008</b>	<b>\$ 6,208</b>	<b>\$ 5,286</b>	<b>\$ 11,494</b>	<b>\$ 1,811</b>	<b>\$ 1,400</b>	<b>\$ 14,704</b>

70. A description of the categories utilized in the table above describing the status of the Claims, is set out at paragraph 28 of the Seventh Report of the Monitor dated March 22, 2022, a copy of which is available on the Monitor's Website.

71. Since the date of the Tenth Report, the Monitor has received and recorded an additional \$22 million in Claims. Based on the preliminary review of such claims by the Just Energy Entities and the Monitor, the additional Claims can be classified into the following categories:

- (a) Claims resulting from the issuance of Notices of Revision or Disallowance of approximately \$21 million. The increased Claim amounts included in these Notices of Revision or Disallowance resulted from the reclassification by the



Just Energy Entities of certain claims submitted as post-filing claims to Pre-Filing Claims;

- (b) Unclaimed Property Negative Notices of approximately \$0.9 million as discussed above; and
- (c) Late-Filed Claims (as defined in the Fifth Report of the Monitor dated February 4, 2022) under review of approximately \$0.1 million.

## **UPDATE ON HB 4492 RECOVERIES AND ERCOT LITIGATION**

### ***HB 4492 Recoveries***

- 72. As mentioned in the Monitor’s previous reports to the Court, including the Supplement to the Tenth Report, the Governor of Texas signed HB 4492 on June 16, 2021, which provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including the Just Energy Entities, during the Texas weather event in February 2021. The Monitor also noted that the total amount that the Just Energy Entities might recover through HB 4492 was dependant on several factors.
- 73. Proceeds of HB 4492 in the aggregate amount of US\$147.5 million were received by the Just Energy Entities from Electric Reliability Council of Texas, Inc. (“**ERCOT**”) on June 22 and 29, 2022. Such proceeds have been received by the Just Energy Entities and are accounted for as a source of cash in the projected cash on hand at the time of closing of the Stalking Horse Transaction.

### ***ERCOT Litigation***

- 74. As noted in the Monitor’s previous reports to the Court, the Just Energy Entities disputed the resettlement payments that the Just Energy Entities were required to pay to ERCOT as a result of the inflated prices during the Texas weather event. The Monitor also noted that ERCOT had dismissed one of the disputes filed by the Just Energy Entities, which triggered an alternative dispute resolution process.
- 75. As previously noted by the Monitor, the Just Energy Entities had commenced litigation against ERCOT and the Public Utility Commission of Texas (the “**PUCT**”) on November 12, 2021, in an effort to recover payments made by various Just Energy



Entities to ERCOT for certain invoices relating to the Texas weather event in February 2021 (the “**ERCOT Litigation**”). The claim against the PUCT was dismissed by the U.S. Court. Further, the Monitor noted that it intends to be actively involved in supporting the ERCOT Litigation.

76. At a hearing on April 4, 2022 on ERCOT’s second motion to dismiss, the U.S. Bankruptcy Court requested that the parties seek direction from the CCAA Court with respect to the proper party in interest to advance certain claims.
77. By endorsement dated May 5, 2022 (the “**Section 36.1 Endorsement**”), the CCAA Court determined that Just Energy (as foreign representative) and other Just Energy Entities, as the case may be, were authorized and empowered to pursue the Section 36.1 Claims in the Adversary Proceeding, *nunc pro tunc*, with the Monitor being authorized and directed to take whatever actions and steps it deemed advisable to assist and supervise the Just Energy Entities with respect to the prosecution of the Section 36.1 Claims in the Adversary Proceeding. As mentioned above, the Section 36.1 Endorsement and related Order were given full force and effect in the United States pursuant to an Order of the U.S. Bankruptcy Court entered on July 19, 2022.
78. On June 9, 2022, the U.S. Bankruptcy Court held a continued hearing on ERCOT’s motion to dismiss the First Amended Complaint. At that hearing, the U.S. Bankruptcy Court dismissed Count 3 (Transfer at Undervalue - CCAA (§ 36.1), BIA (§ 96)). The Bankruptcy Court also dismissed Counts 1 and 2 (Preference - CCAA (§ 36.1), BIA (§ 95)) with leave to replead those Counts to identify with more specificity the individual obligations and transfers at issue. At that time, the U.S. Bankruptcy Court deferred ruling on ERCOT’s other arguments.
79. On June 14, 2022, the Just Energy Entities filed a second amended complaint (the “**Second Amended Complaint**”). The Second Amended Complaint contains the same Counts as the First Amended Complaint, except for Count 3 (Transfer at Undervalue - CCAA (§ 36.1), BIA (§ 96)).



80. On June 21, 2022, ERCOT filed a third motion to dismiss the Second Amended Complaint. At a hearing on June 27, 2022, the U.S. Bankruptcy Court granted ERCOT’s motion in part: (i) dismissing Count 6 (Setoff, Recoupment); and (ii) striking certain allegations from the Second Amended Complaint. The U.S. Bankruptcy Court denied ERCOT’s motion in all other respects, including with respect to arguments based on sovereign immunity, abstention, the filed-rates doctrine, and the PUCT as a necessary party (the “**July 6 Order**”). A table summarizing the foregoing is provided below:

Count	June 9, 2022 Hearing	June 27, 2022 Hearing
Count 1 (Preference (Obligations) CCAA (§ 36.1), BIA (§ 95))	Dismissed with leave to replead	Upheld
Count 2 (Preference (Transfers) - CCAA (§ 36.1), BIA (§ 95))	Dismissed with leave to replead	Upheld
Count 3 (Transfer at Undervalue - CCAA (§ 36.1), BIA (§ 96))	Dismissed	-
Count 4 (Recovering Proceeds - CCAA (§ 36.1), BIA (§ 98))	Deferred determination	Upheld
Count 5 (Turnover - 11 U.S.C. § 542(a))	Deferred determination	Upheld
Count 6 (Setoff, Recoupment)	Deferred determination	Dismissed

81. During the hearing on June 27, 2022, counsel for ERCOT informed the U.S. Bankruptcy Court that ERCOT intends to seek a direct appeal of certain aspects of the U.S. Bankruptcy Court’s ruling to the U.S. Court of Appeals for the Fifth Circuit (the “**Court of Appeals**”). On July 19, 2022, ERCOT filed a notice of appeal of the July 6 Order and, by Order granted July 19, 2022, the U.S. Bankruptcy Court certified the July 6 Order for direct appeal to the Fifth Circuit and recommended that the appeal be heard on an expedited basis. On July 19, 2022 Just Energy, ERCOT and certain Intervenors filed in the U.S. Bankruptcy Court a Certification to the Court of Appeals that a circumstance specified in 28 U.S.C. § 158(d)(2) exists supporting certification to the Court of Appeals.



82. On July 27, 2022 ERCOT and the Intervenors filed an Unopposed Petition for Direct Appeal Under 28 U.S.C. § 158(d)(2) (the “**Motion for Direct Appeal**”) with the Court of Appeals. Also, on July 27, 2022 Just Energy filed with the Court of Appeals Respondents’ Unopposed Motion to Expedite Appeal. The Court of Appeals has not ruled on the Motion for Direct Appeal.
83. The timeline to resolution and likelihood of success of this litigation is unknown. Recoveries from such litigation, if any, could take years to realize.

#### **RECEIPTS AND DISBURSEMENTS FOR THE 13-WEEK PERIOD ENDED AUGUST 6, 2022**

84. The Just Energy Entities’ actual net cash flow for the 13-week period from May 8, 2022 to August 6, 2022, was approximately \$157.6 million better than the Cash Flow Forecast appended to the Tenth Report (the “**Summer 2022 Cash Flow Forecast**”), as summarized below:



<i>(CAD\$ in millions)</i>	<b>Forecast</b>	<b>Actuals</b>	<b>Variance</b>
<b>RECEIPTS</b>			
Sales Receipts	\$682.4	\$737.9	\$55.4
Miscellaneous Receipts	-	194.5	194.5
<i>Total Receipts</i>	\$682.4	\$932.4	\$250.0
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$559.0)	(\$651.6)	(\$92.6)
Payroll	(23.8)	(23.5)	0.3
Taxes	(21.7)	(24.7)	(2.9)
Commissions	(23.4)	(27.1)	(3.7)
Selling and Other Costs	(41.1)	(31.6)	9.4
<i>Total Operating Disbursements</i>	(\$669.0)	(\$758.5)	(\$89.4)
<b>OPERATING CASH FLOWS</b>	<b>\$13.4</b>	<b>\$173.9</b>	<b>\$160.5</b>
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(11.5)	(9.3)	2.2
<i>Restructuring Disbursements</i>			
Professional Fees	(14.2)	(19.3)	(5.2)
<b>NET CASH FLOWS</b>	<b>(\$12.3)</b>	<b>\$145.3</b>	<b>\$157.6</b>
<b>CASH</b>			
Beginning Balance	\$159.3	\$159.3	\$ -
Net Cash Inflows / (Outflows)	(12.3)	145.3	157.6
Other (FX)	-	(2.7)	(2.7)
<b>ENDING CASH</b>	<b>\$147.0</b>	<b>\$301.9</b>	<b>\$154.9</b>

85. Explanations for the main variances in actual receipts and disbursements as compared to the Summer 2022 Cash Flow Forecast are as follows:

- (a) The favourable variance of approximately \$55.4 million in Sales Receipts is primarily comprised of the following:
  - (i) a favourable variance of approximately \$29.3 million due to higher than forecast sales receipts in respect of U.S. residential customers due to higher consumption associated with warmer than expected weather, which is partially offset by higher Energy and Delivery costs in current and future periods;

- (ii) a favourable variance of approximately \$16.0 million due to higher than forecast sales receipts in respect of U.S. commercial customers due to higher consumption associated with warmer than expected weather, which is partially offset by higher Energy and Delivery costs in current and future periods; and
  - (iii) a favourable variance of approximately \$10.1 million due to higher than forecast sales receipts in respect of Canadian residential and commercial customer billings, which is partially offset by higher Energy and Delivery costs in current and future periods;
- (b) The permanent favourable variance of approximately \$194.5 million in Miscellaneous Receipts is primarily due to the recovery from ERCOT pertaining to HB 4492 as mentioned above, as well as receipt of refunds from Canada Revenue Agency on account of Goods and Services Tax previously paid by the Just Energy Entities;
- (c) The unfavourable variance of approximately \$92.6 million in respect of Energy and Delivery Costs is primarily driven by the following:
  - (i) A permanent unfavourable variance of approximately \$52.0 million due to higher commodity payments, primarily driven by increased pricing and load during summer heat waves in the Texas market, partially offset by payouts to the Company from its summer weather hedging strategy;
  - (ii) An unfavourable variance of approximately \$26.4 million primarily due to increased collateral requirements with ERCOT in relation to increased pricing and load during the summer heat waves in the Texas market during the 13-week period;
  - (iii) A permanent unfavourable variance of approximately \$14.3 million due to higher than forecast transportation and delivery payments due in part to higher energy transmission volumes, increased transportation and delivery rates, and normal course fluctuations;



- (d) The temporary unfavourable variance of approximately \$2.9 million in respect of Taxes is primarily due to normal course fluctuations in the timing of tax payments;
- (e) The permanent unfavourable variance of approximately \$3.7 million in respect of Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions relative to the Summer 2022 Cash Flow Forecast;
- (f) The favourable variance of approximately \$9.4 million in respect of Selling and Other Costs is primarily due to lower than forecast spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors;
- (g) The favorable variance of approximately \$2.2 million in respect of Interest Expense & Fees is primarily due to the timing of the Just Energy Entities' remittance of certain amounts being made later than forecast outside the 13-week period analyzed. This timing adjustment is incorporated in the August 2022 Cash Flow Forecast (as defined below); and
- (h) The unfavourable variance of \$5.2 million in respect of Professional Fees is due to higher than forecast payment of professional fee invoices during the 13-week forecast period primarily resulting from increased services rendered by professionals with respect to the continued development and negotiation of the Plan, and the development of an alternative restructuring path forward for the Just Energy Entities among its key stakeholders including negotiation of the SISP, SISP Support Agreement, and Stalking Horse Transaction Agreements, as well as ongoing discussions with the Contingent Litigation Claimants.

### ***Reporting Pursuant to the DIP Term Sheet***

86. The variances shown and described herein compare the Summer 2022 Cash Flow Forecast, as appended to the Tenth Report, with the actual performance of the Just Energy Entities over the 13-week period noted.



87. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Report(s)**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended May 28, 2022; June 25, 2022; and July 23, 2022. All variances reported were within the permitted variances with two exceptions for which Management proactively sought waivers from the DIP Lenders and are summarized below:
- (a) For the variance report covering the four-week period ended May 28, 2022, the Just Energy Entities sought and the DIP Lenders approved a waiver with respect to the line item variance test for the Energy and Delivery Costs. This waiver dated May 28, 2022 was necessary due to higher than forecast collateral requirements by ERCOT in relation to unseasonably high temperatures in the Texas market, which caused historically high load and commodity prices; and
  - (b) For the variance report covering the four-week period ended July 23, 2022, the Just Energy Entities sought, and the DIP Lenders approved, a waiver with respect to the line item variance test for Commissions. This waiver dated July 26, 2022 related to the timing of certain commission payments made by the Just Energy Entities approximately four days earlier than contemplated during the final week of the four-week period instead of during the first week of the subsequent four-week DIP budget period where the commission payments were forecast to be made. This timing variance resulted in commission payments exceeding the testing threshold in the respective four-week DIP budget period – necessitating the waiver.
88. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders’ approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the “**DIP Cash Flow Forecast(s)**”). The Just Energy Entities provided



the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week periods beginning May 29, 2022; June 26, 2022; and July 24, 2022.

89. As the DIP Variance Report utilizes updated underlying cash flow forecasts vis-à-vis the Summer 2022 Cash Flow Forecast for the same period, the DIP Variance Report differed from the variance analysis above that compares actual results to the Summer 2022 Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
90. Since the Tenth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
- (a) Delivery of a Priority Supplier Payables Certificate monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;
  - (c) Delivery of a Cash Management Charge update monthly;
  - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;
  - (e) Delivery of a Gross Margin Calculation Certificate update quarterly;
  - (f) Delivery of Consolidated Financial Statements and related documents update quarterly;
  - (g) Delivery of a Marked to Market Calculation monthly; and
  - (h) Delivery of Electricity and Natural Gas Portfolio Reports, Hedging Exposure and Supply/Demand Projections quarterly.

#### **CASH FLOW FORECAST FOR THE PERIOD ENDING NOVEMBER 5, 2022**

91. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 13-week period ending November 5, 2022 (the “**August 2022 Cash Flow Forecast**”), which encompasses the requested stay extension



to October 31, 2022. The August 2022 Cash Flow Forecast is attached hereto as **Appendix “C”**, and is summarized below:

<i>(CAD\$ in millions)</i>	<b>13-Week Period Ending November 5, 2022</b>
<b>Forecast Week</b>	<b>Total</b>
<b>RECEIPTS</b>	
Sales Receipts	\$858.2
Miscellaneous Receipts	7.3
<i>Total Receipts</i>	\$865.5
<b>DISBURSEMENTS</b>	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$712.7)
Payroll	(29.2)
Taxes	(27.5)
Commissions	(27.0)
Selling and Other Costs	(29.9)
<i>Total Operating Disbursements</i>	(\$826.3)
<b>OPERATING CASH FLOWS</b>	\$39.2
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(13.0)
<i>Restructuring Disbursements</i>	
Professional Fees	(14.0)
<b>NET CASH FLOWS</b>	<b>\$12.2</b>
<b>CASH</b>	
Beginning Balance	\$301.9
Net Cash Inflows / (Outflows)	12.2
Other (FX)	-
<b>ENDING CASH</b>	<b>\$314.1</b>

92. The August 2022 Cash Flow Forecast indicates that during the 13-week period ending November 5, 2022, the Just Energy Entities will have operating cash inflows of approximately \$39.2 million with total receipts of approximately \$865.5 million and total operating disbursements of approximately \$826.3 million, before interest expense and fees of approximately \$13 million and professional fees of approximately \$14 million, such that total net cash inflows are forecast to be approximately \$12.2 million.
93. Generally, the underlying assumptions and methodology utilized in the Summer 2022 Cash Flow Forecast have remained the same for this August 2022 Cash Flow Forecast; however, the Monitor notes the following:



- (a) The forecast period was extended from the week ending August 20, 2022 to the week ending November 5, 2022;
- (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the August 2022 Cash Flow Forecast, which include:
  - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
  - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
  - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
  - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
  - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
  - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.

94. The August 2022 Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to October 31, 2022.

#### **STAY PERIOD EXTENSION**

95. The Stay Period will expire on August 19, 2022, and the Applicants are seeking an extension to the Stay Period up to and including October 31, 2022.



96. The Monitor supports extending the Stay Period to October 31, 2022 for the following reasons:
- (a) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with time to conduct the SISP;
  - (b) as indicated by the August 2022 Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
  - (c) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
  - (d) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the inception of the CCAA Proceedings.

#### **APPROVAL OF THE ACTIVITIES OF THE MONITOR**

97. The proposed SISP Approval Order seeks approval of (i) the Tenth Report (including the Supplement to the Tenth Report); (ii) this Eleventh Report; and (iii) the activities and conduct of the Monitor described therein.
98. Although the Monitor sought approval of the Tenth Report at the Meetings Order Motion, the First Endorsement did not address such approval. Accordingly, the Applicants are seeking such approval at this time in the SISP Approval Order.
99. The Monitor notes that, at the Meetings Order Motion, it also sought approval of its fees and the fees of its counsel as described in the Tenth Report. Such fees were approved in the First Endorsement. The Monitor will seek approval of the fees incurred by the Monitor and its counsel following the date of such approval period in a future report to the Court.
100. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Tenth Report have



been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.

## CONCLUSION

101. The Monitor is of the view that the relief requested by the Applicants is reasonable and justified in the circumstances.
102. Accordingly, the Monitor respectfully supports the requested relief and recommends that the SISP Approval Order be granted.

The Monitor respectfully submits this Eleventh Report to the Court dated this 13<sup>th</sup> day of August, 2022.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor of  
Just Energy Group Inc. *et al*,  
and not in its personal or corporate capacity

Per:



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Paul Bishop  
Senior Managing Director

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 **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**ELEVENTH REPORT OF  
FTI CONSULTING CANADA INC., IN ITS  
CAPACITY AS COURT-APPOINTED MONITOR**

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Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.



**THIS IS EXHIBIT W REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

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Court File No. CV-21-00658423-00CL

**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 **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**Written Endorsement of McEwen, J. – Unofficially Transcribed**

The Applicants seek a Sales Process Approval Order. The Applicants are supported by the DIP Lenders, Credit Facility Lender and Shell at the motion.

The Monitor also supports the relief sought.

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While there is generally no opposition to the order sought, U.S. Class Counsel on behalf of the U.S. Class Actions raise five discrete objections. They are supported by the Omarali Class Action, the Mass Tort Claims and Pariveda.<sup>1</sup>

Given the extreme time sensitivity surrounding this CCAA matter, I am releasing my reasons via this handwritten endorsement. I have reviewed all of the facta filed, affidavits, motion records and Monitor's Eleventh Report.

In providing these reasons, I do not propose to review all submissions made, but will focus on those submission that I consider to be most germane. I have however, reflected on all of the submissions made at the motion.

Before I analyze the five issues in dispute, I will review the overall structure of the Sales Process proposed by the Applicants, and then review the issues not in dispute that were raised at the motion.

Insofar as the Sales Process is concerned, the Applicants seek a sales and investment solicitation process ("SISP") which, among other things, seeks Court authorization, *nunc pro tunc*, to enter into a Stalking Horse Transaction Agreement between the Applicants and the Sponsor (as defined, essentially the related group of companies under the PIMCO umbrella, in the Applicants' factum).

The Applicants also, in this regard, seek approval of the SISP Support Agreement.

As noted, there is no general opposition, and I agree that subject to the determination of the five discrete disputes, the SISP Support Agreement and SISP, which includes the Stalking Horse Transaction, ought to be approved.

The SISP Support Agreement is similar to the previous Plan Support Agreement that I previously approved before the Plan was terminated subsequent to my previous orders in June/22.

Unlike the Plan Support Agreement, however, the SISP Support Agreement contains no restriction on the Applicants to solicit superior offers to the Stalking Horse Transaction. I agree that s. 11 of the CCAA provides this Court with the authority to approve the SISP Support Agreement. I further agree that the SISP Support Agreement is a critical component of the Applicants' going concern restructuring to allow them to market their assets, obtain value and operate in the normal course in the meantime.

This Court has approved similar support agreements in prior cases: *Re. Stelco* (2005) 78 OR (3d) 254 and *U.S. Steel Canada Inc.* 2016 ONSC 7899.

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<sup>1</sup> All as defined in my June 21/22 endorsement.

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With respect to the SISP, I accept the Applicants' submission that the criteria as set out in the *Nortel Networks Corp. (Re)* (2009) 55 CBR (5th) (Ont SCJ) at para. 48 have been met, insofar as they ought to be considered at this stage of the proceeding.

Amongst other reasons is the fact that; of present, no other viable options have been presented; other superior proposals can be accepted; and the Stalking Horse Transactions sets a "floor price" and creates the certainty of a going concern sale.

I pause here to note that the Stalking Horse Transaction contemplates a Reverse Vesting Order ("**RVO**"). In this regard, however, it is important to note that at this stage I am not being asked to grant the RVO (which have been viewed as an extraordinary remedy: see *Harte Gold Corp. (Re)* 2022 ONSC 653 at para 38), nor am I being asked to approve the Stalking Horse Transaction.

Approvals in this regard, if the Stalking Horse Transaction is the successful bid, will be dealt with at the conclusion of the SISP.

Turning now to the specific unopposed relief, I grant the following relief:

- The stay period is extended to October 31/22. There is sufficient liquidity. The Applicants are proceeding in good faith and the extension is fair and reasonable given the ongoing Sales Process.
- The KERP is also approved. Previous KERPs have been approved by this Court. As set out in Mr. Carter's affidavit (the CFO of Just Energy) the proposed KERP, for non-executive key employees is justified as previously ordered payments will soon end and there is a genuine concern that non-executive key employees may resign at this important stage of the proceeding. This would prejudice not only the Applicants, but other stakeholders. The proposed amounts are fair and reasonable.
- The Monitor's Tenth and Eleventh Reports are approved as are the activities, conduct and decisions described therein.
- The sealing orders shall go with respect to the KERP order and the SISP Support Agreement which contains, amongst other things, the holding percentages of the various entities comprising the DIP Lenders' Claim.

In both instances the Sierra Club test, as recast in *Sherman Estate*, has been met. The orders are made on an interim basis. Prior sealing orders have been made concerning KERP Orders. This protects the personal information of the relevant employees.

The interim Sealing Order concerning the SISP Support Agreement is also necessary given the ongoing Sales Process and the commercially sensitive material it contains.

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I now turn to the five disputed issues:

1. The first deals with the U.S. Class Actions' allegation that the Sponsor will have "inside information" regarding other bids and other bidders' communications with the Applicants in the absence of the other bidders' consent. This could result in proprietary or competitive information going to the Sponsor. They argue that this would provide an unfair advantage and could chill the market.

The Applicants submit, as do the supporting stakeholders, that all they seek is an equal playing field.

The Stalking Horse Transaction Agreement has been finalized and disclosed to all potential bidders. The Sponsor, in particular, seeks the same information from other bidders prior to the auction.

At the motion the parties agreed that symmetrical information sharing was sensible and would assist in the Sales Process.

The only potential mischief concerned disclosure of propriety or competitive information. It is frankly difficult to analyze this risk in the abstract.

It was agreed that the symmetrical bidding information should be exchanged. The Monitor agreed to stay involved in the information sharing process. Further, the Sponsor submits that it is not seeking proprietary information, but rather wants to see the exact type of information that it has provided.

In all of these circumstances, I therefore order that the parties/stakeholders engage in the fair, equitable and symmetrical sharing of information concerning bids. The Monitor will continue to engage and monitor the exchange of information to ensure no bidder, including the Sponsor, enjoys an advantage that is unfair and/or could chill the market.

2. I now turn to the U.S. Class Actions' submission that the SISP should not automatically default to the proposed auction. They are currently working with a financier to attempt to present a plan of arrangement.

Counsel for the U.S. Class Actions submit that the SISP should contain a provision that the matter return to Court, before an auction, to determine whether their Plan should be put to a vote of unsecured creditors (or any other plan that surfaces).

I do not agree and agree with the submissions of the Applicants' wherein they submit that such an attendance is unnecessary and detrimental to the SISP process.

There is nothing preventing the U.S. Class Actions from submitting their plan into the auction. No stakeholder disputes their right to do so.

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In my view this is the preferred path and upon the conclusion of the auction<sup>2</sup> I will determine whether the successful bid ought to be approved.

At that time all relevant issues will be reviewed, including if necessary a proposed RVO.

In the usual way, the relevant issues concerning whether or not the successful bid ought to be approved, including why the successful bid is superior, or not, can be put forth.

Parties are free to put forth all relevant, unfettered arguments. As stated by Monitor's counsel, this Court is not a "rubber stamp" at the motion for approval.

This single track, as unopposed to the motion proposed by counsel for the U.S. Class Actions, is preferable and provides greater certainty in the marketplace. I am concerned that a return to Court before an auction could chill the Sales Process, as potential bidders would be concerned that their efforts may never make it to auction resulting in wasted time and expense.

3. The third issue involves whether the valuation of the U.S. Class Actions ought to be suspended.

The U.S. Class Actions want to proceed as per my earlier order, that the Contingent Litigations Claims (which include the U.S. Class Actions, the Omarali Class Action, the Mass Tort Claims and the Pariveda Claim<sup>3</sup>) ought to be valued, in advance of a meeting of creditors when the Meeting Order was sought. Subsequent to that Order being made the Sponsor withdrew from the proposed plan and all parties, including the Contingent Litigation Claims agreed to suspend the valuations to determine the validity and value of the claims.

A letter was provided to me by the Monitor in this regard.

Unbeknownst to me, later in July, the U.S. Class Actions advised the Monitor and other that it, again, wished to carry out the valuations. The matter did not return to me and no valuations were conducted.

At the motion, the Omarali Class Action, the Mass Tort Claims and Pariveda also requested that their claims be valued.

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<sup>2</sup> Assuming the SISP proceeds to auction.

<sup>3</sup> Pariveda was not part of the defined term but I ordered it be valued.

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They all generally submit that in order to formulate and negotiate a plan they (the U.S. Class Actions took the lead here) need to know the creditor pool for the purpose of voting.

The U.S. Class Actions proposed a process by way of letter dated Aug 4/22 which proposes a very aggressive approximate two week process that has either the Honourable J. O'Connor or I conduct the valuations (although they use the word "estimations"). This would now presumably involve valuations of all of the aforementioned claims.

The Applicants submit that such an exercise is wasteful, unnecessary and lacks utility. They further submit that the expedited schedule is unachievable, particularly where the additional claims would also need to be valued.

I agree with the Applicants.

Currently, the only transaction before the Court is the Stalking Horse Transaction which would not result in any recoveries to general unsecured creditors. Further, I agree with the Applicants that the volatile nature of the industry and the Sales Process are placing a strain on resources and personal (as referenced above concerning the KERP).

I further accept the submissions of the Monitor that a valuation can be considered, if and when, a transaction is likely to provide recovery for unsecured creditors. Otherwise it is a costly distraction.

Insofar as the argument of counsel for the US Class Actions is concerned, that it is necessary to formulate and negotiate a plan, this may be of some assistance, but their presence is well known in this proceeding and their desire does not outweigh the above countervailing factors raised by the Applicants and supported by the Monitor.

Last, unlike the valuations ordered with respect to the abandoned plan, here we are dealing with a SISP which, in the ordinary course, should have some value determined before considering a valuation. I also note that the Omarali Class Action submitted that its claim has unique features that further warrant a valuation. Again, I do not accept that those features outweigh the concerns of the Applicants.

4. The fourth issue concerns the break-up fee contained in the Stalking Horse Transaction, in the amount of US\$14.66 million in favour of the Sponsor.

Counsel for the US Class Actions submits that the break-up fee is anti-competitive and unfairly prejudices the unsecured creditors.

They add that the Sponsor has had its fees paid throughout these proceedings and the Sponsor is committed to purchasing the asset. Additionally, they argue that the

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Applicants/Sponsor have advanced no evidence to support the quantum sought and the break-up fee results in other bidders having to raise additional funds to compete.<sup>4</sup>

Insofar, as the law is concerned, counsel for the US Class Actions point out that this Court has a gatekeeping function and ought not simply act as a “rubber stamp”, or merely rely upon the business judgment rule and the seller’s discretion.<sup>5</sup>

Last, they submit that each case must be considered in the context of its own unique circumstances and the mere fact that the proposed break-up fee is within the range of reasonableness as determined in other cases does not mean it is reasonable in the given case.<sup>6</sup>

The Applicants/Sponsor argue that the stalking horse bid provides stability and a framework for competitive bidding. In this context break-up fees are almost always required in exchange for the stalking horse setting the floor, exposing the bid, providing other bidders access, and committing funding.

Further, they argue that the Stalking Horse is tying up a significant amount of capital (in the \$200 million range) and this resulting loss of opportunity cost must be taken into account.

The Sponsor particularly points out that the break-up fee is not anti-competitive, but rather allows the competitive bidding to occur to benefit of all stakeholders, including the over 1,000 employees and approximately 1,000,000 customers.

The Applicants/Sponsor further submit that the break-up fee is well within the accepted range (3.4%) and rely on the evidence of Mr. Carter (paras. 60-63 of his affidavit) and their expert Mark Caiger. Mr. Caiger opines that the break-up fee is in-line with market terms, consistent with market practice and reasonable in the circumstances of this case.

Mr. Caiger was engaged by Just Energy to advise and assist it. In his May 12/22 affidavit he thoroughly sets out the basis of his analysis (see paras 32-38).

Further, the Applicants point to the fact that the previously approved Termination Fee, in connection with the abandoned Plan, was in the same range and was not opposed.

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<sup>4</sup> See *Mecachrome Canada Inc. Re.* 2009 QCCS 6355 at para 64 for support of this submission

<sup>5</sup> *Boutique Euphoria Inc. Re.* 2007 QCCS 7129 at para 65

<sup>6</sup> *Quest University Canada (Re)* 2020 BCSC 1845 at para 58; *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.* 2014 BCSC 1855 at para 36



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In support of the Applicants, the Monitor also emphasizes that the break-up fee is in no way a gratuitous offering but is part of a complicated arm's length agreement, that resulted in the Stalking Horse Transaction. This transaction provides certainty to all stakeholders of a going concern transaction that can close in a timely fashion. The Monitor too is of the view that the break-up fee will not chill the market and its review also has found that it is consistent with break-up fees in similar sales transactions carried out under the CCAA and in the U.S.

I agree that the break-up fee ought to be granted. It is a critical feature of the proposed transaction. The 3.4% is within the range of acceptability.

Although the actual fee, at first glance may seem high, the SISP involves a significant, complicated process involving a complex and large scale business model with secured claims of approximately \$1 billion.

The risks and stakes here are extremely high and the break-up fee is reasonable when one considers all the factors – including the price of stability.<sup>7</sup>

In the very unique and complex circumstances of this case I do not accept the U.S. Class Actions' submission that no break-up fee is warranted – this is not realistic.

Rather the proposed break-up fee recognizes, amongst other things, the effort expended by the Sponsor, the capital committed and the benefits of the Stalking Horse Transaction within the SISP as set out in the record filed by the Applicants. Specifically, it also allows the transaction to proceed and attempt to attract other bidders.

5. The last issue involves the request of the U.S. Class Actions to extend the timeline under the SISP by three weeks.

They primarily submit that there are no liquidity issues and the existing timelines are very tight. For example, the NOI is due Aug 25/22.

The Applicants, prior to the motion, maintained that the timelines were appropriate based on its unchallenged evidence, which includes the volatility of the market and effect on employees.

They also submit that the process commenced on Aug 4/22, not as of the date of the motion.

The Applicants conceded liquidity.

---

<sup>7</sup> *Green Growth Brands (Re)*, 2020 ONSC 3565 at paras 51-52

**NOTE TO READER: This is an UNOFFICIAL TRANSCRIPT of the Endorsement of Justice McEwen dated August 18, 2022, the official hand-written endorsement governs in all respects.**

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At the hearing the Applicants met, off the record, with their key secured stakeholder and advised that they would agree to a one week extension.

As I alluded to at the motion, I believe that a two week extension to the milestones is fair and reasonable. As a result of my previous orders, the proposed Sales Process is proceeding essentially as proposed by the Applicants/Sponsor – including the break-up fee.

Further, as the Applicants and their supporters have stated, the Sale Process is extremely complex and involves significant debt and funding.

By allowing an extra week (over and above the concession at the motion) I see no prejudice to the Applicants. This matter has been evolving for many months and it must be remembered that it took the Applicants some time to formulate the prior Plan.

The extra two weeks provides a clear, court ordered structure and path to a definitive auction date.

In my view, this provides a reasonably quick timetable, but allows some breathing room for other bidders which is to be benefit of stakeholders.<sup>8</sup>

In coming to this conclusion, I have not ignored the Applicants' prior marketing efforts.

A two week extension is granted.

---

<sup>8</sup> *PCAS Patient Care Automation Services Inc. (Re)* 2012 ONSC 2840 at paras 17, 18 for support of this proposition

**NOTE TO READER: This is an UNOFFICIAL TRANSCRIPT of the Endorsement of Justice McEwen dated August 18, 2022, the official hand-written endorsement governs in all respects.**

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Orders shall go with respect to the foregoing reason.

TM  
Judges Initials

Superior Court of Justice  
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FILE/DIRECTION/ORDER

In the Matter of Trust Energy Group Inc et al  
Plaintiff(s)

AND

\_\_\_\_\_  
Defendant(s)

Case Management  Yes  No by Judge: McGwen J.

Counsel	Telephone No:	Facsimile No:
<u>see participants list attached</u>	<u>attached</u>	

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

The Applicants seek a Sales Process Approval Order. The Applicants are supported by the DIP Lenders, Credit Facility Lender and Shell at the motion.

The Monitor also supports the relief sought.

While there is generally no opposition to the order sought

18 August 22  
Date

McGwen J.  
Judge's Signature

Additional Pages 29 in total

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**Superior Court of Justice  
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**FILE/DIRECTION/ORDER**

**Judges Endorsment Continued**

U.S. Class Counsel on behalf of the U.S. Class Actions raise five discrete objections. They are supported by the Omarali Class Action, the Mass Tort Claims and Pariveda.

Given the extreme time sensitivity surrounding the CCAA matter I am releasing my reasons via this handwritten endorsement. I have reviewed all of the facts, filed affidavits, motion records and the Monitor's Eleventh Report.

In providing these reasons I do not propose to review all submissions made, but will focus on those submissions that I consider to be most germane. I have, however, reflected on all of the submissions made at the motion.

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1. All as defined in my June 21/22 endorsement.

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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

Before I analyse the five issues in dispute, I will review the overall structure of the Sales Process proposed by the Applicants, and then review the issues set in dispute that were raised at the motion.

Insofar as the Sales Process is concerned, the Applicants seek a sales and investment solicitation process ("SISP") which, amongst other things, seeks Court authorization, in one proceeding, to enter into a Stalking Horse Transaction Agreement between the Applicants and the Sponsor (as defined, essentially, the related group of companies under the PIMCO umbrella, in the Applicants' Factum).

The Applicants also, in this regard seek approval of the SISP Support

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Judges Endorsment Continued

Agreement.

As noted, there is no general opposition, and I agree that subject to the determination of the five discrete disputes the SISP Support Agreement and SISP, which includes the Stalking Horse Transaction, ought to be approved.

The SISP Support Agreement is similar to the previous Plan Support Agreement that I previously approved before the Plan was terminated ~~by~~ subsequent to my previous orders in June/22.

Unlike the Plan Support Agreement, however, the SISP Support Agreement contains no restriction on the Applicants to solicit superior offers to the Stalking Horse Transaction.

I agree that s.11 of the CCMA provides this Court with the authority

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Judges Endorsment Continued

to approve the SISP Support Agreement. I further agree that the SISP Support Agreement is a critical component of the Applicants' going concern restructuring to allow them to market their assets, obtain value and operate in the normal course in the meantime.

This Court has approved similar support agreements in prior cases: Re Steleo (2005) 78 OR (3d) 254 and U.S. Steel Canada Inc 2016 ONSC 7899.

With respect to the SISP, I accept the Applicants' submissions that the criteria as set out in Nortel Networks Corp (Re) (2009) 55 CBR (5th) (Ont SCJ) at para 48 have been met, insofar as they ought to be considered at this stage of the proceeding.



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Judges Endorsment Continued

Amangst other reasons is the fact that; at present, no other viable options have been presented; other superior proposals can be accepted; and the Stalking Horse Transaction sets a "floor price" and creates the certainty of a going concern sale.

I pause here to note that the Stalking Horse Transaction contemplates a Reverse Vesting Order (RVO). In this regard, however, it is important to note that at this stage I am not being asked to grant the RVO (which have been viewed as an extraordinary remedy - see Harte Gold Corp (Re) 2022 ONSC 653 at para 38), nor am I being asked to approve the Stalking Horse Transaction.

Approvals in this regard, if

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**Judges Endorsment Continued**

The Stalking Horse Transaction is the successful bid, will be dealt with at the conclusion of the SISP.

Turning now to the specific unopposed relief I grant the following relief: ✓

• The stay period is extended to Oct 31/22. There is sufficient liquidity.

<sup>m</sup> Faith ✓ The Applicants are proceeding in good faith and the extension is fair and reasonable given the ongoing Sales process. ✓

• The KERP is also approved. Previous KERPs have been approved by this Court. As set out in Mr Carter's affidavit (the CFO of Trust Energy) the proposed KERP, for non-executive key employees, is justified as previously ordered payments will soon end and there is a genuine concern that non-

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Judges Endorsment Continued

executive key employees may resign at this important stage of the proceeding. This would prejudice not only the Applicants, but other stakeholders. The proposed amounts are fair and reasonable.

• The Monitor's Tenth and Eleventh Reports are approved as are the activities, conduct and decisions described therein.

• The Sealing Orders shall go with respect to the KERP order and the SISP Support Agreement which contains, amongst other things, the holding percentages of the various entities comprising the DIP Lender's claim.

In both instances the Sierra Club test, as recast in *Sherman Estate*, has been met. The orders are

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**Judges Endorsment Continued**

made on an interim basis. Prior sealing orders have been made concerning ~~KEEP~~ Order. This protects the personal information of the relevant employees.

The interim Sealing Order concerning the SISP Support Agreement is also necessary given the ongoing Sales Process and the commercially sensitive material it contains.

I now turn to the five disputed issues:

- ① The first deals with the US Class Action's allegation that the Sponsor will have "inside information" regarding other bids and other bidders' communications with the Applicant in the absence of the other bidder's consent. This could result in proprietary or competitive

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Judges Endorsment Continued

information going to the Sponsor. They argue that this would provide an unfair advantage and could chill the market.

The Applicants submit, as do the supporting stakeholders, that all they seek is an equal playing field.

The Stallion Horse Transaction Agreement has been finalized and disclosed to all potential bidders. The Sponsor, in particular, seeks the same information from other bidders prior to the auction.

At the motion the parties agreed that symmetrical information sharing was sensible and would assist in the Sales Process.

The only potential mischief concerned disclosure <sup>in</sup> ~~of~~ <sup>in</sup> of proprietary or competitive information. It is frankly difficult to analyse this risk in the

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Judges Endorsment Continued

abstract.

It was agreed that the symmetrical bidding information should be exchanged. The Monitor agreed to stay involved in the information sharing process. Further, the Sponsor submits that it is not seeking proprietary information, but rather wants to see the exact type of information that it has provided.

In all of these circumstances I therefore order that the parties/stakeholders engage in the fair, equitable and symmetrical sharing of information concerning bids. The Monitor will continue to engage and monitor the exchange of information to ensure no bidder, including the Sponsor, enjoys an advantage.

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Judges Endorsment Continued

that is unfair and far could chill  
the market.

(2) I now turn to the US Class  
Action submission that the SISP should  
not automatically default to the  
proposed auction. They are currently  
working with a financier to  
attempt to present a plan of  
arrangement.

Counsel for the US Class Action  
submit that the SISP should  
contain a provision that the matter  
return to Court, before an auction,  
to determine whether their plan  
should be put to a vote of  
unsecured creditors (or any other  
plan that surfaces).

I do not agree and agree with  
the submission of the Applicants  
wherein they submit that such

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**Judges Endorsment Continued**

an attendance is unnecessary and detrimental to the SISP process.

There is nothing preventing the US Class Actions from submitting their plan into the auction. No stakeholder disputes their right to do so.

In my view this is the preferred path and upon the conclusion of the auction<sup>2</sup> I will determine whether the successful bid ought to be approved.

At that time all relevant issues will be reviewed, including if necessary a proposed RVO.

In the usual way, the relevant issues concerning whether or not the successful bid ought to be approved, including why the successful bid is superior, or not, can be put forth.

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2. Assuming the SISP proceeds to auction:



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## Judges Endorsment Continued

Parties are free to put forth all relevant, unfettered arguments. As stated by Monitor's counsel, this Court is "not a rubber stamp" at the motion for approval.

This single track was imposed to the motion proposed by counsel for the US Class Actions, is preferable and provides greater certainty in the marketplace. I am concerned that a return to Court before an auction could chill the sales process, as potential bidders would be concerned that their efforts may never make it to auction resulting in wasted time and expense.

③ The third issue involves whether the <sup>in</sup> evaluation of the US Class Actions ought to be suspended.

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Judges Endorsment Continued

The US Class Actions want to proceed as per my earlier order, that the Contingent Litigation Claims (which included the US Class Actions, the Omarati Class Action, the Mass Tort Claims and the Pariveda claim<sup>3</sup>) ought to be ~~evaluated~~<sup>TM</sup> in advance of a meeting of creditors when the Meeting Order was sought. Subsequent to that Order being made the Sponsor withdrew from the proposed plan and all parties, including the Contingent Litigation Claims, agreed to suspend the ~~evaluation~~<sup>TM</sup> to determine the validity and value of the claims.

A letter was provided to me by the Monitor in this regard.

Unbeknownst to me, later in July, the US Class Actions advised

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3. Pariveda was not part of the defined team but I ordered it be valued.

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The Monitor and others that it, again, wished to carry out the valuation. The matter did not return to me and no valuations were conducted.

At the motion, the Omerati Class Action, the Mass Tort Claims and Parivada also requested that their claims be valued.

They all generally submit that in order to formulate and negotiate a plan they (the US Class Actions) took the lead here) need to know the creditor pool for the purpose of voting.

The US Class Actions proposed a process by way of letter dated May 4/27 which proposes a very aggressive, approximate two week process that has either the Honourable J. O'Connor or I

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conduct the valuations (although they use the word "estimation"). This would now presumably involve valuations of all of the abandoned claims.

The Applicants submit that such an exercise is wasteful, unnecessary and lacks utility. They further submit that the expedited schedule is unachievable, particularly <sup>the</sup> <sup>TM</sup> where the additional claims would also need to be valued.

I agree with the Applicants. Currently the only transaction before the Court is the Stalking Horse Transaction which would not result in any recovery to general unsecured creditors. Further, I agree with the Applicants that the volatile nature of the

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industry and the Sales Process are placing a strain on resources and personal (as referenced above concerning the KERP).

I further accept the submissions of the Monitor that a valuation can be considered, if and when, a transaction is likely to provide recovery for insured creditors.

Otherwise it is a costly distraction.

Insofar as the argument of counsel Parkes US Class Actions is concerned, that it is necessary to formulate and negotiate a plan, this may be of some assistance, but their presence is well known in this proceeding and this desire does not outweigh the above countervailing factors raised by the Applicants and supported by

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The Monitor.

Last, unlike the valuation ordered with respect to the abandoned plan, here we are dealing with a SISF which, in the ordinary course, should have some value determined before considering a valuation. I also note that the Omarali Class Action submitted that its claim has unique features that further warrant a valuation. Again, I do not accept that those features outweigh the concerns of the Applicants.

(4) The fourth issue concerns the break-up fee contained in the Shalving Horse Transaction, in the amount of US\$14.66 million in favour of the Sponsor.

Concededly for the U.S. Class Action submits that the break-up fee is

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anti-competitive and unfairly prejudices the unsecured creditors.

They add that the Sponsor has had its fees paid throughout these proceedings and the Sponsor is committed to purchasing the asset.

Additionally, they argue that the Applicants/Sponsor have adduced no evidence to support the quantum sought and the breakup fee results in other bidder having to raise additional funds to compete.<sup>4</sup>

Insofar as the law is concerned, counsel for the US Class Action point out that this Court has a gatekeeping function and ought not simply act as a "rubber stamp", or merely rely upon the business judgment rule and the seller's discretion.<sup>5</sup>

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4. See Mecachrome Canada Inc, Re 2009 QCCS 6355  
5. at para 64 for support of this submission  
Boutique Euphoria Inc, Re 2007 QCCS 7129 at para 65

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Last, they submit that each case must be considered in the context of its own unique circumstances and the mere fact that the proposed break-up fee is within the range of reasonableness as determined in other cases does not mean it is reasonable in the given case<sup>6</sup>.

The Applicants/Plaintiff argue that the stalking horse bid provides stability and a framework for competitive bidding. In this context break-up fees are almost always required in exchange for the stalking horse setting the floor, exposing its bid, providing other bidders access, and committing funding.

Further, they argue that the Stalking Horse is tying up a significant amount of capital (in the \$200 million

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JM

6. Quest University Canada (Re) 2020 BCSC 1845 at para 58; Leslie + Irene Dube Foundation Inc v P218 Enterprises Ltd 2014 BCSC 1855 at para 36



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## Judges Endorsment Continued

range) and this resulting loss of opportunity cost must be taken into account.

The Sponsor particularly point out that the break-up fee is not anti-competitive, but rather allows the competitive bidding to occur to the benefit of all stakeholders, including the over 1000 employees and approximately ~~1~~ 1,000,000 customers.

The Applicant/Sponsor further submit that the break-up fee is well within the accepted range (3.4%) and rely on the evidence of Mr. Carter (pages 60-63 of his affidavit) and their expert Mark Carge. Mr. Carge opines that the break-up fee is in-line with market norms, consistent with market practice and reasonable in the circumstances of

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this case.

Mr Carter was engaged by Just Energy to advise and assist it. In his May 12/22 affidavit he thoroughly sets out the basis of his analysis (see paras 32-38).

Further, the Applicants point to the fact that the previously approved Termination Fee, in connection with the abandoned Plan, was in the same range and was not opposed.

In support of the Applicants, the Monitor also emphasizes that break-up fee is in no way a gratuitous offering but is part of a complicated arm's length agreement that resulted in the Staking Horse Transaction. This transaction provides certainty to all stakeholders of a going concern transaction that can

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## Judges Endorsment Continued

close in a timely fashion. The Monitor  
too is of the view that the break-up  
fee will not chill the market and  
its review also has found that it  
is consistent with break-up fees  
in similar sales transactions carried out  
under the CCAA and in the U.S.

I agree that the break-up  
fee ought to be granted. It is  
a critical feature of the proposed  
transaction. The 3.4% is within  
the range of acceptability.

Although the actual fee, at  
first glance may seem high, the  
SISP involves a significant,  
complicated process involving a  
complex and large scale business  
model with secured claims of  
approximately \$1 billion.

The risks and stakes here are

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Judges Endorsment Continued

extremely high and the break-up fee is reasonable when one considers all the factors - including the price of stability.<sup>7</sup>

In the very unique and complex circumstances of this case I do not accept the US Class Action's submission that no break-up fee is warranted - this is not realistic.

Rather the proposed break-up fee recognizes, amongst other things, the effort expended by the Sponsor, the capital committed and the benefits of the Stalking Horse Transaction within the SISP as set out in the record filed by the Applicants. Specifically, it also allows the transaction to ~~be~~<sup>to</sup> proceed and attempt to attract other bidders.

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7. Green Growth Brands (Re) 2020 ONSC 356 at p 51-52.

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(5) The last issue involves the request of the U.S. Class Action to extend the timeline under the SISP by three weeks.

They primarily submit that there are no liquidity issues and the existing timelines are very tight. For example the NOI is due Aug 25/22.

The Applicants, prior to the motion, maintained that the timelines were appropriate based on its unchallenged evidence, which includes the volatility of the market and effect on employees.

They also submit that the process commenced on Aug 4/22, not as of the date of the motion.

The Applicants conceded liquidity. At the hearing the Applicants met off the record, with ~~their~~ key

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**Judges Endorsment Continued**

secured stakeholder and advised that they would agree to a one week extension

As I alluded to at the motion, I believe that a two week extension to the milestone is fair and reasonable. As a result of my previous order the proposed Sales Process is proceeding essentially as proposed by the Applicants / Sponsor including the break-up fee.

Further, as the Applicants and their supporters have stated the Sales Process is extremely complex and involves significant debt and funding.

By allowing an extra week (over and above the concession at the motion) I see no prejudice

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to the Appraiser. This matter has been evolving for many months and it must be remembered that it took the Appraiser some time to formulate the prior Plan.

The extra two weeks provides a clear, court ordered structure and path to a definitive auction date.

In my view, this provides a reasonably quick timetable, but allows some breathing room for other bidders, which is to be benefit of stakeholders.<sup>8</sup>

I coming to this conclusion I have not ignored the Appraiser's prior marketing efforts.

A two week extension is granted

Order shall go with respect to the foregoing reasons.

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<sup>8</sup> see PCAS Patient Care Automation Services, Inc. (Pc) 2012 ONSC 2340 at paras 17, 18 for support of this proposition.

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If problems arise with respect to the  
issuance of the Sales Process Approval  
Order I can be spoken to.  
meEnt



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**THIS IS EXHIBIT X REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Court File No. CV-21-00658423-00CL

**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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

**AFFIDAVIT OF MICHAEL CARTER**

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. I have been Just Energy Group Inc.'s ("**Just Energy**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of Just Energy and its subsidiaries in these CCAA proceedings (collectively, the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as defined below) to which the protections and authorizations of the Initial Order were extended (collectively with the

Applicants, the “**Just Energy Entities**”). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Just Energy Entities. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Applicants’ senior management team and their financial and Canadian and U.S. legal advisors.

2. I make this affidavit in support of a motion by the Applicants (the “**Vesting Order Motion**”) for:

- (a) an Order substantially in the form of the draft order attached at **Tab 4** of the Applicants’ Motion Record (the “**Reverse Vesting Order**”), *inter alia*:
  - (i) approving the definitive purchase agreement (as amended, and which may further be amended in accordance with the terms of the Reverse Vesting Order, the “**Transaction Agreement**”) dated as of August 4, 2022, between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT Energy I LLC (collectively, the “**Purchaser**”) and the transactions contemplated therein (the “**Transaction**”), with such minor amendments as Just Energy and the Purchaser may deem necessary, with the approval of FTI Consulting Canada Inc., as monitor (the “**Monitor**”) and subject to the terms of the SISP Support Agreement (defined below);
  - (ii) authorizing and approving the execution of the Transaction Agreement by Just Energy;
  - (iii) authorizing and directing the Just Energy Entities to perform their obligations under the Transaction Agreement, including as provided for in the Implementation Steps (as defined below), and to take such additional

steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction;

- (iv) ordering that, upon the delivery of the Monitor's certificate to the Purchaser certifying that, among other things, it has received written confirmation from the Purchaser and Just Energy that all conditions to closing of the Transaction have been satisfied or waived by the parties to the Transaction Agreement, the following, among other things, shall be deemed to occur in the sequence set out in the Implementation Steps and/or as set forth in the Reverse Vesting Order, as applicable:<sup>1</sup>
- (A) all of the right, title and interest of the Acquired Entities in their respective Excluded Assets shall be transferred to, assumed by and vested absolutely and exclusively in two Residual Cos. (one for Excluded Assets with respect to Acquired Entities formed or incorporated in the United States and one for Excluded Assets with respect to Acquired Entities formed or incorporated outside of the United States, together the "**Residual Cos.**" and each a "**Residual Co.**") and, in each case, all Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer;
- (B) all Excluded Contracts and Excluded Liabilities of the Acquired Entities shall be transferred to, assumed by and vested absolutely in the Residual Cos. and the Acquired Entities shall be forever

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<sup>1</sup> All capitalized terms used in this sub-paragraph 2(a)(iv) are as defined below in this Affidavit.

- discharged and released from such Excluded Contracts and Excluded Liabilities and all related claims and encumbrances;
- (C) all right, title and interest in and to the Purchased Interests issued by Just Energy (U.S.) Corp. (“**JEUS**”) will vest absolutely in the Purchaser and all Assumed Liabilities will be assumed as provided under the Transaction Agreement;
  - (D) all equity interests of Just Energy and JEUS existing prior to the commencement of the Implementation Steps will be deemed terminated and cancelled or redeemed as provided in the Implementation Steps;
  - (E) the Acquired Entities will cease to be Applicants in the CCAA proceedings and will be released from the purview of the Second Amended and Restated Initial Order, granted May 26, 2021 (the “**Second ARIO**”) and all other Orders granted in the CCAA proceedings (excluding the Reverse Vesting Order); and
  - (F) the Residual Cos. will be added as Applicants to these CCAA proceedings;
- (v) from and after the Effective Time, barring and enjoining all Persons from commencing or continuing any step or proceeding against the Purchaser or the Acquired Entities relating to the Excluded Assets, the Excluded Contracts, the Excluded Liabilities, or any other claim, obligation or matter waived, released or discharged pursuant to the Reverse Vesting Order;

- (vi) directing the satisfaction of the Priority Payments in accordance with the Transaction Agreement;
  - (vii) granting certain releases and exculpations with respect to the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities (or any of them), the Monitor and its legal counsel, the Purchaser and its current and former directors, officers, employees, legal counsel and advisors, and the Credit Facility Agent and the Credit Facility Lenders and their respective current and former directors, officers, employees, legal counsel and advisors from the Released Claims; and
  - (viii) ordering that, at the Effective Time, the title of the CCAA proceedings will be changed to delete the names of the Applicants and add the names of the two Residual Cos. (as defined below);
- (b) an Order substantially in the form of the draft order attached at **Tab 5** of the Applicants' Motion Record:
- (i) upon the closing of the Transaction, expanding the powers of the Monitor in these CCAA proceedings;
  - (ii) extending the Stay Period (as defined in the Second ARIO) to and including January 31, 2023; and
  - (iii) approving the activities and conduct of the Monitor, the Twelfth Report of the Monitor, to be filed (the "**Twelfth Report**"), and the fees and disbursements of the Monitor and its Canadian and U.S. legal counsel as described in the Twelfth Report; and



- (iv) directing that all copies of the Notices of Intention received by the Just Energy Entities in the SISP and which are attached as Confidential Exhibit “F” to the Affidavit of Mark Caiger, sworn October 17, 2022 (the “**Caiger Affidavit**”) be treated as confidential and sealed, and not form part of the public record, pending further order of this Court.

3. Capitalized terms used in this affidavit but not defined have the meaning given to them in the proposed Reverse Vesting Order and/or the Transaction Agreement, as applicable. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

**A. HISTORY OF THE CCAA PROCEEDINGS**

4. On March 9, 2021 (the “**Filing Date**”), the Applicants obtained protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the CCAA Court. The Applicants’ filing for protection under the CCAA was precipitated by the acute and unforeseen liquidity challenge caused by the unprecedented winter storm in February 2021 in Texas and the Texas regulators’ response to same.

5. On the Filing Date, the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) approved the CCAA Interim Debtor-in-Possession Financing Term Sheet (the “**DIP Term Sheet**”) pursuant to which the DIP Lenders<sup>2</sup> provided access to emergency financing of US\$125 million (the “**DIP Facility**”) to the Just Energy Entities. As discussed further below, on September 26, 2022, the Just Energy Entities partially repaid amounts outstanding under the DIP Facility by remitting US\$70 million to the DIP Lenders from the Just Energy Entities’ cash on hand.

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<sup>2</sup> The DIP Lenders are: LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC and OC II LVS XIV LP (the “**DIP Lenders**”).

6. The Initial Order has twice been amended and restated. The CCAA Court granted an Amended and Restated Initial Order (the “**ARIO**”) on March 19, 2021, and the Second ARIO on May 26, 2021.

7. On April 2, 2021, the United States Bankruptcy Court for the Southern District of Texas (“**U.S. Bankruptcy Court**”) granted a Final Recognition Order under Chapter 15 of the U.S. Bankruptcy Code which, among other things, granted the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the CCAA Court, full force and effect on a final basis with respect to the Just Energy Entities’ property located within the United States.

8. On September 15, 2021, the CCAA Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) establishing a process to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their respective Directors and Officers. The Claims Procedure Order established a Claims Bar Date of November 1, 2021. Following the Claims Bar Date until the suspension of the claims process pursuant to the Order of the CCAA Court granted August 18, 2022, the Just Energy Entities worked in consultation with the Monitor to review, record, dispute and, where appropriate, finally determine the amount and characterization of Claims against the Just Energy Entities and their respective Directors and Officers.

9. On February 9, 2022, the CCAA Court heard a Motion for Advice and Directions filed by U.S. counsel to the proposed representative plaintiffs in *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB (PC-11175-1) and in *Fira Donin and Inna Golovan v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB (PC-11177-1) (together, the “**Putative Class Actions**”). At the conclusion of the February 9<sup>th</sup> hearing, the CCAA Court dismissed the Motion for Advice and Directions (the “**Dismissal Order**”).

10. While U.S. counsel to the proposed representative plaintiffs in the Putative Class Actions filed a Notice of Motion for Leave to Appeal the Dismissal Order, such motion was dismissed in full by the Ontario Court of Appeal on June 28, 2022, with costs payable to Just Energy and the DIP Lenders.

11. On May 12, 2022, the Just Energy Entities filed and served a Notice of Motion seeking orders, *inter alia*, (i) accepting the filing of a Plan of Compromise and Arrangement, dated May 26, 2022 (the “**Plan**”), (ii) approving a Plan Support Agreement, dated May 12, 2022 (the “**Plan Support Agreement**”) and a Backstop Commitment Letter, dated May 12, 2022 (the “**Backstop Commitment Letter**”), and (iii) authorizing the Just Energy Entities to call, hold and conduct virtual meetings of the proposed creditor classes to consider and vote on resolutions to approve the Plan (the “**Meetings Order Motion**”). The Meetings Order Motion was the culmination of ongoing efforts by the Just Energy Entities over an approximately one-year period to reach consensus with certain of their significant secured and unsecured creditors regarding the terms and structure of a restructuring plan to facilitate the Just Energy Entities’ emergence from the current CCAA and Chapter 15 proceedings as a going concern.

12. On June 7, 2022, the Meetings Order Motion was heard by the CCAA Court. The Meetings Order Motion was opposed by the following unsecured contingent creditors:

- (a) U.S. counsel for the plaintiffs in the Putative Class Actions;
- (b) the representative plaintiff in the certified class action proceeding filed in *Haidar Omarali v. Just Energy Group Inc. et al*, Ontario Superior Court of Justice Court File No. CV-15-527493-00CP (the “**Omarali Class Action**”);
- (c) the approximately 250 alleged claimants pursuing claims for alleged loss of business, personal injury and/or property damage arising out of the winter storm in Texas in February 2021 (the “**Mass Tort Claimants**”) and collectively with the

plaintiffs in the Putative Class Actions and the Omarali Class Action, the “**Contingent Litigation Claimants**”); and

(d) Pariveda Solutions Inc. (“**Pariveda**”).

13. On June 10, 2022, the CCAA Court released a brief endorsement addressing the majority of the issues raised both in the Meetings Order Motion and in the various objections filed by the Contingent Litigation Claimants in response to the Meetings Order Motion, with reasons to follow (the “**First Endorsement**”). In the First Endorsement, the CCAA Court:

- (a) granted the vast majority of the relief sought by the Applicants in the Meetings Order Motion, including approval of the Plan Support Agreement, the Backstop Commitment Letter and the Termination Fee (as defined in the Meetings Order Motion), the establishment of two classes of creditors (the Unsecured Creditor Class and the Secured Creditor Class) for purposes of considering and voting on the Plan and the provision of one vote to each of the Putative Class Actions and the Omarali Class Action and four votes to the Mass Tort Claimants;
- (b) denied the Applicants’ request that each of the claims held by the Contingent Litigation Claimants be valued at \$1 for purposes of voting on the Plan, and directed that summary proceedings be undertaken by the Applicants on an expedited basis as soon as reasonably possible to determine the validity and value of the claims held by the Contingent Litigation Claimants and Pariveda;
- (c) directed the Monitor to liaise with the relevant parties to determine a process to conduct the claim determinations and valuations (which process the CCAA Court later clarified in a case conference was to be undertaken prior to the Creditors’ Meetings); and

- (d) requested supplementary submissions from the Applicants, the Purchaser (at that time, acting in its capacity as the “Plan Sponsor”) and the Contingent Litigation Claimants regarding the appropriateness of the terms of the proposed differential consideration being offered to unsecured creditors in the Plan.

14. After the release of the First Endorsement, the Plan Sponsor/DIP Lenders advised the Court and stakeholders that the Plan Sponsor/DIP Lenders intended to withdraw their support for the Plan, indicating that in their view the Plan was no longer feasible.

15. On June 23, 2022, the CCAA Court released its second endorsement addressing the issue of the different consideration being offered to unsecured creditors in the Plan (the “**Second Endorsement**”). The CCAA Court determined in the Second Endorsement that given the complicated nature of the proposed differential consideration and the conflicting evidence on the issue, it was preferable to wait until the sanction hearing to determine the fairness of this aspect of the Plan. The CCAA Court accordingly rejected the Contingent Litigation Claimants’ submission that it was clear that the Plan cannot be sanctioned and is doomed to fail.

16. On July 4, 2022:

- (a) the representative plaintiff in the Omarali Class Action filed a Notice of Motion for Leave to Appeal the First Endorsement and, in particular, the CCAA Court’s determination that the class is entitled to only one vote, rather than one vote for each member of the class, in respect of the Plan; and
- (b) U.S. counsel in the Putative Class Actions filed a Notice of Motion for Leave to Appeal the First Endorsement and, in particular, the CCAA Court’s allocation of one vote to each of the Putative Class Actions and the classification of the Term Loan Lenders in the same class as the claimants in the Putative Class Actions and

other general unsecured creditors. This leave application was not perfected and was subsequently dismissed for delay by the Court of Appeal.

17. Following the release of the First Endorsement, and in an effort to preserve the viability of the Plan and a going concern solution, the Just Energy Entities undertook both bilateral and multilateral discussions with certain of the Contingent Litigation Claimants, Pariveda and the Plan Sponsor to canvass whether a resolution could be achieved in a manner that would permit the Plan to move forward. No resolution was reached.

18. Following the loss of stakeholder support for the Plan, each of the Just Energy Entities, Plan Sponsor, Supporting Secured CF Lenders and Shell agreed to terminate the Plan Support Agreement and support a going concern solution for the Just Energy Entities implemented through a Sales and Investment Solicitation Process (“**SISP**”) in accordance with a new Support Agreement, dated August 4, 2022 among the Just Energy Entities, the Purchaser, Shell, and the Supporting Secured CF Lenders (the “**SISP Support Agreement**”) and supported by the Transaction (at that time referred to as the “Stalking Horse Transaction”).

19. On August 4, 2022, the Just Energy Entities served a Notice of Motion (the “**SISP Motion**”) seeking, *inter alia*, approval of the SISP and SISP Support Agreement, authority to enter into the Transaction Agreement, approval of the US\$14.66 million break-up fee (the “**Break-Up Fee**”) and the Court-ordered charge securing same, an extension of the Stay Period, advice and direction with respect to the proposed suspension of the claims process and approval of a third key employee retention plan (the “**Third KERP**”). The SISP Motion was heard on August 17, 2022 and was opposed by counsel for the plaintiffs in the Putative Class Actions, the representative plaintiff in the Omarali Class Action, the Mass Tort Claimants and Pariveda.

20. On August 18, 2022, the CCAA Court released its endorsement with respect to the SISP Motion. In its endorsement, the CCAA Court granted all of the relief sought by the Just Energy

Entities in the SISP Motion, including approval of the SISP, the SISP Support Agreement, the Break-Up Fee, the Third KERP, the suspension of the claims process and the requested extension to the Stay Period. The CCAA Court dismissed the objections of the Contingent Litigation Claimants and Pariveda in full, however, extended the milestone dates under the proposed SISP by two weeks on the basis that such extension was fair and reasonable.

21. In addition, the CCAA Court directed that parties entitled to receive information on a confidential basis under the SISP Approval Order (as defined below) were required to “engage in the fair, equitable and symmetrical sharing of information concerning bids” and directed the Monitor to “continue to engage and monitor the exchange of information to ensure no bidder, including the Sponsor, enjoys an advantage that is unfair and/or could chill the market.” As discussed further below, the Monitor circulated a letter to the Service List on or about August 25, 2022 confirming the CCAA Court’s direction and setting out the process to be followed with respect to the sharing of confidential information under the SISP Approval Order. A copy of the CCAA Court’s endorsement (the “**SISP Endorsement**”) and associated Order (the “**SISP Approval Order**”) is attached hereto as **Exhibit “A”**.

22. On September 19, 2022, the U.S. Bankruptcy Court granted an Order recognizing and enforcing the SISP Approval Order and the Claims Procedure Order in the United States. A copy of the U.S. Bankruptcy Court’s *Order (I) Recognizing and Enforcing (A) The CCAA SISP Approval Order and (B) the CCAA Claims Procedures Order and (II) Granting Related Relief* is attached hereto as **Exhibit “B”**.

## **B. CONDUCT AND OUTCOME OF THE SISP**

23. As discussed further in my Affidavit sworn August 4, 2022 (the “**August Affidavit**”), the SISP Motion was filed by the Just Energy Entities after nearly 1.5 years of negotiations with their key stakeholders and a failed attempt to obtain a Meetings Order in the form sought. Following

the loss of stakeholder support for the Plan, the SISP was the only viable going concern exit strategy available to the Just Energy Entities to facilitate their exit from these CCAA and Chapter 15 proceedings. The SISP was backstopped by the Transaction (at that time referred to as the “Stalking Horse Transaction”) and was supported by the Just Energy Entities’ key stakeholders, including the Purchaser (in its capacity as Sponsor and DIP Lender), Shell, and the Senior Secured CF Lenders.

24. The SISP, supported by the Transaction, was developed by the Just Energy Entities in consultation with BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the “**Financial Advisor**”), the Monitor, the Purchaser (in its capacity as Sponsor), the Supporting Secured CF Lenders and Shell to provide a fair and reasonable process to canvass the market to confirm whether the Transaction delivered the best possible result for all stakeholders. In granting the SISP Approval Order, the CCAA Court determined that “the SISP Support Agreement and the SISP, which includes the Stalking Horse Transaction, ought to be approved” and that the SISP (including the two-week extension to the milestone dates) provides “a clear, court ordered structure and path to a definitive auction date.”

25. Since the filing of the SISP Motion on August 4, 2022, the Just Energy Entities have conducted the SISP with the assistance of the Financial Advisor, under the supervision of the Monitor, and in accordance with the SISP Approval Order. In particular, pursuant to the SISP Approval Order, the SISP was undertaken in two stages - written notices of intention to bid (“**NOI**”) were required to be submitted by interested parties on or before September 8, 2022, with all Qualified Bids (as defined in the SISP Approval Order) required to be submitted on or before October 13, 2022.

26. With respect to the first stage of the SISP (the solicitation and submission of NOIs):



- (a) the Financial Advisor and the Just Energy Entities prepared a list of potential bidders who were identified as potentially having an interest in a transaction involving the business or assets of the Just Energy Entities and established a data room containing diligence information for purposes of the SISP;
- (b) on August 5, 2022, Just Energy issued a press release announcing that the Just Energy Entities had entered into the Transaction Agreement and SISP Support Agreement (both subject to CCAA Court approval) and had filed the SISP Motion seeking approval of, and authorization to undertake, the SISP (the “**SISP Press Release**”). A copy of the SISP Press Release is attached hereto as **Exhibit “C”**;
- (c) on August 5, 2022, EnergyChoiceMatters.com, a well-known industry website providing coverage of issues affecting the competitive retail electric and natural gas markets in the United States, published an article titled “Just Energy Announces Execution of Stalking Horse Transaction Agreement” on the front page of the website announcing the filing of the SISP Motion. A copy of the publication is attached hereto as **Exhibit “D”**;
- (d) on or about August 5, 2022, the Financial Advisor contacted all identified potential bidders in writing to invite them to participate in the SISP and provided them with (i) the SISP Press Release, (ii) a short summary information package providing public information about the Just Energy Entities (the “**Teaser Letter**”), (iii) the proposed form of SISP procedures and a link to the SISP Motion, and (iv) a form of non-disclosure agreement (“**NDA**”). The Financial Advisor also provided such materials to certain other third parties who contacted the Financial Advisor at various times throughout the first stage of the SISP expressing an interest in potentially participating in the process. A copy of the Teaser Letter is attached hereto as **Exhibit “E”**;

- (e) on August 10, 2022, the Just Energy Entities arranged for the notice attached hereto as **Exhibit “F”** to be published in the Wall Street Journal (on August 12, 2022) and in the Globe & Mail (National Edition) (on August 13, 2022) advising of the filing of the SISP Motion and providing interested parties with information regarding the SISP, the Transaction, and the process for participating in same;
- (f) between August 5, 2022 and early September, the Just Energy Entities negotiated numerous NDAs with potential bidders, facilitated access to the data room for parties that executed an NDA, updated the data room as additional due diligence information was requested by potential bidders, responded to numerous due diligence requests, and offered management presentation meetings to potential bidders;
- (g) following execution of an NDA, the Financial Advisor provided each potential bidder with a SISP process letter (the “**SISP Process Letter**”) to invite them to submit an NOI and ultimately a Qualified Bid in respect of a transaction involving the business or assets of the Just Energy Entities. A SISP Process Letter was also provided to a potential bidder who did not execute an NDA but who indicated its intention to submit an NOI. The SISP Process Letter provided potential bidders with information regarding the data room, due diligence issues, and the requirements for each NOI. A copy of the SISP Process Letter is attached hereto as **Exhibit “G”**; and
- (h) on September 8, 2022, the Just Energy Entities received various NOIs from potential bidders within the SISP indicating interest in completing a transaction for some or all of the Just Energy Entities’ business and/or assets. The Financial Advisor accordingly advised all participants that had submitted an NOI that Just Energy had received multiple NOIs and was moving forward with the process.

27. Specific details regarding the number of third parties contacted, the number of NDAs executed, the data room access granted, the number of NOIs received, and other SISP process-specific matters are addressed in the Caiger Affidavit.

28. As discussed further in my August Affidavit, in July 2022, counsel in the Putative Class Actions advised the Just Energy Entities that absent a consensual arrangement regarding the Plan, their clients anticipated filing their own restructuring plan for consideration by the Just Energy Entities' creditors. In order to best facilitate their opportunity to submit an alternative plan, the Just Energy Entities provided counsel in the Putative Class Actions and their financial advisor with advanced access to the data room created for the SISP, an advance copy of the SISP, and the list of potentially interested parties to be contacted by the Financial Advisor. Counsel in the Putative Class Actions was invited to identify any other parties who they suggested the Financial Advisor should invite to participate in the SISP. They were also invited to submit an alternative restructuring transaction (which could take the form of a plan of arrangement).

29. Notwithstanding such efforts by the Just Energy Entities, counsel in the Putative Class Actions failed to submit an NOI on or before the NOI Deadline (September 8, 2022). The Financial Advisor, the Monitor and counsel for the Just Energy Entities accordingly followed up regarding the SISP process. I am advised by counsel for the Just Energy Entities that counsel in the Putative Class Actions was invited to advise on what they saw as their next steps, including the possibility of obtaining further information concerning the SISP process since they had declared themselves to not be a bidder, so that the Just Energy Entities could consider their position. However, no response was ever received.

30. With respect to the second stage of the SISP (the submission of Qualified Bids):

- (a) the Just Energy Entities, with assistance from their advisors, prepared a form of transaction agreement, including the disclosure letter thereto, and a form of

approval and reverse vesting order, along with blacklines to the corresponding Transaction documents, for completion by bidders as part of their submission of a Qualified Bid;

- (b) on September 22, 2022, the Financial Advisor provided a Qualified Bid process letter (the “**Qualified Bid Process Letter**”) to one party, who had signed an NDA, submitted an NOI and remained engaged in the SISP at that time, inviting it to submit a binding Qualified Bid in the SISP and providing details regarding the substantive and procedural requirements for submission of a Qualified Bid. A copy of the Qualified Bid Process Letter is attached hereto as **Exhibit “H”** with the identity of the party redacted; and
- (c) between September 8 and October 13, 2022, the Just Energy Entities continued to update the data room and respond to numerous due diligence requests, including attending a management meeting with the remaining third-party participant to assist in its due diligence efforts.

31. Again, specific details regarding the process leading up to the Qualified Bid Deadline (October 13, 2022) are provided in the Caiger Affidavit.

32. Notwithstanding the best efforts of the Just Energy Entities and the Financial Advisor, no Qualified Bids other than the Transaction were received on or before the Qualified Bid Deadline. The Transaction was accordingly declared to be the Successful Bid and no Auction was undertaken.

33. The SISP Approval Order authorized Just Energy to provide certain information in respect of the SISP to the DIP Lenders, CBHT and the Supporting Secured CF Lenders on a confidential basis, including copies of any NOIs or bids received. The SISP Approval Order also authorized Just Energy to provide general updates and information in respect of the SISP to counsel to any

General Unsecured Creditor on a confidential basis if such counsel confirmed in writing that the applicable General Unsecured Creditor would not submit an NOI or bid in the SISP and counsel executed a confidentiality agreement with Just Energy.

34. As noted above, in the SISP Endorsement, the CCAA Court directed that parties entitled to receive information on a confidential basis under the SISP Approval Order were required to “engage in the fair, equitable and symmetrical sharing of information concerning bids” and ordered the Monitor to “continue to engage and monitor the exchange of information to ensure no bidder, including the Sponsor, enjoys an advantage that is unfair and/or could chill the market.”

35. On August 25, 2022, the Monitor confirmed by letter to the Just Energy Entities, copied to the Service List (among others), that in order to discharge its duties pursuant to the SISP Endorsement, and notwithstanding anything to the contrary, including the terms of the SISP or any support agreement entered into by the Just Energy Entities in relation to the SISP, the Monitor:

- (a) confirmed that copies of any NOIs and bids received during the SISP may be provided to the Sponsor, the DIP Lenders and the Supporting Secured CF Lenders pursuant to and in accordance with the SISP and the Support Agreement; provided, however, that no proprietary or competitive information (collectively, “**Restricted Information**”) contained in (or provided with) any bid, as determined by the Monitor, shall be so provided;
- (b) required that all bids be vetted for Restricted Information by the Monitor prior to delivery in accordance with the SISP and the SISP Support Agreement;
- (c) required that no additional information relating to any bids be provided to the Sponsor by the Just Energy Entities, their counsel or advisors (including the Financial Advisor) except with the prior written consent of the Monitor; and

- (d) required that a representative of the Monitor be invited to attend all meetings or calls and be copied on all electronic communications between any Just Energy Entity representative and any bidder or potential bidder, including the Sponsor, that in any way related to the SISP.

A copy of the Monitor's August 25, 2022 letter is attached hereto as **Exhibit "I"**.

36. Throughout the course of the SISP, the Just Energy Entities complied with the requirements set out by the Monitor in its August 25<sup>th</sup> correspondence, including providing copies of all NOIs to the Monitor for vetting, seeking the written consent of the Monitor prior to disclosing additional information, copying the Monitor on all correspondence relating to the SISP, and inviting a representative of the Monitor to all meetings and calls with bidders/potential bidders (including the Purchaser) relating to the SISP. The Just Energy Entities provided copies of all NOIs, and other permitted information to the DIP Lenders, CBHT and the Supporting Secured CF Lenders in accordance with the SISP Approval Order.

### **C. THE TRANSACTION**

37. The Transaction is the culmination of the Just Energy Entities' efforts to restructure over the past 19 months since the Initial Order was granted in March 2021 and, following the loss of stakeholder support for the Plan after release of the First Endorsement in June 2022, their efforts to identify a viable going concern strategy to exit these lengthy and costly CCAA and Chapter 15 proceedings in a manner which:

- (a) preserves the going concern value of the businesses for the benefit of stakeholders;
- (b) maintains the Just Energy Entities' relations with Commodity Suppliers to ensure uninterrupted supply of energy to the Just Energy Entities' almost 1 million customers;

- (c) preserves the ongoing employment of most of the Just Energy Entities' more than 1000 employees;
- (d) maintains the critical regulatory and licensing relationships between the Just Energy Entities and its market regulators across Canada and the United States; and
- (e) preserves the Just Energy Entities' relationships with the hundreds of other vendors with whom they transact for goods and services, and other business-critical stakeholders.

38. The terms of the Transaction are discussed at length in my August Affidavit which is attached hereto (without exhibits) as **Exhibit "J"**.

39. Following the granting of the SISP Approval Order issued on August 23, 2022, the Just Energy Entities and the Sponsor agreed to amend the Transaction Agreement and the SISP Support Agreement to: (a) extend all milestone dates included therein to align with the extended dates in the SISP; and (b) revise the definition of "Post-Filing Claim" to clarify that it does not include the subject of any Claim filed in the claims process established pursuant to the Claims Procedure Order unless expressly assumed pursuant to the applicable terms of the Transaction Agreement. Such amendments to the Transaction Agreement were made with the consent of all parties to the SISP Support Agreement and with the approval of the Monitor. The amended Transaction Agreement and a blackline to the version attached to my August Affidavit were appended as an exhibit to the Affidavit of Emily Paplawski, sworn September 15, 2022 (the "**Paplawski Affidavit**") and served on the Service List that same day.

40. The copies of the Transaction Agreement appended to my August Affidavit and the Paplawski Affidavit attach a blank Schedule 2.2(f) to the Disclosure Letter. While the Just Energy Entities and the Purchaser have now completed Schedule 2.2(f) to include all potential "Excluded Entities" (a copy of which will be provided with the updated Transaction Agreement, discussed

below), their review remains ongoing and Schedule 2.2(f) may be narrowed to exclude certain equity interests currently listed thereon. As the current Transaction Agreement requires that Schedule 2.2(f) be finalized not less than 7 days prior to the hearing of the Vesting Order Motion, the Just Energy Entities and the Purchaser have proposed to amend the Transaction Agreement, with the consent of the other parties to the SISP Support Agreement and the approval of the Monitor, to permit Schedule 2.2(f) to be modified (with the prior written consent of the Monitor) up to the Closing Date. The amended Transaction Agreement is expected to provide that the Just Energy Entities will file a copy of the final Schedule 2.2(f) as a schedule to the Monitor's Certificate.

41. In addition to the proposed amendment to the timelines relating to Schedule 2.2(f), Just Energy and the Purchaser have also proposed to amend the Transaction Agreement to:

- (a) permit the list of Excluded Contracts appended as Schedule 2.2(c) to the Disclosure Letter to be modified (subject to the prior written consent of the Monitor) up to the Closing Date and requiring that the final Schedule 2.2(c) be filed as a schedule to the Monitor's Certificate;
- (b) permit the Implementation Steps to be modified by Just Energy, the Credit Facility Lenders and the Purchaser, with the prior written consent of the Monitor, up to the Closing Date and requiring that the final Implementation Steps be filed as a schedule to the Monitor's Certificate;
- (c) clarify the scope of "Excluded Assets" with respect to the tax records and returns and the written information or records relating solely to the Excluded Assets or Excluded Liabilities, including that the Just Energy Entities that are not Excluded Entities will retain such items and provide copies thereof to Residual Co. or the



applicable Excluded Entity as soon as reasonably practicable after Residual Co.'s or the Excluded Entity's request for same;

- (d) clarify the scope of indemnification obligations included as "Assumed Liabilities"; and
- (e) extend the outside dates for: (i) the granting of the Reverse Vesting Order to November 2, 2022; (ii) the granting of an order by the U.S. Bankruptcy Court recognizing the Reverse Vesting Order (the "**Vesting Recognition Order**") to December 1, 2022; and (iii) the Outside Date for the Closing of the Transaction to December 16, 2022.

A copy of the further amended Transaction Agreement agreed to by Just Energy and the Purchaser, with the consent of the other parties to the SISP Support Agreement and the approval of the Monitor, will be finalized and circulated to the Service List in these CCAA proceedings prior to the hearing of the Vesting Order Motion.

**(a) The Transaction**

42. As discussed further in my August Affidavit, the key commercial terms of the Transaction are as follows:

- (a) the purchase price will be satisfied by the Purchaser by (i) payment of US\$184.9 million in cash, plus up to an additional C\$10 million (the "**Additional Cushion Funds**") in the event and to the extent additional funds are required to pay all amounts to be paid by the Just Energy Entities pursuant to the Transaction Agreement and the Reverse Vesting Order, (ii) a credit bid of the BP Commodity/ISO Services Claim (US\$252.7 million, including accrued interest to

November 30, 2022)<sup>3</sup>, in return for the issuance of the newly issued preferred shares of JEUS,<sup>4</sup> and (iii) the retention of all Assumed Liabilities (collectively, the “**Purchase Price**”);

- (b) on or prior to the Closing Date, the Just Energy Entities will effect certain settlements of intercompany obligations, transfers of partnership interests, and other specific transaction and pre-closing and closing date reorganization steps, (collectively, the “**Implementation Steps**”) in order to permit the Transaction to proceed in a tax-efficient manner. A copy of the Implementation Steps detailing the pre-closing and closing date steps for implementation of the Transaction will be provided to the Service List prior to the hearing of the Vesting Order Motion. Any modifications to the Implementation Steps impacting any of the steps noted herein will be identified at the time of service. A discussion of certain pre-closing steps that are expected to be undertaken (in the event the Reverse Vesting Order is granted and pursuant to the Implementation Steps) by the Just Energy Entities in order to facilitate the closing of the Transaction is included below;
- (c) on the Closing Date, pursuant to the terms of the Reverse Vesting Order and the Transaction Agreement, and in accordance with the Implementation Steps and the Articles of Reorganization, as applicable:

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<sup>3</sup> The BP Commodity/ISO Services Claim is comprised of all Pre-Filing Claims of BP Canada Energy Group ULC and BP Energy Company in the aggregate principal amounts of US\$229,461,558.59 and C\$170,652.60, plus all accrued and unpaid interest thereon through to and including the Closing Date. For purposes of the calculation above, an exchange rate of US\$1.00/C\$1.30 was used and a November 30, 2022 Closing Date was assumed. Accrued interest to November 30, 2022 was calculated using the default interest rate of prime plus 2%.

<sup>4</sup> The new preferred equity of JEUS will have a redemption amount approximately equal to the amount of the BP Commodity/ISO Services Claim as of the Closing Date (US\$252.7 million as of November 30, 2022). Holders of the new preferred equity will have the right to force a sale six years after issuance. The new preferred equity will have a 12.50% accreting yield with dividends as and when declared by the board of directors for the first four (4) years, increasing 1% annually thereafter, and provide for a 5% exit fee. The terms of the new preferred are detailed as Exhibit A to the Transaction Agreement.

- (i) the Purchaser will acquire all of the newly issued common and preferred shares of JEUS free and clear of all encumbrances, other than Permitted Encumbrances<sup>5</sup> (collectively, the “**New JEUS Shares**”);
- (ii) all equity interests of JEUS outstanding prior to the issuance of the New JEUS Shares will be cancelled and the New JEUS Shares will represent 100% of the outstanding equity interests of JEUS following their issuance;
- (iii) JEUS will subscribe for and Just Energy will issue to JEUS newly issued common shares of Just Energy, following which:
  - (A) Just Energy will file articles of reorganization which will amend the terms of the common shares of Just Energy to provide that all common shares of Just Energy outstanding prior to the issuance of common shares to JEUS will be redeemed for nil consideration;
  - (B) in accordance with the Reverse Vesting Order, all equity interests of Just Energy other than common shares held by JEUS will be cancelled or redeemed; and
  - (C) thereafter, JEUS will hold directly or indirectly all of the outstanding equity interests in Just Energy and the other Just Energy Entities (other than Excluded Entities);
- (iv) Just Energy will be delisted from the NEX and as a condition for the benefit of the Purchaser, Just Energy will cease to be a reporting issuer in Canada

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<sup>5</sup> As defined in Schedule 1.1(b) to the Disclosure Letter appended to the Transaction Agreement.

and none of the Just Energy Entities will be a reporting issuer (or equivalent thereof) under any Canadian or U.S. securities laws;

- (v) the Just Energy Entities will retain all of their assets and liabilities as of the Closing Date other than the Excluded Assets (as defined below) and the Excluded Liabilities (as defined below);
- (vi) all Excluded Assets (other than the Priority Payment Amount (as defined below) which must be paid in accordance with the Transaction Agreement and, for greater certainty, will not be transferred to Residual Co.) and Excluded Liabilities will be assigned to, and vested in, the Residual Cos., following which each Residual Co. will hold such Excluded Assets and Excluded Liabilities of the Just Energy Entities and will become Applicants in the CCAA proceedings;
- (vii) the Excluded Assets which are to be assigned to, and vested in, the Residual Cos. are narrow, and include, among other things: (A) the tax records and returns, and books and records pertaining solely thereto and other documents, in each case that solely relate to any of the Excluded Assets or Excluded Liabilities; (B) the Excluded Contracts; (C) all written information or records that are solely related to any Excluded Asset or Excluded Liability; (D) the Excluded Entities; (E) any rights of the Residual Cos. under the Transaction documents; and (F) the Administrative Expense Amount (as defined below) which will be paid in accordance with the terms of the Transaction Agreement;
- (viii) the Excluded Liabilities which are to be assigned to, and vested in, the Residual Cos. are comprised of all debts, obligations and liabilities of the

Just Energy Entities or any predecessors of the Just Energy Entities which do not fall within the definition of “Assumed Liabilities” under the Transaction Agreement. Such “Excluded Liabilities” include, among other things, pre-filing, unsecured litigation claims (including the Contingent Litigation Claims), intercompany obligations which do not continue pursuant to the Implementation Steps, and all claims in section 5.1(g)(iv) of the Implementation Steps;

- (ix) one of the Just Energy Entities will wind up under the Canada *Business Corporations Act*, the intercompany claims listed at Appendix E to the Implementation Steps will be cancelled for no consideration, the intercompany claims listed at Appendix F will either be assumed by a Residual Co. or cancelled for no consideration, and the shares of Filter Group USA Inc. shall be transferred by Filter Group Inc. to JEUS and certain intercompany obligations owed by Filter Group Inc. will be repaid;
- (x) the Just Energy Entities will cease to be Applicants in the CCAA proceedings and shall be released from the purview of the Second ARIO and all Orders of the CCAA Court granted in the CCAA proceedings (other than the Reverse Vesting Order); and
- (xi) the Just Energy Entities will continue to be liable for the Assumed Liabilities. Such Assumed Liabilities are comprised of:
  - (A) all Post-Filing Claims;<sup>6</sup>

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<sup>6</sup> Any or all indebtedness, liability, or obligation of the Just Energy Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the Just Energy Entities during such period or under or in accordance with any Continuing Contract; provided that, for certainty, such amounts are not (i) a Restructuring

- (B) liabilities of each Just Energy Entity arising from and after the Closing Date;
- (C) all Claims of any Credit Facility Lender relating to: (i) any letter of credit issued but undrawn under the Credit Facility Documents immediately prior to Closing; and (ii) the Credit Facility Remaining Debt (as defined below), if any;
- (D) all Cash Management Obligations (as defined in the Second ARIO);
- (E) Energy Regulator Claims relating to the Just Energy Entities;
- (F) tax liabilities of the Just Energy Entities for any tax period or the portion thereof beginning on or after the Filing Date (subject to the various exclusions noted in the Transaction Agreement);
- (G) any other Taxes, including sales or use taxes, payable to a Taxing Authority for any period whereby the nonpayment of which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such non-payment;
- (H) the Intercompany Claims between the Just Energy Entities contemplated under the Implementation Steps as continuing as Assumed Liabilities, including certain post-filing Intercompany Claims;

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Period Claim or a Restructuring Period D&O Claim, each as defined in the Claims Procedure Order or (ii) the subject of any claim filed in the claims process established pursuant to the Claims Procedure Order unless expressly assumed pursuant to Subsections 2.3(b) through 2.3(k) of the Transaction Agreements.

- (I) certain indemnification obligations of the Just Energy Entities as more particularly set out in the Transaction Agreement;
  - (J) Employee Priority Claims;<sup>7</sup>
  - (K) all obligations and liabilities of the direct and indirect subsidiaries of Just Energy that are not Just Energy Entities, excluding the Excluded Entities; and
  - (L) all Claims of the Texas Comptroller of Public Accounts that have been accepted pursuant to the Claims Procedure Order.
- (d) In addition, on the Closing Date:
- (i) the Credit Facility Lenders, JEUS and Just Energy Ontario L.P. (“**JEO**”) will enter into a tenth amended and restated credit agreement (the “**New Credit Agreement**”) pursuant to which a first lien revolving credit facility in the amount of \$250 million (the “**New Credit Facility**”) will be made available to JEUS and JEO and: (A) the principal amount of up to \$10 million of the Credit Facility Claim (the “**Credit Facility Remaining Debt**”), if any, may remain outstanding as an initial outstanding principal amount under the New Credit Agreement, and (B) the letters of credit issued by the Credit Facility Lenders but which remain undrawn under the current Credit Agreement immediately prior to Closing will continue under the

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<sup>7</sup> Any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of any of the Just Energy Entities whose employment was terminated between the Filing Date and the Closing Date and (b) unpaid amounts provided for in Section 6(5)(a) of the CCAA.

New Credit Facility or be replaced with new or replacement letters of credit issued under the New Credit Facility; and

- (ii) a seventh amended and restated intercreditor agreement (the “**New Intercreditor Agreement**”) by, among others, the Just Energy Entities, National Bank of Canada, as collateral agent, the Credit Facility Agent, and the applicable Commodity Suppliers, will be entered into;
- (e) on the Closing Date, upon receipt of the cash portion of the Purchase Price from the Purchaser, Just Energy will pay from the cash portion of the Purchase Price and from the Just Energy Entities’ cash on hand: (i) all obligations secured by the Administration Charge, the FA Charge, the KERP Charge and the DIP Charge, (ii) the amount necessary to satisfy each claim of a Government Entity for amounts that are outstanding of the kind defined in section 6(3) of the CCAA, if any (each, a “**Government Priority Claim**”), (iii) the amount necessary to satisfy the Credit Facility Claim<sup>8</sup> (less the Credit Facility Remaining Debt, if any), and (iv) the amount necessary to satisfy each Commodity Supplier’s Commodity Supplier Claim that is an Accepted Claim pursuant to the Claims Procedure Order (collectively, the “**Priority Payments**”); and
- (f) on the Closing Date, the Just Energy Entities will pay \$1.9 million (the “**Administrative Expense Amount**”) in trust to the Monitor for payment of the reasonable and documented fees and costs of the Monitor and its professional advisors and the professional advisors of the Just Energy Entities for services

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<sup>8</sup> Defined in the SISP Support Agreement as “any amounts owing by the Just Energy Entities to the Credit Facility Lenders as of the Closing Date under the Credit Facility Documents, including all principal and all accrued and outstanding fees, costs, interest, or other amounts owing pursuant to the Credit Facility Documents as determined in accordance with the Claims Procedure Order; provided that the Credit Facility Claim shall not include any Credit Facility LC Claim, Commodity Supplier Claim or Cash Management Obligations.”



performed prior to and, other than in respect of the Just Energy Entities, after the Closing Date, in each case, relating directly or indirectly to the CCAA proceeding, the Chapter 15 proceedings and the Transaction Agreement, including: (i) costs required to wind down and/or dissolve and/or bankrupt each Residual Co., and (ii) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and each Residual Co. (collectively, the “**Administrative Expense Costs**”). Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs will be transferred by the Monitor to Just Energy.

43. In summary, following closing, JEUS will own directly or indirectly all of the issued and outstanding shares of Just Energy and its pre-Transaction direct and indirect subsidiaries (other than Excluded Entities) which, in turn, will be wholly owned by the Purchaser. The Just Energy Entities will continue to control and own their assets, other than Excluded Assets, and will continue to be liable for their Assumed Liabilities, excluding the Excluded Liabilities. All secured debt and priority payables will be satisfied in full or retained, and the Monitor will receive the Administrative Expense Amount in order to fund the Administrative Expense Costs required to complete the CCAA and Chapter 15 proceedings. The Just Energy Entities will exit the CCAA and Chapter 15 proceedings and continue in the normal course for the benefit of all stakeholders without the burden of the Excluded Liabilities and the Excluded Assets. The two Residual Cos. will hold all Excluded Assets and Excluded Liabilities of the Just Energy Entities and will become Applicants in the CCAA proceedings.

44. The Just Energy Entities’ cash on hand and the cash portion of the Purchase Price (US\$184.9 million in cash, plus up to an additional C\$10 million in the event and to the extent additional funds are required to pay all amounts to be paid by the Just Energy Entities pursuant to the Transaction Agreement and the Reverse Vesting Order) is only enough to satisfy the Just

Energy Entities' secured and priority claims. In fact, recent projections show that because of working capital fluctuations and ongoing market conditions, the full C\$10 million Credit Facility Remaining Debt and C\$7.4 million of the Additional Cushion Funds will be required for the Just Energy Entities to make all Priority Payments assuming a December 31, 2022 Closing Date. If the Closing Date is delayed to January 31, 2023, given normal seasonal increases in working capital, it is likely that additional funding would be required to satisfy the Priority Payments in excess of the full Credit Facility Remaining Debt and the Additional Cushion Funds. A confidential summary detailing the estimated funds required for a January 31, 2023 Closing was uploaded by the Financial Advisor to the virtual data room on October 7, 2022.

45. Accordingly, no recoveries will be available for General Unsecured Creditors. While the SISP was conducted to canvass the market for executable transaction alternatives which are superior to the Transaction and would provide a recovery to General Unsecured Creditors, no Qualified Bids were received other than the Transaction.

46. I have been advised by counsel that (i) the provisions of Multilateral Instrument 61-101 "Protection of Minority Securityholders in Special Transactions", that require "minority" shareholder approval in respect of certain "related party transactions" or "business combinations" may be triggered by the Transaction, and (ii) the CCAA provides that shareholders are not required to vote on the Transaction unless specifically ordered by the Court.

47. Pursuant to the Transaction Agreement, the Closing Date must occur no later than five (5) business days after the conditions set forth in Article 6 of the Transaction Agreement (discussed below) have been satisfied or waived (the "**Closing Date**"), provided, however, that such Closing Date must occur by no later than December 16, 2022, or such later date agreed to by both Just Energy and the Purchaser in writing in consultation with the Monitor (the "**Outside Date**"). If, by the Outside Date, the only condition to the Closing that remains outstanding is the receipt of Transaction Regulatory Approvals and the filing of Energy Regulator Notices, the Transaction

Agreement provides that the Outside Date will be automatically extended for another sixty (60) days, and thereafter, by the Purchaser in its sole discretion on written notice to Just Energy.

48. Given the exit of the Just Energy Entities from the CCAA and Chapter 15 proceedings upon closing of the Transaction, the Just Energy Entities are seeking an Order from the CCAA Court expanding the powers of the Monitor previously granted in the Second ARIO and other Orders to authorize and empower the Monitor to take all actions necessary to, among other things, wind down and/or dissolve and/or bankrupt each Residual Co. and administer the Excluded Assets, Excluded Liabilities and each Residual Co.

**(b) Approval of the Transaction**

49. The Just Energy Entities are requesting that the Reverse Vesting Order be granted by the CCAA Court approving the Transaction Agreement and the Transaction contemplated therein. The Transaction is the best executable transaction or restructuring alternative available to the Just Energy Entities in the circumstances of these CCAA proceedings. It was subjected to a thorough canvassing of the market pursuant to the SISP approved by the CCAA Court and recognized by the U.S. Bankruptcy Court over the course of approximately ten (10) weeks. The SISP was developed and undertaken with the objective of identifying and completing a going concern transaction that would maximize value for the benefit of the Just Energy Entities' stakeholders; however, no Qualified Bids other than the Transaction were received by the Just Energy Entities.

50. In addition to the SISP, over the past approximately 3 years, the business of the Just Energy Entities has been marketed broadly and extensively. In 2019, the Just Energy Entities undertook a formal review process to evaluate strategic alternatives for the business with a view to the best interests of the Just Energy Entities and all their stakeholders. Thereafter, the Just Energy Entities undertook an extensive sales process to identify a potential transaction for their business with the assistance of Guggenheim Partners, LLC and National Bank Financial Inc. While the sales process

did not result in any executable transactions, discussions between the Just Energy Entities and various parties regarding a potential acquisition transaction continued unsuccessfully into June 2020. As no viable proposals resulted from such ongoing discussions, Just Energy completed a balance sheet recapitalization transaction through a plan of arrangement under section 192 of the *Canada Business Corporations Act* in September 2020.

51. Further, within these CCAA proceedings, a 62-day period was established under the Plan Support Agreement prior to the proposed deadline for the creditors' meeting to permit any interested party to propose a restructuring transaction more favourable than the Plan (which was substantially similar to the Transaction). No meaningful inquiries and no proposals were received by either the Financial Advisor or the Just Energy Entities.

52. Both prior to, and within these CCAA proceedings, interested parties have been provided with ample opportunities to diligence, submit and negotiate a transaction with respect to the Just Energy Entities and their business. The Transaction is the only executable offer which has been received pursuant to the CCAA Court-approved SISP. It provides the highest and best value to the Just Energy Entities and their stakeholders and, in the Just Energy Entities' view, should be approved.

53. The Transaction provides significant benefits to stakeholders of the Just Energy Entities. Among other things:

- (a) the Transaction will preserve the employment of the Just Energy Entities' more than 1000 employees;
- (b) the majority of contracts with Commodity Suppliers, vendors, trade creditors and other counterparties will continue in the normal course for the benefit of all parties thereto. Only a limited number of contracts are expected to be designated as "Excluded Contracts" within the Transaction Agreement and, as a result, most

contracts will continue in the normal course following the closing of the Transaction;

- (c) the operations of the Just Energy Entities across Canada and the United States will be preserved and continue uninterrupted in the normal course for the benefit of the Just Energy Entities' almost 1 million customers;
- (d) all secured claims and priority payables will be satisfied in full either through a cash payment (including the applicable portion of the Credit Facility Claim, all Commodity Supplier Claims, all Government Priority Claims, and applicable beneficiaries of Charges granted within these CCAA proceedings), by credit bid (the BP Commodity/ISO Services Claim), or by a continuance and assumption of such obligations by the Purchaser (including the Credit Facility Remaining Debt, the Credit Facility LC Claim and Post-Filing Claims);
- (e) any U.S. tax attributes and tax pools of the Just Energy Entities will be preserved;
- (f) the Just Energy Entities will exit these CCAA and Chapter 15 proceedings with a significantly deleveraged balance sheet and a \$250 million New Credit Facility;  
and
- (g) on Closing, the Just Energy Entities will exit these CCAA and Chapter 15 proceedings, following which limited matters will remain for the administration and wind down of Residual Cos. and conclusion of these lengthy and costly restructuring proceedings.

**(c) Conditions to Closing of the Transaction**

54. The respective obligations of Just Energy and the Purchaser to consummate the Transaction are subject to the satisfaction or waiver of, or compliance with, the following conditions at or prior to the Closing Time:

- (a) no provision of any applicable law and no judgment, injunction or order preventing or frustrating consummation of the Transaction are in effect;
- (b) each of the SISP Approval Order and the Reverse Vesting Order shall have been issued, entered and become final orders;
- (c) each of the Claims Procedure Recognition Order, the SISP Recognition Order and the Vesting Recognition Order shall have been issued and entered by the U.S. Bankruptcy Court and become final orders;
- (d) the SISP Support Agreement shall not have been terminated;
- (e) the Just Energy Entities and the Purchaser shall have received all required Transaction Regulatory Approvals and provided all Energy Regulator Notices set forth on Schedule 6.1(e) to the Disclosure Letter, and all required Transaction Regulatory Approvals shall be in full force and effect (except for Transaction Regulatory Approvals that need not be in full force and effect prior to Closing); and
- (f) the New Credit Agreement and the New Intercreditor Agreement shall have been entered into by and among the parties thereto.

55. In addition to the foregoing conditions, the following additional conditions, among others, must be satisfied or waived on or before the Closing Time for the benefit of the Purchaser:

- (a) the Reverse Vesting Order shall have been granted by the CCAA Court by November 2, 2022;
- (b) the Just Energy Entities shall have completed the Implementation Steps that are required to be completed prior to Closing;
- (c) the aggregate amount of cash held by the Just Energy Entities immediately after payment of all amounts required under the Transaction Agreement and the Reverse Vesting Order is equal or greater than \$0;
- (d) immediately prior to the Closing, the cash portion of the Purchase Price, plus the aggregate amount of the Just Energy Entities' cash on hand, plus the Credit Facility Remaining Debt shall be sufficient to pay all amounts to be paid by the Just Energy Entities pursuant to the Transaction Agreement and the Reverse Vesting Order;
- (e) Shell shall have provided certain confirmations regarding its continuing supply of commodities to the Just Energy Entities after closing in accordance with all Continuing Contracts; and
- (f) none of the Just Energy Entities shall be a reporting issuer (or equivalent thereof) under any U.S. or Canadian securities laws.

56. It is a condition of the Transaction that it be implemented by means of the Reverse Vesting Order granted by the CCAA Court and recognized by the U.S. Bankruptcy Court. The necessity for the Reverse Vesting Order and the impracticality of implementing the Transaction through another structure are discussed further below.

(d) **Reverse Vesting Order**

**Overview**

57. The Transaction is required to be implemented pursuant to a Reverse Vesting Order as such structure is necessary to preserve the going concern value of the Just Energy Entities' business for the benefit of stakeholders. Importantly, the Just Energy Entities are retail energy providers who derive their value almost entirely from their intangible assets. They do not own any electricity generation facilities, natural gas production or processing facilities, distribution infrastructure, or other hard assets required in the upstream production, or downstream distribution, of energy in the markets in which they operate. The value of the Just Energy Entities' business arises predominantly from the gross margin in their customer contracts which, in turn, is wholly dependent on the Just Energy Entities maintaining the significant number of non-transferrable licenses and authorizations that permit their continued operation in Canada and the United States, and in the agreements between the Just Energy Entities and the more than 100 public utilities (the "**Local Distribution Companies**") which are required for the Just Energy Entities to provide natural gas and electricity in certain markets to their customers. As of the date of this Affidavit, the Just Energy Entities hold at least:

- (a) 17 separate licenses and authorizations in 5 provinces in Canada to allow them to market natural gas and electricity in the applicable provincial markets, 8 of which are non-transferrable and non-assignable, with the remaining 9 only assignable with leave of the regulator;
- (b) 5 separate import and export orders issued by the Canadian Energy Regulator ("**CER**"), all of which are non-transferrable and non-assignable;



- (c) 3 separate registrations with the Alberta Electricity System Operator (the “**AESO**”) in Alberta and with the Independent Electricity System Operator (“**IESO**”) in Ontario, all of which are either non-transferrable or only assignable with leave;
- (d) 6 licenses in Nevada and New Jersey to allow them to market natural gas and/or electricity in the applicable states, all of which are non-transferrable;
- (e) 25 licenses in Connecticut, Delaware, Maine, Maryland, Ohio, Pennsylvania and Virginia to allow them to market natural gas and/or electricity in the applicable states, all of which may only be transferred with the prior authorization of the applicable regulator in each jurisdiction;
- (f) 18 electricity and/or natural gas provider licenses or authorizations in California, Illinois, Massachusetts, Michigan, and New York, where no process for transferring the licenses or authorizations is prescribed in the applicable statutes;
- (g) 5 retail electricity provider certifications in Texas which may only be transferred with the authorization of the Public Utility Commission of Texas (“**PUCT**”);
- (h) 3 separate export authorizations issued by the Department of Energy (“**DOE**”) in the U.S., all of which may only be transferred with the prior authorization of the DOE’s Assistant Secretary; and
- (i) 7 separate market-based authorizations issued by the Federal Energy Regulatory Commission (“**FERC**”) in the U.S. which may only be transferred with the prior authorization of FERC.

58. As discussed further below, I understand from counsel that all of the provincial, state, market participation, export, and import orders/licenses and authorizations held by the Just Energy Entities are non-transferrable, capable of transfer only with the approval of the applicable

regulator, or there are no clear regulatory processes for the transfer of such authorizations. However, other than with respect to the authorizations issued by FERC, the DOE, and the PUCT, change of control transactions are either subject to no restrictions or impose a reporting requirement only on the licensed entity to update its respective filings with, or submit notice to, the applicable regulator.

59. For this reason, among others discussed below, the only feasible structure for the Transaction is a sale of equity by means of the Reverse Vesting Order. Any other structure risks exposing most of the 89 licenses on which the Just Energy Entities' business is founded and, in turn, on which its going concern value is wholly reliant, to significant risk, regulatory uncertainty, and significant delays. Such risk and uncertainty is likely to be reflected by any purchaser in the value offered for the Just Energy Entities' business as the loss of certain licenses within the regulatory assignment process could have dramatic impacts on the Just Energy Entities' ability to carry on business and generate revenue for the benefit of their stakeholders, while also delaying the Just Energy Entities' emergence from these CCAA and Chapter 15 proceedings.

60. In addition:

- (a) the Just Energy Entities are party to a significant number of hedging transactions, including hedge transactions with Commodity Suppliers to minimize commodity and volume risk, foreign exchange hedge transactions and hedges for renewable energy credits, many of which are fundamental to the Just Energy Entities' ability to effectively operate their business, and most of which are non-transferrable; and
- (b) any U.S. tax attributes resident in the Just Energy Entities would generally be unable to be utilized in the go-forward business were the Transaction structured as a traditional asset sale vesting order.

61. Accordingly, it is imperative to the Transaction, and a condition of the Transaction Agreement, that the Transaction be completed by means of the Reverse Vesting Order.

62. Further details regarding the licenses and authorizations held by the Just Energy Entities in Canada and the United States and the reasons for the Just Energy Entities' request for the Reverse Vesting Order are discussed below.

### Canada

63. I am advised by counsel, and believe that, certain of the Just Energy Entities (the "**Licensed Entities**") have received gas and electricity licenses, market participation registrations, gas removal permits, and/or natural gas import and export orders from regulators in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario and from the CER.

64. I understand from counsel, and believe, that no licenses or authorizations held by the Just Energy Entities in Canada may be transferred or assigned to a purchaser with the exception of: (a) certain licenses issued by the Ontario Energy Board ("**OEB**"); and (b) one gas removal permit issued by the Alberta Energy Regulator ("**AER**"). Such licenses and permit can only be transferred with leave of the OEB or AER, as applicable.<sup>9</sup> In all other cases, the purchaser would be required to independently apply for, and obtain a new license, from the applicable regulator in order to participate in the provincial energy and electricity market.

65. However, as shown in the table below, the same restrictions do not apply to change of control transactions (such as the proposed Transaction). No licenses or authorizations held by the Just Energy Entities in Canada are subject to any regulatory restriction, other than, in some jurisdictions, notice requirements, when a change of control occurs in the ownership of the licensed

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<sup>9</sup> I am advised by counsel and believe that the process for obtaining the approval of the OEB and/or AER for the assignment of the licenses/permit is not certain and involves roughly equivalent timing and risk as the process to obtain a new license/permit.

entity. In all cases, the provincial and federal licenses, orders and authorizations held by the Just Energy Entities in Canada continue in the normal course following a change of control transaction.

66. A table detailing the foregoing is as follows:

<b>Just Energy Entity</b>	<b>License/Authorization</b>	<b>Transferrable</b>	<b>Asset Transaction Requirements</b>	<b>Change in Control Requirements</b>
<b>BRITISH COLUMBIA</b>				
Just Energy (B.C.) Limited Partnership	Gas Marketer License	No	Purchaser would need to apply for, and obtain, a new Natural Gas Marketer License.	No impact on license. No notice requirement.
<b>ALBERTA</b>				
Just Energy Alberta L.P. Hudson Energy Canada Corp. Just Energy Ontario L.P.	Each entity holds a Natural Gas Marketer License and an Electricity Marketer License. Just Energy Alberta L.P. holds a Direct Seller's License. Hudson Energy Canada Corp. is a market participant registered with the AESO. Just Energy Ontario L.P. holds a Gas Removal Permit from the AER.	No	Purchaser would need to apply for, and obtain, a new Natural Gas Marketer License(s), a new Electricity Marketer License(s) and a new Direct Seller's License. In addition, purchaser would need to apply for and become a registered market participant.  The Gas Removal Permit can be assigned with the consent of the Alberta Energy Regulator.	Any change in the partners of Just Energy Alberta L.P. would require notification to the Director of Fair Trading.  No impact on licenses, permit or market participant registration.

<b>Just Energy Entity</b>	<b>License/Authorization</b>	<b>Transferrable</b>	<b>Asset Transaction Requirements</b>	<b>Change in Control Requirements</b>
<b>SASKATCHEWAN</b>				
Just Energy Prairies L.P.	Direct Sellers License	No	Purchaser would need to apply for, and obtain, a new Direct Sellers License.	Any change in the partners of Just Energy Prairies L.P. would require notification to the Registrar.
<b>MANITOBA</b>				
Just Energy Manitoba L.P.	Gas Marketer License	No	Purchaser would need to apply for, and obtain, a new Natural Gas Marketer License.	No impact on license. No notice requirement.
<b>ONTARIO</b>				
Just Energy Ontario L.P. Universal Energy Corporation Hudson Energy Canada Corp. Just Energy Solutions Inc. Just Energy New York Corp.	Each of Just Energy Ontario L.P., Universal Energy Corporation, and Hudson Energy Canada Corp. hold a Gas Marketer License and an Electricity Retailer License. Just Energy Solutions Inc. and Just Energy New York Corp. each hold an Electricity Wholesaler License. Just Energy Solutions Inc. and Just Energy New York Corp. are market participants registered with the IESO.	Yes, but only with leave of the OEB with respect to the Gas Marketer Licenses, the Electricity Retailer Licenses, and the Electricity Wholesaler Licenses.  IESO market participant registrations only assignable with consent of IESO.	Purchaser would need to apply to the OEB for leave to transfer the Gas Marketer Licenses, the Electricity Retailer Licenses, and the Electricity Wholesaler Licenses.  Purchaser would need to obtain prior written consent of IESO for assignment of market participant registrations.	Any change to the status of a license holder “with respect to having publicly traded securities or any changes to its list of affiliates that have publicly traded securities” would require notification to the OEB.  No notice requirement with respect to the IESO.

Just Energy Entity	License/Authorization	Transferrable	Asset Transaction Requirements	Change in Control Requirements
<b>CANADA (FEDERAL)</b>				
Just Energy Ontario L.P. Just Energy New York Corp.	Each entity holds a Natural Gas Export Order and a Natural Gas Import Order. Just Energy Ontario L.P. holds a Natural Gas Export Order for Subsequent Importation	No	Purchaser would need to apply for and obtain new import and export orders from the CER.	No impact on orders. No notice requirement.

67. In addition to the licenses and authorizations held by the Just Energy Entities in Canada (without which they cannot operate and conduct their energy marketing/retailing business), the Just Energy Entities are also party to numerous agreements with more than 100 third-party Local Distribution Companies in certain markets in which they operate to distribute electricity and natural gas to their customers. As discussed above, the Just Energy Entities do not own any distribution infrastructure and so are required to have agreements with local utilities to distribute electricity and natural gas to the Just Energy Entities' customers.

68. In addition, in all Canadian markets other than Alberta, the Local Distribution Companies also provide customer billing and collection services to the Just Energy Entities.

69. I am advised by counsel and believe that none of the business-critical agreements between the Just Energy Entities and Local Distribution Companies in Alberta (natural gas and electricity), Saskatchewan (natural gas) or Ontario (natural gas and electricity)<sup>10</sup> are transferrable to a purchaser without the consent of the Local Distribution Company. Any purchaser of the Just

<sup>10</sup> Agreements between the Just Energy Entities and Local Distribution Companies located in British Columbia and Manitoba are freely assignable and do not require the consent of the Local Distribution Company.

Energy Entities' business in these provinces would be required to establish new contractual and operational relationships with applicable Local Distribution Companies or obtain their consent to an assignment of the current agreements held by the Just Energy Entities, prior to commencing business in those markets.<sup>11</sup> In addition, even if consent was obtained, extensive and time consuming testing would be required by the Local Distribution Companies as a condition of the assignment, which tests can take months to commence and complete. However, like the licenses and authorizations held by the Just Energy Entities in Canada, I understand from counsel that agreements with Local Distribution Companies are unaffected by changes in the upstream ownership structure of the applicable counterparty and will continue in the normal course following completion of the Transaction.

70. Lastly, I am advised by counsel and believe that any assignment of a customer contract for the supply of natural gas in British Columbia requires the advance approval of the British Columbia Utilities Commission and provision of a notification to each customer within 30 days of the assignment. While regulatory approval is not required for assignment of customer contracts in Alberta, Saskatchewan, Manitoba, or Ontario, all assignments of customer contracts in Manitoba and Ontario require notice be given to each customer. Again, I understand from counsel that customer contracts in British Columbia and elsewhere are unaffected by changes in the upstream ownership structure of the applicable counterparty and will continue in the normal course following completion of the transaction.

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<sup>11</sup> I am advised by counsel that while all Local Distribution Companies in Canada must offer any purchaser new utility contracts (as such utilities are, by law, "open access"), the process of winding down the contracts held by the Just Energy Entities, transferring customers to the purchaser, and entering into new contracts with the purchaser would be cumbersome and lengthy.

**United States**

71. The Just Energy Entities are also subject to regulation by FERC and the DOE in the United States and by regulators in the following U.S. states: Texas, Connecticut, California, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Ohio, Pennsylvania, and Virginia.

72. I am advised by counsel and believe that similar to Canada:

- (a) the 6 electricity and/or natural gas provider licenses held by the applicable Just Energy Entities in Nevada and New Jersey are non-transferrable to a purchaser. In each case, the purchaser must be authorized to hold the applicable electricity and natural gas licenses in the jurisdiction and must apply to the applicable regulator for the issuance of new licenses prior to commencing operations in the jurisdiction;
- (b) the 25 electricity and/or natural gas provider licenses held by the applicable Just Energy Entities in Connecticut, Delaware, Maine, Maryland, Ohio, Pennsylvania and Virginia may only be transferred to a purchaser with the prior authorization of the applicable regulator in each jurisdiction;
- (c) the applicable statutes, rules, and regulations in California, Illinois, Massachusetts, Michigan, and New York with respect to the 18 electricity and/or natural gas provider licenses held by various Just Energy Entities in those states do not prescribe any process for transferring the licenses or authorizations and are silent on whether the prior authorization of the applicable regulator is required;
- (d) the 5 retail electricity provider certifications held by the applicable Just Energy Entities in Texas may be transferred with the authorization of the PUCT; and



- (e) no regulatory prior approvals for transactions resulting in a change of control of the ownership structure of a licensed entity (such as the Transaction) is required by any regulator in any states in the U.S. in which the Just Energy Entities operate, although many require that a notice be filed updating the license holder's information within a certain period of time following completion of the transaction or in the license holder's annual filing, and, in the case of Texas, an application must be filed to amend its certification if a material change results from the transaction (which may be submitted within 10 working days of the change).

73. I am further advised by counsel, and believe, that with respect to the export authorizations issued by the DOE and the market-based rate authorizations issued by FERC:

- (a) transfer of a DOE export authorization requires prior authorization of the DOE Assistant Secretary. With respect to change of control transactions, the DOE has established a post-closing, streamlined procedure which, for export authorizations such as those held by the Just Energy Entities, immediately authorizes continued exportation following a change of control transaction upon the filing of a statement of change of control by the authorization holder. Accordingly, in the case of a change of control over an entity holding an export authorization such as those held by the Just Energy Entities, such change of control is given immediate effect upon receipt of the statement. In contrast, express prior authorization of the DOE Assistant Secretary is required for transfers of DOE export authorizations; and
- (b) the FERC process for transfer of a market-based authorization for an assignment or a change of control transaction is the same. In both cases, an application must be submitted under the *Federal Power Act* for prior approval by FERC.

### **Necessity of an RVO**

74. In light of the foregoing, the Just Energy Entities are of the view that completion of the Transaction by means of a traditional asset sale vesting order will be extremely difficult, lengthy, costly and unlikely to preserve the going concern value of the Just Energy Entities. Further, attempting to implement the Transaction through a traditional vesting order would not result in any recoveries for unsecured creditors. In any event, it is a requirement of the Transaction that it be implemented by means of the Reverse Vesting Order.

75. First, in a traditional asset sale scenario, the regulatory complexities involved in closing the Transaction would be immense. If the Purchaser sought to acquire all of the assets held by the Just Energy Entities, the Purchaser would be required to participate in separate regulatory processes in 5 Canadian provinces, 15 U.S. states, and federally with the CER in Canada and with the DOE and FERC in the United States to try and obtain either a transfer of the Just Energy Entities' 89 current licenses, authorizations, and certifications, or issuance of new licenses, authorizations, and certifications, in such jurisdictions. Such regulatory processes would be complex, costly, and take many months to complete, with various regulations and statutes not providing any direction on timing and no guarantee of approval.

76. Further, even if all licenses/authorizations/registrations were obtained by the Purchaser from each applicable federal, state and provincial regulator, the Purchaser would still be required to negotiate and finalize contractual and operational relationships with more than 100 Local Distribution Companies in Canada and the United States. Each Local Distribution Company has its own processes and testing requirements which would have to be satisfied by the Purchaser prior to commencing business, which processes and testing requirements can take many months to complete.

77. The Just Energy Entities do not have unlimited time to close the Transaction. As discussed further in my August Affidavit, the Just Energy Entities have faced, and continue to face, mounting pressures to exit these CCAA and Chapter 15 proceedings as soon as possible. Externally, market conditions in the U.S. and Canada continue to be difficult and commodity prices continue to be extremely volatile. Internally, the Just Energy Entities are facing ever increasing employee morale and retention issues as the CCAA and Chapter 15 proceedings continue into their 19<sup>th</sup> month. The Just Energy Entities' critical business relationships with their employees, Commodity Suppliers, Regulators, and others continue to be strained. It is imperative that the Just Energy Entities protect against further deterioration in their business-critical relationships and going concern value and conclude these ongoing proceedings in the near term.

78. Second, even if the Just Energy Entities had extended periods of time for all regulatory processes to conclude and the Transaction to close, such a process would be highly uncertain. Neither the Just Energy Entities nor the Purchaser have any guarantees that all necessary licenses/authorizations/registrations for the operation of the Just Energy Entities' business would be received in all applicable jurisdictions. I am advised by counsel that the decision of whether to grant a license is generally within the discretion of the applicable regulator. While such discretion has constraints and must be exercised in accordance with applicable legal principles, there is never a guarantee of success. The process is uncertain and marked by risk.

79. With respect to the Transaction, such regulatory risk is significant based on the sheer number of licenses, authorizations and registrations required to be granted and/or assigned to the Purchaser, and the sheer number of different regulatory processes that must be undertaken in all the applicable Canadian and U.S. jurisdictions. The loss of certain licenses or authorizations would jeopardize the entire Transaction by precluding the ongoing operation of the Just Energy Entities' business in that jurisdiction, thereby materially impacting both short- and long-term revenues and the Just Energy Entities' going concern value. Any failure of the Transaction to close, or reduction

in the value ascribed by the Purchaser to the Just Energy Entities' business within the Transaction, would be borne by the Just Energy Entities' stakeholders, including its secured and priority creditors, employees, vendors and Commodity Suppliers.

80. Third, most of the hedge contracts and derivative instruments held by the Just Energy Entities which are fundamental to the Just Energy Entities' ability to effectively operate their business are non-transferrable and non-assignable without the consent of the counterparty. Preservation of such hedge contracts and derivative instruments by means of the Reverse Vesting Order maximizes the value of the Just Energy Entities for the benefit of stakeholders. In addition, any U.S. tax pools and tax attributes resident in the Just Energy Entities would be difficult to preserve other than by completion of the Transaction by means of the Reverse Vesting Order.

81. In the Just Energy Entities' view, the highly regulated nature of the Just Energy Entities' business and the complete dependency of its going concern value on the maintenance of its licenses, authorizations and registrations demands a unique transaction structure – here, a Reverse Vesting Order. Any other transaction structure would introduce significant delay, additional costs, risk, complexity and uncertainty into an already complicated, costly and lengthy process. Such increased risk, delay, complexity and uncertainty would be borne by the Just Energy Entities' stakeholders. Such a result is not in the best interests of anyone.

82. The Transaction Agreement requires, as a condition of the Transaction that it be completed by means of a change in control of JEUS and Just Energy (i.e. the upstream ownership structure of the license-holders) and implemented pursuant to a Reverse Vesting Order. The Transaction is the only viable and executable transaction available to the Just Energy Entities following completion of a thorough and transparent marketing process under the SISP, the Just Energy Entities' unsuccessful attempt to submit a Plan to its creditors for their consideration and approval, and more than 19 months of stakeholder negotiations and engagement since the CCAA and Chapter 15 proceedings were filed in March 2021. It is imperative that the Just Energy Entities

conclude these costly and lengthy CCAA and Chapter 15 proceedings for the benefit of all stakeholders. The Transaction is the only viable Transaction available to the Just Energy Entities to effect such result and, in turn, the granting of the Reverse Vesting Order is, in the view of the Just Energy Entities, necessary and appropriate.

**(e) Releases**

83. The Reverse Vesting Order includes the following releases and protections in favour of the Just Energy Entities and various other interested parties that have made material contributions to the successful restructuring of the Just Energy Entities:

- (a) *Third-Party Releases:* (a) the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities and the Residual Cos. (or any of them); (b) the Monitor and its legal counsel; (c) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors; and (d) the Credit Facility Agent and the Credit Facility Lenders, and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, the “**Released Parties**”) will be released by all Persons besides the Just Energy Entities and their respective current and former affiliates (defined in the Reverse Vesting Order as the “**Releasing Parties**”) from the Released Claims (as defined below);
- (b) *Debtor Releases:* the Released Parties will be released by each of the Just Energy Entities and their respective current and former affiliates, and discharged from any and all Released Claims held by the Just Energy Entities as of the Effective Date, provided however that nothing limits or modifies in any way any claim or defence which any of the Just Energy Entities may hold or be entitled to assert against any of the Released Parties as of the Effective Date relating to any contracts, leases,

agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices, or other ordinary course obligations which remain in effect following the Effective Time.

84. The requested releases are necessary to bring finality to the CCAA proceedings, facilitate the release of the Court-ordered charges, including the D&O Charge, without requiring a reserve for potential claims which would prevent the Transaction from closing, and to protect the Released Parties from any and all claims, demands, causes of action, dealings, occurrences (or other matters included within the definition of “Released Claims” in the Reverse Vesting Order) which existed or took place prior to the Effective Time, or which were undertaken or completed in connection with or pursuant to the terms of the Reverse Vesting Order in respect of, relating to, or arising out of: (a) the Just Energy Entities, the business, operations, assets, property and affairs of the Just Energy Entities, the administration and/or management of the Just Energy Entities, or the CCAA and/or the Chapter 15 Cases; or (b) the Transaction Agreement, the Closing Documents, any agreement, document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transaction (subject to the exclusions described below, collectively the “**Released Claims**”).

85. The releases provided in the Reverse Vesting Order explicitly do not release or discharge:

- (a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or
- (b) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the Closing Documents, the SISP Support Agreement, the Definitive Documents and/or any agreement, document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing.

86. The Released Parties have made significant and often critical contributions to the development and implementation of the Just Energy Entities' restructuring in these CCAA proceedings. Since March 2021, the Released Parties have worked diligently towards ensuring the implementation of the restructuring of the Just Energy Entities' financial obligations and operations for the benefit of stakeholders. Such efforts have resulted in the execution and approval of the SISP Support Agreement and Transaction Agreement. If the Reverse Vesting Order is granted and the Transaction is consummated, the Just Energy Entities and their businesses will continue, and their going concern value will be preserved for the benefit of stakeholders.

87. In addition to the Third-Party Releases and the Debtor Releases discussed above, the Reverse Vesting Order also includes various exculpations which the Just Energy Entities will request be approved by the U.S. Bankruptcy Court in the Vesting Recognition Order. The Reverse Vesting Order provides that all of: (a) the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities and the Residual Cos. (or any of them); (b) the Monitor and its legal counsel; and (c) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the "**Exculpated Parties**") are released and exculpated from any cause of action for any act or omission in respect of, relating to, or arising out of: (a) the Transaction Agreement, (b) the Closing Documents, (c) the consummation of the Transactions, (d) the CCAA and Chapter 15 Cases, (e) the formulation, preparation, dissemination, negotiation, filing or consummation of the Transaction Agreement, the Closing Documents, and all related agreements and documents, any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Transactions, (f) the pursuit of approval and consummation of the Transactions or the recognition thereof in the U.S., and/or (g) the transfer of assets and liabilities pursuant to the Reverse Vesting Order.

88. The Reverse Vesting Order expressly does not release the Exculpated Parties from any causes of action related to any act or omission that is determined in a final order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence.

89. On the Effective Date, each Consenting Party (defined as the Just Energy Entities and the Purchaser) is deemed to have consented and agreed to the releases, injunctions and exculpations referred to in the Reverse Vesting Order.

**(f) Pre-Closing Implementation of the Transaction**

**Transaction Regulatory Approvals**

90. The Transaction Agreement requires that Just Energy and the Purchaser use commercially reasonable efforts to, among other things, obtain all Transaction Regulatory Approvals and file all required Energy Regulator Notices as soon as reasonably practicable and, in any event, by no later than the time limits imposed under applicable law. Schedule 6.1(e) to the Disclosure Letter lists a number of Transaction Regulatory Approvals which must be obtained, and Energy Regulator Notices to be provided, prior to the closing of the Transaction. Such Energy Regulator Notices include Competition Act Approval (if required), Investment Canada Act Approval, and Authorization from FERC under section 203 of the *Federal Power Act*.

**(i) Competition Act Approval**

91. I am advised by counsel that the transactions contemplated by the Transaction Agreement require compliance with the pre-merger notification provisions set out in part IX of the *Competition Act*. I am further advised by counsel that such compliance, evidenced by receipt from the Commissioner of Competition (“**Commissioner**”) of an advance ruling certificate pursuant to section 102 of the *Competition Act* (“**ARC**”), or a no-action letter, together with a waiver of the notification requirements, is a condition of closing of the Transaction Agreement.



92. I understand from counsel that an ARC was issued by the Commissioner on June 23, 2022 in connection with the Plan. Attached as **Exhibit “K”** is a copy of correspondence attaching the ARC.

93. Following the loss of stakeholder support for the Plan and execution of the Transaction Agreement by Just Energy and the Purchaser, I am advised by counsel that the Parties contacted the Competition Bureau to outline the changes in the structure of the Transaction provided under the Transaction Agreement and to confirm whether the ARC could be re-issued to reference the Transaction Agreement.

94. On August 31, 2022, I understand from counsel that the Parties received an amended ARC from the Commissioner confirming that, subject to section 103 of the *Competition Act* and pursuant to section 102 of the *Competition Act*, the Commissioner was satisfied that there would not be sufficient grounds on which to apply to the Competition Tribunal under section 92 of the *Competition Act* in respect of the Transaction. Attached as **Exhibit “L”** is a copy of correspondence attaching the Amended ARC. Accordingly, I am advised by counsel that the *Competition Act* closing condition in the Transaction Agreement has been satisfied.

**(ii) Investment Canada Act Approval**

95. The Transaction Agreement contemplates at the Purchaser’s option the filing of a notification to acquire a Canadian Business under the *Investment Canada Act* (the “**ICA Notification**”) following execution of the Transaction Agreement. In addition, if such a filing is made, subsequent confirmation that no action will be taken and no approvals required under any of the potentially applicable provisions of the *Investment Canada Act* is a condition of closing of the Transaction Agreement.

96. I am advised by counsel that Purchaser’s counsel filed with the Investment Review Division (“**IRD**”) on June 6, 2022 a notification to acquire a Canadian Business under the

*Investment Canada Act*, then in relation to the Plan and with respect to the Plan Sponsor. On July 11, 2022 the IRD issued a certification letter, certifying the notification as complete. The relevant time periods for action to be taken or approvals to be required under the *Investment Canada Act* subsequently expired.

97. I am further advised by counsel that following the loss of stakeholder support for the Plan and execution of the Transaction Agreement, the Parties contacted the IRD to determine whether the actions taken under the *Investment Canada Act* in connection with the Plan were sufficient to encompass the actions contemplated under the Transaction Agreement. On September 1, 2022 the IRD advised the Parties that a new notification would be required with respect to the actions contemplated under the Transaction Agreement.

98. Accordingly, I understand from counsel that: (a) on September 7, 2022, counsel to the Purchaser advised that they had filed a revised ICA notification (the “**Amended Notification**”); and (b) on September 9, 2022, counsel to the Purchaser advised that the IRD had issued a new certification letter, certifying the Amended Notification complete as of September 7, 2022. I am advised by counsel that if no action is taken under Part IV.1 of the *Investment Canada Act* prior to October 24, 2022, the *Investment Canada Act* closing condition in the Transaction Agreement will be satisfied.

### (iii) Authorization from FERC

99. The Transaction Agreement contemplates that Just Energy will file an Application pursuant to section 203 of the *Federal Power Act* and part 33 of the regulations of FERC for approval by FERC of the Transaction. In accordance with such requirement, on or about September 14, 2022, the applicable Just Energy Entities filed an *Authorization under Section 203 of the Federal Power Act and Requests for Waivers and Requests for Waivers and Expedited Action* (the “**FERC Application**”) with FERC in Docket No. EC22-119-000 seeking an Order approving the FERC

Application by November 11, 2022 and requesting expedited action and a comment period of 21 days in order to facilitate approval by that date. Attached as **Exhibit “M”** hereto is a copy of the FERC Application.

100. I am advised by counsel that no interventions or comments were filed by the comment period deadline.

### **Pre-Closing Implementation Steps**

101. In addition to Transaction Regulatory Approvals required to be obtained prior to the closing of the Transaction Agreement, the Implementation Steps require that the Just Energy Entities undertake various settlements of intercompany obligations, transfers of partnership interests, and other specific pre-closing reorganization steps, in order to permit the Transaction to proceed in a tax-efficient manner and avoid unintended negative tax consequences. I am advised by counsel that in the event the Reverse Vesting Order is granted, the following pre-closing steps are expected (subject to finalization of the Implementation Steps) to be undertaken by the Just Energy Entities in accordance with the Implementation Steps:

- (a) Just Energy shall transfer its shares of JEUS to a subsidiary (Ontario Energy Commodities Inc. (“**OECI**”)) with the result that all of the shares of JEUS will be held by OECI after such transfer;
- (b) the partnership agreements of certain Just Energy Entities which are limited partnerships organized in Canada will be amended to clarify certain provisions therein relating to the allocation of income and losses to their members;
- (c) in order to consolidate the ownership of interests in partnerships within the Just Energy Entities, certain partnership units in Just Energy Trading LP (“**JETLP**”),

Just Energy Manitoba LP (“**JEMNLP**”), JEO, and Just Ventures LP (“**JVLP**”) will be transferred from one Just Energy Entity to another;

- (d) Just Energy shall transfer a loan receivable owed to it by JEUS to Just Energy Corp. (“**JEC**”);
- (e) certain intercompany obligations between Filter Group Inc., Filter Group USA Inc. and Just Energy and its other subsidiaries will be settled;
- (f) certain pre-filing intercompany obligations between Just Energy Entities organized in Canada (any such obligations, “**Canadian Pre-Petition Intercompany Claims**”) (which shall be deemed to be separate claims from any post-filing obligations) will be memorialized and documented as promissory notes that allow the creditor to enforce its creditor rights, in order to facilitate subsequent settlement steps. After such claims are documented:
  - (i) one set of promissory notes (described in Part I of Appendix B to the Implementation Steps) will be amended to allow the holder to convert such notes into interest-bearing notes with the same principal amount with such amendment not constituting a novation of the underlying indebtedness, and the holder of such notes will subsequently exercise such conversion rights;
  - (ii) a second set of promissory notes (described in Part II of Appendix B to the Implementation Steps) will be amended to add interest rates to such notes with such amendment not constituting a novation of the underlying indebtedness;
  - (iii) for a third set of promissory notes (described in Appendix A to the Implementation Steps), the creditor will make a formal demand for

payment, and on the business day prior to the Closing Date, the debtor will surrender an intercompany receivable owing from a third entity to the creditor as a quitclaim in satisfaction of the note on which the demand was made;

- (g) the Canadian Pre-Petition Intercompany Claims will be settled through (i) set off against other Canadian Pre-Petition Intercompany Claims (including after transfer by the initial creditor); (ii) transfer to a newly-formed subsidiary of the debtor and settlement through a subsequent winding-up of such subsidiary into the debtor; (iii) contribution into the capital of the debtor for cancellation; or (iv) cancellation and forgiveness. For Canadian Pre-Petition Intercompany Claims described in paragraphs 101(f)(i) and (ii), payments of interest accrued since the conversion or addition of interest described therein will be made before such claims are settled; and
- (h) all intercompany claims between subsidiaries of Just Energy which are organized in the U.S. as set out in Appendix D to the Implementation Steps will be cancelled for no consideration on the business day before the Closing Date.

102. I am advised by counsel that the Implementation Steps allow intercompany accounts to be settled in a tax-efficient manner, consistent with the policy underlying the relevant provisions of the *Income Tax Act* (Canada).

103. The Reverse Vesting Order sought by the Just Energy Entities includes approval of the Implementation Steps by the CCAA Court. The Just Energy Entities are seeking approval of the Implementation Steps which, among other things, include the foregoing cancellation, surrender, settlement, and/or memorialization of intercompany obligations, interest payments, and

share/partnership unit transfers being undertaken prior to Closing of the Transaction, some of which may be prohibited by the Initial Order absent CCAA Court approval.

**D. UPDATE ON ERCOT**

104. As discussed in my August Affidavit, certain of the Just Energy Entities and Electric Reliability Council of Texas, Inc. (“**ERCOT**”) are party to an adversary proceeding (the “**Adversary Proceeding**”) filed in the U.S. Bankruptcy Court relating to actions taken by ERCOT during the winter storm in February 2021. The Adversary Proceeding seeks, among other things, to avoid obligations incurred, and to claw back payments made to ERCOT, by certain of the Just Energy Entities pursuant to section 36.1 of the CCAA.

105. At a hearing on June 27, 2022, the U.S. Bankruptcy Court, among other things, denied ERCOT’s third motion to dismiss the Adversary Proceeding, including with respect to arguments based on (i) sovereign immunity, (ii) abstention, (iii) the filed-rates doctrine, and (iv) the PUCT as a necessary party (the “**June 27 Order**”). On July 19, 2022, ERCOT filed a notice of appeal of the June 27 Order and, by Order granted July 19, 2022, the U.S. Bankruptcy Court certified the June 27 Order for direct appeal to the U.S. Court of Appeals for the Fifth Circuit (the “**Fifth Circuit**”) and recommended that the appeal be heard on an expedited basis.

106. Since the last update provided in my August Affidavit regarding the status of the Adversary Proceeding, ERCOT and two defendant-intervenors, Calpine Corporation and NRG Energy, Inc. (collectively, “**Appellants**”), jointly filed an unopposed petition asking the Fifth Circuit to accept direct review of ERCOT’s appeal. The Fifth Circuit granted the Appellants’ petition on August 16, 2022. A copy of the Fifth Circuit’s Order is attached hereto as **Exhibit “N”**.

107. Since accepting direct review of ERCOT’s appeal:

- (a) on August 17, 2022, the Fifth Circuit entered an Order expediting the appeal and, in accordance with the foregoing, issued a letter on August 24, 2022 setting an expedited briefing schedule. A copy of the Fifth Circuit's Order dated August 17, 2022, and letter dated August 24, 2022 is attached hereto as **Exhibits "O" and "P"**, respectively; and
- (b) on August 30, 2022, the Fifth Circuit entered an order granting a motion by the Appellants to stay the Adversary Proceeding pending the outcome of the appeal. A copy of the Order is attached hereto as **Exhibit "Q"**.

108. Oral argument in the appeal is scheduled to proceed before the Fifth Circuit on November 8, 2022. A continued status conference in the Adversary Proceeding is scheduled before the U.S. Bankruptcy Court on December 15, 2022.

109. In Canada, counsel to ERCOT and counsel to the Just Energy Entities have exchanged the following correspondence regarding the Adversary Proceeding and the Transaction since the Just Energy Entities served the SISP Motion on August 4, 2022:

- (a) on August 15, 2022, counsel to ERCOT sent the correspondence attached hereto as **Exhibit "R"** expressing "concerns with the proposed transaction structure in the SISP Motion because of its implications for the Adversary Proceeding and the underlying energy contracts with ERCOT that are at issue in the Adversary Proceeding";
- (b) by return correspondence on August 16, 2022, a copy of which is attached hereto as **Exhibit "S"**, counsel for the Just Energy Entities provided counsel to ERCOT with clarification regarding the customary use of reverse vesting orders in restructuring proceedings and the manner in which certain provisions in the

Transaction documents are intended to operate in the context of the Just Energy Entities' CCAA proceeding;

- (c) on August 29, 2022, counsel to ERCOT sent responding correspondence disagreeing with various positions taken by the Just Energy Entities. A copy of ERCOT's responding correspondence is attached hereto as **Exhibit "T"**; and
- (d) on September 2, 2022, counsel to the Just Energy Entities again wrote counsel to ERCOT providing additional clarification regarding the ongoing SISF and responding to various points raised by ERCOT's counsel. The Just Energy Entities' counsel advised counsel to ERCOT that, "The Just Energy Entities are currently focused on implementing the SISF for the benefit of all stakeholders. We continue to remain available to discuss any of the foregoing issues with you in an attempt to find a consensual resolution." Attached hereto as **Exhibit "U"** is a copy of counsel's correspondence.

110. Since provision of counsel's letter on September 2, 2022, I understand that counsel for the Just Energy Entities has had discussions with counsel for ERCOT in order to address, and in an effort to resolve, any concerns held by ERCOT with respect to the Transaction and the Reverse Vesting Order and the impact of same on the Adversary Proceeding.

**E. UPDATES ON MISCELLANEOUS MATTERS**

**(a) Repayment of the DIP Facility**

111. Following the receipt of proceeds from HB4492 (US\$147.5 million) and conclusion of the summer months during which the Just Energy Entities' collateral posting requirements typically peak, the Just Energy Entities determined, in consultation with the Monitor, that it was prudent and in their best interests to initiate a voluntary repayment of a portion of the DIP Facility in order



to minimize ongoing interest and related costs. Accordingly, on September 26, 2022, the Just Energy Entities repaid US\$70 million of outstanding principal under the DIP Facility. The Just Energy Entities also paid accrued interest and fees of US\$3.9 million to the DIP Lenders which had been due on September 30, 2022.

112. The Just Energy Entities' partial repayment of the DIP Facility was approved by a joint resolution of the boards of directors (or other governing bodies, as applicable) of the Just Energy Entities on September 12, 2022.

**(b) Update on Claims Process with NextEra**

113. NextEra Energy Marketing, LLC (“NextEra”) is a Commodity Supplier to certain of the Just Energy Entities and submitted a secured Claim pursuant to the Claims Procedure Order for outstanding amounts alleged to be owing to it. On June 13, 2022, the Monitor, in consultation with the Just Energy Entities, issued a notice of revision or disallowance (“NORD”), disallowing a portion of NextEra's claim. Following its receipt of the NORD, and in accordance with the Claims Procedure Order, on July 12, 2022, NextEra filed a Notice of Dispute of Revision or Disallowance. Approximately \$7 million of NextEra's Claim remains in dispute between the parties.

114. While all ongoing claims review, claims determination and dispute resolution processes under the Claims Procedure Order were suspended in the SISP Approval Order pending further order of the CCAA Court, the Order carved out from the scope of such suspension Claims which necessarily had to be adjudicated to determine entitlement to proceeds to be distributed in accordance with a transaction completed pursuant to the SISP. The SISP Approval Order permitted the Just Energy Entities, with the consent of the Monitor, to refer such Claims to a Claims Officer or the Court for adjudication.

115. In accordance with the Claims Procedure Order and the SISP Approval Order and with the consent of the Monitor, the Just Energy Entities referred NextEra's disputed Claim to Mr. Edward

Sellers as Claims Officer for determination. A litigation timetable was agreed between the parties and approved by the Claims Officer. In accordance with such timetable, the Just Energy Entities and NextEra exchanged record productions and delivered their fact affidavits and expert reports.

116. The hearing of the dispute is scheduled before Mr. Sellers on October 25, 26 and 27, 2022, with written closing submissions to follow on November 4, 2022, and oral closing submissions on November 10, 2022.

**F. EXTENSION TO THE STAY PERIOD**

117. The Initial Order granted a Stay Period until and including March 19, 2021. The Stay Period has subsequently been extended to, most recently, October 31, 2022. In order to accommodate the scheduling of the hearing of the Vesting Order Motion on November 2, 2022, the Just Energy Entities intend to seek a short, 2 day stay extension from the CCAA Court to November 2, 2022 by written motion in the near term.

118. The Just Energy Entities are seeking to extend the Stay Period up to and including January 31, 2023. While the Just Energy Entities currently expect to close the Transaction prior to this date, the lengthier stay extension is being sought in recognition of the fact that the regulatory approval process is largely outside the control of the Purchaser and the Just Energy Entities and so a reasonable buffer is prudent to ensure sufficient breathing room is provided and the unnecessary costs of an additional motion are avoided.

119. The Just Energy Entities believe that the extension of the Stay Period is necessary and appropriate in the circumstances to permit the Just Energy Entities to:

- (a) obtain all necessary Transaction Regulatory Approvals, complete all Implementation Steps and close the Transaction in accordance with the Transaction Agreement;

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- (b) seek the Vesting Recognition Order from the U.S. Bankruptcy Court, which has been tentatively scheduled for hearing before Judge Isgur on December 1, 2022;
- (c) complete the adjudication process of NextEra's Claim in order to permit for all Priority Payments to be made pursuant to the Reverse Vesting Order; and
- (d) permit the Just Energy Entities to attend to the various other CCAA and/or Chapter 15 matters that will arise in the course of the proceedings.

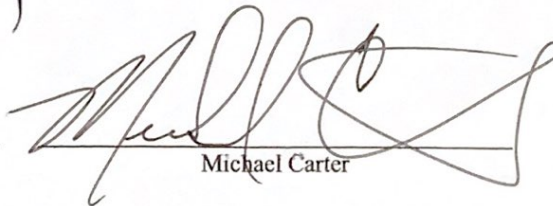
120. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Since the last extension to the Stay Period on August 4, 2022, the Just Energy Entities have, among other things, implemented the SISF in accordance with the SISF Approval Order, finalized the Implementation Steps and other Definitive Documents with respect to the Transaction, prepared the Vesting Order Motion, and repaid a portion of the DIP Facility.

121. I understand that the Monitor's Twelfth Report will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Just Energy Entities will have sufficient funds to continue their operations and fund these CCAA proceedings until January 31, 2023. I further understand that the Monitor's Twelfth Report will recommend that the Stay Period be extended.

SWORN BEFORE ME over video teleconference this 17<sup>th</sup> day of October, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Sibley, in the State of Louisiana while the Commissioner was located in the City of Toronto, in the Province of Ontario.

*Tiffany Sun*

Commissioner for Taking Affidavits  
Miao Sun (LSO No. 84440N)



Michael Carter

**THIS IS EXHIBIT Y REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

**Court File No. CV-21-00658423-00CL**

**Just Energy Group Inc. et al.**

**TWELFTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**October 27, 2022**



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## APPENDICES

Appendix “A”	Letter re Sharing of Information under SISP dated August 25, 2022
Appendix “B”	Supplement to Eleventh Report dated October 3, 2022
Appendix “C”	Cash Flow Forecast for the period ending February 3, 2023
Appendix “D”	Fee Affidavit of Paul Bishop sworn October 26, 2022
Appendix “E”	Fee Affidavit of Rachel Nicholson sworn October 24, 2022
Appendix “F”	Fee Affidavit of John Higgins sworn October 25, 2022



**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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST  
ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP.,  
JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA  
INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC.,  
8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,  
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST  
ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST  
ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST  
ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY  
MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY  
SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY  
GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING  
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL  
ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC,  
JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT  
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND  
JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**TWELFTH REPORT OF THE MONITOR**

**INTRODUCTION**

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (as collectively defined above, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the



protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million (the “**DIP Facility**”) subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and May 26, 2021 (the “**Second ARIO**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”), commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Process**”).
6. By Order dated February 9, 2022, the Court denied, with reasons to follow, certain relief requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan in their





capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”), and Trevor Jordet in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The Court’s reasons were set out in the written reasons of Justice McEwen dated February 23, 2022 (the “**February Endorsement**”). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the February Endorsement to the Court of Appeal for Ontario on February 24, 2022 (the “**Motion for Leave to Appeal**”). The Just Energy Entities filed their response to the Motion for Leave to Appeal on April 29, 2022. On June 28, 2022, the Court of Appeal for Ontario dismissed the Motion for Leave to Appeal, with costs payable to Just Energy and the DIP Lenders.

7. On June 7, 2022, the Just Energy Entities brought a motion before the Court seeking a Meetings Order (the “**Meetings Order Motion**”) to accept the filing of the Just Energy Entities’ Plan of Compromise and Arrangement dated May 26, 2022 (the “**Plan**”).
8. The Meetings Order Motion was opposed by Pariveda Solutions Inc. (“**Pariveda**”) and the following other contingent litigation creditors (collectively, the “**Contingent Litigation Claimants**”): (i) counsel to the proposed representative plaintiffs in the Donin/Jordet Actions (“**Putative Class Action Counsel**”); (ii) counsel to the representative plaintiff on behalf of a certified class in *Haidar Omarali v. Just Energy Group et al.*, Court File No. CV-15-52748300CP (“**Omarali Class Action**”); and (iii) 250 alleged claimants pursuing claims for alleged loss of business, personal injury and/or property damage arising out of the winter storms in Texas in February 2021.
9. On June 10, 2022, the Court released an Endorsement (the “**First Endorsement**”) which granted the majority of the relief sought by the Just Energy Entities pursuant to the Meetings Order Motion. However, the Court denied certain of the Just Energy Entities’ requested relief *vis-à-vis* the Contingent Litigation Claimants and directed a summary process be undertaken to determine the validity and value of the claims held by the Contingent Litigation Claimants and Pariveda.



10. On June 21 and 23, 2022, the Court released its second and third endorsements, which provided the reasons for the Orders and directions provided in the First Endorsement.
11. On July 4, 2022, both the representative plaintiff in the Omarali Class Action and Putative Class Action Counsel filed Notices of Motion for Leave to Appeal the First Endorsement.
12. As a result of the First Endorsement, and specifically the requirement to undertake a valuation process of the Claims held by the Contingent Litigation Claimants in advance of the proposed meetings of creditors to vote on the Plan, certain stakeholders withdrew their support of the Plan. Although the Just Energy Entities, in consultation with the Monitor, engaged in discussions with the Contingent Litigation Claimants and Pariveda with a view to preserving the Plan, no resolution was reached. The Just Energy Entities, the plan sponsor and supporting stakeholders instead pivoted to implementing a sales and investment solicitation process (“SISP”) in accordance with a new Support Agreement dated August 4, 2022 (the “**SISP Support Agreement**”).
13. On August 18, 2022, the Court granted an Order (the “**SISP Approval Order**”) that, among other things, approved the SISP and SISP Support Agreement, suspended the Claims Process (subject to certain exceptions with the consent of the Monitor), and extended the Stay Period to October 31, 2022. On the same date, the Court released an endorsement (the “**SISP Endorsement**”) that, among other things, directed the Monitor to supervise the exchange of information pursuant to the SISP in order to ensure that no bidder, including the stalking horse bidder, enjoyed an advantage that is unfair and/or could chill the market.
14. On September 19, 2022, the U.S. Court granted an Order recognizing and enforcing the SISP Approval Order and the Claims Procedure Order in the United States.
15. Given that the Stay Period is currently scheduled to expire on October 31, 2022 and the Applicants’ motion for the Reverse Vesting Order and the Ancillary Order (as each term is defined below) is returnable on November 2, 2022, the Applicants served a motion record to the Service List (as defined below) on October 19, 2022 seeking a short two-day extension of the Stay Period to November 2, 2022 (to be heard in writing), and



requested any objections to be delivered by October 24, 2022. As no objections were received by such date, on October 25, 2022, the Monitor provided the proposed Order extending the Stay Period to the Court for execution.

16. All references to monetary amounts in this Twelfth Report of the Monitor (the “**Twelfth Report**”) are in Canadian dollars unless otherwise noted.
17. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
18. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.
19. All capitalized terms not otherwise defined herein have the meanings attributed to them in the Second ARIO, Claims Procedure Order, SISP Approval Order or proposed Reverse Vesting Order, as applicable.

## PURPOSE

20. The purpose of this Twelfth Report is to provide information to the Court with respect to the following:
  - (a) the Monitor’s activities since the Monitor’s Eleventh Report to the Court dated August 13, 2022 (the “**Eleventh Report**”);
  - (b) the relief sought by the Applicants in their proposed Order (the “**Reverse Vesting Order**”), including, among other things:
    - (i) approving the purchase agreement (as amended, the “**Transaction Agreement**”) dated August 4, 2022, between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT Energy I LLC (collectively, the “**Purchaser**”) and the transactions contemplated therein (the “**Transaction**”) with such further



minor amendments as Just Energy and the Purchaser may deem necessary, and as may be approved by the Monitor;

- (ii) ordering that, upon the delivery of the Monitor's certificate certifying that, among other things, all conditions to closing of the Transaction have been satisfied or waived, the following shall be deemed to occur:<sup>1</sup>
- (1) the Excluded Assets (as defined herein) shall be transferred to and vested in two residual companies (together, the "**ResidualCos**"), one for Excluded Assets with respect to Acquired Entities formed or incorporated in the United States and one for Excluded Assets with respect to Acquired Entities formed or incorporated outside of the United States and, in each case, all claims and encumbrances shall continue to attach to such Excluded Assets;
  - (2) all Excluded Contracts and Excluded Liabilities of the Acquired Entities shall be transferred to and vested in the ResidualCos, and the Acquired Entities shall be forever discharged and released from such Excluded Contracts and Excluded Liabilities and related claims and encumbrances;
  - (3) all right, title and interest in and to the Purchased Interests will vest absolutely in the Purchaser and all Assumed Liabilities will continue as provided under the Transaction Agreement;
  - (4) all equity interests of Just Energy and Just Energy (U.S.) Corp. ("**JEUS**") existing prior to the commencement of the Implementation Steps will be deemed terminated and cancelled or redeemed as provided in the Implementation Steps and the Articles of Reorganization, as applicable;
  - (5) the Acquired Entities will cease to be Applicants in these CCAA Proceedings and will be released from the Second ARIO and all

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<sup>1</sup> All capitalized terms used in this sub-paragraph are as defined in the Transaction Agreement unless otherwise noted.



- other Orders granted in the CCAA Proceedings (excluding the Reverse Vesting Order); and
- (6) the ResidualCos will be added as Applicants to these CCAA Proceedings;
  - (iii) from and after the Effective Time, barring all Persons from commencing or continuing any step or proceeding against the Purchaser or the Acquired Entities relating to the Excluded Assets, the Excluded Liabilities, or any other claim, obligation or matter waived, released or discharged pursuant to the Reverse Vesting Order;
  - (iv) directing the satisfaction of the applicable priority payments in accordance with the Transaction Agreement;
  - (v) granting certain releases and exculpations with respect to the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities and the ResidualCos, the Monitor and its legal counsel, the Purchaser and its current and former directors, officers, employees, legal counsel and advisors, and the Credit Facility Agent and the Credit Facility Lenders and their respective current and former directors, officers, employees, legal counsel and advisors from the Released Claims; and
  - (vi) ordering that, at the Effective Time, the title of the CCAA Proceedings will be changed to delete the names of the Applicants and add the names of the two ResidualCos;
- (c) the relief sought by the Applicants in their proposed Order (the “**Ancillary Order**”), including, among other things:
- (i) upon the closing of the Transaction, expanding the powers of the Monitor in these CCAA Proceedings;
  - (ii) extending the Stay Period to and including January 31, 2023;
  - (iii) approving the activities and conduct of the Monitor, the Supplement to the Eleventh Report of the Monitor dated October 3, 2022 (the “**Supplement**”



- to the Eleventh Report”), this Twelfth Report, and the fees and disbursements of the Monitor and its Canadian and U.S. counsel;
- (iv) directing that all copies of the Notices of Intention received by the Just Energy Entities in the SISP be treated as confidential and sealed, pending further order of this Court; and
- (d) the Monitor’s recommendations in respect of the foregoing, as applicable.

## TERMS OF REFERENCE AND DISCLAIMER

21. In preparing this Twelfth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
22. Except as otherwise described in this Twelfth Report:
- (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
- (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Twelfth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
23. The Monitor has prepared this Twelfth Report to provide information to the Court in connection with the relief requested by the Applicants. This Twelfth Report should not be relied on for any other purpose.



## MONITOR'S ACTIVITIES SINCE THE ELEVENTH REPORT

24. In accordance with its duties as outlined in the Second ARIIO, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Eleventh Report have included the following:
- (a) delivering to the Just Energy Entities, with a copy to the Service List (as defined below), a letter dated August 25, 2022 that confirmed certain information-sharing protocols and the Monitor's understanding of its duties in relation to the SISP and in accordance with the SISP Endorsement. A copy of the letter is attached as **Appendix "A"** hereto;
  - (b) participating in regular and frequent discussions with the Just Energy Entities, their legal counsel and other advisors regarding, among other things, the SISP, the CCAA Proceedings, and the Claims Procedure, including a detailed review of each development pursuant to the SISP;
  - (c) preparing the Supplement to the Eleventh Report, which included an updated cash flow forecast for the 7-week period ending November 5, 2022 as a result of the Just Energy Entities' voluntary US\$70 million partial repayment of the DIP Facility (plus accrued interest and fees). A copy of the Supplement to the Eleventh Report is attached as **Appendix "B"** hereto;
  - (d) participating in discussions with the DIP Lenders and other key stakeholders, and their respective legal counsel and other advisors regarding, among other things, the SISP;
  - (e) monitoring the cash receipts and disbursements of the Just Energy Entities;
  - (f) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
    - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
    - (ii) monitor the status of the SISP, including the solicitation process thereof and expressions of interest following therefrom; and



- (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (g) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (h) responding to stakeholder inquiries regarding the CCAA Proceedings generally;
- (i) observing the developments and steps taken by the parties with respect to the adjudication of the Claim filed by NextEra Energy Marketing, LLC (“**NextEra**”), a portion of which is disputed by the Just Energy Entities, and providing assistance to the Claims Officer where requested;
- (j) engaging with counsel to certain of the Contingent Litigation Claimants relating to the SISP and related matters;
- (k) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor’s Website in accordance with the terms of the Second ARIO;
- (l) maintaining the service list for the CCAA Proceedings (the “**Service List**”) with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor’s Website; and
- (m) preparing this Twelfth Report.

## **RESULTS OF THE SISP**

25. As a result of the withdrawal of support for the Plan by key stakeholders, the SISP emerged as the only viable going concern strategy available to the Just Energy Entities. As described in its Eleventh Report, the Monitor was involved in the development of the SISP and views the SISP as a reasonable process that will facilitate a fair, final and timely termination of these CCAA Proceedings, which proceedings have experienced delays at times resulting in enhanced costs. The SISP was ultimately approved by the Court after extensive consultation with many of the Just Energy Entities’ key stakeholders, and general notification via service of the proposed SISP Order (at that time) and related materials to the Service List for the CCAA Proceedings.





26. The SISP was backstopped by the Transaction in the form of a stalking horse purchase agreement, which provided additional critical certainty to the Just Energy Entities and their stakeholders (including, importantly, their employees) of finality by way of a going concern transaction for effectively all of the Just Energy Entities' business and also set a floor price for prospective bidders that could optimize the amount of any winning bid.
27. The Monitor has been involved in the supervision and monitoring in all stages of the SISP, including as follows:
- (a) reviewing the list of outreach parties prepared by BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA Proceedings (the “**Financial Advisor**”) as well as the Financial Advisor’s SISP outreach strategy and implementation generally, including communication materials;
  - (b) reviewing the contents of, and monitoring the activity in, the data room containing diligence information relating to the SISP prepared by the Financial Advisor and the Just Energy Entities;
  - (c) attending meetings and calls with, and being a party to email correspondence between, the Just Energy Entities and the Financial Advisor with interested parties; and
  - (d) staying apprised of all material developments *vis-à-vis* prospective bidders and monitoring the sharing of confidential information in accordance with the SISP Endorsement, including revocation of access to the data room where necessary.
28. The Monitor confirms that the Just Energy Entities and their professional advisors complied with the requirements established by the Monitor for information sharing in the August 25, 2022 letter during the SISP.
29. The Just Energy Entities received four NOIs from potential third-party purchasers pursuant to the SISP. A NOI was not received from Putative Class Action Counsel and, subsequent to the NOI Deadline on September 8, 2022, the Monitor participated in a call with Putative Class Action Counsel, the Financial Advisor, and counsel to the Just Energy Entities to confirm that their clients were not participating in the SISP, which was confirmed.



30. By September 22, 2022, only one interested third-party remained actively involved in the SISP. The Financial Advisor invited the remaining party to submit a Qualified Bid, but on October 13, 2022, such party confirmed that they saw no value beyond the stalking horse bid (i.e. no value beyond the amount required to pay secured and priority claims) and, accordingly, would not be submitting a bid. The Transaction is therefore the only going concern transaction available to the Just Energy Entities.
31. In the Monitor's view, the SISP was thorough, far-reaching, and provided sufficient time and opportunity for interested third-parties to be involved and carry out necessary due diligence required to form a view on the opportunity and submit a bid. The SISP was extensively advertised, with Just Energy issuing a press release on August 5, 2022, EnergyChoiceMatters.com publishing an article on August 5, 2022 and Just Energy publishing notices advising of the filing of the motion to approve the SISP in the Wall Street Journal (on August 12, 2022) and in The Globe and Mail (National Edition) (on August 13, 2022) – all of which was in addition to the solicitation efforts undertaken by the Financial Advisor and the third parties contacted directly by the Financial Advisor.
32. The SISP occurred as part of these lengthy and well-publicized CCAA Proceedings known well by industry participants. Extensive solicitation efforts also predated these proceedings by way of a prior strategic review and sale process undertaken by Just Energy – all as described in detail in prior Monitor's reports and the various affidavits of Michael Carter including the affidavit sworn October 17, 2022.

## THE TRANSACTION

### *Overview*

33. The effect of the Transaction is that, following closing, the Purchaser will own all of the issued and outstanding shares of JEUS. In turn, JEUS will own all of the issued and outstanding shares of Just Energy and the Acquired Entities. The Just Energy Entities will continue to control and own their assets (other than Excluded Assets) and will continue to be liable for their respective Assumed Liabilities.



34. All secured debt and specified priority payables will be satisfied in full or retained. Specifically, on closing, Just Energy will pay from the cash portion of the Purchase Price and other cash on hand:
- (a) all obligations secured by the Administration Charge, the FA Charge, the KERP Charge and the DIP Charge;
  - (b) the amount necessary to satisfy each claim of a Government Entity of the kind defined in section 6(3) of the CCAA, if any;
  - (c) the Credit Facility Claim less the Credit Facility Remaining Debt, if any; and
  - (d) each Commodity Supplier's Commodity Supplier Claim that is an Accepted Claim pursuant to the Claims Procedure Order.
35. A \$1.9 million administrative reserve will be paid to the Monitor in trust (the "**Administrative Reserve**") for payment of the reasonable fees and costs of the Monitor and its professional advisors and the professional advisors of the Just Energy Entities for services performed prior to and after the Closing Date, including the costs to wind-down and/or dissolve and/or bankrupt each ResidualCo. Any unused portion of the Administrative Reserve will be returned to Just Energy.
36. The Transaction does not provide for any recoveries to General Unsecured Creditors. Save for the Administrative Reserve, no funds are available to create any other reserve for amounts secured by the Court-ordered charges.
37. The Transaction stipulates a "**Closing Date**" that is the earlier of five business days after the closing conditions are satisfied and December 14, 2022 (expected to be extended to December 16, 2022 in accordance with amendments to the Transaction Agreement under consideration by Just Energy and the Purchaser), or such later date agreed to by Just Energy and the Purchaser in writing in consultation with the Monitor (the "**Outside Date**"). Given the possible delays relating to obtaining Transaction Regulatory Approvals and the filing of Energy Regulator Notices, an automatic 60-day extension of the Outside Date is contemplated in the event any such approval or filing has not been obtained or completed by the Outside Date.



38. Following closing, the Just Energy Entities will exit the CCAA and Chapter 15 proceedings and continue in the normal course thereafter. The two ResidualCos will hold all Excluded Assets and Excluded Liabilities of the Just Energy Entities and will become Applicants in the CCAA Proceedings.
39. An overview of the key commercial terms of the Transaction are as follows:
- (a) the Purchase Price to be paid by the Purchaser under the Transaction Agreement consists of:
    - (i) US\$184.9 million in cash, plus up to an additional C\$10 million in the event and to the extent additional funds are required to pay all amounts to be paid by the Just Energy Entities pursuant to the Transaction Agreement and the Reverse Vesting Order;
    - (ii) a credit bid of the BP Commodity/ISO Services Claim (in the value of US\$252.7 million, including accrued interest to November 30, 2022), in return for the issuance of the newly issued preferred shares of JEUS; and
    - (iii) the assumption of the Assumed Liabilities, including:
      - (1) all Post-Filing Claims, being any or all liability, or obligation of the Just Energy Entities of any kind that arises during and in respect of the period commencing on the Filing Date in respect of services rendered or supplies provided to the Just Energy Entities; provided that such amounts are not a Restructuring Period Claim, a Restructuring Period D&O Claim or the subject of any claim filed in the Claims Process (excluding any secured or priority claims specifically contemplated to be paid or retained as part of the Transaction);
      - (2) any and all indemnification obligations of the Just Energy Entities to current and former directors, officers, and/or other persons employed or previously employed by the Just Energy Entities;
      - (3) Energy Regulator Claims relating to the Just Energy Entities;



- (4) tax liabilities of the Just Energy Entities for any tax period or the portion thereof beginning on or after the Filing Date (subject to the various exclusions noted in the Transaction Agreement);
  - (5) all Cash Management Obligations and Employee Priority Claims;  
and
  - (6) all Claims of the Texas Comptroller of Public Accounts that have been accepted pursuant to the Claims Procedure Order;
- (b) on or before the Closing Date, the Just Energy Entities will take certain steps (collectively, the “**Implementation Steps**”) to permit the Transaction to proceed in a tax-efficient manner, including settling certain intercompany indebtedness and other reorganization steps. The Monitor has discussed the Implementation Steps with the Just Energy Entities and understands the rationale for such steps, which are primarily tax driven;
- (c) on the Closing Date, pursuant to the terms of the Transaction Agreement and the Reverse Vesting Order:
- (i) the Purchaser will acquire all of the newly issued common and preferred shares of JEUS free and clear of all encumbrances, other than Permitted Encumbrances (the “**New JEUS Shares**”). All equity interests of JEUS outstanding prior to the issuance of the New JEUS Shares will be cancelled and the New JEUS Shares will represent 100% of the outstanding equity interests of JEUS following their issuance;
  - (ii) JEUS will subscribe for and Just Energy will issue to JEUS newly issued common shares of Just Energy (the “**New JE Shares**”). All equity interests of Just Energy outstanding prior to the issuance of the New JE Shares will be cancelled and the New JE Shares will represent 100% of the outstanding equity interests of Just Energy following their issuance;
  - (iii) Just Energy will be delisted and none of the Just Energy Entities will be a reporting issuer (or equivalent thereof) under any Canadian or U.S. securities laws;



- (iv) the Just Energy Entities will cease to be Applicants in the CCAA Proceedings and will be released from the purview of the Second ARIO and all Orders of the Court granted in the CCAA Proceedings other than the Reverse Vesting Order;
  - (v) the Just Energy Entities will continue to be liable for the Assumed Liabilities;
  - (vi) all Excluded Assets and Excluded Liabilities will be assigned to and vested in the ResidualCos, following which the ResidualCos will become Applicants in the CCAA Proceedings;
    - (1) such “Excluded Liabilities” include, among other things, pre-filing claims, unsecured litigation claims (including the Contingent Litigation Claims), and intercompany obligations which do not continue pursuant to the Implementation Steps;
    - (2) such “Excluded Assets” are expected to include (in accordance with amendments to the Transaction Agreement under consideration by Just Energy and the Purchaser), among other things: (A) the tax records and returns, and books and records pertaining solely to any of the Excluded Assets or Excluded Liabilities (which will continue to be held by the Just Energy Entities and provided to ResidualCos upon request); (B) the Excluded Contracts; (C) all written information or records that are solely related to any Excluded Asset or Excluded Liability; (D) the Excluded Entities; (E) any rights of the ResidualCos under the Transaction documents; and (F) the Administrative Reserve;
- (d) in addition, on the Closing Date:
- (i) the Credit Facility Lenders, JEUS and Just Energy Ontario L.P. (“**JEO**”) will enter into a tenth amended and restated credit agreement (the “**New Credit Agreement**”) pursuant to which a first lien revolving credit facility in the amount of \$250 million will be made available to JEUS and JEO; and



- (ii) a seventh amended and restated intercreditor agreement by, among others, the Just Energy Entities, National Bank of Canada, as collateral agent, the Credit Facility Agent, and the applicable Commodity Suppliers, will be entered into.

40. The Monitor has considered the factors set out in section 36(3) of the CCAA. The Monitor understands that the Transaction will, among other things, preserve the ongoing employment of most of the Just Energy Entities' employees, provide for the uninterrupted supply of energy to the Just Energy Entities' almost one million customers, and maintain critical relations with market regulators across Canada and the United States, commodity suppliers, trade creditors, and other counterparties. In addition, the Transaction will satisfy or result in an assumption of all secured claims and priority payables and permit the Just Energy Entities to exit these CCAA proceedings with a significantly deleveraged balance sheet and a \$250 million New Credit Facility. Accordingly, the Monitor supports the relief requested.

## **REVERSE VESTING ORDER**

### ***Overview***

- 41. The Transaction is to be implemented pursuant to a Reverse Vesting Order. The need for a Reverse Vesting Order in the circumstances follows from the heavily regulated nature of the Just Energy Entities' business. The value of the Just Energy Entities' business is entirely dependent on the Just Energy Entities maintaining a significant number of non-transferrable licenses and authorizations in numerous states and provinces that permit their continued operation in Canada and the United States. There are also agreements with over 100 public utility bodies which are required for the Just Energy Entities to provide natural gas and electricity in certain markets to their customers. Without such licences, authorizations and agreements, the Just Energy Entities would be barred from operating within the applicable jurisdictions.
- 42. While certain regulators that issued the licences or approvals may permit the transfer of such licenses or approvals with the consent of the regulator, the cost, delay and risk relating to requesting the approval of any such transfers would imperil the Transaction



and risk a lengthy extension with related costs to these CCAA Proceedings to the potential detriment of stakeholders of the Just Energy Entities.

43. The Monitor has considered the potential impact on stakeholders that the Reverse Vesting Order structure may have. In the circumstances, any potential prejudice to individual creditors is far outweighed by the benefit of the transaction as a whole.
44. A Reverse Vesting Order is the only efficient means to ensure that all such licenses, authorizations, and agreements are available to and apply in respect of the Just Energy Entities post-closing in an efficient manner, ensuring the Just Energy Entities can continue as a going concern.
45. In addition, absent the granting of the Reverse Vesting Order:
  - (a) certain U.S. tax attributes that are currently for the benefit of the Just Energy Entities would be unable to be utilized in the go-forward business; and
  - (b) certain hedge contracts and derivative instruments held by the Just Energy Entities, which are fundamental to the Just Energy Entities' ability to effectively operate would likely be lost.
46. Accordingly, the Monitor is of the view that the Reverse Vesting Order represents the only viable alternative to implement the Transaction for the benefit of the Just Energy Entities' stakeholders and therefore supports the relief requested.

### ***Releases***

47. The proposed Reverse Vesting Order includes releases in favour of the "Released Parties", which is defined to include (i) current and former directors, officers, employees, counsel and advisors of the Just Energy Entities or ResidualCos, (ii) the Monitor and its counsel, (iii) the Purchaser and its current and former directors, officers, employees, counsel and advisors, and (iv) the Credit Facility Agent and Credit Facility Lenders and their respective current and former directors, officers, employees, counsel and advisors. The full scope of the release provisions are set out in the proposed Reverse Vesting Order and should be read in conjunction with this Twelfth Report.





48. The Released Parties will be released by the “Releasing Parties” (which is defined to include any and all Persons (other than the Just Energy Entities and their respective current and former affiliates)) from any and all present and future claims of any nature or kind whatsoever based in whole or in part on any act or omission, transaction or dealing or other occurrence existing or take place on prior to the Effective Time in respect of (i) the Just Energy Entities and their business, operations and administration and the CCAA Proceedings and/or Chapter 15 Proceedings, or (ii) the Transaction Agreement and related closing documents (the “**Released Claims**”).
49. The Released Parties will also be released by the Just Energy Entities (and their respective current and former affiliates) in respect of any Released Claims that may be held at the Effective Time, however, such Released Claims do not include any claim (or defences) relating to any contracts, leases, agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices or other ordinary course obligations that remain in effect following the Effective Time.
50. The following claims are excluded from being released under the proposed Reverse Vesting Order: (i) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (ii) any obligations of any of the Released Parties under or in connection with the Transaction Agreement and related closing documents.
51. In the view of the Monitor, having considered the facts of the situation, each of the Released Parties have, in some meaningful way, contributed to the Transaction and the successful restructuring of the Just Energy Entities. Further, it is the Monitor’s understanding, based on the advice of counsel, that it is customary to include such releases in reverse vesting orders. The Monitor also understands that the release in favour of the Directors and Officers is necessary to allow for the release of the D&O Charge, which in turn is necessary to allow the Transaction to close.
52. Accordingly, the Monitor is of the view that the proposed releases are reasonable, and not overly broad, in the circumstances, and supports the relief requested by the Just Energy Entities.



***The Ancillary Order and the Monitor's Enhanced Powers***

53. The Just Energy Entities are also seeking the Ancillary Order, which expands the powers of the Monitor. As mentioned above, upon the Effective Time, all Excluded Liabilities and Excluded Assets will be transferred to and vest in the ResidualCos, and each of the ResidualCos will be added as applicants in the CCAA Proceedings. Given that the remaining Acquired Entities will, as at the Effective Time, no longer be Applicants in the CCAA Proceedings, the proposed Ancillary Order expands the authority and powers of the Monitor so it can assist with the wind down of the ResidualCos.
54. Specifically, the Ancillary Order authorizes and empowers, but does not require, the Monitor to, among other things, (i) cause the ResidualCos to take any and all actions and steps, and execute agreements and documents on behalf of the ResidualCos, (ii) exercise any power which may be properly exercised by any board of directors of the ResidualCos, (iii) engage, retain or terminate, either directly or on behalf of the ResidualCos, services of any officers, employee, consultant, agent, or other person or entities as the Monitor deems necessary, (iv) exercise any shareholder, partnership, joint venture or other rights of any of the ResidualCos, (v) assign any of the ResidualCos into bankruptcy, and the Monitor is entitled (but not obligated) to act as a trustee in such bankruptcies, (vi) cause the dissolution or winding-up of any of the ResidualCos, and (vii) act as an authorized representative of the ResidualCos in respect of dealings with any Taxing Authority.
55. The proposed Ancillary Order also provides for customary exclusions of liability of the Monitor in performing its duties, responsibilities and roles thereunder.
56. The authority granted to the Monitor in the proposed Ancillary Order will ensure that the Monitor has the requisite authority to deal with the winding-down of the ResidualCos in an orderly and efficient manner. As a result, the Monitor is of the view that the relief provided in the Ancillary Order is appropriate in the circumstances.



## LIQUIDATION ANALYSIS

57. The Monitor notes that, under the CCAA, it is not a requirement to conduct a liquidation analysis when a debtor company is seeking to effect a sale transaction pursuant to a vesting order. However, the Applicants, as assisted by the Monitor, commenced preparation of a liquidation analysis when they were pursuing approval of the Plan. The Applicants, with the assistance of the Monitor, have updated this analysis.
58. Based upon the updated liquidation analysis, the Applicants have concluded that, not only would a liquidation produce no recovery for unsecured creditors, but it would result in a shortfall to secured creditors. The Monitor concurs with this view.

## UPDATE ON ERCOT LITIGATION

59. As noted in the Monitor's previous reports to the Court, the Just Energy Entities disputed the resettlement payments that the Just Energy Entities were required to pay to ERCOT as a result of the inflated prices it was charged during the Texas weather event. The Monitor also noted that ERCOT dismissed one of the disputes filed by the Just Energy Entities, which triggered an alternative dispute resolution process.
60. As previously noted by the Monitor, the Just Energy Entities commenced litigation against ERCOT and the Public Utility Commission of Texas (the "PUCT") on November 12, 2021, in an effort to recover payments made by various Just Energy Entities to ERCOT for certain invoices relating to the Texas weather event in February 2021 (the "**ERCOT Litigation**"). The claim against the PUCT was dismissed by the U.S. Bankruptcy Court. Further, the Monitor noted that it intends to be actively involved in supporting the ERCOT Litigation.
61. At a hearing on April 4, 2022 on ERCOT's second motion to dismiss, the U.S. Bankruptcy Court requested that the parties seek direction from the Court with respect to the proper party in interest to advance certain claims.
62. By endorsement dated May 5, 2022 (the "**Section 36.1 Endorsement**"), the Court determined that Just Energy (as foreign representative) and other Just Energy Entities, as the case may be, were authorized and empowered to pursue the Section 36.1 Claims



in the Adversary Proceeding, *nunc pro tunc*, with the Monitor being authorized and directed to take whatever actions and steps it deemed advisable to assist and supervise the Just Energy Entities with respect to the prosecution of the Section 36.1 Claims in the Adversary Proceeding. The Section 36.1 Endorsement and related Order were given full force and effect in the United States pursuant to an Order of the U.S. Bankruptcy Court entered on July 19, 2022.

63. On June 9, 2022, the U.S. Bankruptcy Court held a continued hearing on ERCOT’s motion to dismiss the First Amended Complaint. At that hearing, the U.S. Bankruptcy Court dismissed Count 3 (Transfer at Undervalue - CCAA (section 36.1), BIA (section 96)). The Bankruptcy Court also dismissed Counts 1 and 2 (Preference - CCAA (section 36.1), BIA (section 95)) with leave to replead those Counts to identify with more specificity the individual obligations and transfers at issue. At that time, the U.S. Bankruptcy Court deferred ruling on ERCOT’s other arguments.
64. On June 14, 2022, the Just Energy Entities filed a second amended complaint (the “**Second Amended Complaint**”). The Second Amended Complaint contains the same Counts as the First Amended Complaint, except for Count 3 (Transfer at Undervalue - CCAA (section 36.1), BIA (section 96)), which was omitted.
65. On June 21, 2022, ERCOT filed a third motion to dismiss the Second Amended Complaint. At a hearing on June 27, 2022, the U.S. Bankruptcy Court granted ERCOT’s motion in part: (i) dismissing Count 6 (Setoff, Recoupment); and (ii) striking certain allegations from the Second Amended Complaint. The U.S. Bankruptcy Court denied ERCOT’s motion in all other respects, including with respect to arguments based on sovereign immunity, abstention, the filed-rates doctrine, and that the PUCT was a necessary party (the “**July 6, 2022 Order**”). A table summarizing the foregoing is provided below:

Count	June 9 Hearing	June 27 Hearing
Count 1 (Preference (Obligations) CCAA (s. 36.1), BIA (s. 95))	Dismissed with leave to replead	Upheld
Count 2 (Preference (Transfers) - CCAA (s. 36.1), BIA (s. 95))	Dismissed with leave to replead	Upheld



Count 3 (Transfer at Undervalue - CCAA (s. 36.1), BIA (s. 96))	Dismissed	Omitted from Second Amended Complaint
Count 4 (Recovering Proceeds - CCAA (s. 36.1), BIA (s. 98))	Deferred determination	Upheld
Count 5 (Turnover - 11 U.S.C. § 542(a))	Deferred determination	Upheld
Count 6 (Setoff, Recoupment)	Deferred determination	Dismissed

66. During the hearing on June 27, 2022, counsel for ERCOT informed the U.S. Bankruptcy Court that ERCOT intended to seek a direct appeal of certain aspects of the U.S. Bankruptcy Court’s ruling to the U.S. Court of Appeals for the Fifth Circuit (the “**Court of Appeals**”). On July 19, 2022, ERCOT filed a notice of appeal of the July 6 Order and, by Order entered July 19, 2022, the U.S. Bankruptcy Court certified the July 6, 2022 Order for direct appeal to the Fifth Circuit and recommended that the appeal be heard on an expedited basis. On July 19, 2022 Just Energy, ERCOT and certain Intervenor filed in the U.S. Bankruptcy Court a Certification to the Court of Appeals that a circumstance specified in 28 U.S.C. § 158(d)(2) exists supporting certification to the Court of Appeals.
67. On July 27, 2022 ERCOT and the Intervenor filed an Unopposed Petition for Direct Appeal Under 28 U.S.C. § 158(d)(2) (the “**Motion for Direct Appeal**”) with the Court of Appeals. Also, on July 27, 2022 Just Energy filed with the Court of Appeals Respondents’ Unopposed Motion to Expedite Appeal (“**Motion to Expedite Appeal**”). On August 16, 2022, the Court of Appeals granted the Motion for Direct Appeal, and on August 17, 2022, the Court of Appeals granted the Motion to Expedite Appeal.
68. On August 17, 2022, ERCOT and the Intervenor filed a Motion for Stay Pending Resolution of Sovereign Immunity Appeal, which the Court of Appeals granted on August 30, 2022 over Just Energy’s objection. ERCOT and the Intervenor filed a Notice of Stay in the U.S. Bankruptcy Court on August 30, 2022.
69. ERCOT and the Intervenor filed their brief with the Court of Appeals on September 21, 2022. The PUCT filed a brief as amicus curiae with the Court of Appeals in support



of ERCOT and the Intervenors' brief on September 28, 2022. The Just Energy entities filed their answering brief with the Court of Appeals on October 12, 2022. ERCOT and the Intervenors filed their reply brief with the Court of Appeals on October 26, 2022. The appeal is set for oral argument on Tuesday, November 8, 2022.

70. The timeline to resolution and likelihood of success of this litigation is unknown. Recoveries from such litigation, if any, could take years to realize.

## **UPDATE ON CLAIMS OFFICER ADJUDICATION**

### ***NextEra Claim***

71. As mentioned in the Eleventh Report, pursuant to the Claims Procedure Order, the Just Energy Entities have engaged the Claims Officer to adjudicate the Disputed Claim filed by NextEra, given that such Claim is a secured Claim and is required to be paid pursuant to the Transaction Agreement. Approximately \$7 million of NextEra's Claim remains in dispute between the parties.
72. Since the Eleventh Report, the Monitor has attended numerous case conferences before the Claims Officer, with counsel to the Just Energy Entities, NextEra and the DIP Lenders in attendance. In accordance with the litigation timetable regarding the adjudication of such Claim, each of NextEra and the Just Energy Entities have exchanged productions and delivered their fact affidavits and expert reports.
73. The hearing of the dispute occurred before the Claims Officer on October 25, 26 and 27, 2022, with written closing submissions to follow on November 7, 2022, and oral closing submissions on November 10, 2022.

### ***Donin/Jordet Actions***

74. As mentioned in the Monitor's previous reports to the Court, on March 3, 2022, the Court granted an Order appointing the Honourable Justice Dennis O'Connor as Claims Officer with respect to the adjudication of the Donin/Jordet Actions. Although that adjudication process had commenced, which the Monitor supervised and assisted where requested, such adjudication has been suspended in light of the suspension of the Claims Process pursuant to the SISP Order. Given that, under the Transaction, there will be no



proceeds of sale available to General Unsecured Creditors, there is no intention to continue such adjudication.

**RECEIPTS AND DISBURSEMENTS FOR THE 4-WEEK PERIOD ENDED OCTOBER 15, 2022**

75. The Just Energy Entities' actual net cash flow for the 4-week period from September 18, 2022 to October 15, 2022, was approximately \$55.0 million better than the Cash Flow Forecast appended to the Supplement to the Eleventh Report of the Monitor (the "**Revised August 2022 Cash Flow Forecast**"), as summarized below:



<i>(CAD\$ in millions)</i>	Forecast	Actuals	Variance
	4-Week	4-Week	4-Week
	Total	Total	Total
<b>RECEIPTS</b>			
Sales Receipts	\$288.1	\$285.7	(\$2.4)
Miscellaneous Receipts	-	6.9	6.9
<i>Total Receipts</i>	\$288.1	\$292.6	\$4.5
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$350.2)	(\$304.8)	\$45.4
<i>ERCOT Resettlements</i>	-	-	-
Payroll	(11.3)	(10.9)	0.4
Taxes	(13.7)	(8.2)	5.5
Commissions	(16.3)	(8.9)	7.4
Selling and Other Costs	(9.4)	(10.6)	(1.2)
<i>Total Operating Disbursements</i>	(\$400.8)	(\$343.3)	\$57.5
<b>OPERATING CASH FLOWS</b>	<b>(\$112.7)</b>	<b>(\$50.7)</b>	<b>\$62.0</b>
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	(\$88.9)	(\$96.0)	(\$7.1)
Interest Expense & Fees	(8.5)	(8.7)	(0.2)
<i>Restructuring Disbursements</i>			
Professional Fees	(5.0)	(4.7)	0.3
<b>NET CASH FLOWS</b>	<b>(\$215.1)</b>	<b>(\$160.0)</b>	<b>\$55.0</b>
<b>CASH</b>			
Beginning Balance	\$447.5	\$447.5	\$-
Net Cash Inflows / (Outflows)	(215.1)	(160.0)	55.0
Other (FX)	-	8.2	8.2
<b>ENDING CASH</b>	<b>\$232.4</b>	<b>\$295.7</b>	<b>\$63.3</b>

76. Explanations for the main variances in actual receipts and disbursements as compared to the Revised August 2022 Cash Flow Forecast are as follows:

- (a) The unfavourable variance of approximately \$2.4 million in Sales Receipts is primarily due to normal course week-over-week fluctuations in collections comprised of the following:
  - (i) an unfavourable variance of approximately \$4.7 million in respect of U.S. residential customers;





- (ii) a favourable variance of approximately \$1.3 million in respect of U.S. commercial customers; and
  - (iii) a favourable variance of approximately \$1.0 million in respect of Canadian residential and commercial customers;
- (b) The temporary favourable variance of approximately \$6.9 million in Miscellaneous Receipts is due to the receipt of sales tax refunds from the Canada Revenue Agency earlier than forecasted;
- (c) The favourable variance of approximately \$45.4 million in respect of Energy and Delivery Costs is primarily driven by the following:
  - (i) An unfavourable variance of approximately \$4.0 million due to higher commodity payments driven by normal course market fluctuations;
  - (ii) A temporary favourable variance of approximately \$51.7 million primarily due to cash collateral requirements with ERCOT and other commodity suppliers being posted after the 4-week forecast period rather than during; and
  - (iii) An unfavourable variance of approximately \$2.4 million due to higher than forecast transportation and delivery payments driven by normal course fluctuations;
- (d) The favourable temporary variance of approximately \$5.5 million in respect of Taxes is primarily due to normal course fluctuations in the timing of tax payments being made after the weeks covered by the Revised August 2022 Cash Flow Forecast instead of during the last week of that forecast as contemplated;
- (e) The favourable temporary variance of approximately \$7.4 million in respect of Commissions is primarily due to payments forecasted to be made in the last week of the Revised August 2022 Cash Flow Forecast being paid after the Revised August 2022 Cash Flow Forecast;
- (f) The unfavourable variance of approximately \$1.2 million in respect of Selling and Other Costs is primarily due to higher than forecast spending rates, offset by the



Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors; and

- (g) The unfavourable variance of approximately \$7.1 million in respect of Credit Facility – Borrowings / Repayments is due to the foreign exchange rate between Canadian and U.S. rates being higher than in the Revised August 2022 Cash Flow Forecast such that even though the nominal forecasted payment of US\$70 million remained the same, the real payment was \$7.1 million higher, which is reversed in part by the favourable \$8.2 million variance in Other (FX) below Net Cash Flows.

### ***Reporting Pursuant to the DIP Term Sheet***

- 77. The variances shown and described herein compare the Revised August 2022 Cash Flow Forecast, as appended to the Supplement to the Eleventh Report of the Monitor, with the actual performance of the Just Energy Entities over the 4-week period noted.
- 78. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Report(s)**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance report for the four-week period ended October 15, 2022. All variances reported were within the permitted variances.
- 79. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the “**DIP Cash Flow Forecast(s)**”). The Just Energy Entities provided the required DIP Cash Flow Forecast, which was approved by the DIP Lenders, for the 13-week period beginning October 16, 2022.
- 80. As the DIP Variance Report utilizes updated underlying cash flow forecasts vis-à-vis the Revised August 2022 Cash Flow Forecast for the same period, the DIP Variance Report differed from the variance analysis above that compares actual results to the



Revised August 2022 Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.

81. Since the Supplement to the Eleventh Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second ARIIO, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
- (a) Delivery of a Priority Supplier Payables Certificate monthly;
  - (b) Delivery of an ERCOT Related Settlements update weekly;
  - (c) Delivery of a Cash Management Charge update monthly;
  - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly; and
  - (e) Delivery of a Marked to Market Calculation monthly.

#### ***DIP Waiver to Increase Cash Collateral Cap***

82. During the week ended October 22, 2022, Management proactively sought a waiver from the DIP Lenders to increase the cash collateral cap under the DIP Facility from US\$80 million to US\$100 million. Due to market pricing movements, the planned transition of load for ERCOT from BP to Just Energy Limited, and the timing of normal course commodity accounts payable outstanding, the Just Energy Entities anticipated that additional cash collateral in excess of the existing US\$80 million cap would be required to be posted to ensure continued trading access to energy markets. The DIP Lenders approved the requested waiver on October 21, 2022. A waiver for the Energy and Delivery Costs line item was not required given the excess availability under the line-item test.

#### **CASH FLOW FORECAST FOR THE PERIOD ENDING FEBRUARY 11, 2023**

83. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 17-week period ending February 11, 2023 (the “**November 2022 Cash Flow Forecast**”), which encompasses the requested stay



extension to January 31, 2023. The November 2022 Cash Flow Forecast is attached hereto as **Appendix “C”**, and is summarized below:

<i>(CAD\$ in millions)</i>	<b>17-Week Period Ending February 11, 2023</b>
<b>Forecast Week</b>	<b>Total</b>
<b>RECEIPTS</b>	
Sales Receipts	\$1,132.3
Miscellaneous Receipts	5.0
<i>Total Receipts</i>	\$1,137.3
<b>DISBURSEMENTS</b>	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$972.8)
Payroll	(42.4)
Taxes	(43.7)
Commissions	(35.0)
Selling and Other Costs	(44.2)
<i>Total Operating Disbursements</i>	(\$1,138.1)
<b>OPERATING CASH FLOWS</b>	(\$0.8)
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(10.4)
<i>Restructuring Disbursements</i>	
Professional Fees	(18.9)
<b>NET CASH FLOWS</b>	<b>(\$30.1)</b>
<b>CASH</b>	
Beginning Balance	\$295.7
Net Cash Inflows / (Outflows)	(30.1)
Other (FX)	18.6
<b>ENDING CASH</b>	<b>\$284.2</b>

84. The November 2022 Cash Flow Forecast indicates that during the 17-week period ending February 11, 2023, the Just Energy Entities will have operating cash outflows of approximately \$0.8 million with total receipts of approximately \$1,373.3 million and total operating disbursements of approximately \$1,138.1 million, before interest expense and fees of approximately \$10.4 million and professional fees of approximately \$18.9 million, such that total net cash outflows are forecast to be approximately \$30.1 million.

85. Generally, the underlying assumptions and methodology utilized in the Revised August 2022 Cash Flow Forecast have remained the same for this November 2022 Cash Flow Forecast; however, the Monitor notes the following:
- (a) The forecast period was extended from the week ending November 5, 2022 to the week ending February 11, 2023;
  - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the November 2022 Cash Flow Forecast, which include:
    - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
    - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
    - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
    - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
    - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
    - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
86. The November 2022 Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to January 31, 2023.



## **STAY PERIOD EXTENSION**

87. As mentioned above, the Applicants expect to receive, on or before October 31, 2022, an Order from the Court extending the Stay Period to November 2, 2022. Accordingly, the Applicants are now seeking an extension to the Stay Period up to and including January 31, 2023.
88. The Monitor supports extending the Stay Period to January 31, 2023 for the following reasons:
- (a) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with time to close the Transaction;
  - (b) as indicated by the Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
  - (c) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
  - (d) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the inception of the CCAA Proceedings.

## **APPROVAL OF THE FEES AND ACTIVITIES OF THE MONITOR**

89. The proposed Ancillary Order seeks approval of (i) this Twelfth Report; (ii) the Supplement to the Eleventh Report; and (iii) the activities and conduct of the Monitor described therein.
90. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Eleventh Report have been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.



91. Pursuant to paragraphs 42 and 43 of the Second ARIO, the Monitor, its Canadian and U.S. counsel shall: (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of the Initial Order, by the Just Energy Entities as part of the costs of the CCAA Proceedings; and (ii) pass their accounts from time to time before this Court.
92. Since the Tenth Report to the Court dated May 18, 2022 (when the Monitor and its counsel's fees were last approved), the Monitor and its counsel have maintained detailed records of their professional time and costs. The total fees and disbursements of the Monitor for the period from May 7, 2022 to October 14, 2022 total \$3,097,961.52, including fees in the amount of \$2,728,728.00, disbursements in the amount of \$12,830.83, and Harmonized Sales Tax (“**HST**”) in the amount of \$356,402.69, as more particularly described in the Affidavit of Paul Bishop sworn October 26, 2022 (the “**Bishop Affidavit**”), a copy of which is attached hereto as **Appendix “D”**.
93. The total fees and disbursements of the Monitor's Canadian counsel, from May 7, 2022 to October 14, 2022 total \$1,219,894.74, including fees in the amount of \$1,077,072.50, disbursements in the amount of \$2,480.32, and HST in the amount of \$140,341.92, as more particularly described in the Affidavit of Rachel Nicholson sworn October 24, 2022 (the “**Nicholson Affidavit**”), a copy of which is attached hereto as **Appendix “E”**.
94. The total fees and disbursements of the Monitor's U.S. counsel from May 8, 2022 to October 14, 2022 total US\$83,991.48, including fees in the amount of US\$82,864.50 and disbursements in the amount of US\$1,126.98, as more particularly described in the Affidavit of John Higgins sworn October 25, 2022 (the “**Higgins Affidavit**”, together with the Bishop Affidavit and Nicholson Affidavit, the “**Fee Affidavits**”), a copy of which is attached hereto as **Appendix “F”**.
95. The Monitor respectfully submits that the fees and disbursements incurred by the Monitor and its counsel, as described in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Second ARIO. Accordingly, the Monitor respectfully requests the approval of the fees and disbursements of the Monitor and its counsel as set out in the Fee Affidavits.




**CONCLUSION**

96. The Monitor is of the view that the relief requested by the Applicants is reasonable and justified in the circumstances.
97. Accordingly, the Monitor respectfully supports the requested relief and recommends that the Reverse Vesting Order and Ancillary Order be granted.

The Monitor respectfully submits this Twelfth Report to the Court dated this 27<sup>th</sup> day of October, 2022.

**FTI Consulting Canada Inc.,**  
in its capacity as Court-appointed Monitor  
of Just Energy Group Inc. *et al*,  
and not in its personal or corporate capacity

Per:



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Paul Bishop  
Senior Managing Director



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 **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**TWELFTH REPORT OF  
FTI CONSULTING CANADA INC., IN ITS  
CAPACITY AS COURT-APPOINTED MONITOR**

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Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.

**THIS IS EXHIBIT Z REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Court File No. CV-21-00658423-00CL

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

THE HONOURABLE MR.	)	THURSDAY, THE 3 <sup>RD</sup>
	)	
JUSTICE MCEWEN	)	DAY OF NOVEMBER

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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by the Applicants (together, the Applicants and the partnerships listed on **Schedule “A”** hereto, the “**Just Energy Entities**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCA**”), for an order, *inter alia*, (i) approving the Transaction Agreement (as amended, the “**Transaction Agreement**”) between Just Energy Group Inc. (“**Just Energy**”) and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP, and CBHT Energy I LLC (collectively, the “**Sponsor**”)

dated as of August 4, 2022 and attached as Exhibit “A” to the affidavit of Emily Paplawski sworn October 31, 2022 (the “**Paplawski Affidavit**”) and the transactions contemplated therein (collectively, the “**Transactions**”), including the Implementation Steps (as defined in the Transaction Agreement), (ii) adding 14487893 Canada Inc. (“**Residual Co. 1**”) and 11368, LLC (“**Residual Co. 2**”) as Applicants to these CCAA proceedings, (iii) vesting in and to Residual Co. 1 and/or Residual Co. 2, as applicable, absolutely and exclusively, all of the right, title and interest of the Just Energy Entities not listed on Schedule 2.2(f) of the Transaction Agreement (the “**Acquired Entities**”) in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities (each as defined in the Transaction Agreement), (iv) discharging Claims and Encumbrances, other than the Permitted Encumbrances, against the Acquired Entities and the Retained Assets (each as hereinafter defined), (v) authorizing and directing Just Energy (U.S.) Corp. (“**JEUS**”) to issue the Purchased Interests (as defined in the Transaction Agreement), and vesting all of the right, title and interest in and to the Purchased Interests absolutely and exclusively in and to the Sponsor, free and clear of any Encumbrances, (vi) authorizing and directing Just Energy to file the Articles of Reorganization (as defined in the Transaction Agreement), (vii) terminating and cancelling or redeeming the Subject Interests (as hereinafter defined) for no consideration (as provided for in the Implementation Steps), and (viii) granting certain related relief, was heard this day by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the Notice of Motion of the Applicants, the affidavit of Michael Carter sworn October 17, 2022, the Paplawski Affidavit, the Twelfth Report of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as monitor (the “**Monitor**”), dated October 27, 2022, and on hearing the submissions of counsel for the Just Energy Entities, the Monitor, the Sponsor, the Credit Facility Agent, as administrative agent for the Credit Facility Lenders, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Emily Paplawski, sworn October 17, 2022; the affidavit of service of Matthew Eliseo Cressatti, sworn October 18, 2022; the affidavit of service of Emily Paplawski, sworn October 20, 2022; and the affidavit of service of Elena Pratt, sworn October 31, 2022:

## **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Second Amended and Restated Initial Order of this Court dated May 26, 2021 (the “**Initial Order**”), that certain support agreement approved by this Court pursuant to the SISP Approval Order (as hereinafter defined) (the “**Support Agreement**”), or the Transaction Agreement, as applicable.

## **APPROVAL AND VESTING**

3. **THIS COURT ORDERS AND DECLARES** that, without derogating in any way from the relief contained in the SISP Approval Order of this Court dated August 18, 2022 (the “**SISP Approval Order**”), the Transaction Agreement and the Transactions (including the Implementation Steps) are hereby approved and the execution of the Transaction Agreement by Just Energy is hereby authorized and approved, with such minor amendments as Just Energy and the Sponsor may deem necessary, with the approval of the Monitor and subject to the terms of the Support Agreement. The Just Energy Entities are hereby authorized and directed to perform their obligations under the Transaction Agreement, including the filing of the Articles of Reorganization, the issuance of the Purchased Interests and the termination and cancellation or redemption of the Subject Interests (as provided for in the Implementation Steps), and to take such additional steps and execute such additional documents (including the Closing Documents) as may be necessary or desirable for the completion of the Transactions.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Just Energy Entities to proceed with the Transactions and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Sponsor, substantially in the form attached as **Schedule "B"** hereto, the following shall occur and shall be deemed to have occurred in the sequence set out in the Implementation Steps:

- (a) the Just Energy Entities shall be and are hereby forever released and discharged from the BP Commodity/ISO Services Claim, including all amounts and obligations owing by the Just Energy Entities in connection therewith, and all related Claims and Encumbrances are hereby expunged and discharged;
- (b) (i) with respect to the Acquired Entities not formed or incorporated under the laws of the United States (the "**Non-US Acquired Entities**"), all of the Non-US Acquired Entities' right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and (ii) with respect to the Acquired Entities formed or incorporated under the laws of the United States (the "**US Acquired Entities**"), all of the US Acquired Entities' right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and, in each case, all applicable Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer; provided that, for certainty, the Excluded Assets transferred hereby shall not include the Priority Payments Amount, which

shall be used to satisfy the Priority Payments (as hereinafter defined) in accordance with paragraph 18 hereof;

- (c) all Excluded Contracts and Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature 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) of the Non-US Acquired Entities and the US Acquired Entities (in each case, other than the Assumed Liabilities) shall be transferred to, assumed by and vest absolutely and exclusively in, Residual Co. 1 and Residual Co. 2, respectively, such that all Excluded Contracts and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, as applicable, and shall no longer be obligations of any of the Acquired Entities, and the Acquired Entities and all of their remaining assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (collectively, the “**Retained Assets**”) shall be and are hereby forever released and discharged from all Excluded Contracts and Excluded Liabilities, and all related Claims and Encumbrances, other than the permitted encumbrances, easements and restrictive covenants affecting or relating to the Retained Assets listed on Schedule “C” (the “**Permitted Encumbrances**”), are hereby expunged and discharged as against the Retained Assets; provided that, for certainty, the Excluded Liabilities transferred hereby shall not include the obligations of the Just Energy Entities in respect of the Priority Payments, which shall be satisfied pursuant to paragraph 18 hereof;

- (d) all right, title and interest in and to the Purchased Interests issued by JEUS to the Sponsor shall vest absolutely and exclusively in the Sponsor free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (x) any encumbrances or charges created by the Initial Order, the SISP Approval Order, or any other Order of this Court, and (y) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Interests are hereby expunged and discharged as against the Purchased Interests;
- (e) all equity interests of Just Energy and JEUS existing prior to the commencement of the Implementation Steps (for greater certainty, other than the Purchased Interests), as well as all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as hereinafter defined) and are convertible or exchangeable for any securities of Just Energy or JEUS or which require the issuance, sale or transfer by Just Energy or JEUS, of any shares or other securities of Just Energy or JEUS, as applicable, or otherwise evidencing a right to



acquire the Purchased Interests and/or the share capital of Just Energy or JEUS, or otherwise relating thereto (collectively, the “**Subject Interests**”), shall be deemed terminated and cancelled or redeemed as provided in the Implementation Steps and the Articles of Reorganization, as applicable; and

- (f) the Acquired Entities shall and shall be deemed to cease to be Applicants in these CCAA proceedings, and the Acquired Entities shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order the provisions of which (as they relate to the Acquired Entities) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to (a) provide a copy of the Monitor’s Certificate to the parties to the Support Agreement at the same time as its delivery to the Sponsor; and (b) file with this Court a copy of the Monitor’s Certificate forthwith after delivery thereof in connection with the Transactions as well as a copy of the final form of Transaction Agreement and all related schedules.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from Just Energy and the Sponsor regarding the satisfaction or waiver of conditions to closing under the Transaction Agreement and shall have no liability with respect to delivery of the Monitor’s Certificate.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Effective Time (as defined in the Monitor’s Certificate), subject to the payment of the Priority Payments and the funding of the Administrative Expense Amount, all Claims and Encumbrances released, expunged and discharged pursuant to paragraph 5 hereof, including as against the Acquired Entities, the Retained Assets and the Purchased Interests, shall

attach to (a) the net proceeds remaining (the “**Remaining Proceeds**”), if any, realized from the Cash Purchase Price and transferred to Residual Co. 1 or Residual Co. 2 and (b) the Excluded Assets, in each case, with the same nature and priority as they had immediately prior to the Transactions, as if the Transactions had not occurred.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Just Energy Entities or the Monitor, as the case may be, are authorized, permitted and directed to, at the Effective Time, disclose to the Sponsor all human resources and payroll information in the Acquired Entities’ records pertaining to past and current employees of the Acquired Entities. The Sponsor shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Just Energy Entities prior to the Effective Time.

10. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Sponsor and the Acquired Entities shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, the Just Energy Entities (provided, as it relates to the Sponsor and the Acquired Entities, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the Acquired Entities after the Effective Time; or (b) Taxes expressly assumed as Assumed Liabilities pursuant to the Transaction Agreement), including, without limiting the generality of the foregoing, all Taxes that could be assessed against the Sponsor or the Acquired Entities (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act* (Canada) (the “**Tax Act**”), or proposed section 160.01 of the Tax Act, including as a result of any

future amendments or proposed amendments to such provisions or related provisions, or any provincial equivalent, in connection with the Just Energy Entities.

11. **THIS COURT ORDERS** that (a) to the extent Electric Reliability Council of Texas, Inc. (“**ERCOT**”) has a valid claim, cause of action, right, or remedy against the Just Energy Entities or the Acquired Entities, whether in connection with, or as a result of, any final order in the litigation commenced by the Just Energy Entities against ERCOT in the United States Bankruptcy Court for the Southern District of Texas under the caption *Just Energy Texas LP, et al. v. Electric Reliability Council of Texas, Inc. and the Public Utility Commission of Texas Inc.*, Adv. Pro. No. 21-04399 (“**ERCOT Claim**”), nothing in this Order or in any document in connection with the Transactions shall be deemed to preclude ERCOT from being paid on account of, or enforcing its rights with respect to, such ERCOT Claim from the applicable Just Energy Entities or Acquired Entities following the closing of the Transactions, and any rights, remedies and defenses of the Just Energy Entities, the Acquired Entities, and ERCOT with respect to any such ERCOT Claim, including, but not limited to, the validity, amount and priority of any such ERCOT Claim, are fully preserved and reserved; (b) nothing in this Order or the Transaction Agreement shall be deemed to impact, alter or impair ERCOT’s rights and remedies with respect to obligations of the Just Energy Entities or the Acquired Entities, or the rights and remedies of the Just Energy Entities or the Acquired Entities with respect to obligations of ERCOT, pursuant to the ERCOT Protocols or the operative Standard Form Market Participant Agreement by and between ERCOT and the applicable Just Energy Entities or Acquired Entities; and (c) to the extent there is any market repricing or other reduction in the amount due from the Just Energy Entities or the Acquired Entities to ERCOT as a result of, without limitation, the litigation pending in Texas state court under the caption *Luminant Energy Co. LLC v. Public Utility Commission of Texas Inc.*, Case No.

03-21-00098-CV, or any other litigation in the Texas state or federal courts, nothing contained herein shall preclude (i) the applicable Just Energy Entities or Acquired Entities from seeking an adjustment of any amounts paid to ERCOT by the Just Energy Entities or the Acquired Entities, or (ii) any rights, remedies and defenses of ERCOT in connection thereto.

12. **THIS COURT ORDERS** that, except to the extent expressly contemplated by the Transaction Agreement (and, for greater clarity, excluding Continuing Contracts relating to Assumed Liabilities, including the Credit Facility Documents), all Continuing Contracts to which any of the Acquired Entities are a party upon delivery of the Monitor's Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Effective Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any Just Energy Entity);
- (b) the insolvency of any Just Energy Entity or the fact that the Just Energy Entities sought or obtained relief under the CCAA;

- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Transaction Agreement, the Transactions or the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or
- (d) any transfer or assignment, or any change of control of the Acquired Entities arising from the implementation of the Transaction Agreement, the Transactions or the provisions of this Order.

13. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 12 hereof shall waive, compromise or discharge any obligations of the Acquired Entities or the Sponsor in respect of any Assumed Liabilities; (b) the designation of any Claim as an Assumed Liability is without prejudice to the Acquired Entities' and the Sponsor's right to dispute the existence, validity or quantum of any such Assumed Liability; and (c) nothing in this Order or the Transaction Agreement shall affect or waive the Acquired Entities' or Sponsor's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

14. **THIS COURT ORDERS** that, from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Just Energy Entity then existing or previously committed by any Just Energy Entity, or caused by any Just Energy Entity, directly or indirectly, or noncompliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Continuing Contract, existing between such Person and any Acquired Entity directly or indirectly from the filing by the Applicants under the CCAA and the implementation of the Transactions, including without

limitation any of the matters or events listed in paragraph 12 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Continuing Contract shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to excuse the Sponsor or the Just Energy Entities from performing their obligations under, or be a waiver of defaults by the Sponsor or Just Energy under, the Transaction Agreement and the related agreements and documents, or affect the validity of the Implementation Steps.

15. **THIS COURT ORDERS** that, from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Sponsor or the Acquired Entities relating in any way to or in respect of any Excluded Assets, Excluded Contracts or Excluded Liabilities and any other claims, obligations and other matters which are waived, released, expunged or discharged pursuant to this Order; provided that, nothing herein shall affect the validity of the Implementation Steps.

16. **THIS COURT ORDERS** that, from and after the Effective Time:

- (a) the nature of the Assumed Liabilities assumed by the Sponsor or retained by the Acquired Entities, including, without limitation, their amount and their secured or

unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co. 1 and Residual Co. 2, as applicable;
- (c) any Person that prior to the Effective Time had a valid right or claim against the Acquired Entities under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Acquired Entities but will have an equivalent Excluded Liability Claim against Residual Co. 1 or Residual Co. 2, as applicable, in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co. 1 and/or Residual Co. 2; and
- (d) the Excluded Liability Claim of any Person against Residual Co. 1 and/or Residual Co. 2 following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the applicable Acquired Entities prior to the Effective Time.

17. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

- (a) Residual Co. 1 and Residual Co. 2 shall be companies to which the CCAA applies; and

- (b) Residual Co. 1 and Residual Co. 2 shall be added as Applicants in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an “Applicant” or the “Applicants” shall refer to and include Residual Co. 1 and Residual Co. 2, *mutatis mutandis*, and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Residual Co. 1 and Residual Co. 2, including the Remaining Proceeds (the “**Residual Co. Property**”), and, for greater certainty, each of the Charges, shall constitute charges on the Residual Co. Property.

#### **PRIORITY PAYMENTS**

18. **THIS COURT ORDERS AND DIRECTS** that the Priority Payments Amount and the Cash Purchase Price, as necessary and as permitted by the Transaction Agreement, shall be distributed by Just Energy, on behalf of one or more of the Just Energy Entities, on the Closing Date consistent with the Implementation Steps, to satisfy the following obligations (collectively, the “**Priority Payments**”):

- (a) first, to the beneficiaries of the Administration Charge and the FA Charge, the amounts necessary to satisfy the Just Energy Entities’ obligations secured thereby up to the maximum respective amounts secured by such charges, in full and final satisfaction thereof;
- (b) second, to the beneficiaries of the KERP Charge, the amounts necessary to satisfy the Just Energy Entities’ obligations secured thereby (if any) up to the maximum amount secured by such charge, in full and final satisfaction thereof;



- (c) third, on a *pari passu* basis:
  - (i) to the DIP Agent, for the benefit of the beneficiaries of the DIP Lenders' Charge, an amount necessary to satisfy the Just Energy Entities' obligations secured by such charge, in full and final satisfaction thereof, and
  - (ii) to each Commodity Supplier, an amount necessary to satisfy such Commodity Supplier's Commodity Supplier Claim that is an Accepted Claim (as defined in the Claims Procedure Order), in full and final satisfaction thereof;
- (d) fourth, to each Government Entity, an amount necessary to satisfy such Government Entity's Government Priority Claim, in full and final satisfaction thereof; and
- (e) fifth, to the Credit Facility Agent, in the currency that such Credit Facility Claim was originally denominated, an amount equal to the Credit Facility Claim (less the Credit Facility Remaining Debt, if any), in full and final satisfaction thereof.

19. **THIS COURT ORDERS** that, subject to completion of the Priority Payments set out in paragraph 18 hereof, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge, the Cash Management Charge and the Bid Protections Charge shall be and are hereby terminated, released and discharged.

20. **THIS COURT ORDERS** that the Administrative Expense Amount held by the Monitor shall be subject to the Administration Charge, and any remaining portion thereof after payment of the Administrative Expense Costs shall be paid to Just Energy in accordance with the terms of the Transaction Agreement.

**RELEASES AND OTHER PROTECTIONS**

21. **THIS COURT ORDERS** that, effective as of the Effective Time, (a) the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities, Residual Co. 1 and Residual Co. 2 (or any of them); (b) the Monitor and its legal counsel; (c) the Sponsor and their respective current and former directors, officers, employees, legal counsel and advisors; and (d) the Credit Facility Agent and the Credit Facility Lenders, and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released by the Releasing Parties (as hereinafter defined) 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, taxes, recoveries, and obligations of any 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 on or prior to the Effective Time or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the Just Energy Entities, the business, operations, assets, property and affairs of the Just Energy Entities wherever or however conducted or governed, the administration and/or management of the Just Energy Entities, these CCAA proceedings and/or the Chapter 15 Cases, or (ii) the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents (when used in this Order, as defined in the Support Agreement), any agreement, document, instrument, matter or transaction

involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, subject to the excluded matters below, the “**Released Claims**”), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents, and/or any agreement, document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing. “**Releasing Parties**” means any and all Persons (besides the Just Energy Entities and their respective current and former affiliates), and their current and former affiliates’ current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

22. **THIS COURT ORDERS** that, effective as of the Effective Time, the Released Parties shall be deemed to be forever irrevocably released by each of the Just Energy Entities and their respective current and former affiliates, and discharged from, any and all Released Claims held by the Just Energy Entities and such current and former affiliates as of the Effective Time, which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence; or (b) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents, and/or any agreement, document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing; provided further that, the releases set forth in this paragraph shall not include, nor limit or modify in any way, any claim (or any defenses) which any of the Just Energy Entities may hold or be entitled to assert against any Released Party as of the Effective Time relating to any contracts, leases, agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices, or other ordinary course obligations which are remaining in effect following the Effective Time.

23. **THIS COURT ORDERS** that, without affecting or limiting the releases set forth in paragraphs 21 and 22 hereof, effective as of the Effective Time, none of (a) the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities, Residual Co. 1 and Residual Co. 2 (or any of them); (b) the Monitor and its legal counsel; (c) the Sponsor and

their respective current and former directors, officers, employees, legal counsel and advisors; and (d) the Credit Facility Agent and the Credit Facility Lenders, and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the “**Exculpated Parties**”), shall have or incur, and each Exculpated Party is released and exculpated from, any Causes of Action (as hereinafter defined) against such Exculpated Party for any act or omission in respect of, relating to, or arising out of the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents and/or the consummation of the Transactions, these CCAA proceedings, the Chapter 15 Cases, the formulation, preparation, dissemination, negotiation, filing or consummation of the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents and all related agreements and documents, any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Transactions, the pursuit of approval and consummation of the Transactions or the recognition thereof in the United States, and/or the transfer of assets and liabilities pursuant to this Order, except for Causes of Action related to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence. “**Causes of Action**” means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise.

24. **THIS COURT ORDERS** that all Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all claims or Cause of Actions released pursuant to this Order (including but not limited to the Released Claims), from (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties or Exculpated Parties; (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the Exculpated Parties, or their respective property; (c) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties or the Exculpated Parties; (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the Exculpated Parties, or their respective property; or (e) taking any actions to interfere with the consummation of the Transactions; and any such proceedings will be deemed to have no further effect against such parties and will be released, discharged or vacated without cost.

25. **THIS COURT ORDERS** that, without affecting or limiting the releases set forth in paragraphs 21 and 22 hereof, effective as of the Effective Time, each Consenting Party (as hereinafter defined) shall be deemed to have consented and agreed to paragraphs 21 through 25

hereof. “**Consenting Parties**” means any Person who is, at the Effective Time, a party to the Support Agreement.

26. **THIS COURT ORDERS** that, notwithstanding paragraphs 5, 21 and 22 hereof but subject to paragraphs 27 to 31 hereof, neither Just Energy, Just Energy Corp. nor Just Energy Ontario L.P. (collectively, the “**Specified JE Entities**”), nor any of their current or former officers and/or directors, shall be released from any claim or potential claim, whether at law or in equity, known or unknown, existing up to the Effective Time, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in the action commenced in the Ontario Superior Court of Justice on May 4, 2015 titled *Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.*, Court File No. CV-15-52749300 CP, against the Specified JE Entities or any of their current or former officers and/or directors, including, without limitation, the claims filed by Haidar Omarali, as representative plaintiff, in the Claims Process (as defined in the Claims Procedure Order) conducted by the Just Energy Entities in these CCAA proceedings, being (a) a Proof of Claim (as defined in the Claims Procedure Order) for CAD\$108,854,794.52 against the Specified JE Entities; and (b) a D&O Proof of Claim for CAD\$108,854,794.52 against the Directors (each as defined in the Claims Procedure Order) of Just Energy and Just Energy Corp. listed in schedules A and B to such D&O Proof of Claim (collectively, such claims, the “**Class Action Claim**”), solely to the extent it is necessary with respect to maintaining any claims as against the insurance policies of the Specified JE Entities that may be available to pay insured claims in respect of the Specified JE Entities or their current or former directors and officers (such policies set forth in **Schedule “D”** hereto, the “**Insurance Policies**”) and, solely for the purpose of recovery against the Insurance Policies, such Class Action Claim shall be deemed not to be transferred to Residual Co. 1 or Residual Co. 2.

27. **THIS COURT ORDERS** that, from and after the Effective Time, any Person having a Class Action Claim (a “**Class Action Claimant**”) shall only be entitled to recover from proceeds under the Insurance Policies, to the extent available in respect of any such Class Action Claim, and the recovery of such Class Action Claimants shall be solely limited to such proceeds, without any additional rights of enforcement or recovery as against the Just Energy Entities (including, for certainty, the Acquired Entities) or the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities (or any of them) (in such capacities, collectively, the “**Protected JE Parties**”). The Specified JE Entities will not be required to incur any costs or expenses or to participate in the proceeding with respect to the Class Action Claim, except to the extent reasonably necessary to provide information or evidence reasonably necessary for the determination of such claim solely to seek recovery from proceeds under the Insurance Policies.

28. **THIS COURT ORDERS** that all Class Action Claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the Insurance Policies payable on behalf of the Specified JE Entities or their directors and officers in respect of any such Class Action Claim, and such Class Action Claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the Protected JE Parties in respect of any Class Action Claim, other than enforcing their rights to be paid from the proceeds of the applicable Insurance Policies available to the Specified JE Entities.

29. **THIS COURT ORDERS** that nothing contained in this Order prejudices, compromises, releases or otherwise affects (a) any right, defence or obligation of any insurer in respect of an Insurance Policy; or (b) any Class Action Claimant from recovering against the Specified JE Entities’ current and former directors and officers for any liabilities or claims attributable to any such director or officer’s fraud, wilful misconduct, criminal act or criminal omission, as



determined by the final, non-appealable judgment of a court of competent jurisdiction; provided that, there shall be no claim over against any other Protected JE Party. Notwithstanding any other provision of this Order, nothing in this Order shall restrict, release or in any way compromise any Class Action Claim or recovery thereunder against any Person other than the Protected JE Parties.

30. **THIS COURT ORDERS** that any proceedings with respect to the Class Action Claim, including with respect to any recovery sought by the Class Action Claimants as against the Insurance Policies, may continue in these CCAA proceedings following the closing of the Transactions (notwithstanding the fact that the Acquired Entities will be released from the purview of these CCAA proceedings at that point in time pursuant to paragraph 5(f) hereof).

31. **THIS COURT ORDERS** that any approval required, including pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (“CPA”), to give effect to the inclusion of provisions 26 to 30 hereto in this Order is hereby granted, and any notice that may be required pursuant to the CPA is dispensed with.

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

- (a) the pendency of these CCAA proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Just Energy Entities, Residual Co. 1 or Residual Co. 2, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Just Energy Entities, Residual Co. 1 or Residual Co. 2; or

(d) any foreign law equivalent of (b) or (c).

the Transaction Agreement, the Closing Documents, the consummation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities in and to Residual Co. 1 and Residual Co. 2, as applicable, the transfer and vesting of the Purchased Interests in and to the Sponsor, the payment of the Priority Payments, and any payments by or to the Sponsor, the Just Energy Entities or the Monitor authorized herein or pursuant to the Transaction Agreement and the Closing Documents) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Just Energy Entities, Residual Co. 1 and/or Residual Co. 2, and shall not be void or voidable by creditors of the Just Energy Entities, Residual Co. 1 or Residual Co. 2, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, 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.

33. **THIS COURT ORDERS** that nothing in this Order, including the release of the Acquired Entities from the purview of these CCAA proceedings pursuant to paragraph 5(f) hereof and the addition of Residual Co. 1 and Residual Co. 2 as Applicants in these CCAA proceedings, shall affect, vary, derogate from, limit or amend, and FTI shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, this Order, any other Orders in these CCAA proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Monitor, all of which are expressly continued and confirmed.

**EMPLOYEES**

34. **THIS COURT ORDERS** that Residual Co. 1 shall be deemed to be the former employer of any former employees of the Just Energy Entities who were terminated between September 9, 2020 and the Effective Time whose claims against the Just Energy Entities are transferred to Residual Co. 1 pursuant to this Order, provided that such deeming: (i) shall be effective immediately after the Effective Time; and (ii) will solely be for the purposes of termination pay and severance pay pursuant to the *Wage Earners Protection Program*.

**GENERAL**

35. **THIS COURT ORDERS** that, having been advised of the provisions of Multilateral Instrument 61-101 “Protection of Minority Security Holders in Special Transactions” relating to the requirement for “minority” shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Claims (as defined in the CCAA) in the Just Energy Entities is required to be held in respect of the Transactions and accordingly, there is no requirement to send any disclosure document related to the Transactions to such holders.

36. **THIS COURT ORDERS** that, following the Effective Time, the Sponsor shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances (other than the Permitted Encumbrances) as against the Purchased Interests, the Acquired Entities and the Retained Assets.

37. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings shall be hereby changed by removing the current Applicants that are not Excluded Entities and adding Residual Co. 1 and Residual Co. 2.

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

39. **THIS COURT DECLARES** that the Just Energy Entities shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and the Monitor as may be deemed necessary or appropriate for that purpose.

40. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Southern District of Texas overseeing the Just Energy Entities' proceedings under Chapter 15 of the Bankruptcy Code in Case No. 21-30823 (MI), to give effect to this Order and to assist the Just Energy Entities, the 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 Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

41. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof; provided that, the transaction steps set out in

paragraph 5 hereof shall be deemed to have occurred in the order set out in the Implementation Steps.

McE. T.

**SCHEDULE "A"**  
**PARTNERSHIPS**

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

**SCHEDULE “B”  
FORM OF MONITOR’S CERTIFICATE**

Court File No. CV-21-00658423-00CL

**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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

1. Pursuant to the Initial Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021, the Applicants were granted protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and FTI Consulting Canada Inc. was appointed as the monitor (the “**Monitor**”).

2. Pursuant to an Approval and Vesting Order of the Court dated ●, 2022 (the “**Order**”), the Court approved the transactions (collectively, the “**Transactions**”) contemplated by the Transaction Agreement (as amended, the “**Transaction Agreement**”) between Just Energy Group Inc. (“**Just Energy**”) and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP, and CBHT Energy I LLC (collectively, the “**Sponsor**”) dated as of August 4, 2022, and ordered, *inter alia*, (a) that all of the Acquired Entities’ right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall vest absolutely and exclusively in and to Residual Co. 1 and/or Residual Co. 2, as applicable; (b) Just Energy (U.S.) Corp. to issue the Purchased Interests, and the vesting of all of the right, title and interest in and to the Purchased Interests absolutely and exclusively in and to the Sponsor, free and clear of any Encumbrances; (c) Just Energy to file the Articles of Reorganization; and (d) the termination and cancellation or redemption of the Subject Interests for no consideration (as provided for in the Implementation Steps).

3. Capitalized terms used but not defined herein have the meanings ascribed to them in the Order.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received written confirmation from Just Energy, in form and substance satisfactory to the Monitor, that it has received the Cash Purchase Price from the Sponsor.

2. The Monitor has received written confirmation from the Sponsor and Just Energy, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the Transaction Agreement.



3. This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ on \_\_\_\_\_, 202●  
(the "Effective Time").

**FTI CONSULTING CANADA INC., in its  
capacity as Monitor of the Just Energy  
Entities, and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE “C”  
PERMITTED ENCUMBRANCES**

- Encumbrances securing Assumed Liabilities to the extent that such Assumed Liabilities are secured by Encumbrances as of the Closing Time
- Encumbrances securing obligations under the New Credit Agreement
- Encumbrances which are the subject of the New Intercreditor Agreement
- “Permitted Encumbrances” as defined in the Credit Agreement, subject to those amendments to such definition provided for in Exhibit 1 of the Stalking Horse Term Sheet, except to the extent that they relate to an Excluded Liability or Excluded Asset

*Capitalized terms in this Schedule “C” shall have the meanings ascribed thereto in the Transaction Agreement or, where expressly indicated, the Credit Agreement.*

**SCHEDULE “D”  
INSURANCE POLICIES**

- Policy Term April 1 2020 – April 1, 2021:
  - XL Special Insurance Company – Policy No. B0146ERINT2000452
  - Hiscox – Policy No. B0146ERINT2000453
  - Sompo – Policy No. B0146ERINT2000454
  - AWAC & Starr – Policy No. B0146ERINT2000455
  - Tokio Marine – Policy No. 34-MGU-20-A49117/20G19646000
  - (Llyods Syndicate) – Policy No. B0146ERINT2000768
  - CNA Canada Continental Casualty Company – Policy No. MEX 665412022
  - Beazley – Policy No. B0146ERINT2000774
  - XL Catlin – Policy No. B0146ERINT2000775
  
- Policy Term March 9, 2021-March 9, 2022:
  - XL Special Insurance Company – Policy No. ELU173707-21
  - Tokio Marine HCC – Policy No. 21G196460101
  - Hiscox - Policy No. B0146ERINT2100865

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

Court File No: CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al.

3 Nov 22

Order to go as per the draft filed and signed.  
Reasons will shortly follow.



*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**OSLER, HOSKIN & HARCOURT, LLP**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Michael De Lellis (LSO# 48038U)

Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111

Fax: (416) 862-6666

Lawyers for the Just Energy Entities

**THIS IS EXHIBIT AA REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2000452

Date: 3 April 2020

**Insured: Just Energy Group, Inc.**

Further to your instructions we have effected the attached amendment to the insurance contract referenced above.

Please examine this amendment carefully and notify us immediately if it is incorrect, or does not meet your requirements.

**Duty to Disclose:**

This amendment to your insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

If an additional premium is payable then payment of such premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the additional premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the additional premium or to meet a payment warranty may enable the insurer(s) to avoid this amendment to the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the original contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Should you have any questions please feel free to contact us.

Yours sincerely,

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### AMENDMENT TO CONTRACT OF INSURANCE

**Unique Market Reference: B0146 ERINT2000453**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains an amendment to the terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us, we would be happy to hear from you.

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## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**RISK DETAILS:**

**UNIQUE MARKET REFERENCE:**

B0146ERINT2000452

**TYPE:**

PRIMARY MANAGEMENT LIABILITY INSURANCE.

**PARENT COMPANY:**

**JUST ENERGY GROUP INC.**

**ADDRESS:**

6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada

**POLICY PERIOD:**

Inception Date: 1 April 2020  
Expiration Date: 1 April 2021

The Policy Period incepts and expires as of 12.01 am at the Named Entity Address

**INTEREST:**

Management Liability as more fully defined in the policy wording.

**LIMIT OF LIABILITY:**

1. **USD5,000,000**

in the aggregate for the **policy period** for all **loss**; but sublimited to:

2. **USD50,000**

in the aggregate for the **policy period** for all **security holder demand investigatory costs** under Insuring Agreement D.

**RETENTION:**

**Nil**

each **claim** under Insuring Agreement I (A) and any other **non-indemnifiable loss**

**USD2,500,000**

each **claim** under Insuring Agreement I (B) and any other indemnifiable **loss**, other than a **securities claim**

**USD2,500,000**

each **claim** under Insuring Agreement I (C) and any indemnifiable **loss** payable with respect to a **securities claim**

**Nil**

each **claim** under Insuring Agreement I (D) and any other indemnifiable **security holder demand investigatory costs**

**TERRITORIAL SCOPE:**

Worldwide.

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 DROSEBLAT@CS.FX.COM  
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CONDITIONS:

1. Policy wording: NextPro (Just Energy 2020): Commercial Management Liability Insurance wording and all endorsements as attached or as otherwise agreed.
2. Automatic Extensions of Cover (excess limits and sub-limits set out as applicable):
  - o Parent company board special excess limit: Nil
  - o Non-executive director special excess limit: Nil
  - o Regulatory Crisis Costs: Nil
  - o Crisis Consultant Costs: Nil
  - o Prosecution Costs: Nil
  - o Emergency Costs: Nil
  - o Environmental Liability: Nil
  - o Personal Liability of Insured Persons for Corporate Taxes sub-limit: Nil

It is specifically understood and agreed that the sub-limits stated above shall be a part of and not in addition to the **limit of liability**.

Discovery:

- a) in the event of non-renewal: 12 months @ 100% of annual premium
- b) in the event of change of control: 6 years @ 200% of annual premium

No return of unearned premium in the event of change in control

3. USA New Offering of Equity Securities Market Capitalisation threshold: Nil (For the avoidance of doubt, no cover hereunder for a new offering of USA equity securities unless specifically agreed by the insurer)
4. Pending and Prior Litigation Date: 22 May 2003
5. Notices required to be given to the insurer must be addressed to:
  - Attention: Professional Lines Claims Department
  - XL House
  - 70 Gracechurch Street
  - London EC3V 0XL
  - United Kingdom
6. LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyd's Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Quebec H3B 2V6
7. LMA5180 Intention for AIF to Bind Clause
8. New Short Rate Cancellation Table Endorsement
9. Special Cancellation Clause
10. LMA3100 Sanctions Limitation and Exclusion Clause
11. Lloyd's Insurance Company S.A. Amendatory Endorsement
12. German Insurance Premium Tax Payment Clause
13. Specific Matters Exclusion (in respect of recently filed claim and underlying circumstances)
14. Mr. Anthony Horton included as an Insured Person Endorsement
15. Specified Matters Exclusion in respect of 2019 securities class action
16. Security Holder Demand Investigatory Costs and Class Certification Event Study Expenses Endorsement
17. Coronavirus Absolute Exclusion
18. Canadian Corporate Tax Extension
19. Statutory Claims Endorsement
20. Nominal Defendant Response Costs
21. Employed Lawyers Professional Liability Extension with Sub-Limit of Liability
22. Specified Matters Exclusion in respect of Synder letters

SUBJECTIVITIES:

None

CHOICE OF LAW  
AND JURISDICTION  
(DISPUTES CLAUSE):

Choice of Law: Ontario  
Jurisdiction as per Service of Suit Clause

PREMIUM: **USD450,000.00** (100%) for the Policy Period, plus any taxes as applicable.  
Premium split as follows

USD1,449.98 in respect of the EEA

USD448,550.02 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM PAYMENT TERMS: AFB Premium Payment Warranty – 60 Days

TAXES PAYABLE BY ASSURED AND ADMINISTERED BY INSURERS: See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

RECORDING, TRANSMITTING & STORING INFORMATION: Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

INSURER CONTRACT DOCUMENTATION: This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document. Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

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 DROSBLAT@OIEE.COM  
 Wellington  
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**INFORMATION**

SIC Code: 4924  
 Market Cap: \$137.317m (as of February 25<sup>th</sup>, 2020)

German Address: Kapstadtring 10, 22297 Hamburg, Germany

Schedule of Regulatory Risk Locations and Applicable Taxes

**Taxes Payable by Insured and Administered by Insurers:**

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3222%	19.000%	1,449.98	275.50
<b>Total EEA</b>		<b>0.3222%</b>		<b>1,449.98</b>	<b>275.50</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	140,648,270	6.8723%	0.000%	30,925.38	0.00
Canada (BC)	999,320	0.0488%	0.000%	219.73	0.00
Canada (Manitoba)	2,329,740	0.1138%	0.000%	512.26	0.00
Canada (Ontario)	142,773,330	6.9761%	0.000%	31,392.64	0.00
Canada (Quebec)	4,051,460	0.1980%	0.000%	890.82	0.00
Canada (Sask)	10,197,880	0.4983%	0.000%	2,242.28	0.00
United States	1,739,000,000	84.9704%	0.000%	382,366.90	0.00
<b>Total Non-EEA</b>		<b>99.6778%</b>		<b>448,550.02</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>448,550.02</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>450,000.00</b>	<b>275.50</b>

**Taxes Payable by Insured and Administered by Insured or their representatives:**

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$512.26	\$40.98
Canada (Ontario)	Retail Sales Tax	8.000%	\$31,392.64	\$2,511.41
Canada (Quebec)	Retail Sales Tax	9.000%	\$890.82	\$80.17
Canada (Sask)	Retail Sales Tax	6.000%	\$2,242.28	\$134.54

**SECURITY DETAILS****INSURERS  
LIABILITY:****(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

**ORDER HEREON:** 100% of 100%

**BASIS OF  
WRITTEN LINES:** Percentage of Whole

SIGNING  
PROVISIONS:

In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION  
CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.



XL House  
70 Gracechurch Street  
London EC3V 0XL  
United Kingdom  
Phone +44 (0)20 7933 7000  
Fax +44 (0)20 7469 1001  
xlgroup.com/insurance

# NextPro: Commercial Management Liability Insurance

## Schedule

Policy No: **B0146CYINT2000452**

**Item 1. Name and address of parent company: Just Energy Group Inc.**

**Item 2. Policy period:** Inception date: from 1 April 2020  
Expiration date: to 1 April 2021

The Policy Period incepts and expires as of 12.01 am at the Named Entity Address

**Item 3. Limit of liability: USD5,000,000**  
In the aggregate for the **policy period** for all **loss**.

**Item 4. Retentions:**

Nil each **claim** under Insuring Agreement I (A) and any other **non-indemnifiable loss**

**USD2,500,000** each **claim** under Insuring Agreement I (B) and any other indemnifiable **loss**, other than a **securities claim**

**USD2,500,000** each **claim** under Insuring Agreement I (C) and any indemnifiable **loss** payable with respect to a **securities claim**

**Item 5. Automatic Extensions of Cover (excess limits and sub-limits set out as applicable):**

**Parent company board special excess limit: Nil**

**Non-executive director special excess limit: Nil**

**Regulatory Crisis Costs: sub-limit Nil**

**Crisis Consultant Costs: sub-limit Nil**

**Prosecution Costs: sub-limit Nil**

**Emergency Costs: sub-limit Nil**

**Environmental Liability: sub-limit Nil**

**Personal Liability of Insured Persons for Corporate Taxes sub-limit: Nil**

It is specifically understood and agreed that the sub-limits stated above shall be a part of and not in addition to the **limit of liability**.

**Discovery:**

- a) in the event of non-renewal: 12 months @ 100% of annual premium
  - b) in the event of change of control: 6 years @ 200% of annual premium
- No return of unearned premium in the event of change in control

**Item 6. USA New Offering of Equity Securities Market Capitalisation threshold: Nil**  
(For the avoidance of doubt, no cover hereunder for a new offering of USA equity securities unless specifically agreed by the insurer)

**Item 7. Pending and Prior Litigation Date: 22 May 2003**

**Item 8. Notices required to be given to the Insurer must be addressed to:**

Attention: Professional Lines Claims Department  
XL House  
70 Gracechurch Street  
London EC3V 0XL  
United Kingdom

**Item 9. Endorsements attached at issuance: As attached hereto**

**Item 10. Premium:**

**USD450,000.00** (100%) for the Policy Period, plus any taxes as applicable.

Premium split as follows

USD1,449.98 in respect of the EEA

USD448,550.02 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country



# NextPro: Commercial Management Liability Insurance

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# NextPro: Commercial Management Liability Insurance

THIS IS A CLAIMS MADE POLICY WITH *DEFENCE COSTS* INCLUDED IN THE *LIMIT OF LIABILITY*. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and subject to all of the terms, conditions and limitations of this Policy, the *insurer*, the *insured persons* and the *company* agree as follows:

## I. Insuring Agreements

### (A) Insured Person Cover

The *insurer* shall pay on behalf of the *insured persons* any *loss* resulting from a *claim* first made against the *insured persons* during the *policy period*, for a *wrongful act* or *employment practices wrongful act*, except for *loss* which the *company* has paid on behalf of the *insured persons* as indemnification.

### (B) Company Reimbursement Cover

The *insurer* shall reimburse or pay on behalf of the *company* any *loss* which the *company* is required or permitted to pay as indemnification to any of the *insured persons* resulting from a *claim* first made against the *insured persons* during the *policy period*, for a *wrongful act* or *employment practices wrongful act*.

### (C) Company Securities Claim Cover

The *insurer* shall pay the *loss* of the *company* resulting from any *securities claim* first made against the *company* during the *policy period*, for a *company wrongful act*.

## II. Automatic Extensions of Cover

### (A) Additional Excess Protection for Parent Company Board

In addition to the cover provided under this Policy to members of the *parent company* board as *insured persons*, in the event that:

- (1) the *limit of liability* of this Policy;
- (2) all other applicable management liability insurance, whether or not specifically written as excess over the *limit of liability* of this Policy; and

(3) all other sources of indemnification for **loss** available to any such **insured person**; have been exhausted, the **insurer** shall pay the **loss** of such **insured person** arising out of an **unrelated claim** first made against them during the **policy period**, up to the “parent board special excess limit” set out in Item 5 of the Schedule, which limit shall be in the aggregate for all such **insured persons** during the **policy period**.

(B) **Additional Excess Protection for Non-Executive Directors**

In addition to the cover provided under this Policy to **non-executive directors** as **insured persons**, in the event that:

- (1) the **limit of liability** of this Policy;
- (2) all other applicable management liability insurance, whether or not specifically written as excess over the **limit of liability** of this Policy; and
- (3) all other sources of indemnification for loss available to any **non-executive director**; have been exhausted, the **insurer** shall pay the **loss** of **non-executive directors** arising out of a **claim** first made against them during the **policy period**, up to the “non-executive director special excess limit” set out in Item 5 of the Schedule, which limit shall be in the aggregate for all **non-executive directors** during the **policy period**.

(C) **Investigation Costs**

Whether or not there has been a **claim**, the **insurer** shall pay the reasonable fees, costs and expenses, necessarily incurred, with its prior written consent, relating to the legal representation of any **insured person** at any **investigation** commenced during the **policy period**, once an **insured person**:

- (1) is requested or required to attend the **investigation**; or
- (2) is identified in writing by the **official entity** conducting the **investigation** as a target.

Routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **insured** will fall outside of the scope of this extension. Where the **official entity** is the Securities Exchange Commission (“SEC”), this extension will only apply where the **insured person** has been served with a subpoena or Wells Notice.

An **investigation** shall be deemed to be first made when the **insured person** is first requested, required, identified or served.

The fees, costs and expenses covered by this extension shall not include any remuneration of any **insured person**, the cost of their time or costs or overheads of any **company**.

(D) **Regulatory Crisis Costs**

The **insurer** shall pay the reasonable fees, costs and expenses of any consultant chosen by the **insured** with the prior written consent of the **insurer**, which are necessarily incurred in responding to:

- (1) a raid or on-site visit to any **company** which first takes place during the **policy period**, by any **official entity** that involves the production, review, copying or confiscation of files or interviews of any **insured persons**;
- (2) a public announcement relating to an event in sub-paragraph (1) above; or
- (3) the receipt by any **insured** during the **policy period**, from any **official entity** of a formal notice which legally compels the **insured** to produce documents to, or answer questions by or attend interviews with that **official entity**,

irrespective of whether the events in sub-paragraphs (1), (2) and (3) above fall within the definition of **claim**.

This extension shall apply up to the sub-limit in Item 5 of the Schedule.

Routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **insured** will fall outside of the scope of this extension.

(E) **Crisis Consultant Costs**

The **insurer** shall pay reasonable **crisis consultant costs**, necessarily incurred by the **insured** with the prior written consent of the **insurer**, in order to contain or limit the potentially adverse effects, including negative publicity, resulting from a **claim** first made against them during the **policy period**, or from circumstances which can reasonably give rise to a **claim**. This extension shall apply up to the sub-limit in Item 5 of the Schedule.

This extension of cover shall apply regardless of whether a **claim** is ever made against an **insured person** arising from such crisis and, in the case where such a **claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **claim**.

(F) **Extradition Proceedings**

The **insurer** shall pay the reasonable fees, costs and expenses necessarily incurred by an **insured person** with the prior written consent of the **insurer** in connection with an **extradition proceeding** first commenced against them during the **policy period**.

(G) **Prosecution Costs (restriction of assets and liberty)**

Whether or not there has been a **claim**, the **insurer** shall pay the reasonable legal and other professional fees, costs and expenses, necessarily incurred by an **insured person** with the prior written consent of the **insurer** to bring legal proceedings to obtain the discharge or revocation of:

- (1) an order disqualifying such **insured person** from holding office as a company director or officer; or

- (2) an interim or interlocutory order:
  - (i) confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of such **insured person**; or
  - (ii) imposing a charge over real property or personal assets of such **insured person**; or
  - (iii) imposing a restriction of the **insured person's** liberty; or
  - (iv) for the deportation of an **insured person** following revocation of an otherwise proper, current and valid immigration status for any reason other than the **insured person's** finally adjudicated conviction for a crime.

In each case above, cover will only be available under this extension for orders (whether final, interim or interlocutory) issued during the **policy period**.

This extension shall apply up to the sub-limit in Item 5 of the Schedule.

(H) **Emergency Costs**

If the **insurer's** written consent cannot be obtained within a reasonable time before **defence costs** are incurred with respect to any **claim** first made against an **insured** during the **policy period**, or before costs are incurred which would otherwise fall under Extensions II (C) Investigation Costs, (D) Regulatory Crisis Costs, (E) Crisis Consultant Costs, (F) Extradition Proceedings or (G) Prosecution Costs, then the **insurer** shall provide retrospective approval for such reasonably incurred costs up to, in the aggregate, the sub-limit in Item 5 of the Schedule, provided that the **insurer** is notified by the **insured** of such costs as soon as is reasonably practicable, and before the expiration of ten working days from when such costs were first incurred.

(I) **Outside Directorships**

The **insurer** shall reimburse or pay on behalf of any **outside director**, or the **company** in the event it indemnifies such **outside director**, **loss** resulting from a **claim** first made against them during the **policy period**, for a **wrongful act** or **employment practices wrongful act**, in their capacity as an **outside director**.

(J) **Environmental Liability**

The **insurer** shall pay **defence costs** incurred by any **insured person** in connection with a **claim** first made against them during the **policy period**, arising out of an **environmental violation** if and to the extent such **claim**:

- (1) is against an **insured person** in connection with the obligations under any legislation or regulation relating to **environmental violations**; or
- (2) results in a **non-indemnifiable loss** to any **insured person**,

up to the sub-limit set forth in Item 5 of the Schedule. The sub-limits shall form part of and not be in addition to the **limit of liability**.

(K) **Health and Safety**

The **insurer** shall pay the **defence costs** of any **insured person** with respect to any **claim** first made against them during the **policy period**, alleging a breach of health and safety legislation or any similar legislation in any jurisdiction including any legislation relating to involuntary manslaughter, or corporate manslaughter.

(L) **Fines and Penalties**

The **insurer** shall pay any civil fines and penalties resulting from a **claim** first made against the **insured persons** during the **policy period**, for a **wrongful act** or **employment practices wrongful act**, unless uninsurable as a matter of applicable law.

Fines and penalties covered by this extension shall include, where insurable, civil penalties assessed against an **insured person** pursuant to the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd) (USA), the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) (USA) and the Bribery Act of 2010 (UK).

(M) **Personal Liability of Insured Persons for Corporate Taxes**

The **insurer** shall pay the amount arising from the personal liability of the **insured persons** resulting from a **claim** first made against them during the **policy period**, for unpaid taxes of the **company** following the appointment of a Receiver, Administrator, Administrative Receiver, Liquidator or any comparable or analogous authority or appointment with respect to the **company**, unless uninsurable as a matter of applicable law. This extension shall apply up to the sub-limit in Item 5 of the Schedule.

(N) **Discovery Period**

- (1) If this Policy is not renewed or replaced, and if the total premium for this Policy has been paid in full, the **insured** will be entitled:
  - (i) to an automatic **discovery period** of 60 days; and
  - (ii) to purchase an optional **discovery period** for a longer period as specified in Item 5 of the Schedule, provided that written notice is provided to the **insurer** by the **parent company** within 30 days after the end of the **policy period** and any additional premium specified by the **insurer** is paid within 45 days of the end of the **policy period**. The automatic **discovery period** shall be part of and not in addition to any optional **discovery period** purchased by the **insured**.
- (2) The **discovery period** is non-cancellable and the premium for the optional **discovery period** is deemed fully earned at the inception date of the optional **discovery period**.

- (3) The purchase of the optional **discovery period** will not in any way increase the **limit of liability**, and any payments made with respect to **claims** first made during the **discovery period** (or any other matter for which coverage is provided during the **discovery period** under one of the extensions) shall be part of and not in addition to the limit of liability for all **claims** made during the **policy period**.

(O) **Run-Off for Retired Insured Persons**

If this Policy is not renewed or replaced, and if the total premium for this Policy has been paid in full, the **insurer** shall provide an unlimited **discovery period** for any **retired insured person**.

(P) **Heirs, Representatives, and Spouses**

In the event of the death, incapacity, or bankruptcy of an **insured person**, any **claim** first made during the **policy period**, against the estate, heirs, legal representatives or assigns of such individual for a **wrongful act** or **employment practices wrongful act** of such individual, will be deemed to be a **claim** made against such **insured person**.

Coverage shall also extend to the lawful spouse or domestic partner of any **insured person** but only to the extent the spouse or domestic partner is a party to any **claim** solely in their capacity as a spouse or domestic partner of such **insured person** and only for the purposes of any **claim** seeking damages recoverable from, or in respect of, marital community property, property jointly held by any such **insured person** and the spouse or domestic partner, or property transferred from any such **insured person** to the spouse or domestic partner.

### III. **Changes in Risk**

(A) **New Subsidiaries**

- (1) If during the **policy period**, the **company** acquires a **subsidiary**, or acquires any entity by merger, consolidation or otherwise, coverage shall be provided with respect to such new **subsidiary** or entity for any **loss** resulting from a **claim** involving acts or conduct committed after the completion of such acquisition.
- (2) If, however, the newly acquired entity or **subsidiary**:
- (i) exceeds twenty five percent (25%) of the total assets of the **company**, as represented in the **company's** most recent audited consolidated financial statements; or
  - (ii) has equity securities issued or traded in the United States of America;

then, coverage under this Policy with respect to such entity or **subsidiary** shall be provided for a period of sixty (60) days in respect of acts or conduct that occurred after the completion of the acquisition. Coverage beyond the sixty (60) day period will be provided only if:

- (i) the **insurer** receives written notice containing full details of the acquisition; and



- (ii) the **insurer** at its sole discretion, agrees in writing to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate.
- (3) With respect to the acquisition, merger, consolidation or otherwise of any entity, or **subsidiary** as described in III(A)(1) and (2) above, there will be no coverage available under this Policy in connection with such entity, **subsidiary**, or any act or conduct allegedly committed at any time during which such entity or **subsidiary** is not an **insured**.

(B) **Change in Control**

- (1) If, during the **policy period**, there is any **change in control**, the coverage provided under this Policy shall continue to apply but only with respect to a **claim** against an **insured** in respect of acts or conduct committed or allegedly committed up to the time of the **change in control**. In addition:
  - (i) the entire premium for the Policy will be deemed to be fully earned immediately upon the **change in control**; and
  - (ii) the **insurer** agrees for an additional premium of 200% of the annual premium hereunder to provide run-off cover by providing a **discovery period** in respect of **claims** brought against **insured persons** for 72 months from the expiry of the **policy period**
- (2) If, during the **policy period** any entity ceases to be a **subsidiary**, the coverage provided under this Policy shall continue to apply to the **insured persons** who, because of their service with such **subsidiary**, were covered under this Policy, but only with respect to acts or conduct that occurred or allegedly occurred prior to the time such **subsidiary** ceased to be a **subsidiary**.

(C) **New Outside Directorships**

If, during the **policy period**, the **company** requests that a natural person serve either:

- (a) as a director, officer, or trustee (or functionally equivalent role); or
- (b) in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **insured person** of the **company**, regardless of the name or title by which such position is designated;

of an organisation that does not currently fall within the definition of an **outside entity**, then coverage shall apply as if such natural person is an **outside director** for a period of sixty (60) days from the commencement of such position, unless the **insurer**, at its sole and absolute discretion, accepts in writing by endorsement to this Policy, that such organisation shall be a **scheduled outside entity**.

(D) **New Offering of Securities**

If, during the **policy period**, the **company** undertakes an offering of equity securities in the United States of America, then the **insurer** shall not be liable to make any payment for **loss** in connection with any **claim** based upon, arising out of or in consequence of such offering unless:

- (1) the **insurer** receives prior written notice containing details of the offering; and
- (2) the **insurer** at its sole discretion, has agreed in writing to provide such additional coverage upon the terms, conditions, limitations, and additional premium which it deems appropriate.

#### IV. Definitions

In this Policy the following words shall have the definitions that follow:

- (A) “**bail bond costs**” means the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an **insured person’s** contingent obligation for bail required by a court.
- (B) “**change in control**” means:
  - (1) the merger or acquisition of the **parent company**, or of all or substantially all of its assets by another entity such that the **parent company** is not the surviving entity;
  - (2) the acquisition by any person, entity or affiliated group of persons or entities of the right to vote, select or appoint more than fifty percent (50%) of the directors of the **parent company**; or
  - (3) the appointment of a Receiver, Administrator, Administrative Receiver Conservator, Liquidator, Provisional Liquidator, Trustee, or any comparable or analogous authority or appointment, with respect to the **parent company** or the entry by the **parent company** into a company voluntary arrangement or scheme of arrangement.
- (C) “**claim**” means:
  - (1) a written demand for monetary or non-monetary relief;
  - (2) any civil proceeding in a court of law or equity, or arbitration;
  - (3) any criminal proceeding which is commenced by an indictment or similar proceeding; or
  - (4) in respect of an **insured person** only, a formal civil, criminal, administrative regulatory proceeding or formal investigation of an **insured person** which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying in writing such **insured person** as a person or entity against whom a proceeding as described in this Definition, subsections IV(C)(2) or (3) above may be commenced, including with respect to any **employment practices wrongful act** any proceeding before any government authority regulating employment practices.

for a **wrongful act**. **Claim** shall include a **securities claim** or an **employment practices claim**.
- (D) “**company**” means the **parent company** and any **subsidiary** created or acquired on or before the Inception Date set forth in Item 2 of the Schedule or during the **policy period**, subject to the provisions of Clause III(A).

- (E) “**company wrongful act**” means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the **company** in connection with a **securities claim**.
- (F) “**crisis consultant costs**” means any reasonable professional fees, costs or expenses of any reputable, specialist, or professionally qualified:
- (1) public relations firm or consultant;
  - (2) crisis management firm; or
  - (3) law firm or tax advisor.
- (G) “**defence costs**” means reasonable fees, costs and expenses necessarily incurred in the defence of any **claim**, including **bail bond costs**. **Defence costs** does not include the **company’s** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers or employees.
- (H) “**discovery period**” means a period following the end of the **policy period** during which this Policy will provide coverage:
- (1) with respect to any **claim** first made during such period, or
  - (2) with respect to any of the Extensions under this Policy, for any matter or event taking place, or **claim** first made during such period,
- but only with respect to a **wrongful act**, **company wrongful act**, or **employment practices wrongful act**, occurring prior to the end of the **policy period** or change of control, whichever occurs first.
- (I) “**employment practices claim**” means a **claim** alleging an **employment practices wrongful act**.
- (J) “**employment practices wrongful act**” means any employment related actual or alleged tortious act or omission, breach of statutory provision or breach of common law relating to an employee, including but not limited to:
- (1) failure to provide equal opportunity of employment or pay;
  - (2) discrimination;
  - (3) harassment (sexual or otherwise, and including but not limited to harassment in the form of workplace bullying, or by way of electronic communication including social networking internet sites);
  - (4) wrongful dismissal or treatment;
  - (5) retaliation;
  - (6) inducement to become or remain as an employee based upon an erroneous job description;
  - (7) defamation, misrepresentation, negligent misstatement, wrongful failure to employ or promote, deprivation of a career opportunity, or wrongful discipline;
  - (8) violation of an employee’s civil or human rights, or violations of any similar statutory provision arising out of acts or omissions by an insured or a person for whom the insured is legally responsible;
  - (9) breach of data protection or privacy obligations;

- (10) failure to allow an employee to exercise a statutory right; or
- (11) failure to provide or enforce corporate policies or procedures to prevent or address any of the above.
- (K) “**environmental violation**” means the discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind, including nuclear material or waste or any actual or alleged direction, or request to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralise pollutants, contaminants or waste of any kind including nuclear material or waste.
- (L) “**extradition proceeding**” means any proceeding against an **insured person** including any related appeal, any judicial review applications or any challenge or appeal of any extradition decision by any governmental authority, or any application to the European Court of Human Rights or similar court in respect of any proceedings to remove an **insured person** to another territory against their will.
- (M) “**insured**” means the **insured persons** and the **company**.
- (N) “**insured person**” means:
- (1) any past, present or future director or officer, member of the Board of Managers, or **non-executive director** of the **company**, or the equivalent in any jurisdiction;
  - (2) any past, present or future de facto or shadow director while acting in a capacity as a director or officer of the **company**, as defined in sections 250 and 251 of the Companies Act 2006 (UK) (or equivalent in any jurisdiction), other than a person acting in the capacity of external auditor, administrative receiver, administrator, receiver or liquidator (or equivalent in any jurisdiction);
  - (3) any past, present or future employee of the **company** to the extent:
    - (i) the subject **claim** is a **securities claim**;
    - (ii) such employee is acting in a managerial or supervisory capacity; or
    - (iii) such employee is named as a co-defendant along with an **insured person** as defined in this Definition IV(N) subsections (1) or (2) above;

or
  - (4) any **outside director**;
- but only when and to the extent that such **insured person** is acting for and on behalf of the **company** in any of the capacities referred to in this Definition (N) subsections (1) to (3) above; or, for and on behalf of the **outside entity** at the specific request of the **company** in their capacity as an **outside director**.
- (O) “**insurer**” means XLC 2003 / Lloyd’s Insurance Company S.A..
- (P) “**interrelated wrongful acts**” means any **wrongful act(s)**, **company wrongful act(s)**, or **employment practices wrongful act(s)** based on, arising out of, directly or indirectly

resulting from, in consequence of, or in any way involving any of the same originating cause(s), the same or related facts, series of related facts, or circumstances.

- (Q) “**investigation**” means any hearing, inquiry, or examination ordered by any **official entity** regarding the affairs of the **company**.
- (R) “**joint venture**” means any corporation, partnership, joint venture, association or other entity, other than a **subsidiary**, in which the **parent company**, either directly or through one or more **subsidiary(ies)** owns or controls not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **insured person** of the **company**, regardless of the name or title by which such position is designated.
- (S) “**limit of liability**” means the amount set out in Item 3 of the Schedule.
- (T) “**loss**” means amounts which the **insured** is legally obligated to pay as **defence costs**, damages, judgments, settlements or other amounts payable under the extensions to this policy, including interest and punitive or exemplary damages, and the multiplied portion of any damage award, in excess of the **retention**. **Loss** shall not include:
- (1) fines, penalties or taxes imposed by law, except for punitive or exemplary damages and as provided in Extension II (L) Fines and Penalties and in Extension II (M) Personal Liability of **Insured Persons** for Corporate Taxes;
  - (2) employment-related compensation, wages or benefits; or
  - (3) matters which are uninsurable under applicable law.
- The **insurer** shall not assert that **loss** attributable to allegations of violations of Section 11 or 12 of the Securities Act of 1933 (US) (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of such Act) constitute uninsurable **loss**.
- With respect to the insurability of fines, penalties, punitive, exemplary and multiplied damages, the law of the jurisdiction most favourable to the insurability of such fines, penalties, damages shall be applied, and such jurisdictions shall include, but not be limited to, the jurisdictions where (a) the damages or fines were awarded or imposed, (b) the **wrongful act(s)** giving rise to such damages or matters occurred, (c) the **claim** for such damages or fine was brought, (d) where the **company** is incorporated or has its principal place of business, or (e) where the **insured persons** or the **Insurer** is located.
- (U) “**non-executive director**” means any natural person who serves as a director of the **company** and who is not an employee of the **company**.
- (V) “**non-indemnifiable loss**” means **loss** in respect of which the **company** or **outside entity** is not legally required or permitted to indemnify the **insured person**.
- (W) “**non-profit entity**” means any corporation trust, fund, foundation, community or industry association or registered charity other than the **parent company** or any **subsidiary**, and

whose governing documents prevent it from distributing profits or assets for the benefit of members, whether or not it is exempt from the payments of income tax under any law, regulation or bye-law, whether national, federal, state, territorial, provincial or local, anywhere in the world.

- (X) “**official entity**” means any regulator, government, government body, governmental or administrative agency, any self regulatory body recognised as such under applicable law or official trade body.
- (Y) “**outside director**” means any natural person who at the specific request of the **company** is serving:
- (1) as a director, officer, trustee, regent or governor of a **non-profit entity**; or
  - (2) in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **insured person** of the **company**, regardless of the name or title by which such position is designated, of an **outside entity**.
- (Z) “**outside entity**” means:
- (1) any **non-profit entity**;
  - (2) any **joint venture**; or
  - (3) any **scheduled outside entity**.
- (AA) “**parent company**” means the entity named in Item 1 of the Schedule.
- (BB) “**policy period**” means the period specified in Item 2 of the Schedule.
- (CC) “**proposal**” means:
- (1) the proposal attached to and forming part of this Policy; and/or
  - (2) any materials submitted to the **insurer** prior to placement, which shall be retained on file by the **insurer** and shall be deemed to be physically attached to this Policy.
- (DD) “**retention**” means the amounts specified in Item 4 of the Schedule.
- (EE) “**retired insured person**” means any **insured persons** who have ceased to act in their insured capacity prior to expiry of the **policy period** for reasons other than (a) disqualification, on grounds of fitness or propriety, from holding office or from managing a company; (b) a **change in control**; or (c) the insolvency of the **parent company** or any **subsidiary**; and who does not subsequently resume their position.
- (FF) “**securities**” means any equity or debt instrument issued including any bond, debenture, note, share, stock or other equity or security for debt.

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(GG) “**securities claim**” means a **claim**, other than an administrative or regulatory proceeding against or investigation of a **company**, made against an **insured**:

- (1) for any actual or alleged act, error, omission, misleading statement, breach of duty or violation of any rules, regulations or laws (whether statutory or common law), relating to **securities**, which is:
  - (i) brought by any person or entity based upon, arising out of, directly or indirectly resulting from, or in any way involving the purchase or sale of, or offer to purchase or sell, **securities** of the **company**; or
  - (ii) brought by a **security** holder of the **company** with respect to such **security** holder’s interest in the **securities** of the **company**;

or

- (2) brought derivatively on behalf of the company by a security holder of such **company**.

(HH) “**scheduled outside entity**” means any organisation listed in a Scheduled Outside Directorship Endorsement attached to this Policy.

(II) “**subsidiary**” means any entity during any time in which the **parent company**, directly or through one or more **subsidiary(ies)**:

- (1) owns more than fifty percent (50%) of the issued and outstanding share capital,
- (2) controls more than fifty percent (50%) of the voting rights, or
- (3) controls the right to vote for the election or removal of such entity’s directors.

**Subsidiary** shall include any entity which is a tax-exempt non-profit entity, trade association, foundation, political action committee or a registered charity, controlled, established or maintained by the **company**.

The cover provided under this Policy with respect to any **subsidiary** shall only apply with respect to **wrongful acts**, events or conduct occurring or committed during the time when such entity was a **subsidiary** of the **company**.

(JJ) “**unrelated claim**” means any **claim** which neither alleges nor arises from any **interrelated wrongful acts** alleged in a **claim** previously made during the **policy period**.

(KK) “**wrongful act**” means any act, error, omission, misstatement, misleading statement, neglect, or breach of duty actually or allegedly committed, attempted or proposed to be committed by any **insured person** while acting in his or her capacity as an:

- (1) **insured person** of the **company** or a person serving in a functionally equivalent role for the **parent company** or any **subsidiary**; or
- (2) **outside director**.

## V. Exclusions

The **insurer** shall not be liable to make any payment in connection with any **claim** made against an **insured** or in connection with any matter covered by an extension to this Policy:

- (A) based upon, arising out of, or in any way attributable to any actual or alleged bodily injury, sickness, disease or death of any person, or any damage or destruction of any tangible property including loss of use thereof; however, this exclusion shall not apply to:
- (1) any allegations of mental anguish or emotional distress, or
  - (2) **defence costs** payable under Extensions II(J) and (K);
- (B) arising out of, based upon or attributable to an **insured** acting as a trustee, fiduciary or administrator of the **company's** own pension, profit sharing or employee benefits programme, including any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) (USA) and/or the Pensions Act of 1995 (UK) as amended or any regulations promulgated thereunder, or any similar law or regulation in any other jurisdiction;
- (C) arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **wrongful act, company wrongful act** or **employment practices wrongful act**:
- (1) underlying or alleged in any prior and/or pending litigation, or arbitration proceeding, administrative or regulatory proceeding which was brought prior to the Pending and Prior Litigation Date set forth in Item 7 of the Schedule; or
  - (2) which was the subject of any notice given under any other Management Liability policy, Directors and Officers liability policy or similar policy, unless such notice was provided to the **insurer** under an earlier policy but which was not accepted by the **insurer** as a valid notification, and where cover has been maintained continuously with the **insurer** from the inception date of the earlier policy to the end of the **policy period**.
- (D) brought about or contributed to by any:
- (1) dishonest, fraudulent or criminal act or omission of any **insured** or any wilful violation of any statute, rule or law; or
  - (2) profit or remuneration gained by any **insured** to which such **insured** is not legally entitled;

as determined by a judgment or other final adjudication (including any appeal thereof) in the underlying action or in a separate action or proceeding, or any formal admission by or on behalf of such **insured**, that such conduct did in fact occur.

To the extent permitted by law, Exclusion V(D)(2) above will not apply to allegations in a **claim** against any **insured person** under Section 11 and/or 12 of the Securities Act of 1933 (USA), as amended, arising out of an initial or subsequent public offering of the **company's securities** (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 (USA) by a Controlling Person pursuant to Section 15 of such Act).

For the purpose of determining the applicability of Exclusion V(D)(1) to the **company**, only knowledge or information possessed by the Chairman, Chief Executive Officer, Chief



Financial Officer, Chief Operating Officer or General Counsel (or equivalent in any jurisdiction) of the **company** will be imputed to the **company**.

- (E) brought by, on behalf of, or at the direction of the **company**, or an **outside entity**, except and to the extent such **claim**:
- (1) is brought derivatively by a security holder of the **company** or an **outside entity** who, when such **claim** is made and maintained, is acting independently of, and without the solicitation, assistance, participation or intervention of an **insured person** (other than an insured person engaged in whistleblowing), the **company** or any **outside entity**; or
  - (2) is brought by any receiver, administrator or other insolvency practitioner (or equivalent in any other jurisdiction) of the **company** or an **outside entity**, or any assignee of such person.

This Exclusion V (E) shall not apply with respect to **defence costs**.

No knowledge, or act, error or omission, of any **insured person** will be imputed to any other **insured person** to determine the application of any of the exclusions above.

## VI. **Limit of Liability, Indemnification and Retentions**

- (A) Save as set out in any applicable sub-limit, the **insurer** shall pay the amount of **loss** in excess of the applicable **retention**(s) set forth in **Item 4** of the Schedule up to the **limit of liability**.
- (B) The amount set forth in **Item 3** of the Schedule shall be the maximum aggregate **limit of liability** of the **insurer** under this Policy (except with respect to the special excess limits specified in Extensions II (A) and (B)). Any payment by the **insurer** shall reduce the **limit of liability** accordingly by the paid amount. The sub-limits of liability specified in Section 5 of the Schedule are part of and not in addition to the **limit of liability** and is the maximum amount the **insurer** will pay with respect to the cover to which it applies.
- (C) With respect to the **company's** indemnification of **insured persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organisational documents of the **parent company**, each **subsidiary** and each **outside entity**, will be deemed to permit indemnification of the **insured persons** to the fullest extent allowable by law.
- (D) **Claims** arising from the same **interrelated wrongful acts** shall be deemed to constitute a single **claim** and shall be deemed to have been made at the time at which the earliest such **claim** is made or deemed to have been made pursuant to General Condition VIII (A) (1) to (3) below, if applicable.
- (E) The **retention** applicable to Insuring Agreement I (B) shall apply to any **loss** as to which indemnification by the **company** or **outside entity** is legally required or permitted, whether or not actual indemnification is made unless such indemnification is not made by the

**company**, or **outside entity** solely by reason of its financial insolvency in which case no **retention** shall apply.

- (F) If a payment is made by the **insurer** to any **insured person** under this Policy as to which indemnification by the **company** was legally required or permitted but not made by the **company**, the **company** agrees to pay to the **insurer** the amount of the **retention** applicable to I. Insuring Agreement (B). The **insurer** shall be entitled to set off such amounts against any sums due from the **insurer** to the **company**.
- (G) If different **retentions** are applicable to different parts of any **loss**, the applicable **retention(s)** will be applied separately to each part of such **loss**, and the sum of such **retention(s)** will not exceed the largest applicable **retention** set forth in Item 4 of the Schedule.

## VII. Defence, Settlement and Allocation of Loss

- (A) It shall be the duty of the **insured** to defend any **claim**. The **insurer** shall have the right and be given the opportunity to participate with each **insured** in the defence and settlement of any **claim** that appears likely to involve the **insurer**.
- (B) Except as provided for in Extension II (H) Emergency Costs, the **insurer** shall not be obliged to pay any **defence costs** unless the **insurer** has provided prior written consent to the **defence costs** being incurred, such consent not to be unreasonably withheld, delayed or denied.
- (C) The **insurer** shall not be obliged to make any payment in connection with any liability admitted by the **insured**, nor any settlement agreed by the **insured**, unless the **insurer** has provided prior written consent to the liability being admitted or settlement being agreed, such consent not to be unreasonably withheld, delayed or denied.
- (D) Upon the written request of an **insured**, the **insurer** will, within 60 days, advance **defence costs** on a current basis in excess of the applicable **retention**, if any, before the disposition of the **claim** for which this Policy provides coverage. If it is finally determined that the **loss** incurred is not covered under this Policy, then the **insured** shall repay such **loss**, including **defence costs**, paid to or on behalf of the **insured**.
- (E) In the event the **company** or the **outside entity** refuses to indemnify the **insured persons** even if it is legally required or permitted to do so, the **insurer** shall advance **defence costs** to the **insured persons** and the provisions of Clauses VI (E) and (F) above shall apply. A "refusal to indemnify" shall mean a written refusal by the **company** or the **outside entity** to indemnify the **insured persons**.



- (F) If both **loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **claim** made against the **insured** contains both covered matters and matters not covered by this Policy, or because a **claim** is made against both the **insured** and others (including the **company** for **claims** other than **securities claims**) not insured under this Policy, the **insured** and the **insurer** will use their best efforts to determine a fair and appropriate allocation of **loss** between that portion of **loss** that is covered under this Policy and that portion of **loss** that is not covered under this Policy. Additionally, the **insured** and the **insurer** agree that in determining a fair and appropriate allocation of **loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defence and/or settlement of the **claim** by, the **insured** and others.
- (G) In the event that an agreement cannot be reached between the **insurer** and the **insured** as to an allocation of **loss**, as described in VII(F) above, then the **insurer** shall advance that portion of **loss** which the **insured** and the **insurer** agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

## VIII. General Conditions

### (A) NOTICE

- (1) The **insured** must give the **insurer** written notice of any **claim** first made against the **insured** during the **policy period**, as soon as practicable after the parent company's risk manager or general counsel (or equivalent) becomes aware of such **claim** and, in any event, within thirty (30) days of the end of the **policy period**, or within such additional **discovery period** as may apply. If the **insured** does not give notice to the **insurer** in compliance with this clause, the **insurer** shall have no liability under this Policy in respect of that **claim**.
- (2) During the **policy period**, the **insured** may also give the **insurer** written notice of any **investigation**, event, or proceeding which could give rise to cover under any Extension in Section II of this Policy. If the **insured** does not give notice to the **insurer** in compliance with this Clause VIII (A) (2), the **insurer** shall have no liability under this Policy in respect of any such **investigation**, event or proceeding.
- (3) During the **policy period**, the **insured** may also notify the **insurer** of any fact or circumstance which may reasonably give rise to a **claim**. Such notice must include the reasons why the **insured** reasonably anticipates that the fact or circumstance may give rise to a **claim** with full particulars of the dates, acts and persons involved.
- (4) Any **claim** made after expiry of the **policy period** which alleges, arises out of, is based upon or attributable to any **interrelated wrongful act** which was the basis of:
- (i) a **claim** first made during the **policy period** (or applicable **discovery period**) which has been notified to the **insurer** in accordance with clause VIII (A) (1) above; or
  - (ii) a fact or circumstance, **investigation**, event, or proceeding, which has been notified to the **insurer** in accordance with clauses VIII (A) (2) or (3) above;

will be treated by the **insurer** as having been notified during the **policy period**,

- (5) All notices must be sent by certified mail or the equivalent to the address set forth in Item 8 of the Schedule: Attention: Professional Lines Claims Department.

(B) **OTHER INSURANCE**

- (1) All **loss** payable under this Policy will be specifically excess of and will not contribute with any other insurance, including any insurance that would have been valid and collectable in the absence of this insurance. This Policy will not be subject to the terms of any other insurance policy.
- (2) All coverage under this Policy for **loss** from **claims** made against the **insured persons** while acting in their capacity as an **outside director**, will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **insured person** from such **outside entity** or its insurers by reason of their service as such.

(C) **PRIORITY OF PAYMENTS**

If **loss**, including **defence costs**, shall be payable under more than one of the Insuring Agreements, then the **insurer** shall, to the maximum extent practicable and subject at all times to the **insurer's** maximum aggregate **limit of liability** as set forth in Item 3 of the Schedule, pay such **loss** as follows:

- (1) first, the **insurer** shall pay that **loss**, if any, which the **insurer** may be liable to pay on behalf of the **insured persons** under Insuring Agreement I (A); and
- (2) second, the **insurer** shall pay that **loss**, if any, which the **insurer** may be liable to pay on behalf of the **company** under Insuring Agreements I (B), (C) or otherwise.

(D) **CANCELLATION**

This Policy may only be cancelled for non-payment of premium. If the premium is not paid within (60) days after inception of the **policy period**, the **insurer** may cancel this Policy, with effect from inception, by providing twenty (20) days written notice of cancellation to the **parent company** as the agent of record for the **insured**. If premium is paid during the 20 day notice period, the notice of cancellation will be revoked.

(E) **REMEDIES FOR MISREPRESENTATION AND/OR NON-DISCLOSURE**

The **insurer** irrevocably waives any and all rights and remedies it may have as a result of any misrepresentation or non-disclosure including, but not limited to, any right it may have to rescind or avoid this Policy, except with respect to:

- (1) an **insured person** who was fraudulent in relation to the misrepresentation or non-disclosure in question; or

(2) the **company** in respect of Insuring Agreement I (C).

(F) **SEVERABILITY**

The **proposal** shall be construed as a separate **proposal** by each **insured**. With respect to the information and statements contained in such **proposal** or otherwise provided to the **insurer** when the Policy was placed, no statement or knowledge possessed by any one **insured** shall be imputed to any other **insured** for the purpose of determining the availability of cover for any other **insured**. The acts, omissions, knowledge, or warranties of any **insured** shall not be imputed to any other **insured** with respect to the cover available under this Policy.

Only the knowledge or information possessed by the past, present or future Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or General Counsel (or equivalent in any jurisdiction) of the **company** will be imputed to such **company**.

(G) **ASSISTANCE, COOPERATION AND SUBROGATION**

(1) The **insured** agrees to provide the **insurer** with all information, assistance and cooperation that the **insurer** may reasonably request, and further agrees that they will do nothing which in any way increases the **insurer's** exposure under this Policy or in any way prejudices the **insurer's** potential or actual rights of recovery.

(2) In the event of any payment under this Policy, the **insurer** shall be subrogated to all of the potential or actual rights of recovery of the **insured**. The **insured** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the **insurer** to bring suit in their name, and will provide all other assistance and cooperation which the **insurer** may reasonably require.

(H) **EXHAUSTION**

If the **limit of liability** and the special excess limits specified in Extensions II (A) and (B), are exhausted by the payment of **loss**, the premium for this Policy will be deemed fully earned, and all obligations of the **insurer** under this Policy will be completely fulfilled and exhausted, and the **insurer** will have no further obligations of any kind whatsoever under this Policy.

(I) **ASSIGNMENT AND CHANGES TO THE POLICY**

(1) Assignment of interest under this Policy shall not bind the **insurer** unless the **insurer** has given prior written consent.

(2) Notice to any agent of the **insurer** or knowledge possessed by any agent or other person acting on behalf of the **insurer** will not cause a waiver or change in any part of this Policy or prevent the **insurer** from asserting any right under the terms, conditions and limitations of this Policy.

(3) The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement.

(J) **AUTHORISATION AND NOTICES**

It is understood and agreed that the **parent company** will act on behalf of the **company** and the **insured persons** with respect to:

- (1) the payment of premium;
- (2) the receiving of any return premium that may become due under this Policy;
- (3) the giving of all notices to the **insurer**, and
- (4) the receiving of all notices from the **insurer**.

Subject to the other provisions of this Policy, this General Condition (J) does not preclude an **insured person** from notifying the **insurer** in accordance with General Condition (A).

(K) **CONFIDENTIALITY**

- (1) The **insurer** will treat as confidential all information provided to it by the **insured** in connection with this Policy and will not, without the prior consent of the **parent company**, disclose any such information to any third party. However, the **insurer** shall be entitled, without the consent of the **parent company**, to disclose any confidential information to:
  - (i) any director, officer, employee, agent, reinsurer or adviser of the **insurer** and/or its group companies in dealing with the insurance of the **insured**, including underwriting and claims handling purposes;
  - (ii) to any person in order to comply with any legal or regulatory requirement; or
  - (iii) a court, mediator, or arbitrator to whom matters are referred in connection with this Policy or with any reinsurance of this Policy.
- (2) The **insurer** will not be required to treat as confidential any information provided to it by an **insured** if that information:
  - (a) is in the public domain, other than by means of the **insurer** having disclosed it; or
  - (b) was in the **insurer's** possession prior to it being provided by the **insured**.

(L) **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exist or is available apart from that Act.

(M) **JURISDICTION AND GOVERNING LAW / ARBITRATION**

This Policy shall be governed by and construed in accordance with the laws of Ontario, Canada.

All matters in difference between the parties arising under, out of or in connection with this Policy, including formation and validity, and whether arising during or after the period of this Policy, shall be referred to an arbitration tribunal. The seat and place of arbitration shall be Ontario, Canada.

The arbitration shall be conducted in accordance with the latest UK ARIAS Rules published at the time that arbitration is commenced by the claimant (the party requesting arbitration), unless the rules conflict with this clause, in which case this clause will prevail.

Unless the parties agree to appoint a sole arbitrator within 14 days of one receiving a written request from the other for arbitration, the claimant shall appoint his arbitrator and give written notice to the respondent. Within 14 days of receiving such notice the respondent shall appoint his arbitrator and give written notice to the claimant.

If the respondent refuses to, or fails to appoint an arbitrator within 14 days of receiving written notice of the appointment of the claimant's arbitrator, the claimant may give notice in writing to the respondent that he proposes to appoint his arbitrator to act as the sole arbitrator. If the respondent does not within 7 clear days of that notice being given make the required appointment and notify the claimant that he has done so, the claimant may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.

Where two arbitrators have been appointed by the claimant and the respondent, those arbitrators shall appoint a third arbitrator. Should they fail to appoint such a third arbitrator within 28 days of the appointment of the respondent's arbitrator then either of them or either of the parties may apply to the appointor for the appointment of the third arbitrator. The appointor shall be the Chairman for the time being of ARIAS (UK) or if he is unavailable or it is inappropriate for him to act for any reason, such person as may be nominated by the Committee of ARIAS (UK). If for any reason such persons decline or are unable to act, then the appointor shall be the Judge of the appropriate Courts having jurisdiction at the place of arbitration.

The three arbitrators shall decide by majority. If no majority can be reached the verdict of the third arbitrator shall prevail. He shall also act as chairman of the tribunal.

Unless the parties otherwise agree the arbitration tribunal shall consist of persons (including those who have retired) with not less than ten years' experience of insurance or reinsurance as persons engaged in the industry itself or as lawyers or other professional advisers.

(N) **COMPLAINTS**

Every effort is made to ensure that a high standard of service is provided. However, if the **insured** is not satisfied with the service it has received, it should contact:

Compliance Officer  
XL Insurance Company Limited  
XL House  
70 Gracechurch Street  
London, EC3V 0XL

Telephone: 020 7933 7000

Please quote the Policy or claim number and the name of the **parent company**.

Complaints that cannot be resolved by the Compliance Officer may be referred to the Financial Ombudsman Service.

Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London, E14 9SR

E-mail: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

Telephone 0845 080 1800

CONFIDENTIAL  
Wellington  
PROSENI@LAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM



## Fair Processing Notice

This Privacy Notice describes how the XL Catlin entity named as Insurer in this Policy (for the purpose of this notice “we”, “us” or the "Insurer") collect and use the personal information of insureds, claimants and other parties (for the purpose of this notice “you”) when we are providing our insurance and reinsurance services.

The information provided to the Insurer, together with medical and any other information obtained from you or from other parties about you in connection with this policy, will be used by the Insurer for the purposes of determining your application, the operation of insurance (which includes the process of underwriting, administration, claims management, analytics relevant to insurance, rehabilitation and customer concerns handling) and fraud prevention and detection. We may be required by law to collect certain personal information about you, or as a consequence of any contractual relationship we have with you. Failure to provide this information may prevent or delay the fulfilment of these obligations.

Information will be shared by the Insurer for these purposes with group companies and third party insurers, reinsurers, insurance intermediaries and service providers. Such parties may become data controllers in respect of your personal information. Because we operate as part of a global business, we may transfer your personal information outside the European Economic Area for these purposes.

You have certain rights regarding your personal information, subject to local law. These include the rights to request access, rectification, erasure, restriction, objection and receipt of your personal information in a usable electronic format and to transmit it to a third party (right to portability).

If you have questions or concerns regarding the way in which your personal information has been used, please contact: [compliance@xlcatlin.com](mailto:compliance@xlcatlin.com).

We are committed to working with you to obtain a fair resolution of any complaint or concern about privacy. If, however, you believe that we have not been able to assist with your complaint or concern, you have the right to make a complaint to the UK Information Commissioner's Office.

For more information about how we process your personal information, please see our full privacy notice at: <http://xlgroupp.com/footer/privacy-and-cookies>.

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **001**

**PREMIUM PAYMENT WARRANTY**

IT IS HEREBY WARRANTED that all premium due to Underwriters under this policy is paid within 60 days from inception.

Non-receipt by Underwriters of such premium, by midnight (local standard time) on the premium due date, shall render this policy void with effect from Inception.

623AFB00082

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **002**

### **(RE)INSURERS LIABILITY CLAUSE**

#### **(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

#### **Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

CONFIDENTIAL  
Wellington  
SENDER@SLERCONFIDENTIAL  
Friday, June 10, 2007 11:00 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **003**

**SERVICE OF SUIT CLAUSE (CANADA)**  
**(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

LMA5028  
10/08/06

Form approved by Lloyd's Market Association

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **004**

#### INTENTION FOR AIF TO BIND CLAUSE

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

01/11/11  
LMA5180

CONFIDENTIAL  
Wellington  
D.ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **005**

### NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT

Except as stated in the Special Cancellation Clause and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the Assured the earned premium shall be computed as follows:-

#### SHORT RATE CANCELLATION TABLE

A. For Insurances written for one year:-

Days Insurance in force	Per cent. of One year Premium	Days Insurance in force	Per cent. of One year Premium
1	.....5	154 - 156	.....53
2	.....6	157 - 160	.....54
3 - 4	.....7	161 - 164	.....55
5 - 6	.....8	165 - 167	.....56
7 - 8	.....9	168 - 171	.....57
9 - 10	.....10	172 - 175	.....58
11 - 12	.....11	176 - 178	.....59
13 - 14	.....12	179 - 182	(6 months).....60
15 - 16	.....13	183 - 187	.....61
17 - 18	.....14	188 - 191	.....62
19 - 20	.....15	192 - 196	.....63
21 - 22	.....16	197 - 200	.....64
23 - 25	.....17	201 - 205	.....65
26 - 29	.....18	206 - 209	.....66
30 - 32	(1 month).....19	210 - 214	(7 months).....67
33 - 36	.....20	215 - 218	.....68
37 - 40	.....21	219 - 223	.....69
41 - 43	.....22	224 - 228	.....70
44 - 47	.....23	229 - 232	.....71
48 - 51	.....24	233 - 237	.....72
52 - 54	.....25	238 - 241	.....73
55 - 58	.....26	242 - 246	(8 months).....74
59 - 62	(2 months).....27	247 - 250	.....75
63 - 65	.....28	251 - 255	.....76
66 - 69	.....29	256 - 260	.....77
70 - 73	.....30	261 - 264	.....78
74 - 76	.....31	265 - 269	.....79
77 - 80	.....32	270 - 273	(9 months).....80
81 - 83	.....33	274 - 278	.....81
84 - 87	.....34	279 - 282	.....82
88 - 91	(3 months).....35	283 - 287	.....83
92 - 94	.....36	288 - 291	.....84
95 - 98	.....37	292 - 296	.....85
99 - 102	.....38	297 - 301	.....86
103 - 105	.....39	302 - 305	(10 months).....87
106 - 109	.....40	306 - 310	.....88
110 - 113	.....41	311 - 314	.....89
114 - 116	.....42	315 - 319	.....90
117 - 120	.....43	320 - 323	.....91
121 - 124	(4 months).....44	324 - 328	.....92
125 - 127	.....45	329 - 332	.....93
128 - 131	.....46	333 - 337	(11 months).....94
132 - 135	.....47	338 - 342	.....95
136 - 138	.....48	343 - 346	.....96
139 - 142	.....49	347 - 351	.....97
143 - 146	.....50	352 - 355	.....98
147 - 149	.....51	356 - 360	.....99
150 - 153	(5 months).....52	361 - 365	(12 months).....100

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

- B. For insurances written for more or less than one year:-
1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
  2. If insurance has been in force for more than 12 months:
    - a. Determine full annual premium as for an insurance written for a term of one year.
    - b. Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
    - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

N.M.A. 45 (Amended)

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **006**

### SPECIAL CANCELLATION CLAUSE

In consideration of the premium charged for this Policy, it is hereby understood and agreed that notwithstanding anything to the contrary in this Policy including any endorsement or amendatory thereto, in the event:

1. the Underwriter ceases all underwriting operations; or
2. the Underwriter is the subject of an order or resolution for winding up or formally propose a scheme of arrangement, or is placed into rehabilitation or liquidation by any state department of insurance; or
3. the Underwriter has its authority or license to carry on insurance business withdrawn; or
4. Lloyd's financial strength rating is issued below A- by A.M. Best Company or by Standard & Poor's Rating Services,

the **Parent Company** may cancel this Policy by giving notice within thirty (30) days of such event and the return premium shall be calculated on a pro rata basis to the time on the risk. Any return of premium shall also be subject to a written full release of liability from the **Insureds**. In the event there are any notified, reserved or paid **Claims, Investigations, Losses** or circumstances, return premium shall be calculated on a short rate basis pursuant to the terms of the Policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

CONFIDENTIAL  
 Wellington  
 DROSEN@AT@OSLER.COM  
 Friday, June 10, 2022 11:06:07 AM



Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **007**

**SANCTION LIMITATION AND EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10  
LMA3100

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **008**

**LLOYD'S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd's, London and (b) Lloyd's Insurance Company S.A. the following shall apply:

A. **Shared Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit Of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable Limit Of Liability of this contract of Insurance.

B. **Shared Retention Clause**

There shall be a single each loss and retention applicable to both this contract of Insurance (covering Worldwide excluding EEA) and this contract of Insurance (covering EEA) which shall be eroded by losses otherwise recoverable under either contract of insurance.

2. Solely with respect to the participation of Lloyd's Insurance Company S.A. the following amendments shall apply:

A. **Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of Ontario, Canada and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in Ontario, Canada.

Lloyd's Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney in Fact for Lloyd's Underwriters  
1155 rue Metcalfe, Suite 2220  
Montreal  
Quebec H3B 2V6  
Canada

who in this instance, has authority to accept service on its behalf.

Lloyd's Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

This Service of Suit and Jurisdiction Clause will not be read to conflict with or override the obligations of the parties to resolve their disputes as provided for in any other clause in this Policy and, to the extent required, shall apply to give effect to that process.

LBS0006A  
01/12/2019

CONFIDENTIAL  
DROSEIBLA-1201SLRHCJM  
Wellington  
Friday, June 16, 2012 11:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

**B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 39

E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)

Telephone: 0800 023 4 567 (from inside the UK)

Fax: +44 20 7964 1001

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045  
01/01/2019

**C. SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **009**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London	807/V90807004451
Lloyd's Insurance Company SA	807/V20000025027

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **010**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF 2019 SECURITIES CLASS ACTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that Clause V. **Exclusions** is amended by the addition of:

(F) arising out of, based upon or attributable to:

1. any notices, events, investigations or actions scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any Event; or (b) any **claim** arising from any Event; or any **wrongful act**, underlying facts, circumstances, acts or omissions in any way relating to any Event; or
2. any such Event or any **interrelated wrongful act**, regardless of whether or not such **Claim**, involved the same or different **insureds**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

**SCHEDULE OF EVENTS:**

As alleged in the class action complaint filed against Just Energy Inc and others by Eli Gottein and others in the United States District Court, Southern District of New York on 31 July 2019.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
 Wellington  
 DROSEN@LAT@OSLER.COM  
 Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **011**

**ANTHONY HORTON INCLUDED AS AN INSURED PERSON ENDORSEMENT**

It is hereby understood and agreed that **IV. Definitions N. "insured person"** is amended with the addition of the following:

(5) Mr. Anthony Horton

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **012**

**SECURITY HOLDER DEMAND INVESTIGATORY COSTS**

and

**CLASS CERTIFICATION EVENT STUDY EXPENSES ENDORSEMENT**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that the following amendments are made:

1. It is understood and agreed that Item 3. of the Declarations is deleted in its entirety and replaced with the following:

- Item C. Limit of Liability:
1. **USD 5,000,000** in the aggregate for the **policy period** for all **loss**; but sublimited to
  2. **USD 50,000** in the aggregate for the **policy period** for all **security holder demand investigatory costs** under Insuring Agreement D.

2. It is understood and agreed that Item 4. of the Declarations is amended by the addition of the following:

**USD Nil** each **claim** under Insuring Agreement I (D) and any indemnifiable **security holder demand investigatory costs or class certification event study expenses**.

3. It is understood and agreed that **I. Insuring Agreements** is amended with the addition the following:

(D) **Security Holder Demand Investigatory Costs**

The **insurer** shall pay on behalf of the **company** all **security holder demand investigatory costs** resulting from any **security holder demand** first made during the **policy period** for a **company wrongful act**.

4. It is understood and agreed that **IV. Definitions** (C) "**claim**" is amended with the addition the following:

(5) with respect to Insuring Agreement D., any **security holder demand**.

5. It is understood and agreed that **IV. Definitions** (T). "**loss**" is deleted in its entirety and replaced with the following:

(T) "**loss**" means

- a) amounts which the **insured** is legally obligated to pay as **defence costs, class certification event study expenses**, damages, judgments, settlements or other amounts payable under the extensions to this policy, including interest and punitive or exemplary damages, and the multiplied portion of any damage award, in excess of the **retention**;
- b) with respect to Insuring Clause D., **Security Holder Demand Investigatory Costs** incurred by the **company**

**loss** shall not include:

- (1) fines, penalties or taxes imposed by law, except for punitive or exemplary damages and as provided in Extension II (L) Fines and Penalties and in Extension II (M) Personal Liability of **Insured Persons** for Corporate Taxes;

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

- (2) employment-related compensation, wages or benefits; or
- (3) matters which are uninsurable under applicable law.

The **insurer** shall not assert that **loss** attributable to allegations of violations of Section 11 or 12 of the Securities Act of 1933 (US) (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of such Act) constitute uninsurable **loss**.

With respect to the insurability of fines, penalties, punitive, exemplary and multiplied damages, the law of the jurisdiction most favourable to the insurability of such fines, penalties, damages shall be applied, and such jurisdictions shall include, but not be limited to, the jurisdictions where (a) the damages or fines were awarded or imposed, (b) the **wrongful act(s)** giving rise to such damages or matters occurred, (c) the **claim** for such damages or fine was brought, (d) where the **company** is incorporated or has its principal place of business, or (e) where the **insured persons** or the **insurer** is located.

6. It is understood and agreed that **IV. Definitions** is amended with the addition the following:

- (LL) "**security holder demand**" means any written demand made by one or more security holders of the **company** upon the **company's** Board of Directors to bring a civil proceeding against any of the **directors and officers** for a **wrongful act**.
- (MM) "**security holder demand investigatory costs**" means reasonable fees and expenses incurred by the **company** in connection with the investigation, review or evaluation of any **security holder demand**.
- (NN) "**class certification study expenses**" means:

The reasonable and necessary fees, costs and expenses of an expert witness **consented** to by the **insurer**, which consent shall not be unreasonably withheld, incurred by an **insured** to conduct an event study regarding any issues of fact relevant to the court's decision as to whether to grant class certification in a **securities claim**.

If the law firm defending a **securities claim** recommends to the **insured** a specific expert witness to conduct an event study in the defense of such **securities claim**, then the **insured** may hire such expert witness to perform such event study without further approval by the **insurer**.

7. It is understood and agreed that **VI. Limit of Liability, Indemnifications and Retentions** A. and B. are deleted in its entirety and replaced with the following:

- A. UNDERWRITERS shall be liable to pay **Loss** in excess of the amount of the applicable Retention up to the amount shown in Item C.1. of the Declarations, which shall be the maximum aggregate Limit of Liability of Underwriters under this Policy. The amount shown in Item C.2. of the Declarations shall be the maximum aggregate Sublimit of Liability of Underwriters under the Policy for **Security Holder Demand Investigatory Costs** arising from all **Security Holder Demands** under Insuring Clause D. Such Sublimit of Liability shall be part of, and not in additions to, the Limit of Liability stated in Item C.1. of the Declarations Payment of **Loss** by Underwriters shall reduce the Limit of Liability, and Underwriters shall have no duty to pay **Loss** after the Limit of Liability has been exhausted by payment of **Loss. Costs, Charges and Expenses** shall be part of and not in addition to the Limit of Liability.
- B. Underwriters shall only be liable under this Policy for the amount of **Loss** in excess of the applicable Retention stated in Item D. of the Declarations. The **Assureds** shall be responsible for payment of the applicable Retention, which the **Assureds** shall bear uninsured and at their own risk. No Retention applies to Insuring Clauses A. and D or to **class certification event study expenses**.. If more than one Retention stated in Item D. of the Declarations applies to a **Claim**, then the highest



Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

applicable Retention payable by the **Assureds** for such **Claim** shall be applied. In no event shall more than one Retention be applied to a **Claim**.

8. It is understood and agreed that **VII. Defence, Settlement and Allocation of Loss** (B). is deleted in its entirety and replaced with the following:

(B) Except as provided for in Extension II (H) Emergency Costs, the *insurer* shall not be obliged to pay any **defence costs** or **security holder demand investigatory costs** unless the *insurer* has provided prior written consent to the **defence costs** being incurred, such consent not to be unreasonably withheld, delayed or denied.

All other terms conditions and exclusions shall remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **013**

### **CORONAVIRUS ABSOLUTE EXCLUSION**

The **insurer** shall not be liable to make any payment in connection with any **claim** made against an **insured** or in connection with any matter covered by an extension to this Policy based upon, arising out of, or in any way attributable to coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to or resulting from:

- (i) any fear or threat (whether actual or perceived) of; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of; coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

All other terms conditions and exclusions shall remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **014**

**CANADIAN CORPORATE TAX EXTENSION  
(SECTION 227.1 OF THE INCOME TAX ACT)**

In consideration of the premium charged, it is hereby understood and agreed that coverage as is afforded by virtue of this policy in connection with **claims** made against any **insured person** of a **company** incorporated or formed in Canada and solely as respects Insuring Agreement (A) of this policy, the Definition of **loss** is amended by adding the following at the end thereof:

Notwithstanding the above, **loss** shall include (subject to the other terms, conditions and exclusions of the policy):

- (1) taxes actually assessed against an **insured person** pursuant to section 227.1 of the Canadian Income Tax Act, Section 323 of the Canadian Excise Tax Act or any comparable Canadian Provincial Retail Sales Tax legislation (hereinafter such section referred to as the "**sections**"); and
- (2) any related penalties and interest actually assessed against such **insured person** pursuant to the **sections**.

It is further understood and agreed that solely for the purposes of the coverage afforded by virtue of this endorsement the following additional provisions shall apply:

- (a) The term "**claim**" shall include any action, proceeding or investigation against an **insured person** commenced by Revenue Canada or any Canadian provincial tax authority pursuant to the **sections** that is commenced by a notice of investigation or similar document. **Loss** shall include **defence costs** incurred in connection with such a **claim** subject to the other terms, conditions and exclusions of the policy.
- (b) As a condition precedent to the rights of the **insured** under this endorsement, an event identified in the sections of the Canadian Income Tax Act listed below shall have occurred prior to the **claim** being made against the **insured**:  
  
Sec. 227.1(2) (a)-(c)
- (c) The **company** hereby agrees to indemnify and hold the **insurer** harmless from any payment made to or on the behalf of an **insured person** pursuant to the coverage granted by this endorsement.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **015**

### STATUTORY CLAIMS ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed as follows:

1. Clause IV Definitions (C) **claim** is amended by the addition of the following:

(6) a **statutory claim**.

2. Clause IV Definitions is amended by the addition of the following:

(OO) "**statutory claim**" means:

a **claim** made against any insured person by an Canadian governmental authority, which alleges a violation of any Canadian federal, provincial or territorial law arising out of, based upon or attributable to:

- (1) the failure to deduct, withhold or remit tax from a payment of salary or wages of an employee of a **company**
- (2) the failure to deduct, withhold or remit employment insurance contributions from a payment of salary or wages of an employee of a **company**,
- (3) the failure to deduct, withhold or remit pension plan contributions from a payment of salary or wages of an employee of a **company**,
- (4) the failure to pay wages of an employee of a **company** properly due and owing, or
- (5) the failure to collect or to remit taxes, in accordance with Section 227.1 of the Canadian Income Tax Act, Section 323 of the Canadian Excise Tax Act, Section 43 of the Ontario Retail Sales Taxes Act, or similar provisions of any other Canadian provincial or territorial income tax or retail sales tax statute.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **016**

### NOMINAL DEFENDANT RESPONSE COSTS

In consideration of the premium charged, it is hereby understood and agreed as follows:

1. Insuring Clause (C) is amended to read as follows:

(C) **Company Securities Claim and Nominal Defendant Cover**

The *insurer* shall pay the *loss* of the *company*:

- (1) resulting from any *securities claim* first made against the *company* during the *policy period*, for a *company wrongful act* and
- (2) incurred by a *company* or on its behalf by any *insured persons* (including through any special committee) as **nominal defendant response costs**.

2. Clause IV Definitions is amended by the addition of the following:

- (PP) “**nominal defendant response costs**” means: legal and related fees, costs and expenses incurred through a law firm with the *insurer’s* consent that are reasonably and necessarily incurred in representing an *company* as a nominal plaintiff and/or nominal defendant in any *derivative suit*. **Nominal defendant response costs** shall not include *derivative investigation costs*, and *derivative investigation costs* shall not include **nominal defendant response costs**. “*Loss*” includes **nominal defendant response costs**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

CONFIDENTIAL  
BRUCE L. ATLAS@SLSER.COM  
Pellingon  
From: Bruce L. Atlas, 2022-11-06 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **017**

**EMPLOYED LAWYERS PROFESSIONAL LIABILITY EXTENSION  
WITH SUBLIMIT OF LIABILITY**

In consideration of the premium charged, it is hereby understood and agreed that the term "**insured person**" is amended to include any "**employed lawyer**," but only for **wrongful acts** (as defined below) in such **employed lawyer's** capacity as such, subject to the terms, conditions and limitations of the policy and this endorsement.

Solely for the purposes of the extension of coverage provided by this endorsement, the term "**wrongful act**" means any act, error or omission of an **employed lawyer**, in the rendering or failure to render professional legal services for the **company**, but solely in his or her capacity as such. Provided, however, the term "**wrongful act**" shall not mean any act, error or omission in connection with any activities by such **employed lawyer**: (1) which are not related to such **employed lawyer's** employment with the **company**; (2) which are not rendered on behalf of the **company** at the **company's** written request; or (3) which are performed by the **employed lawyer** for others for a fee.

It is further understood and agreed that solely with respect to the coverage as is afforded by virtue of this endorsement, the **insurer** shall not be liable to make any payment for Loss in connection with any Claim(s) made against an **employed lawyer**:

- (a) Alleging, arising out of, based upon or attributable to any **wrongful act** occurring at a time when the **employed lawyer** was not employed as a lawyer by the **company**;
- (b) Alleging, arising out of, based upon or attributable to any **wrongful act**, if as of the **continuity date**, an **Employed lawyer** knew or could have reasonably foreseen that such **wrongful act** could give rise to a **Claim**; or
- (c) Alleging, arising out of, based upon or attributable to any activities by an **Employed lawyer** as an officer or director of any entity other than the **company**.

It is further understood and agreed that for the purpose of the applicability of the coverage provided by this endorsement, the **company** will be conclusively deemed to have indemnified the **Employed lawyer** to the extent that the **company** is permitted or required to indemnify him or her pursuant to law, common or statutory, or contract, or the charter or by-laws of the **company** (Which are hereby deemed to adopt the broadest provisions of the law which determines and defines such rights of indemnity). The **company** hereby agrees to indemnify the **employed lawyer** to the fullest extent permitted by law including the making in good faith of any required application for court approval and the passing of any corporate resolution or the execution of any contract.

It is further understood and agreed that coverage as is afforded under this endorsement shall apply to a **wrongful act** of an **employed lawyer** only if one or more **insured person(s)** (other than an **employed Lawyer**) are and remain co-defendants in the action along with an **employed lawyer**.

It is further understood and agreed that the coverage provided by this endorsement is specifically excess over any other valid and collectible lawyers professional insurance, legal malpractice or errors and omissions

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

insurance and shall only drop down and be primary insurance only in the event of exhaustion of such other insurance due to losses paid thereunder.

The term "**employed lawyer**" means any employee of the **company** who is admitted to practice law and who is employed, or was employed, at the time of the alleged **wrongful act** as a lawyer full time for salaried by the **company**.

Solely for the purposes of the coverage provided by this endorsement the term "**continuity date**" means for each **employed lawyer** the later of May 22, 2003 or the first date such person became an **employed lawyer** for the **company**.

Solely in regard to the coverage provided by this endorsement, the maximum limit of the **insurer's** liability for all **loss** in the aggregated arising from all **claims** combined shall be USD 25,000 (hereinafter the "**sublimit of liability**"). This **sublimit of liability** shall be part of and not in addition to the aggregate **limit of liability** stated in the Declarations and will in no way serve to increase the **insurer's** Limit of Liability as therein stated.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:06:07 AM

Attaching to and forming part of Policy No: **B0146ERINT2000452**

Issued to: **Just Energy Group Inc.**

Endorsement No. **018**

#### **SPECIFIED MATTERS EXCLUSION IN RESPECT OF SNYDER LETTERS**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that the **insurer** shall not be liable to make any payment for that portion of **loss** arising from any **claim** made against an **insured** arising out of, based upon or attributable to the events scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any such Event; or (b) any **claim** arising from any such Event; or (c) any **wrongful acts**, circumstances, acts or omissions relating to any such Event.

#### **SCHEDULE OF EVENTS:**

Letters from Robert Lloyd Snyder to the Board of Directors of the Company dated 23 December 2019, and to the Company dated 28 February 2020 and 17 March 2020 (as detailed under Schedule 13D/A notifications CUSIP No. 48213W101)

Notwithstanding the foregoing, this exclusion shall not apply to any other matters involving Mr Robert Lloyd Snyder or the Robert L. Snyder Trust provided that they are unrelated to the matters detailed in the Schedule of Events above.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
 Wellington  
 BROSENBAT@OSLER.COM  
 Friday, June 10, 2022 11:06:07 AM



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Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

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Facsimile  
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Website  
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Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000452  
Date: 3rd April 2020

Page: 1 of 1

## Market Security:

### In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)

Signed Line %	Insurer
---------------	---------

100.00 %	Certain Lloyd's Underwriters as per the Schedule below
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Schedule of Underwriters at Lloyd's being:

Signed Line %	Syndicate No.	Pseudonym	Syndicate Full Name
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100.00 %	2003	XLC	XL Catlin Syndicate
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100.00 %			
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### In respect of EEA countries

Signed Line %	Insurer
---------------	---------

100.00 %	Lloyd's Insurance Company S.A. Reinsured by Lloyd's Syndicate XLC 2003
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### Please Note

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.

**THIS IS EXHIBIT BB REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

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+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2000453

Date: 3 April 2020

**Insured: Just Energy Group, Inc.**

Further to your instructions we have effected the attached amendment to the insurance contract referenced above.

Please examine this amendment carefully and notify us immediately if it is incorrect, or does not meet your requirements.

**Duty to Disclose:**

This amendment to your insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

If an additional premium is payable then payment of such premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the additional premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the additional premium or to meet a payment warranty may enable the insurer(s) to avoid this amendment to the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the original contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Should you have any questions please feel free to contact us.

Yours sincerely,

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### AMENDMENT TO CONTRACT OF INSURANCE

**Unique Market Reference: B0146 ERINT2000453**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains an amendment to the terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us, we would be happy to hear from you.

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Friday, June 10, 2022, 11:07:42 AM



## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**RISK DETAILS:**

**UNIQUE MARKET REFERENCE:**

B0146ERINT2000453

**TYPE:**

EXCESS MANAGEMENT LIABILITY INSURANCE

**NAMED INSURED:**

**JUST ENERGY GROUP INC.**

**PRINCIPAL ADDRESS:**

6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada

**POLICY PERIOD:**

From: 1 April 2020  
To: 1 April 2021

Both dates at 12.01 a.m. Local Time at the Principal Address stated above.

**INTEREST:**

Management liability, as per underlying Policy wording.

**LIMIT OF LIABILITY:**

**USD5,000,000**

each claim, including costs and expenses incurred in the defense or settlement of such claim.

**USD5,000,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims

Sublimited to:

**USD50,000**

Aggregate for the Policy Period in respect of Derivative Investigation Costs as set forth in Insuring Agreement (D) of the Followed Policy.

In Excess of Underlying Limits of:

**USD5,000,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims

Sublimited to:

**USD50,000**

Aggregate for the Policy Period in respect of Derivative Investigation Costs as set forth in Insuring Agreement (D) of the Followed Policy.

Which is in turn in excess of primary retentions

**TERRITORIAL SCOPE:**

Worldwide, as per underlying Policy wording

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CONDITIONS:

1. Policy wording: Excess Wording as attached, plus amendments detailed hereon.
2. Notification Pursuant to Clause VI shall be given to: Hiscox, Attn Public Directors and Officers Claims, 101 California Street, Suite 1950, San Francisco, California 94111, United States of America or Hiscox Syndicate 33 using the following email address: [LondonMarketD&OClaims@hiscox.com](mailto:LondonMarketD&OClaims@hiscox.com) (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))
3. LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyds Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Canada H3B 2V6
4. LMA5180 Intention for AIF to Bind Clause
5. Followed Policy and Underlying Insurance as detailed under "INFORMATION" herein.
6. NMA45 New Short Rate Cancellation Table Endorsement, amended to allow pro-rata cancellation by the insured in the event that the Special Cancellation Clause is invoked.
7. Special Cancellation Clause
8. Follow Form and Drop Down over Underlying Sublimit Endorsement
9. Amended Underwriters Rights Endorsement
10. Survival of Sublimits Clause
11. Lloyd's Insurance Company S.A. Amendatory Endorsement
12. German Insurance Premium Tax Payment Clause
13. Coronavirus Absolute Exclusion
14. Specified Matters Exclusion in Respect of Snyder Letters
15. Specified Matters Exclusion in Respect of in respect of 2019 securities class action

NOTICES:

None.

SUBJECTIVITIES:

None.

CHOICE OF LAW AND JURISDICTION (DISPUTES CLAUSE):

Choice of Law: Ontario, Canada  
Jurisdiction as per Service of Suit Clause

PREMIUM:

**USD330,000.00** (100%) for the Policy Period, plus any tax as applicable. Premium split as follows:

USD1,063.32 in respect of the EEA

USD328,936.68 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM PAYMENT TERMS:

LSW3001 – 60 day Premium Payment Clause

TAXES PAYABLE BY ASSURED AND ADMINISTERED BY INSURERS:

See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

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RECORDING,  
TRANSMITTING &  
STORING  
INFORMATION:

Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

INSURER  
CONTRACT  
DOCUMENTATION:

This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document. Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

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**INFORMATION**

SIC Code: 4924  
 Market Cap: \$137.317m (as of February 25<sup>th</sup>, 2020)

**Followed Policy:**

Insurer: Certain Underwriters at Lloyd's, London / Lloyd's Insurance Company S.A.  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000 in the aggregate  
 Retention: USD Nil / USD2,500,000 / USD 2,500,000

**Underlying Insurance:**

Insurer: }  
 Policy No.: } Not Applicable  
 Limit of Liability: }

German Address: Kapstadtring 10, 22297 Hamburg, Germany

Schedule of Regulatory Risk Locations and Applicable Taxes

**Taxes Payable by Insured and Administered by Insurers:**

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3222%	19.000%	1,063.32	202.03
<b>Total EEA</b>		<b>0.3222%</b>		<b>1,063.32</b>	<b>202.03</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	140,648,270	6.8723%	0.000%	22,878.62	0.00
Canada (BC)	999,320	0.0488%	0.000%	161.13	0.00
Canada (Manitoba)	2,329,740	0.1138%	0.000%	375.66	0.00
Canada (Ontario)	142,773,330	6.9761%	0.000%	23,021.27	0.00
Canada (Quebec)	4,051,460	0.1980%	0.000%	653.27	0.00
Canada (Sask)	10,197,880	0.4983%	0.000%	1,644.34	0.00
United States	1,739,000,000	84.9704%	0.000%	280,402.40	0.00
<b>Total Non-EEA</b>		<b>99.6778%</b>		<b>328,936.68</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>328,936.68</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>330,000.00</b>	<b>202.03</b>

**Taxes Payable by Insured and Administered by Insured or their representatives:**

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$375.66	\$30.05
Canada (Ontario)	Retail Sales Tax	8.000%	\$23,021.27	\$1,841.70
Canada (Quebec)	Retail Sales Tax	9.000%	\$653.27	\$58.79
Canada (Sask)	Retail Sales Tax	6.000%	\$1,644.34	\$98.66

**SECURITY DETAILS****INSURERS  
LIABILITY:**

In respect of EEA locations:

**SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

In respect of Rest of the World excluding EEA locations:

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

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ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES: Percentage of Whole

SIGNING PROVISIONS: In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.

**DECLARATIONS****Excess Insurance Policy**

SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THE FOLLOWED POLICY, THIS POLICY MAY ONLY APPLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD PROVIDED THAT SUCH CLAIM IS REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE POLICY PROVISIONS. AMOUNTS INCURRED AS COSTS AND EXPENSES INCURRED IN THE DEFENSE OR SETTLEMENT OF CLAIMS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY AMOUNTS AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

**Policy Number: B0146ERINT2000453**

- Item 1.      Named Insured:           **Just Energy Group Inc.**  
Principal Address:           6345 Dixie Road, Suite 200  
  Mississauga  
  Ontario  
  L5T 2E6  
  Canada
- Item 2.      Policy Period:  
From:        1 April 2020  
To:           1 April 2021  
Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.
- Item 3.      Limit of Liability:  
**USD5,000,000**           Each claim, including costs and expenses incurred in the defense or settlement of such claim.  
**USD5,000,000**           Aggregate for the **Policy Period**, including costs and expenses incurred in the defense or settlement of all claims, sublimited to  
**USD50,000**             Aggregate for the Policy Period in respect of Derivative Investigation Costs as set forth in Insuring Agreement D of the **Followed Policy**
- In Excess of Underlying Limits of:  
**USD5,000,000**           Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims, sublimited to  
**USD50,000**             Aggregate for the Policy Period in respect of Derivative Investigation Costs as set forth in Insuring Agreement D of the **Followed Policy**
- Which is in turn in excess of primary retentions

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Item 4. Premium: **USD330,000.00** (100%) for the **Policy Period**, plus any tax as applicable. Premium split as follows:

USD1,063.32 in respect of the EEA

USD328,936.68 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

Item 5. Notification pursuant to Clause VI. shall be given to:

Hiscox, Attn Public Directors and Officers Claims, 101 California Street, Suite 1950, San Francisco, California 94111, United States of America or Hiscox Syndicate 33 using the following email address: [LondonMarketD&OClaims@hiscox.com](mailto:LondonMarketD&OClaims@hiscox.com) (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))

Item 6. Followed Policy:

Insurer: Certain Underwriters at Lloyd’s, London / Lloyd’s Insurance Company S.A.

Policy No.: B0146ERINT2000452

Limit of Liability: USD5,000,000 in the aggregate

Retention: USD Nil / USD2,500,000 / USD2,500,000

Item 7. Underlying Insurance:

Insurer: }

Policy No.: } Not Applicable

Limit of Liability: }

Item 8. Endorsements Effective at Inception:

As attached hereto

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## Excess Insurance Policy

In consideration of the payment of the premium, in reliance upon all information and representations provided or made available by the **Insureds** to the Underwriters in connection with the underwriting of this Policy, the Underwriters and **Named Insured**, on behalf of all **Insureds**, agree as follows:

### I. INSURING CLAUSE

This Policy shall provide coverage in accordance with all of the terms, conditions and limitations (including, but not limited to, the exclusions and notice requirements) of the **Followed Policy** except for the Limit of Liability, the premium or as otherwise set forth herein. Coverage hereunder shall attach only after all of the **Underlying Limits** have been exhausted through payments by, or on behalf of, or in place of the insurers of the **Underlying Insurance** of amounts under the **Underlying Insurance**. The risk of uncollectibility of any **Underlying Insurance** (in whole or in part), whether because of financial impairment or insolvency of an insurer of the **Underlying Insurance** or for any other reason, is expressly retained by the **Insureds** and is not insured by or assumed by the Underwriters.

### II. DEFINITIONS

- A. **Followed Policy** means the insurance policy identified in Item 6. of the Declarations.
- B. **Insureds** mean all persons and entities covered under the **Followed Policy**.
- C. **Named Insured** means all persons and entities set forth in Item 1. of the Declarations.
- D. **Policy Period** means the period set forth in Item 2. of the Declarations.
- E. **Underlying Insurance** means the **Followed Policy** and all other underlying insurance policies, if any, identified in Item 7. of the Declarations.
- F. **Underlying Limits** mean an amount equal to the aggregate of all limits of liability of the **Underlying Insurance**.

### III. LIMIT OF LIABILITY

The amount set forth in Item 3. of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters for all coverage under this Policy, regardless of the number of claims made against the **Insureds** or the time of payment and regardless of whether or not an extended reporting period applies.

### IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING LIMITS

If, subsequent to the inception date of this Policy, the terms, conditions or limitations of an **Underlying Insurance** are modified, the **Insureds** must notify the Underwriters in writing, as soon as practicable, of such modification. If any changes to the **Followed Policy**: (a) expand coverage, (b) change the policyholder name or address, or (c) modify premium, this Policy shall not follow those changes unless the Underwriters agree in writing to do so. If any coverage under any **Underlying Insurance** is subject to a sub-limit, then this Policy provides no coverage excess of such sub-limit, but the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount. Furthermore, if any amount covered under any policy issued to the **Insureds** outside of the United States of America (a "Foreign Policy") and the **Underlying Insurance** expressly provides for the reduction of the **Underlying Limit** by reason of payment of such amount under the applicable Foreign Policy, then the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount.

### V. UNDERWRITERS RIGHTS

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim.

### VI. NOTICES

Where notice is permitted or required by the **Followed Policy**, the **Insureds** have the same rights and obligations to notify the Underwriters under this Policy, except that such notice shall be given to the Underwriters at the address set forth in Item 5. of the Declarations. Notice to any other insurer shall not constitute notice to the Underwriters unless also given to the Underwriters as provided above

Issued to: **Just Energy Group Inc.**

Endorsement No. **1**

**SERVICE OF SUIT CLAUSE (CANADA)  
(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

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10/08/06

Form approved by Lloyd's Market Association

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Issued to: **Just Energy Group Inc.**

Endorsement No: **2**

**INTENTION FOR AIF TO BIND CLAUSE**

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

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Issued to: **Just Energy Group Inc.**

Endorsement No. **3**

**NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT**

Except as stated in the Special Cancellation Clause and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the **Named Insured** the earned premium shall be computed as follows:-

**SHORT RATE CANCELLATION TABLE**

A. For Insurances written for one year:-

Days Insurance in force	Per cent. of One year Premium	Days Insurance in force	Per cent. of One year Premium
1	.....5	154 - 156	.....53
2	.....6	157 - 160	.....54
3 - 4	.....7	161 - 164	.....55
5 - 6	.....8	165 - 167	.....56
7 - 8	.....9	168 - 171	.....57
9 - 10	.....10	172 - 175	.....58
11 - 12	.....11	176 - 178	.....59
13 - 14	.....12	179 - 182	(6 months).....60
15 - 16	.....13	183 - 187	.....61
17 - 18	.....14	188 - 191	.....62
19 - 20	.....15	192 - 196	.....63
21 - 22	.....16	197 - 200	.....64
23 - 25	.....17	201 - 205	.....65
26 - 29	.....18	206 - 209	.....66
30 - 32	(1 month).....19	210 - 214	(7 months).....67
33 - 36	.....20	215 - 218	.....68
37 - 40	.....21	219 - 223	.....69
41 - 43	.....22	224 - 228	.....70
44 - 47	.....23	229 - 232	.....71
48 - 51	.....24	233 - 237	.....72
52 - 54	.....25	238 - 241	.....73
55 - 58	.....26	242 - 246	(8 months).....74
59 - 62	(2 months).....27	247 - 250	.....75
63 - 65	.....28	251 - 255	.....76
66 - 69	.....29	256 - 260	.....77
70 - 73	.....30	261 - 264	.....78
74 - 76	.....31	265 - 269	.....79
77 - 80	.....32	270 - 273	(9 months).....80
81 - 83	.....33	274 - 278	.....81
84 - 87	.....34	279 - 282	.....82
88 - 91	(3 months).....35	283 - 287	.....83
92 - 94	.....36	288 - 291	.....84
95 - 98	.....37	292 - 296	.....85
99 - 102	.....38	297 - 301	.....86
103 - 105	.....39	302 - 305	(10 months).....87
106 - 109	.....40	306 - 310	.....88
110 - 113	.....41	311 - 314	.....89
114 - 116	.....42	315 - 319	.....90
117 - 120	.....43	320 - 323	.....91
121 - 124	(4 months).....44	324 - 328	.....92
125 - 127	.....45	329 - 332	.....93
128 - 131	.....46	333 - 337	(11 months).....94
132 - 135	.....47	338 - 342	.....95
136 - 138	.....48	343 - 346	.....96
139 - 142	.....49	347 - 351	.....97
143 - 146	.....50	352 - 355	.....98
147 - 149	.....51	356 - 360	.....99
150 - 153	(5 months).....52	361 - 365	(12 months).....100

Issued to: **Just Energy Group Inc.**

- B. For insurances written for more or less than one year:-
1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
  2. If insurance has been in force for more than 12 months:
    - a. Determine full annual premium as for an insurance written for a term of one year.
    - b. Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
    - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

N.M.A. 45 (Amended)

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **4**

**SPECIAL CANCELLATION CLAUSE**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that notwithstanding anything to the contrary in this Policy including any endorsement or amendatory thereto, in the event:

1. the Underwriter ceases all underwriting operations; or
2. the Underwriter is the subject of an order or resolution for winding up or formally propose a scheme of arrangement, or is placed into rehabilitation or liquidation by any state department of insurance; or
3. the Underwriter has its authority or license to carry on insurance business withdrawn; or
4. Lloyd's financial strength rating is issued below A- by A.M. Best Company or by Standard & Poor's Rating Services,

the **Named Insured** may cancel this Policy by giving notice within thirty (30) days of such event and the return premium shall be calculated on a pro rata basis to the time on the risk. Any return of premium shall also be subject to a written full release of liability from the **Insureds**. In the event there are any notified, reserved or paid claims, investigations, inquiries, losses or circumstances, return premium shall be calculated on a short rate basis pursuant to the terms of the Policy.

All other terms and conditions of this Policy remain unchanged.

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **5**

**FOLLOW FORM AND DROP DOWN OVER UNDERLYING SUBLIMIT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that upon exhaustion of the USD50,000 sublimit applicable to Derivative Investigation Costs described in Insuring Clause (D) of the **Followed Policy** (the "Followed Coverage") and any applicable sublimits on any **Underlying Insurance**, this Policy shall drop down and follow form of the terms, conditions and limitations of the Followed Coverage; provided, that the Underwriters' aggregate limit of liability applicable to such Followed Coverage shall be USD50,000 which amount shall be part of and not in addition to the Underwriters' aggregate limit of liability set forth in Item 3. of the Declarations.

All other terms and conditions of this Policy remain unchanged.

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **6**

**AMENDED UNDERWRITERS RIGHTS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause V. UNDERWRITERS RIGHTS is deleted in its entirety and replaced with the following:

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim that is reasonably likely to involve this Policy.

All other terms and conditions of this Policy remain unchanged.

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **7**

**SURVIVAL OF SUBLIMITS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING SUBLIMITS is amended with the addition of the following:

Notwithstanding the foregoing, where any sub-limit of liability in any **Underlying Insurance** is not fully exhausted by payment of, or agreement to pay, or any insurers or those insured hereunder being found liable to pay loss under such **Underlying Insurance**, this policy will extend cover for that part of those losses which would otherwise be subject to such sub-limit of liability, provided that the amount payable hereunder shall not exceed the amount of such sub-limit not exhausted and shall be part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations. In such event, such insurance as is afforded by this Policy shall remain in excess of the total **Underlying Limits**.

This endorsement does not apply to the sub-limit applicable to derivative investigation costs.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **8**

**LLOYD’S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd’s, London and (b) Lloyd’s Insurance Company S.A. the following shall apply:

**Shared Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable limits of this contract of Insurance.

2. Solely with respect to the participation of Lloyd’s Insurance Company S.A. the following amendments shall apply:

**A. Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of Ontario, Canada and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in Canada.

Lloyd’s Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney In Fact in Canada for Lloyd’s Underwriters,  
1155, rue Metcalfe, Suite 2220,  
Montreal,  
Quebec, H3B 2V6.

who in this instance, has authority to accept service on its behalf.

Lloyd’s Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

This Service of Suit and Jurisdiction Clause will not be read to conflict with or override the obligations of the parties to resolve their disputes as provided for in any other clause in this Policy and, to the extent required, shall apply to give effect to that process.

LBS0006A  
01/12/2019

**B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd’s Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 39  
E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

Issued to: **Just Energy Group Inc.**

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)

Telephone: 0800 023 4 567 (from inside the UK)

Fax: +44 20 7964 1001

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045  
01/01/2019

**C. SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

CONFIDENTIAL  
DROSENBLAT@WELLINGTON.COM  
Wellington, June 10, 2022 10:07:42 AM



Issued to: **Just Energy Group Inc.**

Endorsement No. **09**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London  
Lloyd's Insurance Company SA

807/V90807004451  
807/V20000025027

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **10**

**PREMIUM PAYMENT CLAUSE**

Notwithstanding any provision to the contrary within this contract or any endorsement hereto, in respect of non payment of premium only the following clause will apply.

The (Re)Insured undertakes that premium will be paid in full to (Re)Insurers within 60 days of inception of this contract (or, in respect of instalment premiums, when due).

If the premium due under this contract has not been so paid to (Re)Insurers by the 60<sup>th</sup> day from the inception of this contract (and, in respect of instalment premiums, by the date they are due) (Re)Insurers shall have the right to cancel this contract by notifying the (Re)Insured via the broker in writing. In the event of cancellation, premium is due to (Re)Insurers on a pro rata basis for the period that (Re)Insurers are on risk but the full contract premium shall be payable to (Re)Insurers in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this contract.

It is agreed that (Re)Insurers shall give not less than 15 days prior notice of cancellation to the (Re)Insured via the broker. If premium due is paid in full to (Re)Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the contract shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

30/09/08  
LSW3001

CONFIDENTIAL  
Wellington  
ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **11**

**CHOICE OF LAW CLAUSE**

It is hereby understood and agreed by both the **Named Insured** and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of Ontario, Canada.

All other terms and conditions of this Policy remain unchanged.

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**Endorsement No. **12****INSURERS LIABILITY CLAUSE****(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

Issued to: **Just Energy Group Inc.**

Endorsement No. **13**

**CORONAVIRUS ABSOLUTE EXCLUSION**

**Underwriters** shall not be liable to make any payment in connection with any claim made against an **Insured** or in connection with any matter covered by an extension to this Policy based upon, arising out of, or in any way attributable to coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to or resulting from:

- (i) any fear or threat (whether actual or perceived) of; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of;

coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

All other terms conditions and exclusions shall remain unchanged.

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Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **14**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF SNYDER LETTERS**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of loss arising from any claim made against an **Insured** arising out of, based upon or attributable to the events scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any such Event; or (b) any claim arising from any such Event; or (c) any wrongful act, circumstances, acts or omissions relating to any such Event.

**SCHEDULE OF EVENTS:**

Letters from Robert Lloyd Snyder to the Board of Directors of the Company dated 23 December 2019, and to the Company dated 28 February 2020 and 17 March 2020 (as detailed under Schedule 13D/A notifications CUSIP No. 48213W101)

Notwithstanding the foregoing, this exclusion shall not apply to any other matters involving Mr Robert Lloyd Snyder or the Robert L. Snyder Trust provided that they are unrelated to the matters detailed in the Schedule of Events above.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **15**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF 2019 SECURITIES CLASS ACTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that Clause V. Exclusions is amended by the addition of:

(F) arising out of, based upon or attributable to:

1. any notices, events, investigations or actions scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any Event; or (b) any claim arising from any Event; or any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any Event; or
2. any such Event or any interrelated wrongful act, regardless of whether or not such claim, involved the same or different **Insureds**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

As alleged in the class action complaint filed against Just Energy Inc and others by Eli Gottein and others in the United States District Court, Southern District of New York on 31 July 2019.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
www.paragonbrokers.com  
Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000453  
Date: 3rd April 2020

Page: 1 of 1

## Market Security:

### In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)

Signed Line %	Insurer
---------------	---------

100.00 %	Certain Lloyd's Underwriters as per the Schedule below
----------	--

Schedule of Underwriters at Lloyd's being:

Signed Line %	Syndicate No.	Pseudonym	Syndicate Full Name
---------------	---------------	-----------	---------------------

100.00 %	33	HIS	Liscox
----------	----	-----	--------

100.00 %			Wellington
----------	--	--	------------

### In respect of EEA countries

Signed Line %	Insurer
---------------	---------

100.00 %	Lloyd's Insurance Company S.A. Reinsured by Lloyd's Syndicate HIS 33
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### Please Note

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.



**THIS IS EXHIBIT CC REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2000454

Date: 3 April 2020

**Insured: Just Energy Group, Inc.**

Further to your instructions we have effected the attached amendment to the insurance contract referenced above.

Please examine this amendment carefully and notify us immediately if it is incorrect, or does not meet your requirements.

**Duty to Disclose:**

This amendment to your insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

If an additional premium is payable then payment of such premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the additional premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the additional premium or to meet a payment warranty may enable the insurer(s) to avoid this amendment to the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the original contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Should you have any questions please feel free to contact us.

Yours sincerely,

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### AMENDMENT TO CONTRACT OF INSURANCE

**Unique Market Reference: B0146 ERINT2000453**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains an amendment to the terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us, we would be happy to hear from you.

CONFIDENTIAL  
DRSENILLAT@OASLER.COM  
Wellington  
Friday, June 10, 2022, 11:07:42 AM



## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**RISK DETAILS:**

**UNIQUE MARKET REFERENCE:**

B0146ERINT2000454

**TYPE:**

EXCESS MANAGEMENT LIABILITY INSURANCE

**NAMED INSURED:**

**JUST ENERGY GROUP INC.**

**PRINCIPAL ADDRESS:**

6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada

**POLICY PERIOD:**

From: 1 April 2020  
To: 1 April 2021

Both dates at 12.01 a.m. Local Time at the Principal Address stated above.

**INTEREST:**

Management liability, as per underlying Policy wording.

**LIMIT OF LIABILITY:**

**USD5,000,000**

each claim, including costs and expenses incurred in the defense or settlement of such claim.

**USD5,000,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims

In Excess of Underlying Limits of:

**USD10,000,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims

Which is in turn in excess of primary retentions

**TERRITORIAL SCOPE:**

Worldwide, as per underlying Policy wording

**CONDITIONS:**

1. Policy wording: Excess Wording as attached, plus amendments detailed hereon.
2. Notification Pursuant to Clause VI shall be given to: Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London EC3V 4QT, or via email to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com)
3. LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyds Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Canada H3B 2V6
4. LMA5180 Intention for AIF to Bind Clause
5. Followed Policy and Underlying Insurance as detailed under "INFORMATION" herein.

CONFIDENTIAL  
 DROSENBERG@CSL.COM  
 Wellington  
 Friday, June 10, 2022 11:07:42 AM

CONDITIONS:  
(CONTINUED)

6. NMA45 New Short Rate Cancellation Table Endorsement, amended to allow pro-rata cancellation by the insured in the event that the Special Cancellation Clause is invoked.
7. Special Cancellation Clause
8. Follow Form Pending and Prior Litigation/Claim Exclusion with Amended Date Endorsement: 22 May 2011
9. Amended Underwriters Rights Endorsement
10. Survival of Sublimits Clause
11. Lloyd's Insurance Company S.A. Amendatory Endorsement
12. German Insurance Premium Tax Payment Clause
13. Coronavirus Absolute Exclusion
14. Specified Matters Exclusion in Respect of Snyder Letters
15. Specified Matters Exclusion in Respect of in respect of 2019 securities class action

NOTICES: None.

SUBJECTIVITIES: None

CHOICE OF LAW AND JURISDICTION (DISPUTES CLAUSE):

Choice of Law: Ontario, Canada  
Jurisdiction as per Service of Suit Clause

PREMIUM:

**USD290,000.00** (100%) for the Policy Period, plus any tax as applicable. Premium split as follows:

USD934.43 in respect of the EEA

USD289,065.57 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM PAYMENT TERMS:

LSW3001 – 60 day Premium Payment Clause

TAXES PAYABLE BY ASSURED AND ADMINISTERED BY INSURERS:

See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

RECORDING, TRANSMITTING & STORING INFORMATION:

Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

CONFIDENTIAL  
 DROSEIBLAU@OSSEER.COM  
 Wellington  
 Friday, June 10, 2022 11:00:42AM

INSURER  
CONTRACT  
DOCUMENTATION:

This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document. Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

**INFORMATION**

SIC Code: 4924  
 Market Cap: \$137.317m (as of February 25<sup>th</sup>, 2020)

**Followed Policy:**

Insurer: Certain Underwriters at Lloyd's, London / Lloyd's Insurance Company S.A.  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000 in the aggregate  
 Retention: USD Nil / USD2,500,000 / USD 2,500,000

**Underlying Insurance:**

Insurer: Certain Underwriters at Lloyd's, London / Lloyd's Insurance Company S.A.  
 Policy No.: B0146ERINT2000453  
 Limit of Liability: USD5,000,000 excess of USD5,000,000

German Address: Kapstadtring 10, 22297 Hamburg, Germany

Schedule of Regulatory Risk Locations and Applicable Taxes

Taxes Payable by Insured and Administered by Insurers:

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3222%	19.000%	934.43	177.54
<b>Total EEA</b>		<b>0.3222%</b>		<b>934.43</b>	<b>177.54</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	140,648,270	6.8723%	0.000%	19,929.69	0.00
Canada (BC)	999,320	0.0488%	0.000%	141.60	0.00
Canada (Manitoba)	2,329,740	0.1138%	0.000%	330.12	0.00
Canada (Ontario)	142,773,330	6.9761%	0.000%	20,230.81	0.00
Canada (Quebec)	4,051,460	0.1980%	0.000%	574.09	0.00
Canada (Sask)	10,197,880	0.4983%	0.000%	1,445.03	0.00
United States	1,739,000,000	84.9704%	0.000%	246,414.23	0.00
<b>Total Non-EEA</b>		<b>99.6778%</b>		<b>289,065.57</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>289,065.57</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>290,000.00</b>	<b>177.54</b>

Taxes Payable by Insured and Administered by Insured or their representatives:

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$330.12	\$26.41
Canada (Ontario)	Retail Sales Tax	8.000%	\$20,230.81	\$1,618.46
Canada (Quebec)	Retail Sales Tax	9.000%	\$574.09	\$51.67
Canada (Sask)	Retail Sales Tax	6.000%	\$1,445.03	\$86.70



**SECURITY DETAILS****INSURERS  
LIABILITY:**

In respect of EEA locations:

**SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

In respect of Rest of the World excluding EEA locations:

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES: Percentage of Whole

SIGNING PROVISIONS:

In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.

**DECLARATIONS**

## Excess Insurance Policy

SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THE FOLLOWED POLICY, THIS POLICY MAY ONLY APPLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD PROVIDED THAT SUCH CLAIM IS REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE POLICY PROVISIONS. AMOUNTS INCURRED AS COSTS AND EXPENSES INCURRED IN THE DEFENSE OR SETTLEMENT OF CLAIMS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY AMOUNTS AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

**Policy Number: B0146ERINT2000454**

- Item 1.      Named Insured:            **Just Energy Group Inc.**  
                  Principal Address:        6345 Dixie Road, Suite 200  
                                                     Mississauga  
                                                     Ontario  
                                                     L5T 2E6  
                                                     Canada
- Item 2.      Policy Period:  
                  From:        1 April 2020  
                  To:            1 April 2021  
                  Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.
- Item 3.      Limit of Liability:  
                  **USD5,000,000**      Each claim, including costs and expenses incurred in the defense or  
                                                     settlement of such claim.  
                  **USD5,000,000**      Aggregate for the **Policy Period**, including costs and expenses incurred in  
                                                     the defense or settlement of all claims, sublimited to
- In Excess of Underlying Limits of:  
                  **USD10,000,000**      Aggregate for the Policy Period, including costs and expenses incurred in  
                                                     the defense or settlement of all claims, sublimited to
- Which is in turn in excess of primary retentions
- Item 4.      Premium:      **USD290,000.00**    (100%) for the **Policy Period**, plus any tax as applicable.  
                                                     Premium split as follows:  
                                                     USD934.43            in respect of the EEA  
                                                     USD289,065.57      in respect of the Rest of the World  
                                                     For the purposes of the split of premium above the UK is treated as a non-EEA  
                                                     country

CONFIDENTIAL  
 WELLINGTON  
 ROSENBLAT@OSLE.COM  
 Friday, June 10, 2022 11:42 AM

Item 5. Notification pursuant to Clause VI. shall be given to:

Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London EC3V 4QT, or via email to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com)

Item 6. Followed Policy:

Insurer: Certain Underwriters at Lloyd's, London / Lloyd's Insurance Company S.A.  
Policy No.: B0146ERINT2000452  
Limit of Liability: USD5,000,000 in the aggregate  
Retention: USD Nil / USD2,500,000 / USD2,500,000

Item 7. Underlying Insurance:

Insurer: Certain Underwriters at Lloyd's, London / Lloyd's Insurance Company S.A.  
Policy No.: B0146ERINT2000453  
Limit of Liability: USD5,000,000 excess of USD5,000,000

Item 8. Endorsements Effective at Inception:

As attached hereto

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

## Excess Insurance Policy

In consideration of the payment of the premium, in reliance upon all information and representations provided or made available by the **Insureds** to the Underwriters in connection with the underwriting of this Policy, the Underwriters and **Named Insured**, on behalf of all **Insureds**, agree as follows:

### I. INSURING CLAUSE

This Policy shall provide coverage in accordance with all of the terms, conditions and limitations (including, but not limited to, the exclusions and notice requirements) of the **Followed Policy** except for the Limit of Liability, the premium or as otherwise set forth herein. Coverage hereunder shall attach only after all of the **Underlying Limits** have been exhausted through payments by, or on behalf of, or in place of the insurers of the **Underlying Insurance** of amounts under the **Underlying Insurance**. The risk of uncollectibility of any **Underlying Insurance** (in whole or in part), whether because of financial impairment or insolvency of an insurer of the **Underlying Insurance** or for any other reason, is expressly retained by the **Insureds** and is not insured by or assumed by the Underwriters.

### II. DEFINITIONS

- A. **Followed Policy** means the insurance policy identified in Item 6. of the Declarations.
- B. **Insureds** mean all persons and entities covered under the **Followed Policy**.
- C. **Named Insured** means all persons and entities set forth in Item 1. of the Declarations.
- D. **Policy Period** means the period set forth in Item 2. of the Declarations.
- E. **Underlying Insurance** means the **Followed Policy** and all other underlying insurance policies, if any, identified in Item 7. of the Declarations.
- F. **Underlying Limits** mean an amount equal to the aggregate of all limits of liability of the **Underlying Insurance**.

### III. LIMIT OF LIABILITY

The amount set forth in Item 3. of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters for all coverage under this Policy, regardless of the number of claims made against the **Insureds** or the time of payment and regardless of whether or not an extended reporting period applies.

### IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING LIMITS

If, subsequent to the inception date of this Policy, the terms, conditions or limitations of an **Underlying Insurance** are modified, the **Insureds** must notify the Underwriters in writing, as soon as practicable, of such modification. If any changes to the **Followed Policy**: (a) expand coverage, (b) change the policyholder name or address, or (c) modify premium, this Policy shall not follow those changes unless the Underwriters agree in writing to do so. If any coverage under any **Underlying Insurance** is subject to a sub-limit, then this Policy provides no coverage excess of such sub-limit, but the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount. Furthermore, if any amount covered under any policy issued to the **Insureds** outside of the United States of America (a "Foreign Policy") and the **Underlying Insurance** expressly provides for the reduction of the **Underlying Limit** by reason of payment of such amount under the applicable Foreign Policy, then the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount.

### V. UNDERWRITERS RIGHTS

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim.

### VI. NOTICES

Where notice is permitted or required by the **Followed Policy**, the **Insureds** have the same rights and obligations to notify the Underwriters under this Policy, except that such notice shall be given to the Underwriters at the address set forth in Item 5. of the Declarations. Notice to any other insurer shall not constitute notice to the Underwriters unless also given to the Underwriters as provided above.

Issued to: **Just Energy Group Inc.**

Endorsement No. **1**

**SERVICE OF SUIT CLAUSE (CANADA)  
(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

LMA5028  
10/08/06

Form approved by Lloyd's Market Association

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Issued to: **Just Energy Group Inc.**

Endorsement No: **2**

**INTENTION FOR AIF TO BIND CLAUSE**

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

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Issued to: **Just Energy Group Inc.**

Endorsement No. **3**

**NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT**

Except as stated in the Special Cancellation Clause and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the **Named Insured** the earned premium shall be computed as follows:-

**SHORT RATE CANCELLATION TABLE**

A. For Insurances written for one year:-

Days Insurance in force	Per cent. of One year Premium	Days Insurance in force	Per cent. of One year Premium
1	.....5	154 - 156	.....53
2	.....6	157 - 160	.....54
3 - 4	.....7	161 - 164	.....55
5 - 6	.....8	165 - 167	.....56
7 - 8	.....9	168 - 171	.....57
9 - 10	.....10	172 - 175	.....58
11 - 12	.....11	176 - 178	.....59
13 - 14	.....12	179 - 182	(6 months).....60
15 - 16	.....13	183 - 187	.....61
17 - 18	.....14	188 - 191	.....62
19 - 20	.....15	192 - 196	.....63
21 - 22	.....16	197 - 200	.....64
23 - 25	.....17	201 - 205	.....65
26 - 29	.....18	206 - 209	.....66
30 - 32	(1 month).....19	210 - 214	(7 months).....67
33 - 36	.....20	215 - 218	.....68
37 - 40	.....21	219 - 223	.....69
41 - 43	.....22	224 - 228	.....70
44 - 47	.....23	229 - 232	.....71
48 - 51	.....24	233 - 237	.....72
52 - 54	.....25	238 - 241	.....73
55 - 58	.....26	242 - 246	(8 months).....74
59 - 62	(2 months).....27	247 - 250	.....75
63 - 65	.....28	251 - 255	.....76
66 - 69	.....29	256 - 260	.....77
70 - 73	.....30	261 - 264	.....78
74 - 76	.....31	265 - 269	.....79
77 - 80	.....32	270 - 273	(9 months).....80
81 - 83	.....33	274 - 278	.....81
84 - 87	.....34	279 - 282	.....82
88 - 91	(3 months).....35	283 - 287	.....83
92 - 94	.....36	288 - 291	.....84
95 - 98	.....37	292 - 296	.....85
99 - 102	.....38	297 - 301	.....86
103 - 105	.....39	302 - 305	(10 months).....87
106 - 109	.....40	306 - 310	.....88
110 - 113	.....41	311 - 314	.....89
114 - 116	.....42	315 - 319	.....90
117 - 120	.....43	320 - 323	.....91
121 - 124	(4 months).....44	324 - 328	.....92
125 - 127	.....45	329 - 332	.....93
128 - 131	.....46	333 - 337	(11 months).....94
132 - 135	.....47	338 - 342	.....95
136 - 138	.....48	343 - 346	.....96
139 - 142	.....49	347 - 351	.....97
143 - 146	.....50	352 - 355	.....98
147 - 149	.....51	356 - 360	.....99
150 - 153	(5 months).....52	361 - 365	(12 months).....100



Issued to: **Just Energy Group Inc.**

- B. For insurances written for more or less than one year: -
1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
  2. If insurance has been in force for more than 12 months:
    - a. Determine full annual premium as for an insurance written for a term of one year.
    - b. Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
    - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

N.M.A. 45 (Amended)

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Issued to: **Just Energy Group Inc.**

Endorsement No. **4**

**SPECIAL CANCELLATION CLAUSE**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that notwithstanding anything to the contrary in this Policy including any endorsement or amendatory thereto, in the event:

1. the Underwriter ceases all underwriting operations; or
2. the Underwriter is the subject of an order or resolution for winding up or formally propose a scheme of arrangement, or is placed into rehabilitation or liquidation by any state department of insurance; or
3. the Underwriter has its authority or license to carry on insurance business withdrawn; or
4. Lloyd's financial strength rating is issued below A- by A.M. Best Company or by Standard & Poor's Rating Services,

the **Parent Company** may cancel this Policy by giving notice within thirty (30) days of such event and the return premium shall be calculated on a pro rata basis to the time on the risk. Any return of premium shall also be subject to a written full release of liability from the **Insureds**. In the event there are any notified, reserved or paid claims, investigations, inquiries, losses or circumstances, return premium shall be calculated on a short rate basis pursuant to the terms of the Policy.

All other terms and conditions of this Policy remain unchanged.

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Issued to: **Just Energy Group Inc.**

Endorsement No. **5**

**FOLLOW FORM PENDING AND PRIOR LITIGATION/CLAIM EXCLUSION WITH AMENDED DATE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that this Policy shall follow any pending or prior litigation or claim exclusion in the **Followed Policy**, except that the pending or prior litigation or claim date under this Policy shall be: 22 May 2011.

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Issued to: **Just Energy Group Inc.**

Endorsement No. **6**

**AMENDED UNDERWRITERS RIGHTS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause V. UNDERWRITERS RIGHTS is deleted in its entirety and replaced with the following:

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim that is reasonably likely to involve this Policy.

All other terms and conditions of this Policy remain unchanged.

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Issued to: **Just Energy Group Inc.**

Endorsement No. **7**

**SURVIVAL OF SUBLIMITS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING SUBLIMITS is amended with the addition of the following:

Notwithstanding the foregoing, where any sub-limit of liability in any **Underlying Insurance** is not fully exhausted by payment of, or agreement to pay, or any insurers or those insured hereunder being found liable to pay loss under such **Underlying Insurance**, this policy will extend cover for that part of those losses which would otherwise be subject to such sub-limit of liability, provided that the amount payable hereunder shall not exceed the amount of such sub-limit not exhausted and shall be part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations. In such event, such insurance as is afforded by this Policy shall remain in excess of the total **Underlying Limits**.

All other terms and conditions of this Policy remain unchanged.

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Issued to: **Just Energy Group Inc.**Endorsement No. **8****LLOYD'S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd's, London and (b) Lloyd's Insurance Company S.A. the following shall apply:

**Shared Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable limits of this contract of Insurance.

2. Solely with respect to the participation of Lloyd's Insurance Company S.A. the following amendments shall apply:

**A. Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of Ontario, Canada and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in Canada.

Lloyd's Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney In Fact in Canada for Lloyd's Underwriters,  
1155, rue Metcalfe, Suite 2220,  
Montreal,  
Quebec, H3B 2V6.

who in this instance, has authority to accept service on its behalf.

Lloyd's Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

This Service of Suit and Jurisdiction Clause will not be read to conflict with or override the obligations of the parties to resolve their disputes as provided for in any other clause in this Policy and, to the extent required, shall apply to give effect to that process.

LBS0006A  
01/12/2019

**B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 39  
E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

Issued to: **Just Energy Group Inc.**

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)

Telephone: 0800 023 4 567 (from inside the UK)

Fax: +44 20 7964 1001

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045  
01/01/2019

**C. SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

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Wellington, June 10, 2022 10:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **9**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London	807/V90807004451
Lloyd's Insurance Company SA	807/V20000025027

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Issued to: **Just Energy Group Inc.**

Endorsement No. **10**

**PREMIUM PAYMENT CLAUSE**

Notwithstanding any provision to the contrary within this contract or any endorsement hereto, in respect of non payment of premium only the following clause will apply.

The (Re)Insured undertakes that premium will be paid in full to (Re)Insurers within 60 days of inception of this contract (or, in respect of instalment premiums, when due).

If the premium due under this contract has not been so paid to (Re)Insurers by the 60<sup>th</sup> day from the inception of this contract (and, in respect of instalment premiums, by the date they are due) (Re)Insurers shall have the right to cancel this contract by notifying the (Re)Insured via the broker in writing. In the event of cancellation, premium is due to (Re)Insurers on a pro rata basis for the period that (Re)Insurers are on risk but the full contract premium shall be payable to (Re)Insurers in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this contract.

It is agreed that (Re)Insurers shall give not less than 14 days prior notice of cancellation to the (Re)Insured via the broker. If premium due is paid in full to (Re)Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the contract shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

30/09/08  
LSW3001

CONFIDENTIAL  
Wellington  
ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **11**

**CHOICE OF LAW CLAUSE**

It is hereby understood and agreed by both the **Named Insured** and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of Ontario, Canada.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**Endorsement No. **12****INSURERS LIABILITY CLAUSE****(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
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Issued to: **Just Energy Group Inc.**

Endorsement No. **13**

**CORONAVIRUS ABSOLUTE EXCLUSION**

**Underwriters** shall not be liable to make any payment in connection with any claim made against an **Insured** or in connection with any matter covered by an extension to this Policy based upon, arising out of, or in any way attributable to coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to or resulting from:

- (i) any fear or threat (whether actual or perceived) of; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of;

coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

All other terms conditions and exclusions shall remain unchanged.

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **14**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF SNYDER LETTERS**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of loss arising from any claim made against an **Insured** arising out of, based upon or attributable to the events scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any such Event; or (b) any claim arising from any such Event; or (c) any wrongful act, circumstances, acts or omissions relating to any such Event.

**SCHEDULE OF EVENTS:**

Letters from Robert Lloyd Snyder to the Board of Directors of the Company dated 23 December 2019, and to the Company dated 28 February 2020 and 17 March 2020 (as detailed under Schedule 13D/A notifications CUSIP No. 48213W101)

Notwithstanding the foregoing, this exclusion shall not apply to any other matters involving Mr Robert Lloyd Snyder or the Robert L. Snyder Trust provided that they are unrelated to the matters detailed in the Schedule of Events above.

All other terms and conditions of this Policy remain unchanged.

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **15**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF 2019 SECURITIES CLASS ACTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that Clause V. Exclusions is amended by the addition of:

(F) arising out of, based upon or attributable to:

1. any notices, events, investigations or actions scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any Event; or (b) any claim arising from any Event; or any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any Event; or
2. any such Event or any interrelated wrongful act, regardless of whether or not such claim, involved the same or different **Insureds**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

As alleged in the class action complaint filed against Just Energy Inc and others by Eli Gottein and others in the United States District Court, Southern District of New York on 31 July 2019.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
www.paragonbrokers.com  
Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000454  
Date: 3rd April 2020

Page: 1 of 1

## Market Security:

### In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)

Signed Line %	Insurer
---------------	---------

100.00 %	Certain Lloyd's Underwriters as per the Schedule below
----------	--

Schedule of Underwriters at Lloyd's being:

Signed Line %	Syndicate No.	Pseudonym	Syndicate Full Name
100.00 %	5151	ENH	Compo International Insurance

100.00 %			
----------	--	--	--

### In respect of EEA countries

Signed Line %	Insurer
---------------	---------

100.00 %	Lloyd's Insurance Company S.A. Reinsured by Lloyd's Syndicate ENH 5151
----------	---

### Please Note

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.

**THIS IS EXHIBIT DD REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2000455

Date: 3 April 2020

**Insured: Just Energy Group, Inc.**

Further to your instructions we have effected the attached amendment to the insurance contract referenced above.

Please examine this amendment carefully and notify us immediately if it is incorrect, or does not meet your requirements.

**Duty to Disclose:**

This amendment to your insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

If an additional premium is payable then payment of such premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the additional premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the additional premium or to meet a payment warranty may enable the insurer(s) to avoid this amendment to the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the original contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Should you have any questions please feel free to contact us.

Yours sincerely,

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### AMENDMENT TO CONTRACT OF INSURANCE

**Unique Market Reference: B0146 ERINT2000453**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains an amendment to the terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us, we would be happy to hear from you.

CONFIDENTIAL  
DR. SENILAT@OASLER.COM  
Wellington  
Friday, June 10, 2022, 11:07:42 AM



## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**RISK DETAILS:**

**UNIQUE MARKET REFERENCE:**

B0146ERINT2000455

**TYPE:**

EXCESS MANAGEMENT LIABILITY INSURANCE

**NAMED INSURED:**

**JUST ENERGY GROUP INC.**

**PRINCIPAL ADDRESS:**

6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada

**POLICY PERIOD:**

From: 1 April 2020  
To: 1 April 2021

Both dates at 12.01 a.m. Local Time at the Principal Address stated above.

**INTEREST:**

Management liability, as per underlying Policy wording.

**LIMIT OF LIABILITY:**

**USD7,500,000**

each claim, including costs and expenses incurred in the defense or settlement of such claim.

**USD7,500,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims

In Excess of Underlying Limits of:

**USD15,000,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims

Which is in turn in excess of primary retentions

**TERRITORIAL SCOPE:**

Worldwide, as per underlying Policy wording

**CONDITIONS:**

1. Policy wording: Excess Wording as attached, plus amendments detailed hereon.
2. Notification Pursuant to Clause VI shall be given to: Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London EC3V 4QT, or via email to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com)
3. LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyds Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Canada H3B 2V6
4. LMA5180 Intention for AIF to Bind Clause
5. Followed Policy and Underlying Insurance as detailed under "INFORMATION" herein.
6. NMA45 New Short Rate Cancellation Table Endorsement, amended to allow pro-rata cancellation by the insured in the event that the Special Cancellation Clause is invoked.

CONFIDENTIAL  
 DROSENBERG@CSL.COM  
 Wellington  
 Friday, June 10, 2022 11:07:42 AM

CONDITIONS:  
(CONTINUED)

7. Special Cancellation Clause
8. Follow Form Pending and Prior Litigation/Claim Exclusion with Amended Date Endorsement: 22 May 2011
9. Amended Underwriters Rights Endorsement
10. Survival of Sublimits Clause
11. Lloyd's Insurance Company S.A. Amendatory Endorsement
12. German Insurance Premium Tax Payment Clause
13. Coronavirus Absolute Exclusion
14. Specified Matters Exclusion in Respect of Snyder Letters
15. Specified Matters Exclusion in Respect of in respect of 2019 securities class action

NOTICES:

None.

SUBJECTIVITIES:

None

CHOICE OF LAW AND JURISDICTION (DISPUTES CLAUSE):

Choice of Law: Ontario, Canada  
Jurisdiction as per Service of Suit Clause

PREMIUM:

**USD412,500.00** (100%) for the Policy Period, plus any tax as applicable. Premium split as follows:

USD1,329.15 in respect of the EEA

USD411,170.85 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM PAYMENT TERMS:

LSW3001 – 60 day Premium Payment Clause

TAXES PAYABLE BY ASSURED AND ADMINISTERED BY INSURERS:

See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

RECORDING, TRANSMITTING & STORING INFORMATION:

Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

INSURER CONTRACT DOCUMENTATION:

This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document. Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

CONFIDENTIAL  
 WASHINGTON  
 ROSEBLOT@OSSEER.COM  
 Friday, 21 May 2022 11:07:42 AM

**INFORMATION**

SIC Code: 4924  
 Market Cap: \$137.317m (as of February 25<sup>th</sup>, 2020)

**Followed Policy:**

Insurer: Certain Underwriters at Lloyd's, London / Lloyd's Insurance Company S.A.  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000 in the aggregate  
 Retention: USD Nil / USD2,500,000 / USD 2,500,000

**Underlying Insurance:**

Insurer:  
 Policy No.: As held on file by Paragon International Insurance Brokers Ltd.  
 Limit of Liability:

German Address: Kapstadtring 10, 22297 Hamburg, Germany

Schedule of Regulatory Risk Locations and Applicable Taxes

**Taxes Payable by Insured and Administered by Insurers:**

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3222%	19.000%	1,329.15	252.54
<b>Total EEA</b>		<b>0.3222%</b>		<b>1,329.15</b>	<b>252.54</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	140,648,270	6.8723%	0.000%	28,348.27	0.00
Canada (BC)	999,320	0.0488%	0.000%	201.42	0.00
Canada (Manitoba)	2,329,740	0.1138%	0.000%	469.57	0.00
Canada (Ontario)	142,773,330	6.9761%	0.000%	28,776.58	0.00
Canada (Quebec)	4,051,460	0.1980%	0.000%	816.59	0.00
Canada (Sask)	10,197,880	0.4983%	0.000%	2,055.43	0.00
United States	1,739,000,000	84.9704%	0.000%	350,502.99	0.00
<b>Total Non-EEA</b>		<b>99.6778%</b>		<b>411,170.85</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>411,170.85</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>412,500.00</b>	<b>252.54</b>

**Taxes Payable by Insured and Administered by Insured or their representatives:**

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$469.57	\$37.57
Canada (Ontario)	Retail Sales Tax	8.000%	\$28,776.58	\$2,302.13
Canada (Quebec)	Retail Sales Tax	9.000%	\$816.59	\$73.49
Canada (Sask)	Retail Sales Tax	6.000%	\$2,055.43	\$123.33

**SECURITY DETAILS****INSURERS  
LIABILITY:**

In respect of EEA locations:

**SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

In respect of Rest of the World excluding EEA locations:

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to “this contract” in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES: Percentage of Whole

SIGNING PROVISIONS: In the event that the written lines hereon exceed 100% of the order, any lines written “to stand” will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person’s handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.

CONFIDENTIAL  
 DISENTERED ORDER.COM  
 Friday, June 22, 2007 10:07:42 AM



**DECLARATIONS**

## Excess Insurance Policy

SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THE FOLLOWED POLICY, THIS POLICY MAY ONLY APPLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD PROVIDED THAT SUCH CLAIM IS REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE POLICY PROVISIONS. AMOUNTS INCURRED AS COSTS AND EXPENSES INCURRED IN THE DEFENSE OR SETTLEMENT OF CLAIMS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY AMOUNTS AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

**Policy Number: B0146ERINT2000455**

- Item 1. **Named Insured:** **Just Energy Group Inc.**  
Principal Address: 6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada
- Item 2. **Policy Period:**  
From: 1 April 2020  
To: 1 April 2021  
Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.
- Item 3. Limit of Liability:  
**USD7,500,000** Each claim, including costs and expenses incurred in the defense or settlement of such claim.  
**USD7,500,000** Aggregate for the **Policy Period**, including costs and expenses incurred in the defense or settlement of all claims, sublimited to  
In Excess of Underlying Limits of:  
**USD15,000,000** Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims, sublimited to  
Which is in turn in excess of primary retentions
- Item 4. Premium: **USD412,500.00** (100%) for the **Policy Period**, plus any tax as applicable. Premium split as follows:  
USD1,329.15 in respect of the EEA  
USD411,170.85 in respect of the Rest of the World  
For the purposes of the split of premium above the UK is treated as a non-EEA country

CONFIDENTIAL  
Wellington  
PROSENBLAT@OSLE.COM  
Friday, June 10, 2022 11:42 AM

Item 5. Notification pursuant to Clause VI. shall be given to:

Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London EC3V 4QT, or via email to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com)

Item 6. Followed Policy:

Insurer: Certain Underwriters at Lloyd's, London / Lloyd's Insurance Company S.A.  
Policy No.: B0146ERINT2000452  
Limit of Liability: USD5,000,000 in the aggregate  
Retention: USD Nil / USD2,500,000 / USD2,500,000

Item 7. Underlying Insurance:

Insurer:  
Policy No.: As held on file by Paragon International Insurance Brokers Ltd.  
Limit of Liability:

Item 8. Endorsements Effective at Inception:

As attached hereto

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

# Excess Insurance Policy

In consideration of the payment of the premium, in reliance upon all information and representations provided or made available by the **Insureds** to the Underwriters in connection with the underwriting of this Policy, the Underwriters and **Named Insured**, on behalf of all **Insureds**, agree as follows:

## I. INSURING CLAUSE

This Policy shall provide coverage in accordance with all of the terms, conditions and limitations (including, but not limited to, the exclusions and notice requirements) of the **Followed Policy** except for the Limit of Liability, the premium or as otherwise set forth herein. Coverage hereunder shall attach only after all of the **Underlying Limits** have been exhausted through payments by, or on behalf of, or in place of the insurers of the **Underlying Insurance** of amounts under the **Underlying Insurance**. The risk of uncollectibility of any **Underlying Insurance** (in whole or in part), whether because of financial impairment or insolvency of an insurer of the **Underlying Insurance** or for any other reason, is expressly retained by the **Insureds** and is not insured by or assumed by the Underwriters.

## II. DEFINITIONS

- A. **Followed Policy** means the insurance policy identified in Item 6. of the Declarations.
- B. **Insureds** mean all persons and entities covered under the **Followed Policy**.
- C. **Named Insured** means all persons and entities set forth in Item 1. of the Declarations.
- D. **Policy Period** means the period set forth in Item 2. of the Declarations.
- E. **Underlying Insurance** means the **Followed Policy** and all other underlying insurance policies, if any, identified in Item 7. of the Declarations.
- F. **Underlying Limits** mean an amount equal to the aggregate of all limits of liability of the **Underlying Insurance**.

## III. LIMIT OF LIABILITY

The amount set forth in Item 3. of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters for all coverage under this Policy, regardless of the number of claims made against the **Insureds** or the time of payment and regardless of whether or not an extended reporting period applies.

## IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING LIMITS

If, subsequent to the inception date of this Policy, the terms, conditions or limitations of an **Underlying Insurance** are modified, the **Insureds** must notify the Underwriters in writing, as soon as practicable, of such modification. If any changes to the **Followed Policy**: (a) expand coverage, (b) change the policyholder name or address, or (c) modify premium, this Policy shall not follow those changes unless the Underwriters agree in writing to do so. If any coverage under any **Underlying Insurance** is subject to a sub-limit, then this Policy provides no coverage excess of such sub-limit, but the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount. Furthermore, if any amount covered under any policy issued to the **Insureds** outside of the United States of America (a "Foreign Policy") and the **Underlying Insurance** expressly provides for the reduction of the **Underlying Limit** by reason of payment of such amount under the applicable Foreign Policy, then the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount.

## V. UNDERWRITERS RIGHTS

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim.

## VI. NOTICES

Where notice is permitted or required by the **Followed Policy**, the **Insureds** have the same rights and obligations to notify the Underwriters under this Policy, except that such notice shall be given to the Underwriters at the address set forth in Item 5. of the Declarations. Notice to any other insurer shall not constitute notice to the Underwriters unless also given to the Underwriters as provided above.

Issued to: **Just Energy Group Inc.**

Endorsement No. **1**

**SERVICE OF SUIT CLAUSE (CANADA)  
(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

LMA5028  
10/08/06

Form approved by Lloyd's Market Association

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No: **2**

**INTENTION FOR AIF TO BIND CLAUSE**

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

01/11/11  
LMA5180

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **3**

**NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT**

Except as stated in the Special Cancellation Clause and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the **Named Insured** the earned premium shall be computed as follows:-

**SHORT RATE CANCELLATION TABLE**

A. For Insurances written for one year:-

Days Insurance in force	Per cent. of One year Premium	Days Insurance in force	Per cent. of One year Premium
1	.....5	154 - 156	.....53
2	.....6	157 - 160	.....54
3 - 4	.....7	161 - 164	.....55
5 - 6	.....8	165 - 167	.....56
7 - 8	.....9	168 - 171	.....57
9 - 10	.....10	172 - 175	.....58
11 - 12	.....11	176 - 178	.....59
13 - 14	.....12	179 - 182	(6 months).....60
15 - 16	.....13	183 - 187	.....61
17 - 18	.....14	188 - 191	.....62
19 - 20	.....15	192 - 196	.....63
21 - 22	.....16	197 - 200	.....64
23 - 25	.....17	201 - 205	.....65
26 - 29	.....18	206 - 209	.....66
30 - 32	(1 month).....19	210 - 214	(7 months).....67
33 - 36	.....20	215 - 218	.....68
37 - 40	.....21	219 - 223	.....69
41 - 43	.....22	224 - 228	.....70
44 - 47	.....23	229 - 232	.....71
48 - 51	.....24	233 - 237	.....72
52 - 54	.....25	238 - 241	.....73
55 - 58	.....26	242 - 246	(8 months).....74
59 - 62	(2 months).....27	247 - 250	.....75
63 - 65	.....28	251 - 255	.....76
66 - 69	.....29	256 - 260	.....77
70 - 73	.....30	261 - 264	.....78
74 - 76	.....31	265 - 269	.....79
77 - 80	.....32	270 - 273	(9 months).....80
81 - 83	.....33	274 - 278	.....81
84 - 87	.....34	279 - 282	.....82
88 - 91	(3 months).....35	283 - 287	.....83
92 - 94	.....36	288 - 291	.....84
95 - 98	.....37	292 - 296	.....85
99 - 102	.....38	297 - 301	.....86
103 - 105	.....39	302 - 305	(10 months).....87
106 - 109	.....40	306 - 310	.....88
110 - 113	.....41	311 - 314	.....89
114 - 116	.....42	315 - 319	.....90
117 - 120	.....43	320 - 323	.....91
121 - 124	(4 months).....44	324 - 328	.....92
125 - 127	.....45	329 - 332	.....93
128 - 131	.....46	333 - 337	(11 months).....94
132 - 135	.....47	338 - 342	.....95
136 - 138	.....48	343 - 346	.....96
139 - 142	.....49	347 - 351	.....97
143 - 146	.....50	352 - 355	.....98
147 - 149	.....51	356 - 360	.....99
150 - 153	(5 months).....52	361 - 365	(12 months).....100

Issued to: **Just Energy Group Inc.**

- B. For insurances written for more or less than one year:-
1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
  2. If insurance has been in force for more than 12 months:
    - a. Determine full annual premium as for an insurance written for a term of one year.
    - b. Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
    - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

N.M.A. 45 (Amended)

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **4**

**SPECIAL CANCELLATION CLAUSE**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that notwithstanding anything to the contrary in this Policy including any endorsement or amendatory thereto, in the event:

1. the Underwriter ceases all underwriting operations; or
2. the Underwriter is the subject of an order or resolution for winding up or formally propose a scheme of arrangement, or is placed into rehabilitation or liquidation by any state department of insurance; or
3. the Underwriter has its authority or license to carry on insurance business withdrawn; or
4. Lloyd's financial strength rating is issued below A- by A.M. Best Company or by Standard & Poor's Rating Services,

the **Parent Company** may cancel this Policy by giving notice within thirty (30) days of such event and the return premium shall be calculated on a pro rata basis to the time on the risk. Any return of premium shall also be subject to a written full release of liability from the **Insureds**. In the event there are any notified, reserved or paid claims, investigations, inquiries, losses or circumstances, return premium shall be calculated on a short rate basis pursuant to the terms of the Policy.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM



Issued to: **Just Energy Group Inc.**

Endorsement No. **5**

**FOLLOW FORM PENDING AND PRIOR LITIGATION/CLAIM EXCLUSION WITH AMENDED DATE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that this Policy shall follow any pending or prior litigation or claim exclusion in the **Followed Policy**, except that the pending or prior litigation or claim date under this Policy shall be: 22 May 2011.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **6**

**AMENDED UNDERWRITERS RIGHTS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause V. UNDERWRITERS RIGHTS is deleted in its entirety and replaced with the following:

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim that is reasonably likely to involve this Policy.

All other terms and conditions of this Policy remain unchanged.

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Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **7**

**SURVIVAL OF SUBLIMITS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING SUBLIMITS is amended with the addition of the following:

Notwithstanding the foregoing, where any sub-limit of liability in any **Underlying Insurance** is not fully exhausted by payment of, or agreement to pay, or any insurers or those insured hereunder being found liable to pay loss under such **Underlying Insurance**, this policy will extend cover for that part of those losses which would otherwise be subject to such sub-limit of liability, provided that the amount payable hereunder shall not exceed the amount of such sub-limit not exhausted and shall be part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations. In such event, such insurance as is afforded by this Policy shall remain in excess of the total **Underlying Limits**.

All other terms and conditions of this Policy remain unchanged.

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Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **8**

**LLOYD'S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd's, London and (b) Lloyd's Insurance Company S.A. the following shall apply:

**Shared Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable limits of this contract of Insurance.

2. Solely with respect to the participation of Lloyd's Insurance Company S.A. the following amendments shall apply:

**A. Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of Ontario, Canada and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in Canada.

Lloyd's Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney In Fact in Canada for Lloyd's Underwriters,  
1155, rue Metcalfe, Suite 2220,  
Montreal,  
Quebec, H3B 2V6.

who in this instance, has authority to accept service on its behalf.

Lloyd's Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

This Service of Suit and Jurisdiction Clause will not be read to conflict with or override the obligations of the parties to resolve their disputes as provided for in any other clause in this Policy and, to the extent required, shall apply to give effect to that process.

LBS0006A  
01/12/2019

**B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 39  
E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

Issued to: **Just Energy Group Inc.**

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)

Telephone: 0800 023 4 567 (from inside the UK)

Fax: +44 20 7964 1001

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045a  
01/01/2019

**C. SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

CONFIDENTIAL  
Wellington, New Zealand  
DROSENBLAT@OPQ.INSUR.COM  
Friday, June 10, 2022 10:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **9**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London	807/V90807004451
Lloyd's Insurance Company SA	807/V20000025027

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Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **10**

**PREMIUM PAYMENT CLAUSE**

Notwithstanding any provision to the contrary within this contract or any endorsement hereto, in respect of non payment of premium only the following clause will apply.

The (Re)Insured undertakes that premium will be paid in full to (Re)Insurers within 60 days of inception of this contract (or, in respect of instalment premiums, when due).

If the premium due under this contract has not been so paid to (Re)Insurers by the 60<sup>th</sup> day from the inception of this contract (and, in respect of instalment premiums, by the date they are due) (Re)Insurers shall have the right to cancel this contract by notifying the (Re)Insured via the broker in writing. In the event of cancellation, premium is due to (Re)Insurers on a pro rata basis for the period that (Re)Insurers are on risk but the full contract premium shall be payable to (Re)Insurers in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this contract.

It is agreed that (Re)Insurers shall give not less than 14 days prior notice of cancellation to the (Re)Insured via the broker. If premium due is paid in full to (Re)Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the contract shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

30/09/08  
LSW3001

CONFIDENTIAL  
Wellington  
ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **11**

**CHOICE OF LAW CLAUSE**

It is hereby understood and agreed by both the **Insured** and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of Ontario, Canada.

All other terms and conditions of this Policy remain unchanged.

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM



Issued to: **Just Energy Group Inc.**Endorsement No. **12****INSURERS LIABILITY CLAUSE****(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

Issued to: **Just Energy Group Inc.**

Endorsement No. **13**

**CORONAVIRUS ABSOLUTE EXCLUSION**

**Underwriters** shall not be liable to make any payment in connection with any claim made against an **Insured** or in connection with any matter covered by an extension to this Policy based upon, arising out of, or in any way attributable to coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to or resulting from:

- (i) any fear or threat (whether actual or perceived) of; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of;

coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

All other terms conditions and exclusions shall remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **14**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF SNYDER LETTERS**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of loss arising from any claim made against an **Insured** arising out of, based upon or attributable to the events scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any such Event; or (b) any claim arising from any such Event; or (c) any wrongful act, circumstances, acts or omissions relating to any such Event.

**SCHEDULE OF EVENTS:**

Letters from Robert Lloyd Snyder to the Board of Directors of the Company dated 23 December 2019, and to the Company dated 28 February 2020 and 17 March 2020 (as detailed under Schedule 13D/A notifications CUSIP No. 48213W101)

Notwithstanding the foregoing, this exclusion shall not apply to any other matters involving Mr Robert Lloyd Snyder or the Robert L. Snyder Trust provided that they are unrelated to the matters detailed in the Schedule of Events above.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Issued to: **Just Energy Group Inc.**

Endorsement No. **15**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF 2019 SECURITIES CLASS ACTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that Clause V. Exclusions is amended by the addition of:

(F) arising out of, based upon or attributable to:

1. any notices, events, investigations or actions scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any Event; or (b) any claim arising from any Event; or any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any Event; or
2. any such Event or any interrelated wrongful act, regardless of whether or not such claim, involved the same or different **Insureds**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

As alleged in the class action complaint filed against Just Energy Inc and others by Eli Gottein and others in the United Dtates District Court, Southern District of New York on 31 July 2019.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
www.paragonbrokers.com  
Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000455  
Date: 3rd April 2020

Page: 1 of 1

## Market Security:

### In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)

Signed Line %                      Insurer

100.00 %                      Certain Lloyd's Underwriters as per the Schedule below

Schedule of Underwriters at Lloyd's being:

Signed Line %	Syndicate No.	Pseudonym	Syndicate Full Name
66.667 %	2232	AWH	Allied World Global Markets
33.333%	1919	CVS	Starr Underwriting Agents Limited
100.00 %			

### In respect of EEA countries

Signed Line %                      Insurer

66.667 %                      Lloyd's Insurance Company S.A.  
Reinsured by Lloyd's Syndicate AWH 2232

33.333 %                      Lloyd's Insurance Company S.A.  
Reinsured by Lloyd's Syndicate 1919 CVS

### Please Note

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.

**THIS IS EXHIBIT EE REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**D&O Group**  
 11757 Katy Freeway, Suite 1300  
 Houston, Texas 77079  
 main 281-854-2014 facsimile 860-676-1737

April 7, 2020

Tim Losie  
 USI Insurance Services, LLC  
 9811 Katy Freeway, Suite 500  
 Houston, TX 77024

Re: Just Energy Group Inc.  
 Excess Directors & Officers Liability

Dear Tim:

Tokio Marine HCC - D&O Group is pleased to present the following confirmation of binding on behalf of U.S. Specialty Insurance Company (Form USSIC 994 (04/2002)):

**ITEM 1. Name and Principal Address:**

Just Energy Group Inc.  
 5251 Westheimer Rd Suite 1000  
 Houston, TX 77056

**ITEM 2. Policy Number:** 34-MGU-20-A49117

**ITEM 3. Policy Period:** (a) Inception Date: 4/1/2020  
 (b) Expiration Date: 4/1/2021  
 at 12:01 a.m. at the Principal Address stated in ITEM 1.

**ITEM 4. Limit of Liability (Inclusive of Defense Expenses):**  
 \$5,000,000 excess of \$22,500,000 underlying limits.

**ITEM 5. Schedule of Underlying Insurance**

<u>Position</u>	<u>Insurer</u>	<u>Policy Number</u>	<u>Limit</u>
Primary	Lloyd's of London	B0146ERINT2000452	\$5,000,000
1st Excess	Lloyd's Syndicate 33 (Hiscox Syndicates Limited)	B0146ERINT2000453	\$5,000,000
2nd Excess	Lloyd's syndicate 5151	B0146ERINT2000454	\$5,000,000
3rd Excess	Lloyd's Syndicate 2232	B0146ERINT2000455	\$7,500,000

**ITEM 6. Premium:** \$250,000.00

**ITEM 7. Endorsements Effective at Inception:**

Texas Amendatory - 600TX (Ed. 01/20)  
 Texas Amendatory - USSIC 601E-TX (Ed. 08/07)  
 Texas Amendatory - 1149-TX (Ed. 04/02)  
 994-936 - Delete Section IX (Ed. 04/05)  
 994-938 - Delete Subrogation to follow form of primary carrier's subrogation language (Ed. 02/02)  
 994-958 - Specific Litigation Exclusion (Ed. 12/03) (Notice from the Ontario Securities Exchange )  
 994-985 - Amend Conformity to Statute (if conflict w/amendatory, will apply most favorable terms) (Ed. 05/05)  
 994-995 - Delete Section II.B, Cancellation of U/L Insurance (Ed. 12/05)  
 994-9009 - PPL Excl. (preferred lang.) (Ed. 03/07) (5/22/2011)

80016 - Terrorism Coverage (Ed. 01/15)

**ITEM 8. Commission:** 12.5%

**CONTINGENCIES:**

**Please note that this binder is contingent upon all of the following:**

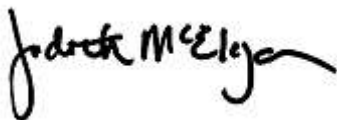
Receipt, review, and acceptance of the following:

- Copy of each underlying policy (when issued)
- Payment of the premium by the date indicated on the attached invoice.

**Failure to meet these contingencies may result in coverage being cancelled or voided ab initio. In order to issue our policy, we must have a copy of the binder for each underlying policy.**

**It is your agency's/brokerage's responsibility to conform with the Laws and Regulations of the applicable jurisdiction (state of the insured), including, but not limited to holding the required license(s).**

Sincerely,



Judith McElya  
(281) 854-2013  
jmcelya@tmhcc.com

**CONFIDENTIAL**  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:07:42 AM



**THIS IS EXHIBIT FF REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2000768

Date: 3 April 2020

**Insured: Just Energy Group, Inc.**

Further to your instructions we have effected the attached amendment to the insurance contract referenced above.

Please examine this amendment carefully and notify us immediately if it is incorrect, or does not meet your requirements.

**Duty to Disclose:**

This amendment to your insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

If an additional premium is payable then payment of such premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the additional premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the additional premium or to meet a payment warranty may enable the insurer(s) to avoid this amendment to the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the original contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Should you have any questions please feel free to contact us.

Yours sincerely,

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### AMENDMENT TO CONTRACT OF INSURANCE

**Unique Market Reference: B0146 ERINT2000453**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains an amendment to the terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us, we would be happy to hear from you.

CONFIDENTIAL  
DR. SENILAT@OSLER.COM  
Wellington  
Friday, June 10, 2022, 11:10:27 AM



## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**RISK DETAILS:**

**UNIQUE MARKET REFERENCE:**

B0146ERINT2000768

**TYPE:**

EXCESS CLAIMS MADE A-SIDE AND DIFFERENCE IN CONDITIONS DROP-DOWN DIRECTORS AND OFFICERS LIABILITY INSURANCE.

**PARENT COMPANY:**

**JUST ENERGY GROUP INC.**

**PRINCIPAL ADDRESS:**

6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada

**POLICY PERIOD:**

From: 1 April 2020  
To: 1 April 2021

Both dates at 12.01 a.m. Local Time at the Principal Address of the stated above

**INTEREST:**

In respect of the acts of the Directors and Officers on behalf of the Parent Company.

**LIMIT OF LIABILITY:**

1. **USD5,000,000** in the aggregate for the Policy Period, but sub-limited to:  
**USD5,000,000** in the aggregate for the Policy Period for all Loss in the countries scheduled in Item I., and  
**USD250,000** in the aggregate for the Policy Period for all Mitigation Costs

such sub-limits shall be part of, and not in addition to, the aggregate limit for the Policy Period shown above

and separately

2. **USD1,000,000** in the aggregate for the Policy Period solely for Claims made against or Investigations of or Inquiries reported by or on behalf of any Independent Directors

and separately

3. **USD150,000** in the aggregate for the Policy Period for all Access to Policy Costs

In Excess of:

- USD27,500,000** in the aggregate for the Policy Period

**TERRITORIAL SCOPE:**

Worldwide, as per primary policy wording

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CONDITIONS:

1. Policy wording: LSW4001 Armour Boardroom Protection DIC wording.
2. State of Incorporation: Not Applicable
3. Optional Extension Period:
  - a) in the event of non-renewal: 12 months @ 100% of annual premium
  - b) in the event of change of control: 6 years @ 200% of annual premium
 No return of unearned premium in the event of change in control
4. Notification pursuant to Clause VII shall be given to: Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London EC3V 4QT, or via email to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))
5. Inquiry Coverage Date: None
6. Scheduled Countries: None
7. Clause XII (Service of Suit) is deleted and replaced with LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyds Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Canada H3B 2V6
8. Armour Enhancement Endorsement
9. NMA45 New Short Rate Cancellation Table Endorsement, amended to allow pro-rata cancellation by the Assured in the event that the Special Cancellation Clause is invoked.
11. Excess Prior and Pending Litigation Exclusion, at 22 May 2011
12. Special Cancellation Clause
13. LMA5180 Intention for AIF to Bind Clause
14. Delegated Authority Endorsement
15. Lloyd's Insurance Company S.A. Amendatory Endorsement
16. German Insurance Premium Tax Payment Clause
17. Coronavirus Absolute Exclusion
18. Specified Matters Exclusion in Respect of Snyder Letters
19. Specified Matters Exclusion in Respect of in respect of 2019 securities class action
20. No Reinstatement of Limit

NOTICES:

None.

SUBJECTIVITIES:

None

CHOICE OF LAW AND JURISDICTION (DISPUTES CLAUSE):

Choice of Law: Ontario, Canada  
 Jurisdiction: As per Service of Suit Clause

PREMIUM:

**USD215,000.00** (100%) for the Policy Period, plus any taxes as applicable. Premium split as follows:

USD692.77 in respect of the EEA

USD214,307.23 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM PAYMENT TERMS:

LSW3001 – 60 day Premium Payment Clause

TAXES PAYABLE BY ASSURED AND ADMINISTERED BY INSURERS:

See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

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 OSLER.COM  
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RECORDING,  
TRANSMITTING &  
STORING  
INFORMATION:

Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

INSURER  
CONTRACT  
DOCUMENTATION:

This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document.

Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

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**INFORMATION**

SIC Code: 4924  
 Market Cap: \$137.317m (as of February 25<sup>th</sup>, 2020)

**Followed Policy:**

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000 in the aggregate  
 Retention: USD Nil / USD2,500,000 / USD 2,500,000

**Underlying Insurance:**

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000453  
 Limit of Liability: USD5,000,000 excess of USD5,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000454  
 Limit of Liability: USD5,000,000 excess of USD10,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000455  
 Limit of Liability: USD7,500,000 excess of USD15,000,000

Insurer: Tokio Marine HCC – D&O Group / HCC Underwriting Agency  
 Policy No.: to be confirmed  
 Limit of Liability: USD5,000,000 excess of USD22,500,000

German Address: Kapstadtring 10, 22297 Hamburg, Germany

Schedule of Regulatory Risk Locations and Applicable Taxes

Taxes Payable by Insured and Administered by Insurers:

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3222%	19.000%	692.77	131.63
<b>Total EEA</b>		<b>0.3222%</b>		<b>692.77</b>	<b>131.63</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	140,648,270	6.8723%	0.000%	14,775.46	0.00
Canada (BC)	999,320	0.0488%	0.000%	104.98	0.00
Canada (Manitoba)	2,329,740	0.1138%	0.000%	244.75	0.00
Canada (Ontario)	142,773,330	6.9761%	0.000%	14,998.70	0.00
Canada (Quebec)	4,051,460	0.1980%	0.000%	425.62	0.00
Canada (Sask)	10,197,880	0.4983%	0.000%	1,071.31	0.00
United States	1,739,000,000	84.9704%	0.000%	182,686.41	0.00
<b>Total Non-EEA</b>		<b>99.6778%</b>		<b>214,307.23</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>214,307.23</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>215,000.00</b>	<b>131.63</b>



**Taxes Payable by Insured and Administered by Insured or their representatives:**

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$244.75	\$19.58
Canada (Ontario)	Retail Sales Tax	8.000%	\$14,998.70	\$1,199.90
Canada (Quebec)	Retail Sales Tax	9.000%	\$425.62	\$38.31
Canada (Sask)	Retail Sales Tax	6.000%	\$1,071.31	\$64.28

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**SECURITY DETAILS****INSURERS  
LIABILITY:**

In respect of EEA locations:

**SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

In respect of Rest of the World excluding EEA locations:

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES: Percentage of Whole

SIGNING PROVISIONS:

In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.

**DECLARATIONS**

## Armour Boardroom Protection Difference in Conditions

THIS IS A CLAIMS MADE POLICY. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY **CLAIM** FIRST MADE, ANY **INVESTIGATION** FIRST COMMENCED AND ANY **INQUIRY** FIRST REPORTED DURING THE **POLICY PERIOD** PROVIDED:

- (1) SUCH **CLAIM** OR **INVESTIGATION** IS REPORTED TO UNDERWRITERS IN ACCORDANCE WITH THE TERMS OF CLAUSE VII.A.; AND
- (2) SUCH **INQUIRY** IS FIRST RECEIVED BY THE **INSURED PERSONS** ON OR AFTER THE DATE SET FORTH IN ITEM G. OF THE DECLARATIONS.

AMOUNTS INCURRED AS **COSTS, CHARGES AND EXPENSES** AND **INQUIRY COSTS** SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY UNDERWRITERS TO DEFEND ANY OF THE **INSURED PERSONS**.

These Declarations along with the completed and signed **Application** and the Policy with endorsements shall constitute the contract between the **Insured Persons** and Underwriters.

**Policy No:** B0146ERINT2000768

**Item A. Parent Company:**

Just Energy Group Inc.

**Principal Address:**

6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada

**State of Incorporation:**

Not Applicable

**Item B. Policy Period:**

**From:** 1 April 2020

**To:** 1 April 2021

Both days 12.01 a.m. Local Time at the Principal Address stated in Item A.

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 Wellington  
 DROSENBLAT@OSLER.COM  
 Friday, June 10, 2022 11:10:27 AM

**Item C. Limit of Liability:**

1. **USD5,000,000** in the aggregate for the **Policy Period**, but sub-limited to:  
**USD5,000,000** in the aggregate for the **Policy Period** for all **Loss** in the countries scheduled in Item I., such amount shall be part of, and not in addition to, the amount shown above  
and separately
2. **USD1,000,000** in the aggregate for the **Policy Period** solely for **Claims** made against or **Investigations** of or **Inquiries** reported by or on behalf of any **Independent Directors**

In Excess of:

**USD27,500,000** in the aggregate for the **Policy Period**

**Item D. Premium: USD215,000.00** (100%) for the **Policy Period**, plus any tax as applicable. Premium split as follows:

USD692.77 in respect of the EEA

USD214,307.23 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

- Item E.**
1. Premium for **Optional Extension Period**: As per Primary Policy.
  2. Length of **Optional Extension Period**: As per Primary Policy.

**Item F. Notification pursuant to Clause VII. shall be given to:**

Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London, EC3V 4QT

Or via email to: claims@paragonbrokers.com

**Item G. Inquiry Coverage Date:**

None

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Wellington  
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**Item H. Underlying Insurance:**Primary Policy

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000  
 Retention: USD Nil / USD2,500,000 / USD2,500,000

Underlying Insurance

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000453  
 Limit of Liability: USD5,000,000 excess of USD5,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000454  
 Limit of Liability: USD5,000,000 excess of USD10,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000455  
 Limit of Liability: USD7,500,000 excess of USD15,000,000

Insurer: Tokio Marine HCC – D&O Group / HCC Underwriting Agency  
 Policy No.: to be confirmed.  
 Limit of Liability: USD5,000,000 excess of USD22,500,000

**Item I. Country Schedule to which coverage under Clause V. applies:**

<u>Country:</u>	<u>Premium</u>	<u>Tax</u>	<u>All Other Charges</u>
Not Applicable			

**Item J. Service of process in any suit shall be made upon:**

As detailed in the LMA5028 Service of Suit (Canada) Clause

**Item K. Choice of Law:**

Ontario, Canada

**Dated in London:** 1 April 2020

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 DROSENBLAT@OSLER.COM  
 Friday, June 10, 2022 11:40:23 AM

# Armour Boardroom Protection

## Difference in Conditions

In consideration of the payment of the premium, in reliance on the **Application** and subject to all of the provisions of this Policy, Underwriters and the **Insured Persons** agree as follows:

### I. INSURING CLAUSE

Underwriters shall pay on behalf of the **Insured Persons**:

- A. **Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
- B. **Loss** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**; or
- C. **Inquiry Costs** resulting from any **Inquiry** first reported to Underwriters during the **Policy Period** provided such **Inquiry** is first received by the **Insured Persons** on or after the date set forth in Item G. of the Declarations,

except to the extent that such **Loss** or **Inquiry Costs** are paid by any other insurance or as indemnification, subject to Clause V. of this Policy.

In no event will this Policy cover the **Company** or any **Outside Entity** with respect to any claims made against them, any investigations commenced against them, any inquiries received by them or cover any amounts that the **Company** or any **Outside Entity** pays on behalf of or as indemnification to the **Insured Persons**.

### II. DEFINITIONS

The following terms whenever used in this Policy in boldface type shall have the meanings indicated.

- A. **"Application"** means:

1. the application for this Policy including any materials submitted therewith, and
2. any public documents filed by the **Company** with the Securities and Exchange Commission or any similar foreign authority during the twelve (12) month period prior to the inception date of this Policy,

all of which shall be deemed part of this Policy, as if physically attached.

- B. **"Claim"** means:

1. any written demand for monetary damages, non monetary relief, injunctive relief or other relief against any of the **Insured Persons**, or any civil, criminal, administrative, regulatory, arbitration or mediation proceeding or other alternative dispute resolution process initiated against any of the **Insured Persons**, including:
  - (a) any appeal from any such proceeding;
  - (b) any proceeding before the Equal Employment Opportunity Commission or any similar federal, state, local or foreign governmental body;
  - (c) any **Manslaughter Claim**;

- (d) any formal demand or proceeding arising out of any statutory liability of the **Insured Persons** due to the failure of the **Company** to deduct, withhold or remit taxes (including non-resident withholding taxes, goods and services taxes, salary or withholding taxes and employee source deductions), unemployment insurance contributions, or pension plan contributions; or
  - (e) any formal demand or proceeding arising out of any statutory liability of the **Insured Persons** due to the failure of the **Company** to pay debts for services performed by an employee of the **Company** for salary, wages or related amounts such as vacation pay or holiday pay; or
2. any extradition proceeding initiated against any of the **Insured Persons**, or the arrest and detainment or incarceration for more than twenty-four (24) hours of any of the **Insured Persons** solely with respect to their status as **Insured Persons** of the **Company**, by any law enforcement authority in a foreign jurisdiction in conjunction with any proceeding described in 1. above or an **Investigation** or **Inquiry**,

but shall not include any **Investigation** or **Inquiry**.

C. **"Company"** means:

- 1. the **Parent Company**;
- 2. any **Subsidiary**;
- 3. the **Parent Company** or any **Subsidiary** as a debtor in possession under the United States bankruptcy law or similar legal status under foreign law; and
- 4. any foundation, charitable trust or political action committee totally funded or controlled by the **Parent Company** or any **Subsidiary**.

D. **"Corporate Takeover"** means:

- 1. the acquisition by any person or entity of more than fifty percent (50%) of the outstanding securities of the **Parent Company** representing the present right to vote for the election of directors; or
- 2. the merger of the **Parent Company** into another entity such that the **Parent Company** is not the surviving entity.

E. **"Costs, Charges and Expenses"** means:

- 1. reasonable and necessary fees, costs, charges and expenses including reasonable and necessary attorneys and expert fees incurred by the **Insured Persons** in defense, settlement, investigation and appeal of any **Claim** or **Investigation** and cost of attachment or similar bonds, and
- 2. in respect of coverages afforded under Clause II.B.2., reasonable costs (other than collateral) for a bond or other financial instrument to guarantee the contingent obligation of the **Insured Persons** for bail or its equivalent required by a court in any foreign jurisdiction,

but shall not include salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**.

F. **"Facilitation Costs"** means reasonable and necessary fees, costs and expenses (including the premium or origination fee for a loan or bond) incurred by:

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1. the chief executive officer or chief financial officer of the **Parent Company** solely to facilitate the return of amounts required to be repaid pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, or
2. the **Insured Persons** solely to facilitate the return of amounts required to be repaid pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any internal policy of the **Company** promulgated in accordance therewith,

provided that such fees, costs or expenses do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any internal policy of the **Company** promulgated in accordance therewith.

- G. "**Independent Director**" means any **Insured Person** who was, now is, or shall be a director of the **Company** or any person serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States, provided such **Insured Person** has not been an employee, officer or equivalent executive of the **Company** in the past three (3) years.

- H. "**Inquiry**" means:

1. a request by the **Company** or a **Regulatory Authority** for any of the **Insured Persons** to appear for an interview or meeting or to produce documents in connection with:
  - (a) an inquiry or investigation of any of the **Insured Persons** or the **Company** by a **Regulatory Authority**, or
  - (b) a security holder derivative demand, or
2. a request by the **Company** or a **Regulatory Authority** for any of the **Insured Persons** to appear as a witness in a trial or a court hearing of any criminal proceeding solely against the **Company** under the UK Corporate Manslaughter & Homicide Act 2007 or its equivalent in any jurisdiction,

regarding such **Insured Persons** capacity as such or the business of the **Company**, but shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulatory entity.

- I. "**Inquiry Costs**" means reasonable and necessary fees and expenses incurred by the **Insured Persons** solely in connection with such **Insured Persons** preparation for and response to an **Inquiry**, but shall not include:
1. salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**;
  2. costs of complying with any discovery or other request seeking documents (including electronic information) in the possession or control of the **Company** or for which the **Company** has the direct financial responsibility to produce; or
  3. any amounts incurred prior to the time that the **Inquiry** is reported to Underwriters in accordance with Clause VII.B.

J. **"Insured Persons"** means:

1. all persons who were, now are, or shall be directors, officers, trustees (other than bankruptcy trustees) or risk managers of the **Company** and all persons serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States;
2. all persons who were, now are, or shall be managers or functionally equivalent roles of any limited liability company as defined in Clause II.U.;
3. all persons who were, now are, or shall be members of the board of managers of the **Company**;
4. all persons who were, now are, or shall be employees of the **Company**, but only to the extent such employee is named as a co-defendant in any **Claim** or **Investigation** with any of the persons set forth in the above provisions of this definition;
5. all natural persons who were, now are, or shall be shadow directors, as defined under Section 251 of the United Kingdom Companies Act 2006, of the **Parent Company** or any **Subsidiary** operating or incorporated in the United Kingdom or the Republic of Ireland;
6. any de facto or alleged de facto director of the **Company**; and
7. the lawful spouse or domestic partner of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to any **Claim** or **Investigation** solely because of his or her status as the spouse or domestic partner of any such persons and only for the purposes of any **Claim** or **Investigation** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner,

including their estates, heirs, legal representatives, trusts, estate planning vehicles or assigns in the event of their death, incapacity or bankruptcy.

K. **"Interrelated Wrongful Acts"** means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

L. **"Investigation"** means:

1. any formal investigation of any of the **Insured Persons** by a **Regulatory Authority**:
  - (a) once any such **Insured Persons** are identified in writing by such **Regulatory Authority** as a person against whom a **Claim** may be brought, including without limitation receipt of a target letter, or
  - (b) after the service of a subpoena or other similar written request compelling witness testimony or document production upon any such **Insured Persons**, or
  - (c) after any such **Insured Persons** have been identified in a Wells Notice, target letter or other written notice describing actual or alleged violations of securities laws or other laws by any such **Insured Persons**; or

2. any informal investigation of any of the **Insured Persons** by the Securities and Exchange Commission or any similar federal, state, local or foreign governmental body with jurisdiction over violations of securities laws after such **Insured Person** becomes aware that they are the subject of such investigation and, as a consequence of such investigation, retains legal counsel.
- M. "**Loss**" means any amounts which the **Insured Persons** become legally obligated to pay, including:
1. damages, judgments, including pre and post-judgment interest, costs and fees awarded pursuant to judgments, and settlements,
  2. **Costs, Charges and Expenses, Inquiry Costs** and **Facilitation Costs**,
  3. punitive, exemplary or multiplied damages where the applicable law allows coverage for punitive, exemplary or multiplied damages, and
  4. criminal or civil fines or penalties assessed against any of the **Insured Persons** where the applicable law allows coverage for criminal or civil fines or penalties, including:
    - (a) fines or civil penalties assessed against any of the **Insured Persons** pursuant to Section 78dd 2(g)(2)(B) or Section 78ff (c)2(B) of the Foreign Corrupt Practices Act, 15 U.S.C. or Section 11(1)(a) of the United Kingdom Bribery Act of 2010, Chapter 23 or any statute or law similar to the foregoing in any jurisdiction, or
    - (b) civil penalties assessed against any of the **Insured Persons** for the benefit of shareholders pursuant to Section 308 of the Sarbanes Oxley Act of 2002
  5. **Personal Asset Costs**, subject to a maximum sublimit of USD 500,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.1. of the Declarations,

but shall not include (other than **Inquiry Costs** and **Costs, Charges and Expenses**):

- (a) taxes or the loss of tax benefits except:
  - (i) with respect to that portion of any tax assessment imposed on any of the **Insured Persons** by a foreign jurisdiction based on Underwriters' payment of such damages, judgments, settlements, **Inquiry Costs** or **Costs, Charges and Expenses** as a foreign or non-admitted carrier; or
  - (ii) with respect to any statutory liability for such taxes owed by any of the **Insured Persons** as described in Clause II.B.1.(d);
- (b) benefits due or to become due under the terms of any employee benefit plan sponsored by the **Company** except to the extent that recovery for such benefit is based on a **Wrongful Act** and is payable as the personal obligation of any of the **Insured Persons**; or
- (c) matters deemed uninsurable under the law pursuant to which this Policy shall be construed.

Notwithstanding the foregoing, Underwriters shall not assert that the portion of any judgment, settlement or **Costs, Charges and Expenses** incurred in connection with any **Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933 as amended, are uninsurable.

With respect to the coverage for punitive, exemplary or multiplied damages, criminal or civil fines or penalties and the insurability of matters under exception (c) above, any applicable law most favourable to the insurability of such damages, fines, penalties or matters shall apply, and where the **Insured Persons** are able to demonstrate in good faith that such damages, fines, penalties or matters are insurable under any applicable law, Underwriters shall not challenge that interpretation of insurability. For purposes of this provision, "any applicable law" shall include but not be limited to the law: a) where the **Claim** seeking such damages was brought, b) where the **Wrongful Acts** giving rise to the **Claim** seeking such damages took place, c) where the **Insured Persons** are incorporated, have their principal place of business or reside, and d) where Underwriters are incorporated or have their principal place of business. If any of the **Insured Persons** present a written legal opinion stating that such damages, fines, penalties or matters are insurable under any applicable law, Underwriters shall not challenge that determination.

N. **"Management Control"** means:

1. owning interest representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the board of directors of a corporation, the management committee members of a joint venture, the members of the management board of a limited liability corporation or with respect to entities operating or organized outside the United States, persons serving in a functionally equivalent role; or
2. having the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of the **Company** to elect, appoint or designate a majority of the board of directors of a corporation, the management committee members of a joint venture, the management board of a limited liability corporation or with respect to entities operating or organized outside of the United States, persons serving in a functionally equivalent role.

O. **"Manslaughter Claim"** means the prosecution of any of the **Insured Persons** for involuntary, constructive or gross negligence manslaughter before the Crown Prosecution Service, the Procurator Fiscal or any similar authority with jurisdiction over any corporate manslaughter violation.

P. **"Outside Entity"** means:

1. any not-for-profit organization, community chest, fund or foundation; or
2. any other organization where the **Insured Persons** serve with such organization at the specific request of the **Company**.

Q. **"Parent Company"** means the entity named in Item A. of the Declarations.

R. **"Personal Asset Costs"** means reasonable and necessary fees, costs, charges and expenses incurred by the **Insured Persons** in connection with any **Claim** or **Investigation** to oppose any efforts by any **Regulatory Authority** to seize, attach or otherwise enjoin the use of the personal assets or real property of such **Insured Person** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in anyway impairing the use thereof.

S. **"Policy Period"** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item B. of the Declarations, or its earlier cancellation date and hour, if any, or the end of any optional extension period or equivalent or the Retired and Resigned Insured Person Extension, if purchased.

T. **"Regulatory Authority"** means any federal, state, local or foreign law enforcement or governmental authority (including the Department of Justice, the Securities and Exchange Commission and any attorney general) or the enforcement unit of any securities exchange or similar self-regulating body.

- U. **"Subsidiary"** means any entity, including but not limited to any limited liability company, over which the **Parent Company** directly or indirectly had or has **Management Control**, provided, that this Policy only provides coverage for any **Wrongful Act** committed or any conduct undertaken while the **Parent Company** had **Management Control** of such entity.
- V. **"Wrongful Act"** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty:
1. by any of the **Insured Persons**, while acting in their capacity as such, or any matter claimed against any of the **Insured Persons** solely by reason of their serving in such capacity; or
  2. by any of the **Insured Persons**, while acting in their capacity as, or any matter claimed against any of the **Insured Persons** solely by reason of their serving as:
    - (a) a director, officer, manager, trustee, governor or executive director or in a functionally equivalent position of any **Outside Entity**; or
    - (b) a fiduciary of any employee benefit plan sponsored by the **Company**.

### III. EXCLUSIONS

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim, Investigation or Inquiry** for:

- A. any deliberately fraudulent or deliberately criminal act or omission by any of the **Insured Persons**, or
- B. any personal profit or financial advantage gained by any of the **Insured Persons** to which they were not legally entitled; or
- C. the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Company**,

as determined by a final non-appealable adjudication in the underlying action.

Notwithstanding the foregoing:

1. Exclusions A., B. and C. shall not apply to **Independent Directors**; and
2. Exclusions B. and C. shall not apply to:
  - (a) that portion of any **Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933 as amended; or
  - (b) **Facilitation Costs** incurred in connection with that portion of any **Claim** alleging violations of Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any internal policy of the **Company** promulgated in accordance therewith.

With respect to Exclusion A. for acts or omissions which are treated as a criminal violation in a jurisdiction outside the United States of America that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such jurisdiction will not, by itself, be conclusive proof that a deliberately fraudulent or deliberately criminal act or omission occurred.

For the purpose of determining the applicability of any of the Exclusions, no facts pertaining to, no knowledge possessed by, and no **Wrongful Act** of any of the **Insured Persons** shall be imputed to any other natural person.

#### IV. LIMIT OF LIABILITY AND ORDER OF PAYMENTS

- A. The amount shown in Item C.1. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under the Policy.
- B. The amount shown in Item C.2. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under the Policy solely for **Claims** made against or **Investigations** of or **Inquiries** reported by or on behalf of any **Independent Directors**.

Such amount is a separate additional limit to the amount shown in Item C.1. of the Declarations, and shall only apply excess of the limit of liability of all policies of insurance providing excess coverage above this Policy.

- C. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following dates:
1. the date on which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
  2. the date on which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VII.C.
- D. More than one **Investigation** having as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions shall be deemed to constitute a single **Investigation** and shall be deemed to have been commenced at the earliest of the following dates:
1. the date on which the earliest **Investigation** is first commenced; or
  2. the date on which the **Investigation** shall be deemed to have been commenced pursuant to Clause VII.C.
- E. If an **Inquiry** is first reported to Underwriters during the **Policy Period** in accordance with Clause VII.B. then such **Inquiry** and any subsequent **Inquiry** having as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions shall be deemed a single **Inquiry** first reported on the date the earliest **Inquiry** is first reported.
- F. Any **Claim**, **Investigation** or **Inquiry** having as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions shall be deemed a single **Claim** and shall be deemed to have been made at the earliest of the following dates:
1. the date on which the **Inquiry** is first reported;
  2. the date on which the **Investigation** is first commenced; or
  3. the date on which the **Claim** is first made.
- G. Payments of **Loss** by Underwriters shall reduce the Limit of Liability. Underwriters shall pay **Loss** in the following order:
1. first, **Loss** that is allocable to any **Wrongful Act** committed or any conduct undertaken prior to the **Company** becoming a debtor in possession under the United States bankruptcy law or similar legal status under foreign law; and
  2. second, **Loss** that is allocable to any **Wrongful Act** committed or any conduct undertaken on or after the **Company** became a debtor in possession under the

United States bankruptcy law or similar legal status under foreign law.

Underwriters shall have no obligation to pay **Loss** after exhaustion of the Limit of Liability.

- H. Underwriters shall pay **Costs, Charges and Expenses** or **Inquiry Costs** on a current basis but no less than once every ninety (90) days.

## V. OTHER INSURANCE, INDEMNIFICATION, DROP DOWN AND DIFFERENCE IN CONDITIONS

- A. The **Insured Persons** and Underwriters agree that all coverage under this Policy is excess over and will not contribute with:

1. all other valid and collectible insurance, whenever purchased, whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise; and
2. all indemnification to which the **Insured Persons** may be entitled from the **Company** or any **Outside Entity**.

However, the coverage under this Policy shall apply as primary to any personal directorship liability insurance of any of the **Insureds** or any Directors and Officers Liability insurance issued to any equity holder of the **Company**.

- B. If, following specific written request on behalf of the **Insured Persons**, **Loss** is not paid by such other insurance or as indemnification for any reason within sixty (60) days of **Loss** becoming due and payable after specific request is made by or on behalf of the **Insured Persons**, including without limitation:

1. refusal of any entity to indemnify any of the **Insured Persons**,
2. attempted rescission of any other insurance policy,
3. exclusion under any other insurance policy or pursuant to any automatic stay of bankruptcy, or
4. in any country scheduled in Item I. of the Declarations due to any underlying insurer not holding a valid local license,

then this Policy will pay such **Loss** on behalf of the **Insured Persons** after the Underwriters have received written and itemized documentation of such **Loss** by means of invoices or otherwise, subject to all of its provisions, including without limitation Clause VI.C. Settlement and Defense and Clause X. Assistance, Cooperation and Subrogation.

Other than the United States of America or any country scheduled in Item I. of the Declarations, the Underwriters shall not be obligated to pay **Loss** in any other country solely by virtue of holding a valid local license to do so.

## VI. SETTLEMENTS AND DEFENSE

- A. No settlement shall be made and no **Facilitation Costs, Personal Asset Costs** or **Inquiry Costs** shall be incurred without Underwriters' consent, such consent not to be unreasonably withheld.

Underwriters' consent will not be required in connection with incurring any **Personal Asset Costs, Facilitation Costs** or **Inquiry Costs** to the extent the **Claim, Investigation** or **Inquiry** is covered or consent is given under any other insurance or where indemnification is provided by the **Company** or any **Outside Entity**.

- B. It shall be the duty of the **Insured Persons** and not the duty of the Underwriters to defend **Claims, Investigations** or **Inquiries**. Underwriters shall have the right and shall be given the opportunity to effectively associate with the **Insured Persons** in the investigation, defense and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part hereunder.
- C. In the event that:
1. the **Company** or any **Outside Entity** is required or permitted to indemnify the **Insured Persons** for **Costs, Charges and Expenses** or **Inquiry Costs** or to advance on behalf of any **Insured Persons** any **Costs, Charges and Expenses** or **Inquiry Costs** in any **Claim, Investigation** or **Inquiry**, whether such indemnity or advancement is pursuant to law, charter or other similar formative document, by-laws or written agreements of the **Company** or any **Outside Entity**, and
  2. the **Company** or any **Outside Entity** refuses or is financially unable to indemnify the **Insured Persons** for such **Costs, Charges and Expenses** or **Inquiry Costs**,

then, at the written request of the **Insured Persons**, Underwriters will advance on a current basis any **Costs, Charges and Expenses** or **Inquiry Costs** which the **Company** or **Outside Entity** has not indemnified or advanced.

If Underwriters advance such **Costs, Charges and Expenses** or **Inquiry Costs**, the **Insured Persons** agree to assign to Underwriters their right to recover indemnity from the **Company** or the **Outside Entity** and to comply with Clause X. Assistance, Cooperation and Subrogation to assist Underwriters to recover against the **Company** or **Outside Entity** for indemnification or advancement of **Costs, Charges and Expenses** or **Inquiry Costs** due but not paid.

## VII. NOTIFICATION

- A. The **Insured Persons** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of any **Claim** or **Investigation** as soon as practicable after the risk manager, general counsel, chief executive officer or chief financial officer or equivalent of the **Parent Company** first becomes aware of such **Claim** or **Investigation**.

In the event that the **Insured Persons** fails to provide notice of a **Claim** or **Investigation** in accordance with the above, Underwriters shall not be entitled to deny coverage for the **Claim** or **Investigation** based solely upon late notice, unless Underwriters can establish that their interests were materially prejudiced by reason of such late notice.

- B. If the **Insureds** elect to seek coverage for **Inquiry Costs** in connection with an **Inquiry**, the **Insureds** shall give to Underwriters notice in writing of such **Inquiry**, but in no event later than:
1. the end of the **Policy Period**, or
  2. in the event this Policy is non-renewed with Underwriters, sixty (60) days after the end of the **Policy Period**.



C. If the **Insured Persons**:

1. become aware of a specific fact, circumstance or situation which could reasonably give rise to a **Claim** or **Investigation**, or
2. receive any request to toll a period or statute of limitation which may be applicable to any **Claim** or **Investigation**,

and if the **Insured Persons** during the **Policy Period** give written notice to Underwriters of:

- (a) the specific fact, circumstance, situation or the request to toll a period or statute of limitation;
- (b) the consequences which have resulted or may result therefrom; and
- (c) the circumstances by which the **Insured Persons** first became aware thereof,

then any **Claim** or **Investigation** made subsequently arising out of such fact, circumstance, situation or the request to toll a period or statute of limitation shall be deemed for the purposes of this Policy to have been made or commenced at the time such notice was first given.

- D. Notice to Underwriters provided for in Clause VII. shall only be deemed effective if given to the firm shown under Item F. of the Declarations.

### VIII. GENERAL CONDITIONS

## A. Representations and Severability

By acceptance of this Policy, the **Insured Persons** agree that the statements in the **Application** are their representations and that this Policy is issued in reliance upon the truth of such representations.

The **Application** shall be construed as a separate **Application** for coverage by each of the **Insured Persons** and no knowledge possessed by any **Insured Person** shall be imputed to any other natural person.

Underwriters shall not be entitled to void this Policy, in whole or in part, or to rescind this Policy at any time.

## B. Adjustment Clause

1. This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**.

In the event the **Company**:

- (a) acquires any other entity or acquires substantially all of the assets of another entity, or
- (b) merges with another entity such that the **Company** is the surviving entity, or
- (c) acquires a **Subsidiary**

after the inception of this Policy, coverage shall be afforded for **Loss** in any way involving the assets acquired or the assets, liabilities, directors, officers or employees of the entity acquired or merged with, but only with respect to any **Wrongful Act** committed or any conduct undertaken on or after the date such entity is acquired, merged with or became a **Subsidiary**.

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2. In the event any entity ceased to be a **Subsidiary** as defined herein after the inception date of this Policy, or of any policy of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to any of the **Insured Persons** who were covered under this Policy because of their service with such entity but only with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken prior to the time such entity ceased to be a **Subsidiary**.
3. In the event of a **Corporate Takeover** after the inception date of this Policy or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to the **Insured Persons** but only with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken prior to the **Corporate Takeover**.

C. Company Authorization Clause

By acceptance of this Policy the **Insured Persons** agree that the **Parent Company** will act on their behalf with respect to the giving of all notices to Underwriters, the receiving of notices from Underwriters, the payment of the premium and the receipt of any return premium.

D. Valuation and Currency Clause

All premiums, limits, retentions and **Loss** under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars or if **Costs, Charges and Expenses** or **Inquiry Costs** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due or the date such **Costs, Charges and Expenses** or **Inquiry Costs** are paid.

E. Bankruptcy Clause

Bankruptcy or insolvency of the **Company** or any of the **Insured Persons** shall not relieve Underwriters of any of their obligations under this Policy.

If a liquidation or reorganization proceeding is commenced by the **Company** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law, then, in regard to a covered **Claim, Investigation** or **Inquiry** under this Policy, Underwriters and the **Insured Persons** hereby agree not to oppose or object to any efforts by Underwriters or any of the **Insured Persons** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

F. Recovery Clause

In the event the Underwriters recover amounts they have paid under this Policy, the Underwriters will reinstate the Limit of Liability of this Policy to the extent of such recovery, less its costs incurred in administering and obtaining such recovery. The Underwriters assume no duty to seek a recovery of any amounts paid under this Policy.

## IX. RETIRED AND RESIGNED INSURED PERSON EXTENSION

- A. If this Policy is not renewed by the **Parent Company** or by Underwriters, then any of the **Insured Persons** who have retired or resigned prior to or during the **Policy Period** shall have an automatic extension of the coverage granted by this Policy with respect to:
  1. any **Claim** first made or **Investigation** first commenced during the seventy two month period following the end of the **Policy Period**, but only with respect to any

**Wrongful Act** committed or any conduct undertaken before the Policy expiration date; or

2. any **Inquiry** first reported to Underwriters during the seventy two month period following the end of the **Policy Period**, but only with respect to any **Inquiry** first received on or after the date set forth in Item G. of the Declarations for any conduct undertaken before the Policy expiration date.

The above automatic extension of coverage shall not apply in the event the **Company** or such **Insured Person** has purchased other insurance, including any optional extension period or equivalent, to replace, in whole or in part, the insurance provided under this Policy.

- B. As a condition precedent to the right to the coverage afforded under the Retired and Resigned Insured Person Extension the total premium for this Policy must have been paid.
- C. The exercise of the Retired and Resigned Insured Person Extension shall not in any way increase the Limit of Liability of Underwriters.

## X. ASSISTANCE, COOPERATION AND SUBROGATION

The **Insured Persons** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that, after a **Claim** has been made against them, an **Investigation** has been commenced against them or an **Inquiry** has been received by them, they shall not take any action which in any way increases Underwriters' exposure under this Policy. The failure of any of the **Insured Persons** to give Underwriters or their counsel the information, assistance and cooperation that they may reasonably request shall not impair the rights of any other natural person under this Policy.

In the event of any payment under this Policy, Underwriters shall be subrogated to the **Insured Persons'** rights of recovery therefor against any person or entity, including without limitation for indemnification by the **Company**, any **Outside Entity** or any underlying insurer, to the extent of such payment. The **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require including without limitation, an action against the **Company**, any **Outside Entity** or any underlying insurer for non-payment of indemnity due and owing to the **Insured Persons**.

Notwithstanding the foregoing, Underwriters agree to waive their rights of subrogation against any of the **Insured Persons** except where a final non-appealable adjudication in the underlying action adverse to the relevant **Insured Persons** establishes that the relevant **Insured Persons** have committed a deliberately fraudulent or deliberately criminal act or omission.

## XI. UNDERLYING INSURANCE

In the event any of the underlying insurance as set forth in Item H. of the Declarations provides broader coverage for the **Insured Persons**, then this Policy is amended solely with respect to the **Insured Persons** to provide coverage in accordance with the broader terms and conditions of such underlying insurance, except in relation to:

- A. the coverage provided under Clause I. INSURING CLAUSE, and
- B. Clause II. DEFINITION A., and
- C. Clause III. EXCLUSIONS, and

- D. the coverage provided under Clause V. OTHER INSURANCE, INDEMNIFICATION, DROP DOWN AND DIFFERENCE IN CONDITIONS.

This Policy shall follow any optional extension period or equivalent under the primary policy as set forth in Item H. of the Declarations, except the premium and period for such optional extension period or equivalent under this Policy shall be the premium and period as set forth in Item E. of the Declarations.

Furthermore, only exclusions contained in Clause III. of this Policy and any added by Endorsement to this Policy shall apply to any **Claim, Investigation** or **Inquiry**. No additional exclusions under any underlying insurance shall apply to this Policy.

## XII. SERVICE OF SUIT

It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters at the request of any of the **Insured Persons** will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon the firm shown under Item J. of the Declarations, and that in such suit instituted against any one of the Underwriters upon this Policy, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The firm shown under Item J. of the Declarations is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of any of the **Insured Persons** to give a written undertaking to such **Insured Person** that it will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to the statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officers specified for that purpose in the statute, or any of their successors in office, as their true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any of the **Insured Persons** or any beneficiary hereunder arising out of this Policy, and hereby designate the firm shown in Item J of the Declaration as the firm to whom the said officer is authorized to mail such process or a true copy thereof.

## XIII. CHOICE OF LAW

Any dispute involving this Policy shall be resolved by applying the law of the state designated in Item K. of the Declarations, except:

- A. with respect to the insurability of damages under Clause II.M., and
- B. with regard to **Loss** due in any country scheduled in Item I. of the Declarations, such dispute shall be resolved by applying the law of England & Wales unless prohibited by the laws of such country, in which case the law of that country shall apply.

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Endorsement No: 1

**PRIOR AND PENDING LITIGATION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**ARMOUR BOARDROOM PROTECTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that Underwriters shall not be liable to make any payment in connection with that portion of any **Claim, Investigation or Inquiry** based upon, arising out of or attributable to any written demand, suit, investigation or other proceeding pending, or order, decree or judgment entered, against any **Insured Person** prior to 22 May 2011, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

All other terms and conditions of this Policy remain unchanged.

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Endorsement No: 2

**ENHANCEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**ARMOUR BOARDROOM PROTECTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that:

1) Item C. of the Declarations is deleted in its entirety and replaced with the following:

- 1. **USD5,000,000** in the aggregate for the **Policy Period**, but sub-limited to:
  - USD5,000,000** in the aggregate for the **Policy Period** for all **Loss** in the countries scheduled in Item I., and
  - USD250,000** in the aggregate for the **Policy Period** for all **Mitigation Costs**
 such sub-limits shall be part of, and not in addition to, the aggregate limit for the **Policy Period** shown above

and separately

- 2. **USD1,000,000** in the aggregate for the **Policy Period** solely for **Claims** made against or **Investigations** of or **Inquiries** reported by or on behalf of any **Independent Directors**

and separately

- 3. **USD150,000** in the aggregate for the **Policy Period** for all **Access to Policy Costs**

In Excess of:

- USD27,500,000** in the aggregate for the **Policy Period**

2) Clause **I. INSURING CLAUSE** is deleted in its entirety and replaced with the following:

Underwriters shall pay on behalf of the **Insured Persons**:

- A. **Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
- B. **Loss** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**; or
- C. **Inquiry Costs** resulting from any **Inquiry** first reported to Underwriters during the **Policy Period** provided such **Inquiry** is first received by the **Insured Persons** on or after the date set forth in Item G. of the Declarations; or
- D. **Mitigation Costs** resulting from any specific fact, circumstance or situation that the **Insured Persons** first become aware of and report to Underwriters during the **Policy Period** in accordance with Clause VII.D.; or
- E. **Access to Policy Costs** resulting from any **Claim** under Insuring Clause I.A., **Investigation** under Insuring Clause I.B., **Inquiry** under Insuring Clause I.C. or fact, circumstance or situation under Insuring Clause I.D.,

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except to the extent that such **Loss** including any **Inquiry Costs, Mitigation Costs** or **Access to Policy Costs** is paid by any other insurance or as indemnification by the **Company** or any **Outside Entity**, subject to Clause V. of this Policy.

In no event will this Policy cover the **Company** or any **Outside Entity** with respect to any claims made against them, any investigations commenced against them, any inquiries received by them, any amounts incurred to mitigate a specific fact, circumstance or situation which could reasonably give rise to a claim, investigation or inquiry or cover any amounts incurred to investigate or resist any challenge to an indemnity right under this Policy or cover any amounts that the **Company** or any **Outside Entity** pays on behalf of or as indemnification to the **Insured Persons**.

As a condition precedent to the **Insured Persons** right to payment under Insuring Clause I.D.:

1. the **Insured Persons** shall demonstrate, to the reasonable satisfaction of Underwriters, that the incurring of such **Mitigation Costs** is reasonably likely to prevent such fact, circumstance or situation from resulting in a **Claim, Investigation** or **Inquiry**;
  2. any action taken by the **Insured Persons** shall only be taken with the prior written consent of Underwriters;
  3. the liability of Underwriters for **Mitigation Costs** shall in no event exceed the amount of **Loss** they would have paid if a **Claim, Investigation** or **Inquiry** were to be pursued against the **Insured Persons**; and
  4. the **Insured Persons** shall establish that such **Claim, Investigation** or **Inquiry** would be covered under this Policy.
- 3) Clause **II. DEFINITIONS** A., D., E, F., H., I., J., L., M. and P. are deleted in their entirety and replaced with the following:
- A. **"Application"** means:
1. the application for this Policy (if any) including any written materials submitted therewith, and
  2. any public documents filed by the **Company** with the Securities and Exchange Commission or any similar foreign authority during the twelve (12) month period prior to the inception date of this Policy,
- all of which shall be deemed part of this Policy, as if physically attached.
- D. **"Corporate Takeover"** means:
1. the acquisition by any person or entity of more than fifty percent (50%) of the outstanding securities of the **Parent Company** representing the present right to vote for the election of directors; or
  2. the merger of the **Parent Company** into another entity such that the **Parent Company** is not the surviving entity.

**Corporate Takeover** shall not be considered to have occurred in the event of appointment of a receiver, liquidator, conservator, trustee or similar official.

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E. **"Costs, Charges and Expenses"** means:

1. reasonable and necessary fees, costs, charges and expenses incurred by the **Insured Persons** in defense, settlement, investigation and appeal of any **Claim** or in responding to any **Investigation** and cost of attachment or similar bonds, including:
  - (a) reasonable and necessary attorneys and expert fees incurred by the **Insured Persons** in defense, settlement, investigation and appeal of any **Claim** or in responding to any **Investigation**, and
  - (b) reasonable and necessary legal fees and expenses incurred by the **Insured Persons** in defense, settlement, investigation and appeal of:
    - (i) any **Claim** made against the chief executive officer or chief financial officer of the **Parent Company** seeking repayment of compensation as a result of a financial restatement of the **Company** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, or
    - (ii) any **Claim** made against the **Insured Persons** seeking repayment of compensation as a result of a financial restatement of the **Company** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any internal policy of the **Company** promulgated in accordance therewith, and
2. in respect of coverages afforded under Clause II.B.2.:
  - (a) reasonable costs (other than collateral) for a bond or other financial instrument to guarantee the contingent obligation of the **Insured Persons** for bail or its equivalent required by a court in any foreign jurisdiction, and
  - (b) **Foreign Accommodation Costs** where such **Foreign Accommodation Costs** are not paid by the **Company**, subject to a maximum sublimit of USD50,000 for each **Insured Person** and all of his or her **Relatives** and USD250,000 in the aggregate all **Insured Persons** and all of his or her **Relatives** for the **Policy Period**, such sublimits shall be part of, and not in addition to, the Limit of Liability stated in Item C.1. of the Declarations, and
3. reasonable fees and expenses incurred by the **Insured Persons** at the Underwriters' request to assist Underwriters in investigating the **Claim** or **Investigation**, and
4. reasonable and necessary legal fees and expenses incurred by any of the **Insured Persons** where deposed as a witness in connection with any **Claim** against or **Investigation** of any other **Insured Person**;

but shall not include salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**.

F. **"Facilitation Costs"** means reasonable and necessary fees, costs and expenses (including the premium or origination fee for a loan or bond) incurred by:

1. the chief executive officer or chief financial officer of the **Parent Company** solely to facilitate the return of amounts required to be repaid pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, or



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2. the **Insured Persons** solely to facilitate the return of amounts required to be repaid pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any internal policy of the **Company** promulgated in accordance therewith, or
3. the **Insured Persons** solely to facilitate the return of amounts required to be repaid pursuant to the Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq. or any internal policy of the **Company** promulgated in accordance therewith,

provided that such fees, costs or expenses do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or the Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq. or any internal policy of the **Company** promulgated in accordance therewith.

H. **"Inquiry"** means:

1. (a) a request by the **Company** or a **Regulatory Authority** for any of the **Insured Persons** to appear for an interview or meeting or to provide a sworn testimony or to produce documents in connection with:
  - (i) an inquiry or investigation of any of the **Insured Persons** or the **Company** by a **Regulatory Authority**, or
  - (ii) a security holder derivative demand or a derivative action lawsuit,
- (b) a request by the **Company** or a **Regulatory Authority** for any of the **Insured Persons** to appear as a witness in a trial or a court hearing of any criminal proceeding solely against the **Company** under the UK Corporate Manslaughter & Homicide Act 2007 or its equivalent in any jurisdiction,
- (c) a request by the **Company** for any of the **Insured Persons** to appear for an interview or meeting or to provide a sworn testimony or to produce documents in connection with an investigation by the **Company** following the disclosure by the **Company** or any of the **Insured Persons** to a **Regulatory Authority** that a violation of any law has, or may have, occurred,
- (d) a request by any court-appointed trustee, examiner, receiver, liquidator, conservator, rehabilitator or similar official of the **Company** for any of the **Insured Persons** to appear for an interview or meeting or to provide a sworn testimony or to produce documents in connection with any bankruptcy proceeding by or against the **Company**, or
- (e) a request by or on behalf of a party to any litigation, arbitration or other type of proceeding against the **Company** for any of the **Insured Persons** to appear for an interview or meeting or to provide a sworn testimony or to produce documents in connection with such litigation, arbitration or proceeding,

regarding such **Insured Persons** capacity as such or the business of the **Company**, and

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2. any informal investigation of any of the **Insured Persons** by a **Regulatory Authority** after such **Insured Person** becomes aware that they are the subject of such investigation and, as a consequence of such investigation, retains legal counsel,

but shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulatory entity.

- I. **"Inquiry Costs"** means reasonable and necessary fees and expenses incurred by the **Insured Persons** solely in connection with such **Insured Persons** preparation for and response to an **Inquiry**, including reasonable and necessary fees and expenses incurred by the **Insured Persons** to produce documents in his or her possession or to produce documents needed to prepare for an interview, meeting or a sworn testimony, but shall not include:
  1. salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**;
  2. costs of complying with any discovery or other request seeking documents (including electronic information) for which the **Company** has the direct financial responsibility to produce; or
  3. any amounts incurred prior to the time that the **Inquiry** is reported to Underwriters in accordance with Clause VII.B.

- J. **"Insured Persons"** means:
  1. all persons who were, now are, or shall be directors, officers, trustees (other than bankruptcy trustees) general counsel or risk managers of the **Company** and all persons serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States;
  2. all persons who were, now are, or shall be managers or functionally equivalent roles of any limited liability company as defined in Clause II.U.;
  3. all persons who were, now are, or shall be members of the board of managers of the **Company**;
  4. all persons who were, now are, or shall be employees of the **Company**, but only to the extent such employee is named as a co-defendant in any **Claim** or **Investigation** with any of the persons set forth in the above provisions of this definition;
  5. all natural persons who were, now are, or shall be shadow directors, as defined under Section 251 of the United Kingdom Companies Act 2006, of the **Parent Company** or any **Subsidiary** operating or incorporated in the United Kingdom or the Republic of Ireland;
  6. any de facto or alleged de facto director of the **Company**; and
  7. the lawful spouse or domestic partner of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to any **Claim** or **Investigation** solely because of his or her status as the spouse or domestic partner of any such persons and only for the purposes of any **Claim** or **Investigation** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or domestic

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partner, or property transferred from any such person to the spouse or domestic partner,

including their estates, heirs, legal representatives, trusts, estate planning vehicles or assigns in the event of their death, incapacity or bankruptcy.

- L. **"Investigation"** means any formal investigation of any of the **Insured Persons** by a **Regulatory Authority**:
1. once any such **Insured Persons** are identified in writing by such **Regulatory Authority** as a person against whom a **Claim** may be brought, including without limitation receipt of a target letter, or
  2. after the service of a subpoena or other similar written request compelling witness testimony or document production upon any such **Insured Persons**, or
  3. after any such **Insured Persons** have been identified in a Wells Notice, target letter or other written notice describing actual or alleged violations of securities laws or other laws by any such **Insured Persons**.
- M. **"Loss"** means any amounts which the **Insured Persons** become legally obligated to pay, including:
1. damages, judgments, including pre and post-judgment interest, costs and fees awarded pursuant to judgments, and settlements,
  2. **Costs, Charges and Expenses, Inquiry Costs** and **Facilitation Costs**,
  3. punitive, exemplary or multiplied damages where the applicable law allows coverage for punitive, exemplary or multiplied damages,
  4. criminal or civil fines or penalties assessed against any of the **Insured Persons** where the applicable law allows coverage for criminal or civil fines or penalties, including:
    - (a) fines or civil penalties assessed against any of the **Insured Persons** pursuant to Section 78dd 2(g)(2)(B) or Section 78ff (c)2(B) of the Foreign Corrupt Practices Act, 15 U.S.C. or Section 11(1)(a) of the United Kingdom Bribery Act of 2010, Chapter 23 or any statute or law similar to the foregoing in any jurisdiction,
    - (b) fines or penalties assessed against any of the **Insured Persons** pursuant to the Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq., or
    - (c) civil penalties assessed against any of the **Insured Persons** for the benefit of shareholders pursuant to Section 308 of the Sarbanes Oxley Act of 2002,
  5. **Personal Asset Costs**, subject to a maximum sublimit of USD 500,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.1. of the Declarations,
  6. **Personal Reputation Costs**, subject to a maximum sublimit of USD 500,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.1. of the Declarations,
  7. with respect to Insuring Clause I.D. **Mitigation Costs**, and
  8. with respect to Insuring Clause I.E. **Access to Policy Costs**,
- but shall not include (other than **Inquiry Costs** and **Costs, Charges and Expenses**):

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- (a) taxes or the loss of tax benefits except:
  - (i) with respect to that portion of any tax assessment imposed on any of the **Insured Persons** by a foreign jurisdiction based on Underwriters' payment of such damages, judgments, settlements, **Inquiry Costs** or **Costs, Charges and Expenses** as a foreign or non-admitted carrier;
  - (ii) with respect to any statutory liability for such taxes owed by any of the **Insured Persons** as described in Clause II.B.1.(d); or
  - (iii) for any taxes owed by the **Company** for which any of the **Insured Persons** are held legally liable where the applicable law allows coverage for such taxes, subject to a maximum sublimit of USD 10,000 each of the **Insured Persons** but in no event exceeding USD 100,000 in the aggregate for the **Policy Period** all **Insured Persons**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.1. of the Declarations;
- (b) benefits due or to become due under the terms of any employee benefit plan sponsored by the **Company** except to the extent that recovery for such benefit is based on a **Wrongful Act** and is payable as the personal obligation of any of the **Insured Persons**; or
- (c) matters deemed uninsurable under the law pursuant to which this Policy shall be construed.

Notwithstanding the foregoing, Underwriters shall not assert that the portion of any judgment, settlement or **Costs, Charges and Expenses** incurred in connection with any **Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933 as amended, are uninsurable.

With respect to the coverage for punitive, exemplary or multiplied damages, criminal or civil fines or penalties, taxes and the insurability of matters under exception (c) above, any applicable law most favourable to the insurability of such damages, fines, penalties, taxes or matters shall apply, and where the **Insured Persons** are able to demonstrate in good faith (including presenting a written legal opinion) that such damages, fines, penalties, taxes or matters are insurable under any applicable law, Underwriters shall not challenge that interpretation of insurability. For purposes of this provision, "any applicable law" shall include but not be limited to the law: a) where the **Claim** seeking such damages was brought, b) where the **Wrongful Acts** giving rise to the **Claim** seeking such damages took place, c) where the **Insured Persons** have their principal place of business or reside, and d) where Underwriters are incorporated or have their principal place of business.

P. **"Outside Entity"** means:

1. any not-for-profit organization, community chest, fund or foundation; or
2. any other organization where the **Insured Persons** serve with such organization at the specific request of the **Company**.

For the purpose of paragraph 2. above, in the event of a disagreement between the **Company** and any of the **Insured Persons** as to whether such **Insured Person** was acting "at the specific request of the **Company**", it is agreed that Underwriters shall abide by the determination of the **Company** on this issue and such determination shall be made by the **Company** by written notice to Underwriters within 90 days after the **Claim** is first made or the **Investigation** is first commenced against such **Insured Person**. In the event no determination is made within such period, this paragraph shall

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operate as if the **Company** determined that such **Insured Person** was not acting at the specific request of the **Company**.

- 4) Clause **II. DEFINITIONS** B.1. is deleted in its entirety and replaced with the following
  1. any written demand for monetary damages, non monetary relief, injunctive relief or other relief against any of the **Insured Persons**, or any civil, criminal, administrative, regulatory, arbitration, tribunal or mediation proceeding or other alternative dispute resolution process initiated against any of the **Insured Persons**, including:
- 5) Clause **II. DEFINITIONS** B.2. is deleted in its entirety and replaced with the following:
  2. any extradition proceeding initiated against any of the **Insured Persons**, or the arrest and detention or incarceration for more than twenty-four (24) hours of any of the **Insured Persons** solely with respect to their status as **Insured Persons** of the **Company**, by any law enforcement authority,
- 6) Clause **II. DEFINITIONS** J.4. is deleted in its entirety and replaced with the following:
  4. all persons who were, now are, or shall be employees of the **Company**, but only to the extent:
    - (a) such employee is named as a co-defendant in any **Claim** or **Investigation** with any of the persons set forth in the above provisions of this definition; or
    - (b) such employee receives a request to respond to an **Inquiry** concurrently with any of the persons set forth in the above provisions of this definition;
- 7) Clause **II. DEFINITIONS** is amended by the addition of the following:
  - W. **"Access to Policy Costs"** means reasonable and necessary fees, costs, charges and expenses including reasonable and necessary attorneys and expert fees incurred by any of the **Insured Persons** to investigate and resist any challenge, by any other **Insured Person**, the **Company** or any third party, to their right to an indemnity under this Policy or any underlying insurance as set forth in Item H. of the Declarations, but shall not include salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**.
  - X. **"Foreign Accommodation Costs"** means, where legally permissible, the following expenses and fees incurred in connection with a proceeding described in Clause II.B.2.:
    1. reasonable travel expenses incurred by a **Relative** to travel to a foreign jurisdiction in which the **Insured Person** is not domiciled,
    2. reasonable accommodation expenses incurred by any of the **Insured Persons** or any of his or her **Relatives** to temporarily reside in a foreign jurisdiction in which such **Insured Person** is not domiciled,
    3. reasonable fees incurred by any of the **Insured Persons** or any of his or her **Relatives** to convert currency to the currency of a foreign jurisdiction in which such **Insured Person** is not domiciled, or
    4. reasonable fees incurred by any of the **Insured Persons** or any of his or her **Relatives** to obtain the services of an interpreter or translator.
  - Y. **"Mitigation Costs"** means reasonable and necessary fees, costs, charges and expenses incurred by any of the **Insured Persons** solely to mitigate a specific fact, circumstance or situation which could reasonably give rise to a covered **Claim**, **Investigation** or **Inquiry**, but shall not include:

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1. any amounts incurred prior to the time that such specific fact, circumstance or situation is reported to Underwriters in accordance with Clause VII.D.;
  2. any amounts incurred after the time a **Claim** is made against, an **Investigation** is commenced of, or an **Inquiry** is received by, any of the **Insured Persons** which arises out of such fact, circumstance or situation;
  3. salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**; or
  4. costs of producing documents for which the **Company** has the direct financial responsibility to produce.
- Z. "**Personal Reputation Costs**" means reasonable and necessary fees, costs, charges and expenses charged by any public relations firm or crisis management firm incurred by the **Insured Persons** in connection with any **Claim** or **Investigation** to mitigate the adverse effects to such **Insured Person's** reputation as a result of a negative public statement made about him or her by a **Regulatory Authority**.
- AA. "**Relative**" means a lawful spouse, domestic partner, child, stepchild, adopted child, adopted stepchild, lawful spouse of a married child, grandchild, sister, brother, parent, parent-in-law, stepparent, grandparent or grandparent-in-law of any of the **Insured Persons**, or of any resident or individual employed in the household of any of the **Insured Persons**.

8) Clause **III. EXCLUSIONS** is deleted in its entirety and replaced with the following:

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim, Investigation** or **Inquiry** for:

- A. any deliberately fraudulent or deliberately criminal act or omission by any of the **Insured Persons**, or
- B. any personal profit or financial advantage gained by any of the **Insured Persons** to which they were not legally entitled, or
- C. the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Company**,

as determined by a final non-appealable adjudication adverse to the relevant **Insured Persons** in the underlying action.

Notwithstanding the foregoing:

1. Exclusions A., B. and C. shall not apply to **Costs, Charges and Expenses, Inquiry Costs** or **Independent Directors**; and
2. Exclusions B. and C. shall not apply to:
  - (a) that portion of any **Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933 as amended; or
  - (b) **Facilitation Costs** incurred in connection with that portion of any **Claim** alleging violations of Section 304(a) of the Sarbanes-Oxley Act of 2002, Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any internal policy of the **Company** promulgated in accordance therewith or the Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq. or any internal policy of the **Company** promulgated in accordance therewith.

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With respect to Exclusion A. for acts or omissions which are treated as a criminal violation in a jurisdiction outside the United States of America that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such jurisdiction will not, by itself, be conclusive proof that a deliberately fraudulent or deliberately criminal act or omission occurred.

For the purpose of determining the applicability of any of the Exclusions, no facts pertaining to, no knowledge possessed by, and no **Wrongful Act** of any of the **Insured Persons** or the **Company** shall be imputed to any other natural person.

9) Clause **IV. LIMIT OF LIABILITY AND ORDER OF PAYMENTS** is deleted in its entirety and replaced with the following:

- A. The amount shown in Item C.1. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under the Policy.
- B. The amount shown in Item C.2. of the Declarations shall be a separate additional excess aggregate limit to the amount shown in Item C.1. of the Declarations.

Such amount:

- 1. shall only apply to **Claims** against, **Investigations** of and **Inquiries** reported by or on behalf of any **Independent Directors**, and
- 2. shall only apply in excess of the limit of liability of all policies of insurance providing excess coverage above this Policy
- C. The amount shown in Item C.3. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under the Policy for **Access to Policy Costs**.

Such amount is a separate additional limit to the amount shown in Item C.1. of the Declarations.

- D. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following dates:
  - 1. the date on which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
  - 2. the date on which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VII.C.
- E. More than one **Investigation** having as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions shall be deemed to constitute a single **Investigation** and shall be deemed to have been commenced at the earliest of the following dates:
  - 1. the date on which the earliest **Investigation** is first commenced; or
  - 2. the date on which the **Investigation** shall be deemed to have been commenced pursuant to Clause VII.C.

- F. If an **Inquiry** is first reported to Underwriters during the **Policy Period** in accordance with Clause VII.B. then such **Inquiry** and any subsequent **Inquiry** having as a common nexus any fact, circumstance, situation, event, transaction or series of facts,

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circumstances, situations, events or transactions shall be deemed a single **Inquiry** first reported on the date the earliest **Inquiry** is first reported.

G. Any **Claim, Investigation** or **Inquiry** having as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions shall be deemed a single **Claim** and shall be deemed to have been made at the earliest of the following dates:

1. the date on which the **Inquiry** is first reported;
2. the date on which the **Investigation** is first commenced; or
3. the date on which the **Claim** is first made.

H. Payments of **Loss** by Underwriters shall reduce the Limit of Liability. Underwriters shall pay **Loss** in the following order:

1. first, **Loss** that is allocable to any **Wrongful Act** committed or any conduct undertaken prior to the **Company** becoming a debtor in possession under the United States bankruptcy law or similar legal status under foreign law; and
2. second, **Loss** that is allocable to any **Wrongful Act** committed or any conduct undertaken on or after the **Company** became a debtor in possession under the United States bankruptcy law or similar legal status under foreign law.

Underwriters shall have no obligation to pay **Loss** after exhaustion of the Limit of Liability.

I. Underwriters shall advance or pay **Costs, Charges and Expenses, Inquiry Costs, Mitigation Costs** or **Access to Policy Costs** on a current basis but no less than once every ninety (90) days.

10) Clause **V. OTHER INSURANCE, INDEMNIFICATION, DROP DOWN AND DIFFERENCE IN CONDITIONS** is deleted in its entirety and replaced with the following:

A. The **Insured Persons** and Underwriters agree that all coverage under this Policy is excess over and will not contribute with:

1. all other valid and collectible insurance, whenever purchased, whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise, unless such other insurance is written as specific excess insurance over the Limit of Liability provided by this Policy; and
2. all indemnification to which the **Insured Persons** may be entitled from the **Company** or any **Outside Entity**.

However, the coverage under this Policy shall apply as primary to any personal directorship liability insurance of any of the **Insured Persons** or any Directors and Officers Liability insurance issued to any equity holder of the **Company**.

B. If the **Company** or the insurer of any underlying insurance as set forth in Item H. of Declarations:

1. refuses to advance or indemnify **Loss** on behalf of the **Insured Persons** for any reason, or
2. fails to advance or indemnify **Loss** on behalf of the **Insured Persons** for any reason within forty-five (45) days of **Loss** becoming due and payable,



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including without limitation:

- (a) refusal of any entity to indemnify any of the **Insured Persons**,
- (b) attempted rescission of any other insurance policy,
- (c) exclusion under any other insurance policy or pursuant to any automatic stay of bankruptcy, or
- (d) in any country scheduled in Item I. of the Declarations due to any underlying insurer not holding a valid local license,
- (e) the insurer under one of more of the Underlying Policies fails to pay loss in connection with any claims as a result of the insolvency, bankruptcy or liquidation of said insurer.

then, after specific request is made by or on behalf of the **Insured Persons**, this Policy will advance or pay such **Loss** on behalf of the **Insured Persons** after the Underwriters have received written and itemized documentation of such **Loss** by means of invoices or otherwise, subject to all of its provisions, including without limitation Clause VI.C. Settlement and Defense and Clause X. Assistance, Cooperation and Subrogation.

11) Clause **VI. SETTLEMENTS AND DEFENSE** A. and C. are deleted in their entirety and replaced with the following:

- A. No settlement shall be made and no **Facilitation Costs, Personal Asset Costs, Personal Reputation Costs, Mitigation Costs, Access to Policy Costs, Foreign Accommodation Costs** or **Inquiry Costs** shall be incurred without Underwriters' consent, such consent not to be unreasonably withheld.

Underwriters' consent will not be required in connection with incurring any **Facilitation Costs, Personal Asset Costs, Personal Reputation Costs, Mitigation Costs, Access to Policy Costs, Foreign Accommodation Costs** or **Inquiry Costs** to the extent the **Claim, Investigation** or **Inquiry** is covered or consent is given under any other insurance or where indemnification is provided by the **Company** or any **Outside Entity**.

C. In the event that:

- 1. the **Company** or any **Outside Entity** is required or permitted to indemnify the **Insured Persons** for **Costs, Charges and Expenses, Inquiry Costs** or **Mitigation Costs** or to advance on behalf of any **Insured Persons** any **Costs, Charges and Expenses** or **Inquiry Costs** in any **Claim, Investigation** or **Inquiry**, or any **Mitigation Costs**, whether such indemnity or advancement is pursuant to law, charter or other similar formative document, by-laws or written agreements of the **Company** or any **Outside Entity**, and
- 2. the **Company** or any **Outside Entity**:
  - (a) refuses to indemnify the **Insured Persons** for such **Costs, Charges and Expenses, Inquiry Costs** or **Mitigation Costs**, or
  - (b) fails or is financially unable to indemnify the **Insured Persons** for such **Costs, Charges and Expenses, Inquiry Costs** or **Mitigation Costs** within sixty (60) days of **Costs, Charges and Expenses, Inquiry Costs** or **Mitigation Costs** becoming due and payable,

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then at the written request of the **Insured Persons**, Underwriters will advance on a current basis any **Costs, Charges and Expenses, Inquiry Costs** or **Mitigation Costs** which the **Company** or **Outside Entity** has not indemnified or advanced.

If Underwriters advance such **Costs, Charges and Expenses, Inquiry Costs** or **Mitigation Costs**, the **Insured Persons** agree to assign to Underwriters their right to recover indemnity from the **Company** or the **Outside Entity** and to comply with Clause X. Assistance, Cooperation and Subrogation to assist Underwriters to recover against the **Company** or **Outside Entity** for indemnification or advancement of **Costs, Charges and Expenses, Inquiry Costs** or **Mitigation Costs** due but not paid.

12) Clause **VII. NOTIFICATION** is deleted in its entirety and replaced with the following:

- A. The **Insured Persons** or the **Company** shall, as a condition precedent to the **Insured Persons'** rights to payment under this Policy, give to Underwriters notice in writing of any **Claim** or **Investigation** as soon as practicable after the risk manager or general counsel or equivalent of the **Parent Company** first becomes aware of such **Claim** or **Investigation**.

In the event that the **Insured Persons** or the **Company** fail to provide notice of a **Claim** or **Investigation** in accordance with the above, Underwriters shall not be entitled to deny coverage for the **Claim** or **Investigation** based solely upon late notice, unless Underwriters can establish that their interests were materially prejudiced by reason of such late notice.

- B. If the **Insured Persons** or the **Company** elects to seek coverage for **Inquiry Costs** in connection with an **Inquiry**, the **Insured Persons** or the **Company** shall give to Underwriters notice in writing of such **Inquiry**, but in no event later than:

- 1. the end of the **Policy Period**, or
- 2. in the event this Policy is not renewed with Underwriters, sixty (60) days after the end of the **Policy Period**.

- C. If the **Insured Persons** or the **Company**:

- 1. becomes aware of a specific fact, circumstance or situation which could reasonably give rise to a **Claim, Investigation** or **Inquiry**, or
- 2. receives any request to toll, extend or waive a period or statute of limitation or a contractual timebar which may be applicable to any **Claim, Investigation** or **Inquiry**,

and if the **Insured Persons** or the **Company** during the **Policy Period** gives written notice to Underwriters of:

- (a) the specific fact, circumstance, situation or the request to toll, extend or waive a period or statute of limitation or a contractual timebar;
- (b) the consequences which have resulted or may result therefrom; and
- (c) the circumstances by which the **Insured Persons** or the **Company** first became aware thereof,

then any **Claim** made, **Investigation** commenced or **Inquiry** reported subsequently arising out of such fact, circumstance, situation or the request to toll, extend or waive a period or statute of limitation or a contractual timebar shall be deemed for the purposes

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of this Policy to have been made, commenced or reported at the time such notice was first given.

- D. The **Insured Persons** or the **Company** shall, as a condition precedent to the **Insured Persons'** rights to payment of **Mitigation Costs** under this Policy, provide Underwriters with the information required in Sections VII.C.(a) through VII.C.(c) above as soon as practicable after the risk manager, general counsel, chief executive officer or chief financial officer or equivalent of the **Parent Company** first becomes aware of a specific fact, circumstance or situation which could reasonably give rise to a **Claim, Investigation** or **Inquiry**.
- E. Notice to Underwriters provided for in Clause VII. shall only be deemed effective if given to the firm shown under Item F. of the Declarations.

13) Clause **VIII. GENERAL CONDITION** A. is deleted in its entirety and replaced with the following:

A. Representations and Severability

By acceptance of this Policy, the **Insured Persons** agree that the statements in the **Application** are their representations and that this Policy is issued in reliance upon the truth of such representations.

The **Application** shall be construed as a separate **Application** for coverage by each of the **Insured Persons** and no knowledge possessed by any **Insured Person** or the **Company** shall be imputed to any other natural person.

Underwriters shall not be entitled to void this Policy, in whole or in part, or to rescind this Policy at any time.

14) Clause **VIII. GENERAL CONDITION** D. is deleted in its entirety and replaced with the following:

D. Valuation and Currency Clause

All premiums, limits and **Loss** under this Policy are expressed in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars or if **Costs, Charges and Expenses, Inquiry Costs, Mitigation Costs** or **Access to Policy Costs** are paid in a currency other than United States dollars, payment under this Policy shall be made, at the **Insured Persons** election, either:

- (a) in United States dollars, or
- (b) in the foreign jurisdiction at issue and in the foreign currency at issue, to the extent legally permissible.

The rate of exchange published in the Wall Street Journal on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due or the date **Costs, Charges and Expenses, Inquiry Costs, Mitigation Costs** or **Access to Policy Costs** are paid shall be used to calculate erosion of the limits of liability of this Policy.

15) Clause **IX. RETIRED AND RESIGNED INSURED PERSON EXTENSION** is deleted in its entirety and replaced with the following:

**IX. EXTENSIONS TO THE POLICY PERIOD**

A. Insolvency

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In the event that during the **Policy Period** a bankruptcy proceeding is commenced by or against the **Parent Company** pursuant to Chapter 7 of the United States Bankruptcy Code (11 U.S.C. §§ 701 et seq.) and this Policy is subsequently not renewed by the **Parent Company** or by Underwriters, then the **Insured Persons** shall have an automatic extension of the coverage granted by this Policy with respect to:

1. any **Claim** first made or **Investigation** first commenced during the seventy two month period following the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed or any conduct undertaken before the Policy expiration date; or
2. any **Inquiry** first reported to Underwriters during the seventy two month period following the end of the **Policy Period**, but only with respect to any **Inquiry** first received on or after the date set forth in Item G. of the Declarations for any conduct undertaken before the Policy expiration date.

B. Retired and Resigned Insured Persons

If this Policy is not renewed by the **Parent Company** or by Underwriters, then any of the **Insured Persons** who have retired or resigned prior to or during the **Policy Period** shall have an automatic extension of the coverage granted by this Policy with respect to:

1. any **Claim** first made or **Investigation** first commenced during the seventy two month period following the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed or any conduct undertaken before the Policy expiration date; or
2. any **Inquiry** first reported to Underwriters during the seventy two month period following the end of the **Policy Period**, but only with respect to any **Inquiry** first received on or after the date set forth in Item G. of the Declarations for any conduct undertaken before the Policy expiration date.

The above automatic extension of coverage shall not apply in the event the Insolvency Extension is granted.

C. Extension Conditions

1. As a condition precedent to the right to the coverage afforded under the Insolvency Extension or the Retired and Resigned Insured Person Extension the total premium for this Policy must have been paid.
2. The above automatic extensions of coverage shall not apply in the event the **Company** or such **Insured Person** has purchased other insurance, including any optional extension period or equivalent, to replace, in whole or in part, the insurance provided under this Policy.
3. The exercise of the Insolvency Extension or the Retired and Resigned Insured Person Extension shall not in any way increase the Limit of Liability of Underwriters.

16) Clause **X. ASSISTANCE, COOPERATION AND SUBROGATION** is deleted in its entirety and replaced with the following:

The **Insured Persons** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that, after a **Claim** has been made against them, an **Investigation** has been commenced against them or an **Inquiry** has been received by them, they shall not take any action which in any way increases Underwriters' exposure under this Policy. The failure of any of the

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 CHICAGO, IL 60601  
 TEL: 312.467.1100  
 FAX: 312.467.1101  
 WWW.WELLSLEGAL.COM

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**Insured Persons** or the **Company** to give Underwriters or their counsel the information, assistance and cooperation that they may reasonably request shall not impair the rights of any other natural person under this Policy.

The reporting of matters to, and subsequent communication with a **Regulatory Authority** by the **Company** or any of the **Insured Persons**, whether pursuant to law, regulation, negotiation under a deferred prosecution agreement or otherwise will not constitute a contravention of this provision by the **Company** or such **Insured Persons**.

In the event of any payment under this Policy, Underwriters shall be subrogated to the **Insured Persons'** rights of recovery therefor against any person or entity, including without limitation for indemnification by the **Company**, any **Outside Entity** or any underlying insurer, to the extent of such payment. The **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require including without limitation, an action against the **Company**, any **Outside Entity** or any underlying insurer for non-payment of indemnity due and owing to the **Insured Persons**.

Notwithstanding the foregoing, Underwriters agree to waive their rights of subrogation against any of the **Insured Persons** except where a final non-appealable adjudication in the underlying action adverse to the relevant **Insured Persons** establishes that the relevant **Insured Persons** have committed a deliberately fraudulent or deliberately criminal act or omission.

17) Clause **XI. UNDERLYING INSURANCE** is amended by the addition of the following:

If any underlying insurance as set forth in Item H. of the Declarations provides broader coverage for the **Insured Persons** than this Policy and is subject to a sub-limit, then this Policy shall provide coverage excess of such sub-limit, but only up to the amount of the sub-limit of the primary policy.

18) this Policy is amended by the addition of the following Clause:

**XIV. WORLDWIDE**

This Policy applies only to **Claims** first made, **Investigations** first commenced and **Inquiries** first reported during the **Policy Period** anywhere in the world as permitted by law.

All other terms and conditions of this Policy remain unchanged.

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Endorsement No. 3

**NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT**

Except as stated in the Special Cancellation Clause and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the Assured the earned premium shall be computed as follows:-

**SHORT RATE CANCELLATION TABLE**

A. For Insurances written for one year:-

Days Insurance in force	Per cent. of One year Premium	Days Insurance in force	Per cent. of One year Premium
1	5	154 - 156	53
2	6	157 - 160	54
3 - 4	7	161 - 164	55
5 - 6	8	165 - 167	56
7 - 8	9	168 - 171	57
9 - 10	10	172 - 175	58
11 - 12	11	176 - 178	59
13 - 14	12	179 - 182 (6 months)	60
15 - 16	13	183 - 187	61
17 - 18	14	188 - 191	62
19 - 20	15	192 - 196	63
21 - 22	16	197 - 200	64
23 - 25	17	201 - 205	65
26 - 29	18	206 - 209	66
30 - 32 (1 month)	19	210 - 214 (7 months)	67
33 - 36	20	215 - 218	68
37 - 40	21	219 - 223	69
41 - 43	22	224 - 228	70
44 - 47	23	229 - 232	71
48 - 51	24	233 - 237	72
52 - 54	25	238 - 241	73
55 - 58	26	242 - 246 (8 months)	74
59 - 62 (2 months)	27	247 - 250	75
63 - 65	28	251 - 255	76
66 - 69	29	256 - 260	77
70 - 73	30	261 - 264	78
74 - 76	31	265 - 269	79
77 - 80	32	270 - 273 (9 months)	80
81 - 83	33	274 - 278	81
84 - 87	34	279 - 282	82
88 - 91 (3 months)	35	283 - 287	83
92 - 94	36	288 - 291	84
95 - 98	37	292 - 296	85
99 - 102	38	297 - 301	86
103 - 105	39	302 - 305 (10 months)	87
106 - 109	40	306 - 310	88
110 - 113	41	311 - 314	89
114 - 116	42	315 - 319	90
117 - 120	43	320 - 323	91
121 - 124 (4 months)	44	324 - 328	92
125 - 127	45	329 - 332	93
128 - 131	46	333 - 337 (11 months)	94
132 - 135	47	338 - 342	95
136 - 138	48	343 - 346	96
139 - 142	49	347 - 351	97
143 - 146	50	352 - 355	98
147 - 149	51	356 - 360	99
150 - 153 (5 months)	52	361 - 365 (12 months)	100

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- B. For insurances written for more or less than one year:-
1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
  2. If insurance has been in force for more than 12 months:
    - a. Determine full annual premium as for an insurance written for a term of one year.
    - b. Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
    - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

N.M.A. 45 (amended)

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Endorsement No. 4

**SPECIAL CANCELLATION CLAUSE**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that notwithstanding anything to the contrary in this Policy including any endorsement or amendatory thereto, in the event:

1. the Underwriter ceases all underwriting operations; or
2. the Underwriter is the subject of an order or resolution for winding up or formally propose a scheme of arrangement, or is placed into rehabilitation or liquidation by any state department of insurance; or
- 3 the Underwriter has its authority or license to carry on insurance business withdrawn; or
- 4 Lloyd’s financial strength rating is issued below A- by A.M. Best Company or by Standard & Poor’s Rating Services,

the **Parent Company** may cancel this Policy by giving notice within thirty (30) days of such event and the return premium shall be calculated on a pro rata basis to the time on the risk. Any return of premium shall also be subject to a written full release of liability from the **Insureds**. In the event there are any notified, reserved or paid **Claims, Investigations, Inquiries, Losses** or circumstances, return premium shall be calculated on a short rate basis pursuant to the terms of the Policy.

All other terms and conditions of this Policy remain unchanged.

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Endorsement No. 5

In consideration of the premium charged for this policy it is hereby understood and agreed that Clause XII (Service of Suit) is deleted in its entirety and replaced with the following:

**SERVICE OF SUIT CLAUSE (CANADA)  
(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

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Form approved by Lloyd's Market Association

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Endorsement No: 6

**INTENTION FOR AIF TO BIND CLAUSE**

Whereas Lloyd’s Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd’s insurance and reinsurance coverage be provided in a manner that requires Lloyd’s Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd’s Underwriters’ attorney and chief agent in Canada (the “AIF”) to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd’s Underwriters’ coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the “Canadian Policy”), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

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Endorsement No: 7

**DELEGATED AUTHORITY ENDORSEMENT**

It is hereby understood and agreed that Clause **VIII. GENERAL CONDITIONS D.** Company Authorization Clause, is amended by the addition of the following:

Notwithstanding the foregoing, an **Insured Person** may, upon notice to Underwriters, designate an agent other than the **Parent Company** to represent them with respect to all or any of the matters listed above.

All other terms and conditions of this Policy remain unchanged.

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Endorsement No. 8

**LLOYD'S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd's, London and (b) Lloyd's Insurance Company S.A. the following shall apply:

**Shared Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable limits of this contract of Insurance.

2. Solely with respect to the participation of Lloyd's Insurance Company S.A. the following amendments shall apply:

**A. Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of Ontario, Canada and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in Canada.

Lloyd's Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney In Fact in Canada for Lloyd's Underwriters,  
1155, rue Metcalfe, Suite 2220,  
Montreal,  
Quebec, H3B 2V6.

who in this instance, has authority to accept service on its behalf.

Lloyd's Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

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01/01/2019

**B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Issued to: Just Energy Group Inc.

Tel: +32 (0)2 227 39 39  
E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)  
Telephone: 0800 023 4 567 (from inside the UK)  
Fax: +44 20 7964 1001  
Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045  
01/01/2019

**C. SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

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Endorsement No. **9**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London  
Lloyd's Insurance Company SA

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807/V20000025027

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Endorsement No. 11

**PREMIUM PAYMENT CLAUSE**

Notwithstanding any provision to the contrary within this contract or any endorsement hereto, in respect of non payment of premium only the following clause will apply.

The (Re)Insured undertakes that premium will be paid in full to (Re)Insurers within 60 days of inception of this contract (or, in respect of instalment premiums, when due).

If the premium due under this contract has not been so paid to (Re)Insurers by the 60<sup>th</sup> day from the inception of this contract (and, in respect of instalment premiums, by the date they are due) (Re)Insurers shall have the right to cancel this contract by notifying the (Re)Insured via the broker in writing. In the event of cancellation, premium is due to (Re)Insurers on a pro rata basis for the period that (Re)Insurers are on risk but the full contract premium shall be payable to (Re)Insurers in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this contract.

It is agreed that (Re)Insurers shall give not less than 15 days prior notice of cancellation to the (Re)Insured via the broker. If premium due is paid in full to (Re)Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the contract shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

30/09/08  
LSW3001

CONFIDENTIAL  
JROSLER@OSLER.COM  
Wellington  
Friday, June 10, 2022 11:10:27 AM



Issued to: Just Energy Group Inc.

Endorsement No. 12

**CORONAVIRUS ABSOLUTE EXCLUSION**

**Underwriters** shall not be liable to make any payment in connection with any **Claim** made against an **Insured Person** or in connection with any matter covered by an extension to this Policy based upon, arising out of, or in any way attributable to coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to or resulting from:

- (i) any fear or threat (whether actual or perceived) of; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of;

coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

All other terms conditions and exclusions shall remain unchanged.

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Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Issued to: Just Energy Group Inc.

Endorsement No. 13

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF SNYDER LETTERS**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of **Loss** arising from any **Claim** made against an **Insured Person** arising out of, based upon or attributable to the events scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any such Event; or (b) any **Claim** arising from any such Event; or (c) any **Wrongful Acts**, circumstances, acts or omissions relating to any such Event.

**SCHEDULE OF EVENTS:**

Letters from Robert Lloyd Snyder to the Board of Directors of the Company dated 23 December 2019, and to the Company dated 28 February 2020 and 17 March 2020 (as detailed under Schedule 13D/A notifications CUSIP No. 48213W101)

Notwithstanding the foregoing, this exclusion shall not apply to any other matters involving Mr Robert Lloyd Snyder or the Robert L. Snyder Trust provided that they are unrelated to the matters detailed in the Schedule of Events above.

All other terms and conditions of this Policy remain unchanged.

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Wellington  
D.ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Issued to: Just Energy Group Inc.

Endorsement No. 14

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF 2019 SECURITIES CLASS ACTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment in connection with that portion of any **Claim, Investigation or Inquiry** arising out of, based upon or attributable to:

1. any notices, events, investigations or actions scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any Event; or (b) any claim arising from any Event; or any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any Event; or
2. any such Event or any interrelated wrongful act, regardless of whether or not such claim, involved the same or different **Insured Persons**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

As alleged in the class action complaint filed against Just Energy Inc and others by Eli Gottein and others in the United States District Court, Southern District of New York on 31 July 2019.

All other terms and conditions of this Policy remain unchanged.

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Wellington  
DROSIANBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
www.paragonbrokers.com  
Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000768  
Date: 3rd April 2020

Page: 1 of 1

## Market Security:

### In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)

Signed Line %	Insurer
---------------	---------

100.00 %	Certain Lloyd's Underwriters as per the Schedule below
----------	--

Schedule of Underwriters at Lloyd's being:

Signed Line %	Syndicate No.	Pseudonym	Syndicate Full Name
---------------	---------------	-----------	---------------------

100.00 %	1221	HIG	Wellington Navigators
----------	------	-----	-----------------------

100.00 %			
----------	--	--	--

### In respect of EEA countries

Signed Line %	Insurer
---------------	---------

100.00 %	Lloyd's Insurance Company S.A. Reinsured by Lloyd's Syndicate HIG 1221
----------	---

### Please Note

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.

**THIS IS EXHIBIT GG REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



# MANAGEMENT LIABILITY SOLUTIONS

**CNA Canada**  
**Continental Casualty Company**  
Bankers Hall West,  
Suite 1130, 888 – 3rd Street SW  
Calgary, AB T2P 5C5

**Brock Mckechnie**  
**Senior Underwriter, Specialty**  
Telephone: 403-218-4877  
Facsimile: 403-508-9962  
E-mail: [brock.mckechnie@cna.com](mailto:brock.mckechnie@cna.com)

17 April 2020

Nolan Heuchert  
Wylie-Crump Limited  
1620 W. 8th Avenue, Suite 301  
Vancouver, BC V6J 1V4

Named Insured: Just Energy Group Inc.  
6345 Dixie Road Suite 400  
Mississauga, ON L5T 2E6

## BINDER

Policy Number: MEX 665412022

Policy Term :

Effective Date:

April 1, 2020

Expiry Date:

April 1, 2021

Thank you for binding coverage with CNA under our Excess Insurance Policy. Please review the details of this binder carefully and advise us immediately if any changes are required.

This Binder shall terminate automatically upon the expiration of 30 Days from the date of its issuance, or upon the issuance of the policy, whichever occurs first. This Binder is subject to the terms and conditions contained herein, and a short rate premium charge will be made for this Binder unless the Policy is issued by the Company and accepted by the entity referred to above.

The foregoing Binder for coverage is subject to modification or withdrawal by the Company if, before completion, review and acceptance of all subjectivities, or before the policy inception date, any new, corrected or updated information becomes known which relates to any proposed Insured's claims history or risk exposure or which could otherwise change the underwriting evaluation of any proposed Insured and the Company, in its sole discretion, determines that the terms of this Binder are no longer appropriate. Any insurance contracts and premium agreements subsequently issued shall conform to this binder or amendments thereto.

This binder does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from offering or providing insurance. To the extent any such prohibitions apply, this binder is void ab initio.

Once coverage becomes effective, cancellation for non-payment will be on a pro-rata basis.

Please call us if you have any questions.

Regards,

Brock Mckechnie

Senior Underwriter

Management Liability & Financial Institutions

CONFIDENTIAL  
DR OSINBERNARDI@OSI-LEGAL.COM  
Friday, April 17, 2020 11:20 AM

## MANAGEMENT LIABILITY SOLUTIONS

### COMMON POLICY

#### Policy Coverage Parts:

EX-001-012015 EXCESS LIABILITY DECLARATIONS

EX-002-012015 EXCESS LIABILITY POLICY

#### Standard Endorsements:

COVERAGE TERRITORY LIMITATION ENDORSEMENT

DECLARATION OF EMERGENCY ENDORSEMENT

UNITED STATES TERRORISM RISK INSURANCE ACT ENDORSEMENT

#### Additional Endorsements:

- Directors and Officers Excess and Difference-In-Conditions Endorsement
- Follow Form on Specific Coverage  
Coverages:  
Coronavirus Absolute Exclusion as noted in underlying primary and lead DIC carriers
- Follow Form on Specific Coverage  
Coverages:  
Specific Matters Exclusion in Respect to Snyder Letters
- Follow Form on Specific Coverage  
Coverages:  
Specific Matters Exclusion in Respect of 2019 securities class action
- Sanctions Endorsement
- Statutory Conditions Endorsement
- US Currency Clause

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# MANAGEMENT LIABILITY SOLUTIONS

**DIRECTORS AND OFFICERS LIABILITY COVERAGE**

	<b>ATTACHMENT POINT</b>	<b>LIMIT OF LIABILITY</b> (inclusive of def. expenses)	<b>ANNUAL PREMIUM</b>
CNA Canada	\$32,500,000	\$2,500,000 USD	\$102,500 USD
<b>AGGREGATE LIMIT OF LIABILITY:</b>		<b>\$2,500,000 USD</b>	

**Underlying Program Information:**

<b>PROGRAM</b>	<b>ATTACHMENT</b>	<b>LIMIT</b>
Certain Underwriters at Lloyd's	Primary	\$5,000,000
Certain Underwriters at Lloyd's	\$5,000,000	\$5,000,000
Certain Underwriters at Lloyd's	\$10,000,000	\$5,000,000
Certain Underwriters at Lloyd's	\$15,000,000	\$7,500,000
U.S. Specialty Insurance Company/	\$22,500,000	\$5,000,000
HCC Syndicate 4141 at Lloyd's		
Certain Underwriters at Lloyd's –	\$27,500,000	\$5,000,000
Lead DIC Navigators		
<b>Total underlying:</b>		----- \$32,500,000

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**Extended Reporting Period**

<b><u>Period:</u></b> 365 Days	<b><u>Premium</u></b> As per primary
<b><u>PPL Date:</u></b>	May 22, 2011





# MANAGEMENT LIABILITY SOLUTIONS

**Subjectivities:**

Receipt, review and acceptance of

- Underlying policies - prior to issuance

**SUMMARY**

**Annual Policy Premium:**

\$102,500

**Currency**

USD

**Commission**

15%

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DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

**THIS IS EXHIBIT HH REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2000774

Date: 21 April 2020

**Insured: Just Energy Group, Inc.**

Further to your instructions we have effected the attached amendment to the insurance contract referenced above.

Please examine this amendment carefully and notify us immediately if it is incorrect, or does not meet your requirements.

**Duty to Disclose:**

This amendment to your insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

If an additional premium is payable then payment of such premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the additional premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the additional premium or to meet a payment warranty may enable the insurer(s) to avoid this amendment to the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the original contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Should you have any questions please feel free to contact us.

Yours sincerely,

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### AMENDMENT TO CONTRACT OF INSURANCE

**Unique Market Reference: B0146ERINT2000774**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains an amendment to the terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us, we would be happy to hear from you.

CONFIDENTIAL  
DRSENLLAT@OSLER.COM  
Wellington  
Friday, June 10, 2022, 11:10:27 AM



## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**RISK DETAILS:**

**UNIQUE MARKET REFERENCE:**

B0146ERINT2000774

**TYPE:**

EXCESS CLAIMS MADE A-SIDE AND DIRECTORS AND OFFICERS LIABILITY INSURANCE.

**NAMED INSURED:**

**JUST ENERGY GROUP INC.**

**PRINCIPAL ADDRESS:**

6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada

**POLICY PERIOD:**

From: 1 April 2020  
To: 1 April 2021  
Both dates at 12:01 a.m. Local Time at the Principal Address stated above.

**INTEREST:**

Excess A-Side and Directors and Officers Liability, as more fully defined in the followed policy.

**LIMIT OF LIABILITY:**

**USD 2,500,000**

Each claim, including costs and expenses incurred in the defense or settlement of such claim.

**USD 2,500,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims.

In Excess of Underlying Limits of:

**USD 35,000,000**

in the Aggregate for the Policy Period.

**TERRITORIAL SCOPE:**

Worldwide, as per underlying Policy wording

**CONDITIONS:**

1. Policy wording: Excess Wording agreed as attached
2. Notification pursuant to Clause VI. shall be given to: Beazley Claims Services, 30 Batterson Park Road, Farmington, Connecticut 06032, United States of America or [claims@beazley.com](mailto:claims@beazley.com) (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))
3. LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyds Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Canada H3B 2V6
4. LMA5180 Intention for AIF to Bind Clause
5. Special Cancellation Clause, wording agreed as attached.
6. NMA45 (amended) New Short Rate Cancellation Table Endorsement, amended to allow pro-rata cancellation by the insured in the event that the Special Cancellation Clause is invoked.
7. German Insurance Premium Tax Payment Clause, wording agreed as attached

CONFIDENTIAL  
 Wellington  
 DOSEBLAT@DSEBLAT.COM  
 Friday, June 10, 2022 11:10:27 AM

## PARAGON INTERNATIONAL INSURANCE BROKERS LTD.

POLICY NUMBER: B0146ERINT2000774

PAGE 2 OF 6

CONDITIONS:  
(CONTINUED)

8. Lloyd's Insurance Company S.A. Amendatory Endorsement, wording agreed as attached
9. Coronavirus Absolute Exclusion
10. Specified Matters Exclusion in Respect of Snyder Letters
11. Specified Matters Exclusion in Respect of in respect of 2019 securities class action
12. Excess Side A Difference in Conditions Endorsement

NOTICES:

None

SUBJECTIVITIES:

None

CHOICE OF LAW  
AND JURISDICTION  
(DISPUTES CLAUSE):

Choice of Law: Ontario, Canada  
Jurisdiction: As per Service of Suit Clause

PREMIUM:**USD 100,000.00**

(100%) for the Policy Period plus taxes as applicable.  
Premium split as follows

USD 322.22

in respect of the EEA

USD 99,677.78

in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM  
PAYMENT TERMS:

45 day Premium Payment Warranty, wording agreed as attached.

TAXES PAYABLE  
BY ASSURED AND  
ADMINISTERED BY  
INSURERS:

See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

RECORDING,  
TRANSMITTING &  
STORING  
INFORMATION:

Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

INSURER  
CONTRACT  
DOCUMENTATION:

This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document.

Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

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 DROSENBLAT@OSLER.COM  
 Wellington  
 Friday, June 10, 2022 11:11:27 AM

## PARAGON INTERNATIONAL INSURANCE BROKERS LTD.

POLICY NUMBER: B0146ERINT2000774

PAGE 3 OF 6

**INFORMATION**

SIC Code: 4924  
 Market Cap: \$137.317m (as of February 25<sup>th</sup>, 2020)

**Followed Policy:**

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000 in the aggregate  
 Retention: USD Nil / USD2,500,000 / USD 2,500,000

**Underlying Insurance:**

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000453  
 Limit of Liability: USD5,000,000 excess of USD5,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000454  
 Limit of Liability: USD5,000,000 excess of USD10,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000455  
 Limit of Liability: USD7,500,000 excess of USD15,000,000

Insurer: Tokio Marine HCC – D&O Group / HCC Underwriting Agency  
 Policy No.: 34-MGU-20-A49117 / 20G19646000  
 Limit of Liability: USD5,000,000 excess of USD22,500,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000768  
 Limit of Liability: USD5,000,000 excess of USD27,500,000

Insurer: CNA Canada Continental Casualty Company  
 Policy No.: MEX 665412022  
 Limit of Liability: USD2,500,000 excess of USD32,500,000

German Address: Kapstadtring 10, 22297 Hamburg, Germany



Schedule of Regulatory Risk Locations and Applicable Taxes:

**Taxes Payable by Insured and Administered by Insurers:**

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3222%	19.000%	322.22	61.22
<b>Total EEA</b>		<b>0.3222%</b>		<b>322.22</b>	<b>61.22</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	140,648,270	6.8723%	0.000%	6,872.31	0.00
Canada (BC)	999,320	0.0488%	0.000%	48.83	0.00
Canada (Manitoba)	2,329,740	0.1138%	0.000%	113.83	0.00
Canada (Ontario)	142,773,330	6.9761%	0.000%	6,976.14	0.00
Canada (Quebec)	4,051,460	0.1980%	0.000%	197.96	0.00
Canada (Sask)	10,197,880	0.4983%	0.000%	498.29	0.00
United States	1,739,000,000	84.9704%	0.000%	84,970.42	0.00
<b>Total Non-EEA</b>		<b>99.6778%</b>		<b>99,677.78</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>99,677.78</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>100,000.00</b>	<b>61.22</b>

**Taxes Payable by Insured and Administered by Insured or their representatives:**

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$113.83	\$9.11
Canada (Ontario)	Retail Sales Tax	8.000%	\$6,976.14	\$558.09
Canada (Quebec)	Retail Sales Tax	9.000%	\$197.96	\$17.82
Canada (Sask)	Retail Sales Tax	6.000%	\$498.29	\$29.90

**SECURITY DETAILS****INSURERS  
LIABILITY:**

In respect of the EEA:

**SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

In respect of the Rest of the World:

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES: Percentage of Whole

SIGNING PROVISIONS: In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.

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 Paragon  
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## DECLARATIONS

## Excess Insurance Policy

SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THE FOLLOWED POLICY, THIS POLICY MAY ONLY APPLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD PROVIDED THAT SUCH CLAIM IS REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE POLICY PROVISIONS. AMOUNTS INCURRED AS COSTS AND EXPENSES INCURRED IN THE DEFENSE OR SETTLEMENT OF CLAIMS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY AMOUNTS AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

### Policy Number: B0146ERINT2000774

- Item 1. **Named Insured:** **JUST ENERGY GROUP INC.**
- Principal Address: 6345 Dixie Road, Suite 200  
Mississauga,  
Ontario  
L5T 2E6  
Canada
- Item 2. **Policy Period:**
- From: 1 April 2020  
To: 1 April 2021
- Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.
- Item 3. **Limit of Liability:**
- USD 2,500,000** Each claim, including costs and expenses incurred in the defense or settlement of such claim.
- USD 2,500,000** Aggregate for the **Policy Period**, including costs and expenses incurred in the defense or settlement of all claims.
- In Excess of Underlying Limits of:
- USD 35,000,000** in the Aggregate for the **Policy Period**
- Item 4. **Premium: USD 100,000.00** (100%) for the **Policy Period** plus taxes as applicable. Premium split as follows
- USD 322.22 in respect of the EEA
- USD 99,677.78 in respect of the Rest of the World
- For the purposes of the split of premium above the UK is treated as a non-EEA country
- Item 5. **Notification pursuant to Clause VI. shall be given to:**
- Beazley Claims Services, 30 Batterson Park Road, Farmington, Connecticut 06032, United States of America or [claims@beazley.com](mailto:claims@beazley.com) (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))

- Item 6. **Followed Policy:**  
 Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000  
 Retention: USDNil / USD2,500,000 / USD2,500,000
- Item 7. **Underlying Insurance:**
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000453  
 Limit of Liability: USD5,000,000 excess of USD5,000,000
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000454  
 Limit of Liability: USD5,000,000 excess of USD10,000,000
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000455  
 Limit of Liability: USD7,500,000 excess of USD15,000,000
- Insurer: Tokio Marine HCC – D&O Group / HCC Underwriting Agency  
 Policy No.: 34-MGU-20-A49117 / 20G196460000  
 Limit of Liability: USD5,000,000 excess of USD22,500,000
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000768  
 Limit of Liability: USD5,000,000 excess of USD27,500,000
- Insurer: CNA Canada Continental Casualty Company  
 Policy No.: MEX 665412022  
 Limit of Liability: USD2,500,000 excess of USD32,500,000
- Item 8. Endorsements Effective at Inception:  
 As attached hereto

CONFIDENTIAL  
 WASHINGTON  
 DROPPING NEAR OSLESLER.COM  
 Friday, June 10, 2022 11:10:27 AM

# Excess Insurance Policy

In consideration of the payment of the premium, in reliance upon all information and representations provided or made available by the **Insureds** to the Underwriters in connection with the underwriting of this Policy, the Underwriters and **Named Insured**, on behalf of all **Insureds**, agree as follows:

## I. INSURING CLAUSE

This Policy shall provide coverage in accordance with all of the terms, conditions and limitations (including, but not limited to, the exclusions and notice requirements) of the **Followed Policy** except for the Limit of Liability, the premium or as otherwise set forth herein. Coverage hereunder shall attach only after all of the **Underlying Limits** have been exhausted through payments by, or on behalf of, or in place of the insurers of the **Underlying Insurance** of amounts under the **Underlying Insurance**. The risk of uncollectibility of any **Underlying Insurance** (in whole or in part), whether because of financial impairment or insolvency of an insurer of the **Underlying Insurance** or for any other reason, is expressly retained by the **Insureds** and is not insured by or assumed by the Underwriters.

## II. DEFINITIONS

- A. **Followed Policy** means the insurance policy identified in Item 6. of the Declarations.
- B. **Insureds** mean all persons and entities covered under the **Followed Policy**.
- C. **Named Insured** means all persons and entities set forth in Item 1. of the Declarations.
- D. **Policy Period** means the period set forth in Item 2. of the Declarations.
- E. **Underlying Insurance** means the **Followed Policy** and all other underlying insurance policies, if any, identified in Item 7. of the Declarations.
- F. **Underlying Limits** mean an amount equal to the aggregate of all limits of liability of the **Underlying Insurance**.

## III. LIMIT OF LIABILITY

The amount set forth in Item 3. of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters for all coverage under this Policy, regardless of the number of claims made against the **Insureds** or the time of payment and regardless of whether or not an extended reporting period applies.

## IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING LIMITS

If, subsequent to the inception date of this Policy, the terms, conditions or limitations of an **Underlying Insurance** are modified, the **Insureds** must notify the Underwriters in writing, as soon as practicable, of such modification.

If any changes to the **Followed Policy**: (a) expand coverage, (b) change the policyholder name or address, or (c) modify premium, this Policy shall not follow those changes unless the Underwriters agree in writing to do so. If any coverage under any **Underlying Insurance** is subject to a sub-limit, then this Policy provides no coverage excess of such sub-limit, but the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount. Furthermore, if any amount covered under any policy issued to the **Insureds** outside of the United States of America (a "Foreign Policy") and the **Underlying Insurance** expressly provides for the reduction of the **Underlying Limit** by reason of payment of such amount under the applicable Foreign Policy, then the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount.

## V. UNDERWRITERS RIGHTS

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim.

## VI. NOTICES

Where notice is permitted or required by the **Followed Policy**, the **Insureds** have the same rights and obligations to notify the Underwriters under this Policy, except that such notice shall be given to the Underwriters at the address set forth in Item 5. of the Declarations. Notice to any other insurer shall not constitute notice to the Underwriters unless also given to the Underwriters as provided above.

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **1**

**SERVICE OF SUIT CLAUSE (CANADA)**  
**(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

LMA5028  
10/08/06

Form approved by Lloyd's Market Association

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **2**

**INTENTION FOR AIF TO BIND CLAUSE**

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

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CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM



Policy Number: **B0146ERINT2000774**  
 Named Insured: **JUST ENERGY GROUP INC.**  
 Endorsement Number: **3**

**EXCESS SIDE A DIFFERENCE IN CONDITIONS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**EXCESS INSURANCE POLICY**

In consideration of the premiums charged for the Policy, it is hereby understood and agreed that:

1. The term "**Followed Policy**" when used in this Policy, is amended to read "**Base DIC Policy**" which means the following Excess DIC Policy issued to the **Insureds**:

<u>Insurer</u>	<u>Policy No.</u>	<u>Limit/Attachment</u>
Certain Underwriters at Lloyd's, London	B0146ERINT2000768	USD 5,000,000 Excess of USD 27,500,000

2. The term "**Underlying Insurance**" when used in this Policy, is amended to read "**Underlying DIC Insurance**" which means the **Base DIC Policy** and the following Excess DIC Policies specifically excess of the **Base DIC Policy**, if any:

<u>Insurer</u>	<u>Policy No.</u>	<u>Limit/Attachment</u>
CNA Canada Continental Casualty Company	MEX 665412022	USD 2,500,000 Excess of USD 32,500,000

3. The term "**Underlying Limits**" when used in this Policy, is amended to read "**Underlying DIC Limits**" which means the amount equal to the aggregate of all limits of liability as set forth in paragraphs 1. and 2. above for all **Underlying DIC Insurance**.

4. Items 6. and 7. of the Declarations are deleted in their entirety.

5. Notwithstanding anything in this Policy to the contrary:

A. if and to the extent the **Base DIC Policy** or any other **Underlying DIC Insurance** drops down pursuant to the difference-in-conditions ("DIC") provision in the **Base DIC Policy**, this Policy shall also drop down excess of such **Underlying DIC Insurance**; and

B. if and to the extent within sixty (60) days after any covered amount is due and payable an insurer of any **Underlying DIC Insurance**:

1. refuses to pay such amount otherwise covered hereunder;
2. is financially unable to pay such amount by reason of insolvency, bankruptcy or liquidation; or
3. is prohibited by law or court order from paying such amount,

this Policy shall drop down with respect to such amount as provided in the DIC provision in the **Base DIC Policy**, subject to this Policy remaining excess of any **Underlying DIC Insurance** which pays such amounts.

The Underwriters shall also recognize exhaustion of the **Underlying DIC Limit** as a result of any payment of covered amounts in the same manner as the **Base DIC Policy**.

6. In the event of payment under this endorsement, the Underwriters shall be subrogated to the **Insureds'** rights of recovery against any person or entity, including without limitation for indemnification by the **Named Insured** or any insurer under any **Underlying DIC Insurance** to the extent of such payment. The **Insureds** shall execute all papers required

Policy Number: **B0146ERINT2000774**

Named Insured: **JUST ENERGY GROUP INC.**

and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable the Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which the Underwriters may reasonably require, including without limitation, an action against the **Named Insured** or any insurer under any **Underlying DIC Insurance** for non-payment of indemnity due and owing to the **Insureds**.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **4**

#### **SPECIAL CANCELLATION CLAUSE**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that notwithstanding anything to the contrary in this Policy including any endorsement or amendatory thereto, in the event:

1. the Underwriter ceases all underwriting operations; or
2. the Underwriter is the subject of an order or resolution for winding up or formally propose a scheme of arrangement, or is placed into rehabilitation or liquidation by any state department of insurance; or
3. the Underwriter has its authority or license to carry on insurance business withdrawn; or
4. Lloyd's financial strength rating is issued below A- by A.M. Best Company or by Standard & Poor's Rating Services,

the **Named Insured** may cancel this Policy by giving notice within thirty (30) days of such event and the return premium shall be calculated on a pro rata basis to the time on the risk. Any return of premium shall also be subject to a written full release of liability from the **Insureds**. In the event there are any notified, reserved or paid claims, investigations, inquiries, losses or circumstances, return premium shall be calculated on a short rate basis pursuant to the terms of the Policy.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**

Named Insured: **JUST ENERGY GROUP INC.**

Endorsement Number: **5**

**NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT**

Except as stated in the Special Cancellation Clause and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the **Insureds** the earned premium shall be computed as follows:-

**SHORT RATE CANCELLATION TABLE**

A. For Insurances written for one year:-

Days Insurance in force	Per cent. of One year Premium	Days Insurance in force	Per cent. of One year Premium
1	5	154 - 156	53
2	6	157 - 160	54
3 - 4	7	161 - 164	55
5 - 6	8	165 - 167	56
7 - 8	9	168 - 171	57
9 - 10	10	172 - 175	58
11 - 12	11	176 - 178	59
13 - 14	12	179 - 182 (6 months)	60
15 - 16	13	183 - 187	61
17 - 18	14	188 - 191	62
19 - 20	15	192 - 196	63
21 - 22	16	197 - 200	64
23 - 25	17	201 - 205	65
26 - 29	18	206 - 209	66
30 - 32 (1 month)	19	210 - 214 (7 months)	67
33 - 36	20	215 - 218	68
37 - 40	21	219 - 223	69
41 - 43	22	224 - 228	70
44 - 47	23	229 - 232	71
48 - 51	24	233 - 237	72
52 - 54	25	238 - 241	73
55 - 58	26	242 - 246 (8 months)	74
59 - 62 (2 months)	27	247 - 250	75
63 - 65	28	251 - 255	76
66 - 69	29	256 - 260	77
70 - 73	30	261 - 264	78
74 - 76	31	265 - 269	79
77 - 80	32	270 - 273 (9 months)	80
81 - 83	33	274 - 278	81
84 - 87	34	279 - 282	82
88 - 91 (3 months)	35	283 - 287	83
92 - 94	36	288 - 291	84
95 - 98	37	292 - 296	85
99 - 102	38	297 - 301	86
103 - 105	39	302 - 305 (10 months)	87
106 - 109	40	306 - 310	88
110 - 113	41	311 - 314	89
114 - 116	42	315 - 319	90
117 - 120	43	320 - 323	91
121 - 124 (4 months)	44	324 - 328	92
125 - 127	45	329 - 332	93
128 - 131	46	333 - 337 (11 months)	94
132 - 135	47	338 - 342	95
136 - 138	48	343 - 346	96
139 - 142	49	347 - 351	97
143 - 146	50	352 - 355	98

WELLINGTON CENTRAL  
 100 COLLEGE STREET  
 WELLINGTON, NEW ZEALAND  
 Friday, June 19, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**

Named Insured: **JUST ENERGY GROUP INC.**

147 - 149	.....51	356 - 360	.....99
150 - 153	(5 months).....52	361 - 365	(12 months).....100

- B. For insurances written for more or less than one year:-
1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
  2. If insurance has been in force for more than 12 months:
    - a. Determine full annual premium as for an insurance written for a term of one year.
    - b. Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
    - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

N.M.A. 45 (amended)

CONFIDENTIAL  
 Wellington  
 DROSENBLAT@OSLER.COM  
 Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **6**

**PREMIUM PAYMENT WARRANTY**

IT IS HEREBY WARRANTED that all premium due to Underwriters under this policy is paid within 45 days from inception.

Non-receipt by Underwriters of such premium, by midnight (local standard time) on the premium due date, shall render this policy void with effect from Inception.

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CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **7**

**CHOICE OF LAW CLAUSE**

It is hereby understood and agreed by both the **Insured** and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of Ontario, Canada.

All other terms and conditions of this policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
 Named Insured: **JUST ENERGY GROUP INC.**  
 Endorsement Number: **8**

### **INSURERS LIABILITY CLAUSE**

#### **(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

#### **Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333



Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **9**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London	807/V90807004451
Lloyd's Insurance Company SA	807/V20000025027

All other terms and conditions of this policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
 Named Insured: **JUST ENERGY GROUP INC.**  
 Endorsement Number: **10**

**LLOYD'S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd's, London and (b) Lloyd's Insurance Company S.A. the following shall apply:

**Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable limits of this contract of Insurance.

2. Solely with respect to the participation of Lloyd's Insurance Company S.A. the following amendments shall apply:

A. **Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of United States of America and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in United States of America. No State law is specified at the request of the Insured.

Lloyd's Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney In Fact in Canada for Lloyd's Underwriters,  
 1155, rue Metcalfe, Suite 2220,  
 Montreal,  
 Quebec, H3B 2V6.

who in this instance, has authority to accept service on its behalf.

Lloyd's Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

This Service of Suit and Jurisdiction Clause will not be read to conflict with or override the obligations of the parties to resolve their disputes as provided for in any other clause in this Policy and, to the extent required, shall apply to give effect to that process.

LBS0006A  
 01/01/2019

Policy Number: **B0146ERINT2000774**

Named Insured: **JUST ENERGY GROUP INC.**

**B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 39

E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)

Telephone: 0800 023 4 567 (from inside the UK)

Fax: +44 20 7964 1001

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045a  
01/01/2019

CONFIDENTIAL  
Wellington  
DRD@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**

Named Insured: **JUST ENERGY GROUP INC.**

C. **SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **11**

### **CORONAVIRUS ABSOLUTE EXCLUSION**

**Underwriters** shall not be liable to make any payment in connection with any claim made against an **Insured** or in connection with any matter covered by an extension to this Policy based upon, arising out of, or in any way attributable to coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to or resulting from:

- (i) any fear or threat (whether actual or perceived) of; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of;

coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

All other terms conditions and exclusions shall remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **12**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF SNYDER LETTERS**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of loss arising from any claim made against an **Insured** arising out of, based upon or attributable to the events scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any such Event; or (b) any claim arising from any such Event; or (c) any wrongful act, circumstances, acts or omissions relating to any such Event.

**SCHEDULE OF EVENTS:**

Letters from Robert Lloyd Snyder to the Board of Directors of the Company dated 23 December 2019, and to the Company dated 28 February 2020 and 17 March 2020 (as detailed under Schedule 13D/A notifications CUSIP No. 48213W101)

Notwithstanding the foregoing, this exclusion shall not apply to any other matters involving Mr Robert Lloyd Snyder or the Robert L. Snyder Trust provided that they are unrelated to the matters detailed in the Schedule of Events above.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DR@SENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000774**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **13**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF 2019 SECURITIES CLASS ACTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of loss arising from any claim made against an **Insured** arising out of, based upon or attributable to:

1. any notices, events, investigations or actions scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any Event; or (b) any claim arising from any Event; or any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any Event; or
2. any such Event or any interrelated wrongful act, regardless of whether or not such claim, involved the same or different **Insureds**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

As alleged in the class action complaint filed against Just Energy Inc and others by Eli Gottein and others in the United States District Court, Southern District of New York on 31 July 2019.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
www.paragonbrokers.com  
Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000774  
Date: 21 April 2020

Page: 1 of 1

## Market Security:

### In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)

Signed Line %                      Insurer

100.00 %                      Certain Lloyd's Underwriters as per the Schedule below

Schedule of Underwriters at Lloyd's being:

Signed Line %              Syndicate No.      Pseudonym              Syndicate Full Name

18.00 %              0623              AFB              Beazley

82.00%              2623              AFB              Beazley

100.00 %

### In respect of EEA countries

Signed Line %                      Insurer

100.00 %                      Lloyd's Insurance Company S.A.  
Reinsured by Lloyd's Syndicate AFB 623/2623

### Please Note

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.



**THIS IS EXHIBIT II REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)



**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2000775

Date: 21 April 2020

**Insured: Just Energy Group, Inc.**

Further to your instructions we have effected the attached amendment to the insurance contract referenced above.

Please examine this amendment carefully and notify us immediately if it is incorrect, or does not meet your requirements.

**Duty to Disclose:**

This amendment to your insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

If an additional premium is payable then payment of such premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the additional premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the additional premium or to meet a payment warranty may enable the insurer(s) to avoid this amendment to the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the original contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Should you have any questions please feel free to contact us.

Yours sincerely,

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### AMENDMENT TO CONTRACT OF INSURANCE

**Unique Market Reference: B0146ERINT2000775**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains an amendment to the terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us, we would be happy to hear from you.

CONFIDENTIAL  
DR. SENJIT@OSLER.COM  
Weyington  
Friday, June 10, 2022, 11:10:27 AM



## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**RISK DETAILS:****UNIQUE MARKET REFERENCE:**

B0146ERINT2000775

**TYPE:**

EXCESS CLAIMS MADE A-SIDE DIRECTORS AND OFFICERS LIABILITY INSURANCE.

**NAMED INSURED:****JUST ENERGY GROUP INC.****PRINCIPAL ADDRESS:**6345 Dixie Road, Suite 200  
Mississauga  
Ontario  
L5T 2E6  
Canada**POLICY PERIOD:**From: 1 April 2020  
To: 1 April 2021

Both dates at 12:01 a.m. Local Time at the Principal Address stated above.

**INTEREST:**

Excess A-Side Directors and Officers Liability, as more fully defined in the followed policy.

**LIMIT OF LIABILITY:****USD 1,000,000**

Each claim, including costs and expenses incurred in the defense or settlement of such claim.

**USD 1,000,000**

Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims.

In Excess of Underlying Limits of:

**USD 37,500,000**

in the Aggregate for the Policy Period.

**TERRITORIAL SCOPE:**

Worldwide, as per underlying Policy wording

**CONDITIONS:**

1. Policy wording: Excess Wording agreed as attached
2. Notification pursuant to Clause VI. shall be given to: Claims Department, XL House, 70 Gracechurch Street, London EC3V 0XL United Kingdom (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))
3. LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyds Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Canada H3B 2V6
4. LMA5180 Intention for AIF to Bind Clause
5. Special Cancellation Clause, wording agreed as attached.
6. NMA45 (amended) New Short Rate Cancellation Table Endorsement, amended to allow pro-rata cancellation by the insured in the event that the Special Cancellation Clause is invoked.
7. German Insurance Premium Tax Payment Clause, wording agreed as attached

CONDITIONS:  
(CONTINUED)

8. Lloyd's Insurance Company S.A. Amendatory Endorsement, wording agreed as attached
9. Coronavirus Absolute Exclusion
10. Specified Matters Exclusion in Respect of Snyder Letters
11. Specified Matters Exclusion in Respect of in respect of 2019 securities class action

NOTICES:

None

SUBJECTIVITIES:

None

CHOICE OF LAW AND JURISDICTION (DISPUTES CLAUSE):

Choice of Law: Ontario, Canada  
Jurisdiction: As per Service of Suit Clause

PREMIUM:

**USD 200,000.00** (100%) for the Policy Period plus taxes as applicable.  
Premium split as follows

USD 644.44 in respect of the EEA

USD 199,355.56 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM PAYMENT TERMS:

LSW3001 - 60 day Premium Payment Clause, wording agreed as attached.

TAXES PAYABLE BY ASSURED AND ADMINISTERED BY INSURERS:

See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

RECORDING, TRANSMITTING & STORING INFORMATION:

Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

INSURER CONTRACT DOCUMENTATION:

This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document.

Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

CONFIDENTIAL  
 DROSENBERG@OSLER.COM  
 Wellington  
 Friday, June 10, 2022 11:10:27 AM

## PARAGON INTERNATIONAL INSURANCE BROKERS LTD.

POLICY NUMBER: B0146ERINT2000775

PAGE 3 OF 6

**INFORMATION**

SIC Code: 4924  
 Market Cap: \$137.317m (as of February 25<sup>th</sup>, 2020)

**Followed Policy:**

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000 in the aggregate  
 Retention: USD Nil / USD2,500,000 / USD 2,500,000

**Underlying Insurance:**

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000453  
 Limit of Liability: USD5,000,000 excess of USD5,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000454  
 Limit of Liability: USD5,000,000 excess of USD10,000,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000455  
 Limit of Liability: USD7,500,000 excess of USD15,000,000

Insurer: Tokio Marine HCC – D&O Group / HCC Underwriting Agency  
 Policy No.: 34-MGU-20-A49117 / 20G196460000  
 Limit of Liability: USD5,000,000 excess of USD22,500,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000768  
 Limit of Liability: USD5,000,000 excess of USD27,500,000

Insurer: CNA Canada Continental Casualty Company  
 Policy No.: MEX 665412022  
 Limit of Liability: USD2,500,000 excess of USD32,500,000

Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000774  
 Limit of Liability: USD2,500,000 excess of USD35,000,000

German Address: Kapstadtring 10, 22297 Hamburg, Germany

Schedule of Regulatory Risk Locations and Applicable Taxes:

**Taxes Payable by Insured and Administered by Insurers:**

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3222%	19.000%	644.44	122.44
<b>Total EEA</b>		<b>0.3222%</b>		<b>644.44</b>	<b>122.44</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	140,648,270	6.8723%	0.000%	13,744.62	0.00
Canada (BC)	999,320	0.0488%	0.000%	97.66	0.00
Canada (Manitoba)	2,329,740	0.1138%	0.000%	227.67	0.00
Canada (Ontario)	142,773,330	6.9761%	0.000%	13,952.28	0.00
Canada (Quebec)	4,051,460	0.1980%	0.000%	395.92	0.00
Canada (Sask)	10,197,880	0.4983%	0.000%	996.57	0.00
United States	1,739,000,000	84.9704%	0.000%	169,940.85	0.00
<b>Total Non-EEA</b>		<b>99.6778%</b>		<b>199,355.56</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>199,355.56</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>200,000.00</b>	<b>122.44</b>

**Taxes Payable by Insured and Administered by Insured or their representatives:**

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$227.67	\$18.21
Canada (Ontario)	Retail Sales Tax	8.000%	\$13,952.28	\$1,116.18
Canada (Quebec)	Retail Sales Tax	9.000%	\$395.92	\$35.63
Canada (Sask)	Retail Sales Tax	6.000%	\$996.57	\$59.79



**SECURITY DETAILS****INSURERS****LIABILITY:**

In respect of the EEA:

**SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

In respect of the Rest of the World:

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES: Percentage of Whole

SIGNING PROVISIONS: In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.

## DECLARATIONS

## Excess Insurance Policy

SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THE FOLLOWED POLICY, THIS POLICY MAY ONLY APPLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD PROVIDED THAT SUCH CLAIM IS REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE POLICY PROVISIONS. AMOUNTS INCURRED AS COSTS AND EXPENSES INCURRED IN THE DEFENSE OR SETTLEMENT OF CLAIMS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY AMOUNTS AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

### Policy Number: B0146ERINT2000775

- Item 1. **Named Insured:** **JUST ENERGY GROUP INC. AND THE INSURED THEREOF**
- Principal Address: 6345 Dixie Road, Suite 200  
Mississauga,  
Ontario  
L5T 2E6  
Canada
- Item 2. **Policy Period:**
- From: 1 April 2020  
To: 1 April 2021
- Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.
- Item 3. **Limit of Liability:**
- USD 1,000,000** Each claim, including costs and expenses incurred in the defense or settlement of such claim.
- USD 1,000,000** Aggregate for the **Policy Period**, including costs and expenses incurred in the defense or settlement of all claims.
- In Excess of Underlying Limits of:
- USD 37,500,000** in the Aggregate for the **Policy Period**
- Item 4. **Premium: USD 200,000.00** (100%) for the **Policy Period** plus taxes as applicable. Premium split as follows
- USD 644.44 in respect of the EEA
- USD 199,355.56 in respect of the Rest of the World
- For the purposes of the split of premium above the UK is treated as a non-EEA country
- Item 5. **Notification pursuant to Clause VI. shall be given to:**
- Claims Department, XL House, 70 Gracechurch Street, London EC3V 0XL, United Kingdom (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))

CONFIDENTIAL  
 Wellingtyn  
 DROSENBLAT@CSLER.COM  
 Friday, June 10, 2022 11:10:05 AM

- Item 6. **Followed Policy:**  
 Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000452  
 Limit of Liability: USD5,000,000  
 Retention: USDNil / USD2,500,000 / USD2,500,000
- Item 7. **Underlying Insurance:**
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000453  
 Limit of Liability: USD5,000,000 excess of USD5,000,000
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000454  
 Limit of Liability: USD5,000,000 excess of USD10,000,000
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000455  
 Limit of Liability: USD7,500,000 excess of USD15,000,000
- Insurer: Tokio Marine HCC – D&O Group / HCC Underwriting Agency  
 Policy No.: 34-MGU-20-A49117 / 20G196460000  
 Limit of Liability: USD5,000,000 excess of USD22,500,000
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000768  
 Limit of Liability: USD5,000,000 excess of USD27,500,000
- Insurer: CNA Canada Continental Casualty Company  
 Policy No.: MEX 665412022  
 Limit of Liability: USD2,500,000 excess of USD32,500,000
- Insurer: Certain Underwriters at Lloyd's, London  
 Policy No.: B0146ERINT2000774  
 Limit of Liability: USD2,500,000 excess of USD35,000,000
- Item 8. Endorsements Effective at Inception:  
 As attached hereto

DRAFT DOCUMENT FOR REVIEW ONLY  
 CONFIDENTIAL  
 WASHINGTON, DC 20001  
 TEL: (202) 462-1000  
 FAX: (202) 462-1001  
 WWW: WWW.CENTRALR.COM  
 DATE: 10/27/2021 10:27AM

# Excess Insurance Policy

In consideration of the payment of the premium, in reliance upon all information and representations provided or made available by the **Insureds** to the Underwriters in connection with the underwriting of this Policy, the Underwriters and **Named Insured**, on behalf of all **Insureds**, agree as follows:

## I. INSURING CLAUSE

This Policy shall provide coverage in accordance with all of the terms, conditions and limitations (including, but not limited to, the exclusions and notice requirements) of the **Followed Policy** except for the Limit of Liability, the premium or as otherwise set forth herein. Coverage hereunder shall attach only after all of the **Underlying Limits** have been exhausted through payments by, or on behalf of, or in place of the insurers of the **Underlying Insurance** of amounts under the **Underlying Insurance**. The risk of uncollectibility of any **Underlying Insurance** (in whole or in part), whether because of financial impairment or insolvency of an insurer of the **Underlying Insurance** or for any other reason, is expressly retained by the **Insureds** and is not insured by or assumed by the Underwriters. For the avoidance of doubt, this Policy does not follow any term of any **Underlying Insurance** policy which provides difference in conditions coverage. Further, should any **Underlying Insurance** policy drop down in accordance with any difference in conditions clause therein, this Policy shall not similarly drop down.

## II. DEFINITIONS

- A. **Followed Policy** means the insurance policy identified in Item 6. of the Declarations.
- B. **Insureds** mean all persons covered under the **Followed Policy**.
- C. **Named Insured** means all persons and entities set forth in Item 1. of the Declarations.
- D. **Policy Period** means the period set forth in Item 2. of the Declarations.
- E. **Underlying Insurance** means the **Followed Policy** and all other underlying insurance policies, if any, identified in Item 7. of the Declarations.
- F. **Underlying Limits** mean an amount equal to the aggregate of all limits of liability of the **Underlying Insurance**.

## III. LIMIT OF LIABILITY

The amount set forth in Item 3. of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters for all coverage under this Policy, regardless of the number of claims made against the **Insureds** or the time of payment and regardless of whether or not an extended reporting period applies.

## IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING LIMITS

If, subsequent to the inception date of this Policy, the terms, conditions or limitations of an **Underlying Insurance** are modified, the **Insureds** must notify the Underwriters in writing, as soon as practicable, of such modification.

If any changes to the **Followed Policy**: (a) expand coverage, (b) change the policyholder name or address, or (c) modify premium, this Policy shall not follow those changes unless the Underwriters agree in writing to do so. If any coverage under any **Underlying Insurance** is subject to a sub-limit, then this Policy provides no coverage excess of such sub-limit, but the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount. Furthermore, if any amount covered under any policy issued to the **Insureds** outside of the United States of America (a "Foreign Policy") and the **Underlying Insurance** expressly provides for the reduction of the **Underlying Limit** by reason of payment of such amount under the applicable Foreign Policy, then the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount.

## V. UNDERWRITERS RIGHTS

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim.

**VI. NOTICES**

Where notice is permitted or required by the **Followed Policy**, the **Insureds** have the same rights and obligations to notify the Underwriters under this Policy, except that such notice shall be given to the Underwriters at the address set forth in Item 5. of the Declarations. Notice to any other insurer shall not constitute notice to the Underwriters unless also given to the Underwriters as provided above

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **1**

**SERVICE OF SUIT CLAUSE (CANADA)**  
**(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

LMA5028  
10/08/06

Form approved by Lloyd's Market Association

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **2**

**INTENTION FOR AIF TO BIND CLAUSE**

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

01/11/11  
LMA5180

CONFIDENTIAL  
Wellington  
DROUSENBLAGAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM



Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **3**

### **SPECIAL CANCELLATION CLAUSE**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that notwithstanding anything to the contrary in this Policy including any endorsement or amendatory thereto, in the event:

1. the Underwriter ceases all underwriting operations; or
2. the Underwriter is the subject of an order or resolution for winding up or formally propose a scheme of arrangement, or is placed into rehabilitation or liquidation by any state department of insurance; or
3. the Underwriter has its authority or license to carry on insurance business withdrawn; or
4. Lloyd's financial strength rating is issued below A- by A.M. Best Company or by Standard & Poor's Rating Services,

the **Named Insured** may cancel this Policy by giving notice within thirty (30) days of such event and the return premium shall be calculated on a pro rata basis to the time on the risk. Any return of premium shall also be subject to a written full release of liability from the **Insureds**. In the event there are any notified, reserved or paid claims, investigations, inquiries, losses or circumstances, return premium shall be calculated on a short rate basis pursuant to the terms of the Policy.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**

Named Insured: **JUST ENERGY GROUP INC.**

Endorsement Number: **4**

**NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT**

Except as stated in the Special Cancellation Clause and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the **Insureds** the earned premium shall be computed as follows:-

**SHORT RATE CANCELLATION TABLE**

A. For Insurances written for one year:-

Days Insurance in force	Per cent. of One year Premium	Days Insurance in force	Per cent. of One year Premium
1	5	154 - 156	53
2	6	157 - 160	54
3 - 4	7	161 - 164	55
5 - 6	8	165 - 167	56
7 - 8	9	168 - 171	57
9 - 10	10	172 - 175	58
11 - 12	11	176 - 178	59
13 - 14	12	179 - 182 (6 months)	60
15 - 16	13	183 - 187	61
17 - 18	14	188 - 191	62
19 - 20	15	192 - 196	63
21 - 22	16	197 - 200	64
23 - 25	17	201 - 205	65
26 - 29	18	206 - 209	66
30 - 32 (1 month)	19	210 - 214 (7 months)	67
33 - 36	20	215 - 218	68
37 - 40	21	219 - 223	69
41 - 43	22	224 - 228	70
44 - 47	23	229 - 232	71
48 - 51	24	233 - 237	72
52 - 54	25	238 - 241	73
55 - 58	26	242 - 246 (8 months)	74
59 - 62 (2 months)	27	247 - 250	75
63 - 65	28	251 - 255	76
66 - 69	29	256 - 260	77
70 - 73	30	261 - 264	78
74 - 76	31	265 - 269	79
77 - 80	32	270 - 273 (9 months)	80
81 - 83	33	274 - 278	81
84 - 87	34	279 - 282	82
88 - 91 (3 months)	35	283 - 287	83
92 - 94	36	288 - 291	84
95 - 98	37	292 - 296	85
99 - 102	38	297 - 301	86
103 - 105	39	302 - 305 (10 months)	87
106 - 109	40	306 - 310	88
110 - 113	41	311 - 314	89
114 - 116	42	315 - 319	90
117 - 120	43	320 - 323	91
121 - 124 (4 months)	44	324 - 328	92
125 - 127	45	329 - 332	93
128 - 131	46	333 - 337 (11 months)	94
132 - 135	47	338 - 342	95
136 - 138	48	343 - 346	96
139 - 142	49	347 - 351	97
143 - 146	50	352 - 355	98

Policy Number: **B0146ERINT2000775**

Named Insured: **JUST ENERGY GROUP INC.**

147 - 149 .....	51	356 - 360 .....	99
150 - 153 (5 months).....	52	361 - 365 (12 months).....	100

- B. For insurances written for more or less than one year:-
1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
  2. If insurance has been in force for more than 12 months:
    - a. Determine full annual premium as for an insurance written for a term of one year.
    - b. Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
    - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

N.M.A. 45 (amended)

CONFIDENTIAL  
 Wellington  
 DROSENBLAT@OSLER.COM  
 Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **5**

#### **PREMIUM PAYMENT CLAUSE**

Notwithstanding any provision to the contrary within this contract or any endorsement hereto, in respect of non payment of premium only the following clause will apply.

The (Re)Insured undertakes that premium will be paid in full to (Re)Insurers within 60 days of inception of this contract (or, in respect of instalment premiums, when due).

If the premium due under this contract has not been so paid to (Re)Insurers by the 60 day from the inception of this contract (and, in respect of instalment premiums, by the date they are due) (Re)Insurers shall have the right to cancel this contract by notifying the (Re)Insured via the broker in writing. In the event of cancellation, premium is due to (Re)Insurers on a pro rata basis for the period that (Re)Insurers are on risk but the full contract premium shall be payable to (Re)Insurers in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this contract.

It is agreed that (Re)Insurers shall give not less than 15 days prior notice of cancellation to the (Re)Insured via the broker. If premium due is paid in full to (Re)Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the contract shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

30/09/08

LSW3001

CONFIDENTIAL  
Birmingham  
ROSEMARY.T@OSLER.COM  
Friday, June 19, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **6**

**CHOICE OF LAW CLAUSE**

It is hereby understood and agreed by both the **Insured** and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of Ontario, Canada.

All other terms and conditions of this policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
 Named Insured: **JUST ENERGY GROUP INC.**  
 Endorsement Number: **7**

### **INSURERS LIABILITY CLAUSE**

#### **(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

#### **Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **8**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London	807/V90807004451
Lloyd's Insurance Company SA	807/V20000025027

All other terms and conditions of this policy remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
 Named Insured: **JUST ENERGY GROUP INC.**  
 Endorsement Number: **9**

**LLOYD'S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd's, London and (b) Lloyd's Insurance Company S.A. the following shall apply:

**Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable limits of this contract of Insurance.

2. Solely with respect to the participation of Lloyd's Insurance Company S.A. the following amendments shall apply:

A. **Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of United States of America and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in United States of America. No State law is specified at the request of the Insured.

Lloyd's Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney In Fact in Canada for Lloyd's Underwriters,  
 1155, rue Metcalfe, Suite 2220,  
 Montreal,  
 Quebec, H3B 2V6.

who in this instance, has authority to accept service on its behalf.

Lloyd's Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

This Service of Suit and Jurisdiction Clause will not be read to conflict with or override the obligations of the parties to resolve their disputes as provided for in any other clause in this Policy and, to the extent required, shall apply to give effect to that process.

LBS0006A  
 01/01/2019



Policy Number: **B0146ERINT2000775**

Named Insured: **JUST ENERGY GROUP INC.**

**B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 39

E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)

Telephone: 0800 023 4 567 (from inside the UK)

Fax: +44 20 7964 1001

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045a  
01/01/2019

CONFIDENTIAL  
Wellington  
DRD@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**

Named Insured: **JUST ENERGY GROUP INC.**

C. **SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **10**

#### **CORONAVIRUS ABSOLUTE EXCLUSION**

**Underwriters** shall not be liable to make any payment in connection with any claim made against an **Insured** or in connection with any matter covered by an extension to this Policy based upon, arising out of, or in any way attributable to coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to or resulting from:

- (i) any fear or threat (whether actual or perceived) of; or
- (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of;

coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof.

All other terms conditions and exclusions shall remain unchanged.

CONFIDENTIAL  
Wellington  
DROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **11**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF SNYDER LETTERS**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of loss arising from any claim made against an **Insured** arising out of, based upon or attributable to the events scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any such Event; or (b) any claim arising from any such Event; or (c) any wrongful act, circumstances, acts or omissions relating to any such Event.

**SCHEDULE OF EVENTS:**

Letters from Robert Lloyd Snyder to the Board of Directors of the Company dated 23 December 2019, and to the Company dated 28 February 2020 and 17 March 2020 (as detailed under Schedule 13D/A notifications CUSIP No. 48213W101)

Notwithstanding the foregoing, this exclusion shall not apply to any other matters involving Mr Robert Lloyd Snyder or the Robert L. Snyder Trust provided that they are unrelated to the matters detailed in the Schedule of Events above.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
DR@SENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Policy Number: **B0146ERINT2000775**  
Named Insured: **JUST ENERGY GROUP INC.**  
Endorsement Number: **12**

**SPECIFIED MATTERS EXCLUSION IN RESPECT OF 2019 SECURITIES CLASS ACTION**

In consideration of the premium charged for this Policy, it is hereby understood and agreed that **Underwriters** shall not be liable to make any payment for that portion of loss arising from any claim made against an **Insured** arising out of, based upon or attributable to:

1. any notices, events, investigations or actions scheduled below (hereinafter "Events"); the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any Event; or (b) any claim arising from any Event; or any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any Event; or
2. any such Event or any interrelated wrongful act, regardless of whether or not such claim, involved the same or different **Insureds**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

As alleged in the class action complaint filed against Just Energy Inc and others by Eli Gottein and others in the United States District Court, Southern District of New York on 31 July 2019.

All other terms and conditions of this Policy remain unchanged.

CONFIDENTIAL  
Wellington  
ROSENBLAT@OSLER.COM  
Friday, June 10, 2022 11:10:27 AM

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
www.paragonbrokers.com  
Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000775  
Date: 3rd April 2020

Page: 1 of 1

## Market Security:

### In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)

Signed Line %	Insurer
---------------	---------

100.00 %	Certain Lloyd's Underwriters as per the Schedule below
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Schedule of Underwriters at Lloyd's being:

Signed Line %	Syndicate No.	Pseudonym	Syndicate Full Name
---------------	---------------	-----------	---------------------

100.00 %	2003	XLC	XL Catlin Syndicate
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100.00 %			
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### In respect of EEA countries

Signed Line %	Insurer
---------------	---------

100.00 %	Lloyd's Insurance Company S.A. Reinsured by Lloyd's Syndicate XLC 2003
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### Please Note

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.

**THIS IS EXHIBIT JJ REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**EXECUTIVE AND CORPORATE  
SECURITIES INSURANCE POLICY  
DECLARATIONS**

**Policy Number:** ELU173707-21  
Renewal of Number: N/A

**XL Specialty Insurance Company  
First Canadian Place  
100 King Street West, Suite 3020  
Toronto, Ontario M5X 1C9**

**THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR, IF APPLICABLE, THE OPTIONAL EXTENSION PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

**Item 1. Name and Mailing Address of Parent Company:**

Just Energy Group Inc.  
100 King Street West, Suite 2630  
Toronto Ontario, CANADA M5X 1E1

**Item 2. Policy Period:** Inception Date: March 09, 2021      Expiration Date: March 09, 2022  
At 12:01AM Standard Time at your Mailing Address Shown Above

**Item 3. Limit of Liability:**

- (A) USD\$0      Maximum Aggregate Sublimit of Liability each **Policy Period** for all **Investigation Demands**
- (B) USD\$5,000,000      Maximum Aggregate Limit of Liability each **Policy Period** (including **Defense Expenses**) for all **Loss** from all **Claims, Investigation Demands** and **Interviews**

**Item 4. Retentions:**

USD\$0      each **Insured Person** under INSURING AGREEMENT I (A) or (D)  
USD\$0      each **Claim**, other than a **Securities Claim**, under INSURING AGREEMENT I (B) or (E)  
USD\$0      each **Securities Claim** under INSURING AGREEMENT I (B) or (C)  
USD\$0      each **Investigation Demand** under INSURING AGREEMENT I (F)

**Item 5. Optional Extension Period:**

Length of Optional Extension Period: One Year after the end of the **Policy Period**, if elected.  
Premium for Optional Extension Period:

**Item 6. Pending and Prior Litigation Date:** March 09, 2021

**Item 7. Notices required to be given to the Insurer must be addressed to:**

XL Specialty Insurance Company  
First Canadian Place  
100 King Street West, Suite 3020  
Toronto, Ontario M5X 1C9  
Attention: Claims Department  
Email: [claimscanada@axa.com](mailto:claimscanada@axa.com)

**Item 8. Premium:**

Policy Premium      USD\$800,000.00



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**Item 9. Policy Form and Endorsements Attached at Issuance:**

CN 71 00 09 16 XL 80 78 02 15 BR 80 454 08 19 BR 83 11 03 15 BR 80 507 10 20 BR 80 20 01 15  
BR 80 334 08 17 BR 80 12 12 14

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THESE **DECLARATIONS** AND THE POLICY, WITH THE ENDORSEMENTS, ATTACHMENTS, AND THE **APPLICATION** SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE **INSURED** RELATING TO THIS INSURANCE.

**IN WITNESS WHEREOF** the Insurer has caused this Policy to be signed by the Canadian Chief Agent.

**XL SPECIALTY INSURANCE COMPANY**



---

**Glen Hopkinson**  
**Chief Agent for Canada**

For purposes of the *Insurance Companies Act (Canada)*, this document was issued in the course of XL Specialty Insurance Company's insurance business in Canada.

Endorsement No.: 1  
Named Insured: Just Energy Group Inc.  
Policy No.: ELU173707-21

Effective: March 09, 2021  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## TRADE SANCTIONS ENDORSEMENT

This Policy is amended as follows:

XL Specialty Insurance Company shall not be deemed to provide cover and shall not be liable to pay any claim or provide any benefit hereunder, to the extent that the provision of such cover, payment of such claim or provision of such benefit would conflict with or expose XL Specialty Insurance Company to any sanction, prohibition, restriction or penalty under United Nations resolutions or the trade or economic sanctions, laws or regulations of Canada, the European Union, United Kingdom or United States of America.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 2  
Named Insured: Just Energy Group Inc.  
Policy No.: ELU173707-21  
Policy Form: EXECUTIVE AND CORPORATE SECURITIES LIABILITY

Effective: March 09, 2021  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## AMEND DEFINITION OF LOSS ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that the term "Loss," as defined in Section II Definitions of the Policy, shall not include any pre-judgment and post-judgment interest or other amounts (including, but not limited to, punitive, exemplary or multiplied damages) awarded in connection with all or any part of a judgment which is not covered under this Policy. The Policy, including any and all Endorsements, shall be deemed amended as necessary to affect the intent and purpose of this Endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 3  
Named Insured: Just Energy Group Inc.  
Policy No.: ELU173707-21

Effective: March 09, 2021  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## PRIOR ACTS EXCLUSION

In consideration of the premium charged, no coverage will be available for any Claim, Interview or Investigation Demand based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act, error, omission, misstatement, misleading statement, neglect, breach of duty or Wrongful Act committed or allegedly committed prior to March 09, 2021.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 4  
Named Insured: Just Energy Group Inc.  
Policy No.: ELU173707-21  
Policy Form: EXECUTIVE AND CORPORATE SECURITIES LIABILITY

Effective: March 09, 2021  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## DELETE INSURING AGREEMENTS (B) TO (F) AND SPECIFIED INSURED PERSONS ENDORSEMENT

In consideration of the premium charged:

- (1) Section I Insuring Agreement (B) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (B) are deleted.
- (2) Section I Insuring Agreement (C) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (C) are deleted.
- (3) Section I Insuring Agreement (D) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (D) are deleted.
- (4) Section I Insuring Agreement (E) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (E) are deleted.
- (5) Section I Insuring Agreement (F) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (F) are deleted.
- (6) The term "Insured," as defined in Section II Definitions (I) of the Policy, is amended to read in its entirety as follows:  
  
    “(I) ‘Insured’ means the Insured Persons.”
- (7) Section II Definitions (L) of the Policy is deleted in its entirety, and all references in the Policy to “Interview” are deleted.
- (8) Section II Definitions (M) of the Policy is deleted in its entirety, and all references in the Policy to “Investigation Demand” are deleted.
- (9) The term “Securities Claim,” as defined in Section II Definitions (S) of the Policy, is amended to read in its entirety as follows:  
  
    “(S) ‘Securities Claim’ means a Claim:  
  
        (1) made against any Insured Person for any actual or alleged violation of any federal, state or local statute, regulation, or rule or common law regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities, which is:  
  
            (a) brought by any person or entity resulting from, the purchase or sale of, or offer to purchase or sell, securities of the Company; or  
  
            (b) brought by a security holder of the Company with respect to such security holder's interest in securities of the Company; or  
  
        (2) brought derivatively on behalf of the Company by a security holder of the Company.”

- (10) The term “Wrongful Act,” as defined Section II Definitions (U) of the Policy, is amended to read in its entirety as follows:
- “(U) ‘Wrongful Act’ means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an Insured Person while acting in his or her capacity as such or due to his or her status as such;
  - (2) solely with respect to a Claim as defined in Definition (C)(4) of the Policy, any other matter concerning an Insured Person solely by reason of his or her capacity as such or due to his or her status as such; or
  - (3) any Employment Practices Wrongful Act by an Insured Person while acting in his or her capacity as such or due to his or her status as such.”
- (11) Section IV Limit of Liability, Indemnification and Retentions (A) of the Policy is amended to read in its entirety as follows:
- “(A) The Insurer shall pay the amount of Loss in excess of the applicable Retention(s) set forth in ITEM 4 of the Declarations up to the Limit of Liability set forth in ITEM 3 of the Declarations.”
- (12) Section IV Limit of Liability, Indemnification and Retentions (B) of the Policy is amended to read in its entirety as follows:
- “(B) The amount set forth in ITEM 3 of the Declarations shall be the maximum aggregate limit of liability of the Insurer under this Policy, and payment of Loss, including Defense Expenses, by the Insurer shall reduce the Limit of Liability.”
- (13) Section IV Limit of Liability, Indemnification and Retentions (C) of the Policy is deleted in its entirety.
- (14) Section IV Limit of Liability, Indemnification and Retentions (F) of the Policy is deleted in its entirety.
- (15) Section IV Limit of Liability, Indemnification and Retentions (G) of the Policy is deleted in its entirety.
- (16) Section V Defense, Settlement and Allocation of Loss (D) of the Policy is amended to read in its entirety as follows:
- “(D) If both Loss covered by this Policy and loss not covered by this Policy are incurred, either because a Claim made against an Insured contains both covered and uncovered matters, or because a Claim is made against both the Insured and others not insured under this Policy, the Insured and the Insurer will use their best efforts to determine a fair and appropriate allocation of Loss between that portion of Loss that is covered under this Policy and that portion of loss that is not covered under this Policy. Additionally, the Insured and the Insurer agree that in determining a fair and appropriate allocation of Loss, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the Claim, by the Insured and others.”
- (17) Section VI General Condition (L) of the Policy is deleted in its entirety.
- (18) Item 3. of the Declarations is amended to read in its entirety as follows:
- “Item 3. Limit of Liability:
- \$5,000,000 Maximum Aggregate Limit of Liability each Policy Period (including Defense Expenses) for all Loss from all Claims”
- (19) Item 4. of the Declarations is amended to read in its entirety as follows:

"Item 4. Retentions:

\$0 each Insured Person under INSURING AGREEMENT I (A)"

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 5  
Named Insured: Just Energy Group Inc.  
Policy No.: ELU173707-21

Effective: March 09, 2021  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## FULLY-EARNED PREMIUM ENDORSEMENT

In consideration of the premium charged, the entire premium for this Policy, as set forth in ITEM 8 of the Declarations, shall be deemed to be fully earned as of the Policy Inception Date set forth in ITEM 2 of the Declarations.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Endorsement No.: 6  
Named Insured: Just Energy Group Inc.  
Policy No.: ELU173707-21  
Policy Form: EXECUTIVE AND CORPORATE SECURITIES LIABILITY

Effective: March 09, 2021  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## CONVERT POLICY TO RUN-OFF UPON HAPPENING OF SPECIFIC EVENT

In consideration of an additional premium of \$0 (the "Run-Off Premium") charged:

- (1) Immediately upon the date which the event described in paragraph (2) below occurs:
  - (a) coverage under this Policy will continue in full force and effect with respect to any Claim or Investigation Demand for a Wrongful Act committed or allegedly committed before such event, but coverage will cease with respect to any Claim or Investigation Demand for a Wrongful Act, committed or allegedly committed on or after such event (hereinafter, the date of such event, "Conversion Date").
  - (b) The Expiration Date set forth in Item 2 of the Declarations shall be amended to that date exactly six (6) years after the Conversion Date.
  - (c) The term "Company" shall not include those Subsidiaries created or acquired after the Conversion Date.
  - (d) Section VI General Conditions (F) of the Policy and Item 5 of the Declarations, and all other references in the Policy to an Optional Extension Period, are deleted in their entirety.
  - (e) Section VI General Conditions (E)(1) is amended to read in its entirety as follows:

"(1) The entire premium for this Policy is fully earned."
  - (g) Section VI General Conditions (A)(3) of the Policy is deleted in its entirety.
- (2) The event upon the happening of which coverage under this Policy will cease with respect to any Claim or Investigation Demand described in paragraph (1) above, is as follows:

Emergence from bankruptcy
- (3) The Run-Off Premium shall be deemed fully earned as of the effective date of this endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 7  
Named Insured: Just Energy Group Inc.  
Policy No.: ELU173707-21

Effective: March 09, 2021  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

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## AMEND DEFINITION OF CLAIM ENDORSEMENT

In consideration of the premium charged, the term "Claim," as defined in Section II Definitions (C) of the Policy, is amended to include a written request or agreement that an Insured Person or the Company toll any applicable statute of limitations (but with respect to the Company only if such Claim would otherwise meet the definition of Securities Claim).

## EXECUTIVE AND CORPORATE SECURITIES LIABILITY INSURANCE COVERAGE FORM

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.  
PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the "Insurer"), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

## I. INSURING AGREEMENTS

- (A) The Insurer shall pay on behalf of the **Insured Persons Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**, except for **Loss** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.
- (B) The Insurer shall pay on behalf of the **Company Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act** to the extent the **Company** is required or permitted to pay on behalf of the **Insured Persons** as indemnification.
- (C) The Insurer shall pay on behalf of the **Company Loss** resulting solely from any **Securities Claim** first made against the **Company** during the **Policy Period** for a **Wrongful Act**.
- (D) The Insurer shall pay on behalf of the **Insured Persons Defense Expenses** resulting from an **Interview**, except for **Defense Expenses** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.
- (E) The Insurer shall pay on behalf of the **Company Defense Expenses** incurred by the **Insured Persons** resulting from an **Interview** to the extent the **Company** is required or permitted to pay on behalf of the **Insured Persons** such **Defense Expenses**.
- (F) The Insurer shall pay on behalf of the **Company Defense Expenses** incurred by the **Company** resulting from any **Investigation Demand** first made during the **Policy Period**.

## II. DEFINITIONS

- (A) "**Application**" means:
  - (1) any application, including attachments thereto, or any written information or representation, provided to the Insurer by or on behalf of an **Insured** in connection with the underwriting of this Policy; and
  - (2) any publicly available document filed by the **Company** with any federal, provincial or territorial securities commission, including but not limited to each and every public filing by or on behalf of the Company made with The System for Electronic Document Analysis and Retrieval (SEDAR), the U.S. Securities and Exchange Commission or any state, local or foreign equivalent during the twelve (12) months preceding this Policy's Inception Date.
- (B) "**Change In Control**" means:
  - (1) the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets by another entity such that the **Parent Company** is not the surviving entity; or
  - (2) any person, entity or an affiliated group of persons or entities acting together, acquire (a) interest representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of the majority of the directors, management committee members or members of the board of managers of the **Parent Company**, as applicable to its organization, or (b) such rights pursuant to written contract or the by-laws, charter, operating agreement or similar document of the **Parent Company**;

- (C) **"Claim"** means:
- (1) any written demand (other than an **Investigation Demand**) for:
    - (a) monetary or non-monetary relief, including injunctive relief; or
    - (b) arbitration, mediation or other alternative dispute resolution proceeding;
  - (2) any civil, criminal, administrative or regulatory proceeding commenced by:
    - (a) service of a statement of claim, notice of charges, statement of allegations, laying of an information, complaint or similar pleading;
    - (b) return of an indictment, information, notice of charges or similar document;
    - (c) an official written request for extradition of any **Insured Person** or the issuance of a warrant for the arrest of any **Insured Person** where such issuance is an element of extradition;
  - (3) any investigation of an **Insured Person** commenced by a written statement from an **Enforcement Authority** identifying such **Insured Person** as the subject of an investigation, including any investigation order, target letter, Wells Notice or similar document;
  - (4) any summons, warrant, subpoena or similar document served upon an **Insured Person** for testimony or documents in connection with a formal or informal investigation of the **Company** by any **Enforcement Authority**; and
  - (5) any **Corporate Manslaughter Charge**.
- (D) **"Company"** means the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or during the **Policy Period**, subject to GENERAL CONDITIONS VI (D). The term **Company** shall include any such entity as a debtor in possession as such term is used in Chapter 11 of the United States Bankruptcy Code or equivalent status as described in the Canadian Companies' Creditors Arrangement Act or Canadian Bankruptcy and Insolvency Act or any equivalent provision in any foreign jurisdiction.
- (E) **"Corporate Manslaughter Charge"** means a formal criminal proceeding commenced in the United Kingdom against an **Insured Person** of the **Company** domiciled or incorporated in the United Kingdom for involuntary manslaughter (including constructive manslaughter or gross negligence manslaughter) in his or her capacity as a director or officer of the **Company** and directly related to the business of the **Company**.
- (F) **"Defense Expenses"** means reasonable and necessary legal fees, expenses and other costs (including experts' fees):
- (1) incurred in the investigation, adjustment, settlement, defense and/or appeal of any **Claim**, **Investigation Demand** or **Interview**, including any preparation for such an **Interview**;
  - (2) incurred due to the arrest and detainment or incarceration of any **Insured Person** in his or her capacity as a director or officer of the **Company** and directly related to the business of the **Company**;
  - (3) incurred in connection with any **Claim** under section 304 of the Sarbanes-Oxley Act of 2002 or imposed pursuant to section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or similar federal, provincial or territorial statute, law, regulation or ordinance; or
  - (4) incurred in the defense of any **Corporate Manslaughter Charge**;

**Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers or employees.

- (G) "**Employment Practices Wrongful Act**" means any actual or alleged:
- (1) wrongful termination of employment whether actual or constructive;
  - (2) employment discrimination of any kind, including violation of the Canadian Charter of Rights and Freedoms, any federal, state, provincial, municipal or local law involving employment or discrimination in employment, which would deprive or potentially deprive any person of employment opportunities or otherwise adversely affect his or her status as an employee because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, or other protected status;
  - (3) sexual or other harassment in the workplace; or
  - (4) wrongful deprivation of career opportunity, employment related misrepresentations, retaliatory treatment against an employee of the **Company**, failure to promote, demotion, wrongful discipline or evaluation, refusal to hire, negligent hiring, or negligent supervision.
- (H) "**Enforcement Authority**" means any federal, provincial, municipal, state, local or foreign law enforcement or governmental regulatory authority, including, but not limited to, the Ontario Securities Commission or similar provincial or territorial securities regulatory authority, the Department of Justice Canada or any similar provincial or territorial Department of Justice, the United States Departments of Justice and Labor, Securities and Exchange Commission, attorneys general, or the enforcement unit of any securities exchange or similar self-regulatory organization.
- (I) "**Insured**" means the **Insured Persons** and the **Company**.
- (J) "**Insured Person**" means:
- (1) any past, present or future natural person director or officer, or member or manager of the board of managers, of the **Company** and those persons serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States or Canada (including any de facto director);
  - (2) any past, present or future natural person employee of the **Company** (other than an individual described in (J)(1) above) to the extent any **Claim** is: (a) a **Securities Claim**, or (b) made and maintained against both such employee and an **Insured Person** as defined in (J)(1) above;
  - (3) an individual identified in (J)(1) above who, with the consent of the **Company**, is or was serving as a director, officer, trustee, regent or governor of a **Non-Profit Entity**; or
  - (4) any individual identified in (J)(1) above who, with the consent of the **Company** is or was serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**.

In addition:

In the event of the death, incapacity or bankruptcy of any individual identified above, any **Claim** against the estate, heirs, legal representatives or assigns of such individual for a **Wrongful Act** of such individual will be deemed to be a **Claim** against such individual.

The coverage otherwise available under this Policy to any **Insured Person** will be extended to such **Insured Person's** lawful spouse or domestic partner, but only to the extent such spouse or domestic partner, is a party to any **Claim** solely in his or her capacity as a spouse or domestic partner, of such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner.

- (K) **"Interrelated Wrongful Acts"** means any **Wrongful Acts**, based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related facts, series of related facts, circumstances, situations, transactions or events.
- (L) **"Interview"** means:
- (1) a written request first received by an **Insured Person** during the **Policy Period** for a voluntary interview, meeting or sworn statement by:
    - (a) any **Enforcement Authority**; or
    - (b) the **Company** in connection with an **Investigation Demand** or an investigation or other inquiry of the **Company** by an **Enforcement Authority**; or
  - (2) an arrest or confinement of an **Insured Person** during the **Policy Period** to a specified residence or secure custodial premises operated by an **Enforcement Authority**, but only in connection with the business of the **Company** or an **Insured Person's** capacity as such or due to his/her status as such;

provided that **Interview** will not include: any document production or discovery in a legal proceeding; any request that is part of any routine or regularly scheduled oversight, compliance, audit, inspection or examination; or any request that is part of an employment-related investigation or **Claim**. Any **Interview** as defined in (L)(1) above first received, or as defined in (L)(2) above, occurring, prior to the Inception Date of this Policy are not covered under this Policy.

- (M) **"Investigation Demand"** means an investigation by the **Company** to determine whether it is in its best interest to prosecute the allegations made by a security holder or by a complainant as defined under Section 238 of the Canada Business Corporations Act of the **Company** in a derivative demand or action. An **Investigation Demand** shall be deemed first made upon the earlier of: receipt of such allegations by the **Company** or service of a civil complaint or similar proceeding setting forth such allegations.
- (N) **"Joint Venture"** means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, during any time in which the **Parent Company**, either directly or through one or more **Subsidiary(s)**:
- (1) owns or controls at least thirty-three percent (33%), but not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the present right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
  - (2) has the right, by written contract, ownership of securities or otherwise, to elect, appoint or designate at least thirty-three (33%) of those persons described in (N)(1) above.
- (O) **"Loss"** means damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts (including punitive, exemplary or multiplied damages, where insurable by law) that any **Insured** is legally obligated to pay and **Defense Expenses**, including that portion of any settlement which represents the claimant's legal fees. **Loss** will not include that portion which constitutes:
- (1) fines, penalties or taxes imposed by law; provided that **Loss** will specifically include:
    - (a) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(b) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(b), Sections 4(2) and 5(2) of the Corruption of Foreign Public Officials Act of Canada, the United Kingdom's Bribery Act 2010 (2010 chapter 23), and Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) or similar federal, provincial or territorial statute, law, regulation or ordinance; and

- (b) solely with respect to **Loss** to which Insuring Agreement (A) applies,
- (i) fines, penalties or taxes, including, but not limited to, Section 227.1 of the Canadian Income Tax Act, Section 323 of the Canadian Excise Tax Act, Section 43 of the Ontario Retail Sales Tax Act, or similar provisions of any other Canadian provincial or territorial income tax or retail sales tax statute;
  - (ii) taxes, employment insurance contributions and pension plan contributions that are or were payable by the **Company** to a Canadian federal, provincial, territorial or municipal governmental taxing authority, which are imposed by statute upon an **Insured Person** in his or her capacity as such in connection with the failure of the **Company** to deduct, withhold or remit such amounts; or
  - (iii) salary, wages and related amounts such as vacation pay or holiday pay that are or were payable by the **Company** to an employee for services performed if an **Insured Person** has become personally liable to make such payment under any applicable federal, provincial, territorial or municipal statutory provision;
- that an **Insured Person** is obligated to pay if such fines, penalties, taxes or payments are insurable by law and are imposed in connection with such **Insured Person's** service with an insolvent **Company**;

- (2) costs incurred by an **Insured** to comply with an order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief;
- (3) any amount which is uninsurable under the law pursuant to which this Policy is construed; provided that the Insurer will not assert that the portion of any settlement or judgment in a **Claim** arising from an initial or subsequent public offering of the **Company's** securities constitutes uninsurable loss due to the alleged violations of Sections 130 and/or 130.1 of the Ontario Securities Act or any other similar provision of a Canadian provincial or territorial securities law, Section 11 and/or 12 of the Securities Act of 1933 as amended (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933);
- (4) any amount arising out of the cleanup, containing, treating, testing, removing, disposing, assessing, monitoring or similar costs relating to pollution, contaminants, waste of any kind, pollutants, product defects that result in the release of hazardous materials or pollutants, or any other hazardous materials;
- (5) any amount which represents or is substantially equivalent to an increase in the consideration paid, or proposed to be paid, by the **Company** in connection with its purchase of any securities or assets of any person, group of persons, or entity;
- (6) the return of any amounts required to be paid by an **Insured Person** pursuant to section 304 of the Sarbanes-Oxley Act of 2002 or promulgated under Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or similar federal, provincial or territorial statute, law, regulation or ordinance;

NOTE: With respect to judgments in which punitive, exemplary or multiplied damage are awarded, the coverage provided by this Policy shall apply to the broadest extent permitted by law. If, based on the written opinion of counsel for the **Insured**, punitive, exemplary or multiplied damages are insurable under applicable law, the Insurer will not dispute the written opinion of counsel for the **Insured**.

- (P) "**Non-Profit Entity**" means any not-for-profit entity or not-for-profit organization.
- (Q) "**Parent Company**" means the entity named in ITEM 1 of the Declarations.
- (R) "**Policy Period**" means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations or to any earlier cancellation date. **Policy Period** will include any Optional Extension

Period, if applicable.

(S) "**Securities Claim**" means a **Claim**, other than an administrative or regulatory proceeding against or investigation of the **Company**:

- (1) made against any **Insured** for any actual or alleged violation of any federal, state, local, provincial, territorial, municipal or foreign statute, regulation or rule or common law regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities, which is:
  - (a) brought by any person or entity resulting from, the purchase or sale of, or offer to purchase or sell, securities of the **Company**; or
  - (b) brought by a security holder of the **Company** with respect to such security holder's interest in securities of the **Company**; or
- (2) brought derivatively on behalf of the **Company** by a security holder of the **Company**.

Notwithstanding the foregoing, the term **Securities Claim** shall include an administrative or regulatory proceeding against, or a formal investigation of, the **Company**, but only if and only during the time that such formal investigation or proceeding is also maintained against an **Insured Person**.

(T) "**Subsidiary**" means any entity during any time in which the **Parent Company** holds directly or indirectly:

- (1) more than fifty percent (50%) of the voting rights or issued share capital of such entity;
- (2) between twenty percent (20%) and fifty percent (50%) of the voting rights or issued share capital, together with control of the management of such entity; or
- (3) the right to appoint or remove a majority of the Board of Directors of such entity.

(U) "**Wrongful Act**" means:

- (1) any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an **Insured Person** while acting in his or her capacity as such or due to his or her status as such;
- (2) solely with respect to a **Claim** as defined in Definition (C)(4) of the Policy, any other matter concerning an **Insured Person** solely by reason of his or her capacity as such or due to his or her status as such;
- (3) solely with respect to Insuring Agreement (C) of the **Policy**, any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by the **Company**; or
- (4) any **Employment Practices Wrongful Act** by an **Insured Person** while acting in his or her capacity as such or due to his or her status as such.

Solely with respect to determining whether a securities holder derivative lawsuit which names the **Company** as a defendant (including as a nominal defendant) is a **Securities Claim** against such **Company** for purposes of Insuring Agreement (C) of the Policy, any **Wrongful Act** as defined in subparagraph (U)(1) above will also be deemed to be a **Wrongful Act** of the **Company**; provided that this provision shall not be deemed to create coverage under this Policy for **Loss** from any **Investigation Demand** pursuant to Insuring Agreement (F) of the Policy. Any such coverage shall only be available pursuant to Insuring Agreement (F) of the Policy.

### III. EXCLUSIONS

(A) No coverage shall be available under this Policy for that portion of any **Claim, Interview** or



**Investigation Demand** made against an **Insured**:

- (1) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any property including loss of use thereof; however, this Exclusion (A)(1) will not apply to: (a) any allegations of libel, slander, defamation, mental anguish or emotional distress if and only to the extent that such allegations are made as part of a **Claim** for an **Employment Practices Wrongful Act**; (b) any **Securities Claim**; (c) for **Corporate Manslaughter Charges**; (d) **Defense Expenses** incurred as a result of any **Claim** brought against an **Insured Person** pursuant to (i) Section 217.1 of the Criminal Code of Canada (as amended by Bill C-45); (ii) Section 32 of the Ontario Occupational Health and Safety Act; or (e) any **Claim** to the extent coverage is provided under Insuring Agreement, (A) of the Policy;
- (2) for any actual or alleged violation of the Canada Pension Benefits Standards Act, the Ontario Pension Benefits Act, the Employee Retirement Income Security Act of 1974 (ERISA) as amended or any regulations promulgated thereunder or any similar law, federal, provincial, territorial, municipal, state or local law or regulation in connection with any pension, profit sharing or employee benefit program established and/or sponsored by the **Company** in whole or in part for the benefit of the directors, officers or employees of the **Company**;
- (3) by, on behalf of, or at the direction of the **Company**, or any **Joint Venture** or **Non-Profit Entity** (but with respect to the **Joint Venture** or **Non-Profit Entity**, only against an **Insured Person** for a **Wrongful Act** while acting in his or her capacity as a director, officer, trustee, regent or governor of such **Joint Venture** or **Non-Profit Entity**, or as a person occupying an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated of the **Joint Venture**); however, this Exclusion (A)(3) will not apply to:
  - (a) the extent a **Claim** is brought derivatively by a security holder or by a complainant as defined under Section 238 of the Canada Business Corporations Act of the **Company**, or by any **Joint Venture** or **Non-Profit Entity** who, when such **Claim** is made and maintained, is acting independently of, and without the solicitation, assistance, participation or intervention of any **Insured Person** unless such solicitation, assistance, participation or intervention is protected pursuant to Section 425.1 of the Criminal Code of Canada, Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute, or the **Company**, or any **Joint Venture** or **Non-Profit Entity**;
  - (b) the extent a **Claim** or **Interview** is brought by the Bankruptcy Trustee or Examiner of the **Company**, or by any **Joint Venture** or **Non-Profit Entity** or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company**, **Joint Venture**, or **Non-Profit Entity**;
  - (c) the extent a **Claim** is brought and maintained in a non-common law jurisdiction outside the United States of America, including its territories and possessions, or Canada;
  - (d) the extent a **Claim** or **Interview** is brought by a Creditors Committee of the **Company**, or any **Joint Venture** or **Non-Profit Entity** in the event the **Company**, **Joint Venture**, or **Non-Profit Entity** files for relief under Title 11 of the United States Code, or by a receiver, monitor, liquidator or trustee appointed on behalf of the **Company**, **Joint Venture**, or **Non-Profit Entity** by a court or creditor by virtue of the provisions of the Canadian Companies' Creditors Arrangement Act or of the Canadian Bankruptcy and Insolvency Act, or of any similar federal, provincial, territorial, municipal, state or other governmental statute, law, regulation or ordinance;
  - (e) **Defense Expenses** covered under Insuring Agreement (A) or (D).

- (B) No coverage shall be available under this Policy for any **Claim, Interview or Investigation Demand** made against an **Insured**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration against an **Insured** which was brought prior to the Pending and Prior Litigation Date set forth in ITEM 6 of the Declarations;
  - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other Management Liability policy, Directors and Officers liability policy or similar policy;
  - (3) brought about or contributed to in fact by any:
    - (a) deliberately fraudulent or deliberately criminal act or omission or any willful violation of any statute, rule, regulation or law by an **Insured**; or
    - (b) profit or remuneration gained by an **Insured** to which such **Insured** is not legally entitled,

as determined by a final, non-appealable adjudication in the underlying action; however this Exclusion (B)(3) will not apply to: (i) allegations in a **Claim** asserted against an **Insured** under Sections 130 and/or 130.1 of the Ontario Securities Act or any other similar provision of a Canadian provincial or territorial securities law, Section 11 and/or 12 of the Securities Act of 1933 as amended arising out of an initial or subsequent public offering of the **Company's** securities (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933); or (ii) **Defense Expenses** incurred in connection with a **Claim** alleging violations of section 304 of the Sarbanes-Oxley Act of 2002 or section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or similar federal, provincial or territorial statute, law, regulation or ordinance;

No conduct of any **Insured** will be imputed to any other **Insured Person** to determine the application of any of the above EXCLUSIONS. Only the conduct of the chief executive officer and/or chief financial officer of the **Company** will be imputed to the **Company**.

#### IV. LIMIT OF LIABILITY, INDEMNIFICATION AND RETENTIONS

- (A) The Insurer shall pay the amount of **Loss** in excess of the applicable Retention(s) set forth in ITEM 4 of the Declarations up to the Limit of Liability set forth in ITEM 3(B) of the Declarations.
- (B) The amount set forth in ITEM 3(B) of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under this Policy whether any **Loss** is covered under one or more Insuring Agreements. Payment of **Loss**, including **Defense Expenses**, by the Insurer shall reduce the Limit of Liability.
- (C) The amount set forth in Item 3(A) of the Declarations shall be the maximum aggregate limit of liability of the Insurer under this Policy resulting from all **Investigation Demands** first made during the **Policy Period**, which amount is part of, and not in addition to, the maximum aggregate Limit of Liability for the Policy as set forth in Item 3(B) of the Declarations.
- (D) With respect to the **Company's** indemnification of its **Insured Persons**, the articles of incorporation, certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Parent Company**, each **Subsidiary** and each **Non-Profit Entity** or **Joint Venture**, will be deemed to require indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (E) No Retention will be applicable to **Loss**, including **Defense Expenses**, under Insuring Agreements, (A), (D) or (F). In the event of financial insolvency of the **Company**, no Retention shall apply.

- (F) In the event the **Company** is obligated under the Policy to pay any Retention, the **Company** may satisfy such Retention from any source. As a precondition to such recognition of the erosion of the Retention from any source other than by payment by the **Company**, the **Company** shall provide the Insurer with written proof, to the Insurer's satisfaction, that payment of such Retention has been made.
- (G) If more than one retention is applicable to different portions of **Loss**, including **Defense Expenses**, the applicable Retention(s) will be applied separately to each portion of such **Loss**, and the sum of such Retention(s) will not exceed the largest applicable Retention set forth in ITEM 4 of the Declarations.

## V. DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS

- (A) It shall be the duty of the **Insured** and not the duty of the Insurer to defend any **Claim, Interview or Investigation Demand** under this Policy.
- (B) No **Insured** may incur any **Defense Expenses** in connection with any **Claim, Interview or Investigation Demand**, or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably delayed or withheld; however, the **Insured** may settle a **Claim** without such consent, if the total amount of such settlement and **Defense Expenses** does not exceed fifty percent (50%) of the amount of the applicable Retention(s) for such **Claim**.
- (C) Upon the written request of an **Insured**, the Insurer will advance **Defense Expenses** on a current basis, but no less so than quarterly, excess of the applicable Retention, before the disposition of the **Claim, Interview or Investigation Demand** for which this Policy provides coverage. As a condition of the advancement of **Defense Expenses**, each **Insured** agrees that if and to the extent it is determined that such **Defense Expenses** are not insured under this Policy, such **Defense Expenses** shall be repaid to the Insurer by the **Insureds**, severally according to their respective interests.
- (D) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim, Interview or Investigation Demand** made against the **Insured** contains both covered and uncovered matters, or because a **Claim, Interview or Investigation Demand** is made against both the **Insured** and others (including the **Company** for **Claims** other than **Securities Claims**) not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate allocation of **Loss** between that portion of **Loss** that is covered under this Policy and that portion of loss that is not covered under this Policy. Additionally, the **Insured** and the Insurer agree that in determining a fair and appropriate allocation of **Loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim, Interview or Investigation Demand** by, the **Insured** and others.
- (E) In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in (D) above, then the Insurer shall advance that portion of **Loss** which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

## VI. GENERAL CONDITIONS

### (A) NOTICE

- (1) As a condition precedent to any right to payment under this Policy with respect to any **Claim or Investigation Demand**, the **Insured** shall give written notice to the Insurer of each **Claim or Investigation Demand** as soon as practicable after it is first made, including but not limited to written notice as soon as practicable of each **Claim or Investigation Demand** deemed to constitute a single **Claim or Investigation Demand** pursuant to Section VI (B) below. Such notice shall be provided as soon as practicable after the risk management or general counsel departments of the **Parent Company** first becomes aware of such **Claim or Investigation Demand**. In the event that the **Insureds** fail to provide timely notice to the Insurer under this Section VI (A)(1), the Insurer shall not be entitled to deny coverage solely based on such untimely notice unless the Insurer can demonstrate its interests were materially prejudiced by reason of such untimely notice.

- (2) As a condition precedent to any right to payment under this Policy with respect to any **Interview**, the **Insured** may elect to give the Insurer written notice thereof during the **Policy Period** pursuant to Section VI (A)(4) below.
- (3) If, during the **Policy Period**, the **Insured** provides the Insurer with written notice of:
- (a) a specific **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, and the circumstances by which the **Insured** first became aware of such **Wrongful Act**;
  - (b) its receipt of a request to toll or waive a statute of limitations in connection with a **Wrongful Act**; or
  - (c) an **Interview** first received during the **Policy Period**,

then any **Claim** or **Investigation Demand** subsequently made arising out of such **Wrongful Act**, request to toll or waive a statute of limitation or **Interview** will be treated as if it had been first made during the **Policy Period**, provided written notice of any subsequent **Claim** or **Investigation Demand** is provided to the Insurer as soon as practicable after such **Claim** or **Investigation Demand** is made.

- (4) All notices under Section VI (A)(1),(2) and (3) above must be sent by:
- (a) first class U.S. mail, overnight mail, Canada Post or the equivalent to the address set forth in ITEM 7 of the Declarations: Attention Claim Department; or
  - (b) electronic mail (email) to the address shown in ITEM 7 of the Declarations.

(B) **INTERRELATED CLAIMS**

All **Claims**, **Investigation Demands**, **Interviews** or requests to toll or waive a statute of limitations, arising from the same **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim**, **Investigation Demand** or **Interview** and shall be deemed to have been made at the earliest of the time at which the earliest such **Claim**, **Investigation Demand**, or **Interview** is made or deemed to have been made pursuant to Section VI (A) above.

(C) **OTHER INSURANCE AND SERVICE IN CONNECTION WITH NON-PROFIT ENTITIES AND JOINT VENTURES**

- (1) Subject to Section IV LIMIT OF LIABILITY INDEMNIFICATION AND RETENTIONS (F), all coverage under this Policy will be specifically excess of and will not contribute with any other valid and collectible management liability insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy, or a personal umbrella policy or personal directorship liability policy purchased by an **Insured Person**. This Policy will not be subject to the terms of any other insurance policy.
- (2) All coverage under this Policy for **Loss** from **Claims** and **Interviews** made against the **Insured Persons** while acting in their capacity as a director, officer, trustee, regent or governor of a **Non-Profit Entity** or persons occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of the **Insured Persons** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Non-Profit Entity** or **Joint Venture** by reason of his or her service as such.

(D) **MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL)**

- (1) If during the **Policy Period** the **Company** acquires any entity by merger, consolidation or

otherwise such that the entity becomes a **Subsidiary**, coverage shall be provided for any **Loss** involving a **Claim, Interview or Investigation Demand** for a **Wrongful Act** occurring after the consummation of the transaction.

- (2) If, however, by reason of the transaction (or series of transactions) described in (D)(1) above, the assets or liabilities so acquired or so assumed as a result of such acquisition, exceed thirty-five percent (35%) of the total assets or liabilities, respectively, of the **Company**, as represented in the **Company's** most recent audited consolidated financial statements, coverage under this Policy shall be provided for a period of ninety (90) days or to the Expiration Date, whichever occurs first, for any **Loss** involving a **Claim, Interview or Investigation Demand** for a **Wrongful Act** that occurred after the transaction has been consummated. Coverage beyond such period will be provided only if:
  - (a) the Insurer receives written notice containing full details of the transaction(s); and
  - (b) the Insurer at its sole discretion, agrees to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate.
- (3) With respect to the acquisition, assumption, merger, consolidation or otherwise of any entity as described in (D)(1) and (2) above, there will be no coverage available to the **Company**, an **Insured Person**, or to the acquired entity under this Policy for **Claims** made against the **Company**, an **Insured Person**, or the acquired entity, for a **Wrongful Act** committed any time during which such entity, is not an **Insured**.
- (4) If any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to the **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.
- (5) If during the **Policy Period** there is a **Change In Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** against an **Insured** for a **Wrongful Act** committed or allegedly committed up to the time of the **Change In Control**; and
  - (a) coverage will cease with respect to any **Claim** for a **Wrongful Act** committed subsequent to the **Change In Control**; and
  - (b) the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change In Control**.

(E) **CANCELLATION AND RENEWAL OF COVERAGE**

- (1) Except for the nonpayment of premium, as set forth in (E)(2) below, the **Parent Company** has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will provide not less than twenty (20) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured**, if applicable.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Expiration Date set forth in ITEM 2 of the Declarations.

(F) **OPTIONAL EXTENSION PERIOD**

- (1) If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** or any **Insured Person** shall be entitled, upon payment of an additional premium set forth in ITEM 5 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any **Claim** or **Investigation Demand** first made or deemed first made during the period of time set forth in ITEM 5 of the Declarations after the Policy Expiration Date, but only with respect to a **Wrongful Act** occurring prior to the Policy Expiration Date. Any such **Claim** or **Investigation Demand** shall be deemed to have been made during the **Policy Period**.
- (2) As a condition precedent to the right to purchase the Optional Extension Period, the total premium for this Policy must have been paid in full. The right of the **Parent Company** or any **Insured Person** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Parent Company** or **Insured Person** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the Policy Expiration Date.
- (3) If the **Parent Company** or **Insured Person** elects to purchase the Optional Extension Period as set forth in (F)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date for the Optional Extension Period.
- (4) The purchase of the Optional Extension Period will not in any way increase the Limit of Liability set forth in ITEM 3 of the Declarations, and the Limit of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the Limit of Liability for all **Claims, Interviews** and **Investigation Demands** made during the **Policy Period**.

(G) **ASSISTANCE, COOPERATION AND SUBROGATION**

- (1) The **Insured** agrees to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request in connection with any **Claim, Investigation Demand** or **Interview** that is reasonably likely to be covered under this Policy, and further agrees that it will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery against any party.
- (2) In the event of any payment under this Policy, the Insurer will be subrogated to the extent of such payment of **Loss** to all of the **Insured's** rights of recovery; provided that the Insurer will be subrogated to any **Insured's** potential or actual rights of recovery against any **Insured Person** only in the event that Exclusion (B)(3) of the Policy is applicable to such **Insured Person** in connection with such **Loss**. The **Insured** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in its name, and will provide all other assistance and cooperation which the Insurer may reasonably require. It is understood that the failure of any **Insured Person** to give the Insurer cooperation and information as required in this paragraph shall not impair the rights of the **Company**, or any other **Insured Person** under this Policy.
- (3) In the event the Insurer recovers amounts it paid under this Policy, the Insurer will reinstate the applicable Limits of Liability of this Policy to the extent of such recovery, less the Insurer's costs incurred in obtaining such recovery. It is understood and agreed that the Insurer shall have no duty to seek such a recovery.

(H) **EXHAUSTION**

If the Insurer's Limit of Liability as set forth in ITEM 3 of the Declarations is exhausted by the payment of **Loss**, the premium as set forth in ITEM 8 of the Declarations will be fully earned and, subject to Section VI General Condition (G)(3), all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under this Policy.

(I) **REPRESENTATION CLAUSE**

The **Insured** represents that the statements and particulars contained in the **Application** as well as any prior application submitted to the Insurer are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, form the basis of this Policy. No knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person**. With respect to **Claims** made under Insuring Agreement (C) only, no knowledge or information possessed by any **Insured Person** other than a past or present chief executive officer or chief financial officer of the **Parent Company** will be imputed to the **Company**. In the event that any of the particulars or statements in the **Application** are untrue, this Policy will be void with respect to any **Insured** who knew of such untruth.

This Policy shall not be rescinded by the Insurer; provided that nothing herein shall limit or waive any other rights or remedies available under the Policy or applicable law.

(J) **ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY**

- (1) No action may be taken against the Insurer unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this Policy.
- (2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the **Insured** to determine its liability, nor may the **Insured** implead the Insurer in any **Claim**.
- (3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
- (4) Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement.

(K) **AUTHORIZATION AND NOTICES**

It is understood and agreed that the **Parent Company** will act on behalf of the **Company** and the **Insured Persons** with respect to:

- (1) the payment of the premiums;
- (2) the receiving of any return premiums that may become due under this Policy;
- (3) the giving of all notices to the Insurer as provided herein; and
- (4) the receiving of all notices from the Insurer.

(L) **PRIORITY OF PAYMENTS**

In the event of **Loss**, including **Defense Expenses**, payable under more than one of the Insuring Agreements of the Policy, then the Insurer shall, to the maximum extent practicable and subject at all times to the Insurer's maximum aggregate Limit of Liability as set forth in ITEM 3 of the Declarations, pay such **Loss** as follows:

- (1) first, the Insurer shall pay that **Loss**, if any, which the Insurer may be liable to pay on behalf of the **Insured Persons** which the **Company** is not permitted nor required to pay on behalf of the **Insured Persons** as indemnification;

- (2) second, the Insurer shall pay that **Loss**, if any, which the Insurer may be liable to pay on behalf of the **Company** which the **Company** is permitted or required to pay on behalf of the **Insured Persons**; and
- (3) third, the Insurer shall make such other payments which the Insurer may be liable to make under Insuring Agreements (C) and/or (F) or otherwise.

(M) **BANKRUPTCY**

Bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations under this Policy. In such event, including any liquidation or reorganization proceeding of the **Company**, then each **Insured** and the Insurer hereby agree not to oppose or object to any efforts by any **Insured Person** to obtain relief from any stay or injunction.

(N) **ENTIRE AGREEMENT – WORLDWIDE COVERAGE**

- (1) The **Insured** agrees that the Declarations, Policy, including the endorsements, attachments and the **Application**, shall constitute the entire agreement between the Insurer or any of its agents and the **Insured** relating to this insurance. The coverage afforded by the Policy shall apply anywhere in the world.
- (2) If the **Parent Company** requests management or directors and officers liability policies for issuance to its foreign **Subsidiaries** in their own countries, the Insurer or a subsidiary or affiliate of XL Group plc shall provide a quote to the **Parent Company** for such policies; provided that the Insurer or a subsidiary or affiliate of XL Group plc can support or facilitate the issuance of the policies to such foreign **Subsidiaries** in their applicable foreign countries. Any coordination of coverage under such policies with coverage under this Policy shall be set forth in an endorsement attached to this Policy.

(O) **CURRENCY**

All premiums, limits of liability, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of Canada. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than Canadian dollars, payment of covered **Loss** due under this Policy, subject to its terms, conditions and limitations, will be made either in such other currency (at the option of the Insurer and with the agreement of the **Parent Company**), or, in Canadian dollars at the rate of exchange most recently published in The Globe and Mail on the date of the Insurer's obligation to pay such **Loss** is established.



**THIS IS EXHIBIT KK REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

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**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**Tokio Marine HCC**  
1 Aldgate  
London EC3N 1RE, UK  
Tel: +44 (0)20 7648 1100  
tmhcc.com/international

**LLOYD'S**

**EXCESS INDEMNITY INSURANCE**

Effected with certain Lloyd's Underwriters through Lloyd's Approved Coverholder ("the Coverholder"):

**Tokio Marine HCC – D&O Group, 8 Forest Park Drive, Farmington CT 06032.**

**THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.**

**THIS IS A CLAIMS MADE EXCESS POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED, AND MAY BE EXHAUSTED, BY THE PAYMENT OF DEFENSE EXPENSES.**

**EXCESS INDEMNITY POLICY  
DECLARATIONS**

**NAME OF CANADIAN INTERMEDIARY::** Nolan Heuchert, Director  
Wylie-Crump  
Limited 301-1620 West  
8th Avenue, Vancouver,  
BC V6J 1V4

POLICY NUMBER: 21G196460101

RENEWAL OF: N/A

ITEM 1. **INSURED:** Just Energy Group Inc.  
100 King Street West, Suite 2360  
Toronto Ontario, OT M5X 1E1

ITEM 2. **POLICY PERIOD:**  
(a) Inception Date: 3/9/2021  
(b) Expiration Date: 3/9/2022  
Both days at 12:01 a.m. Standard Time at the Principal Address stated in ITEM 1.

ITEM 3. **LIMIT OF LIABILITY (INCLUSIVE OF DEFENSE EXPENSES):**  
USD \$5,000,000

ITEM 4. **SCHEDULE OF UNDERLYING INSURANCE:**

	<u>Insurer</u>	<u>Policy Number</u>	<u>Limits</u>
<b>Primary</b>	XL Specialty Insurance Company	ELU173707-21	\$5,000,000

ITEM 5. **PREMIUM: USD \$640,000.00**

ITEM 6. **NOTICES REQUIRED TO BE GIVEN TO INSURER MUST BE ADDRESSED TO ONE OF THE FOLLOWING:**

<b><u>Street Address:</u></b> Tokio Marine HCC – D&O Group 8 Forest Park Drive Farmington, CT 06032 Attn: Claims Manager	<b><u>Facsimile Number:</u></b> (860) 676-1737	<b><u>E-mail Address:</u></b> <a href="mailto:usclaims@tmhcc.com">usclaims@tmhcc.com</a>
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ITEM 8. **ENDORSEMENTS ATTACHED AT ISSUANCE:**

CAN-LMA5028A CAN-LMA5180 CAN-LMA5185 CAN-LSW1542F CAN-LSW1543D  
CAN-LSW1565C CAN-NMA0464 CAN-NMA1622 994-936  
994-938 994-985 994-995 994-9059

Date: May 18, 2021

A subsidiary of HCC Insurance Holdings, Inc., **HCC Underwriting Agency Ltd.** is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and Prudential Regulation Authority. Registered with the Companies House of England and Wales No. 04632146. Registered office: 1 Aldgate, London, EC3N 1RE, UK.

The insurance contract consists of this Declarations page as well as all coverage wordings, riders, or endorsements that are attached hereto.

#### IDENTIFICATION OF INSURER / ACTION AGAINST INSURER

This insurance has been effected in accordance with the authorization granted to the Coverholder by HCC Underwriting Agency Ltd, HCC Syndicate 4141 trading as Tokio Marine HCC International via Agreement No. B602121HCCGF (hereinafter referred to as "the Underwriters"). The Underwriters shall be liable hereunder each for his own part and not one for another in proportion to the several sums that each of them has subscribed to the said Agreement.

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155 rue Metcalfe, Suite 2220, Montreal, Quebec H3B 2V6..

#### NOTICE

Any notice to the Underwriters may be validly given to: Nolan Heuchert, Director  
Wylie-Crump  
Limited 301-1620 West  
8th Avenue, Vancouver,  
BC V6J 1V4

**In witness whereof** this policy has been signed in Farmington, Connecticut, as authorized by the Underwriters, by Tokio Marine HCC – D&O Group.

Per



The Insured is requested to read this policy, and if incorrect, return it immediately for alteration.

In the event of an occurrence likely to result in a claim under this insurance, immediate notice should be given to the Canadian licenced intermediary whose name and address appear above. All inquiries and disputes are also to be addressed to this intermediary.

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

ENDORSEMENT NUMBER: 1

**SERVICE OF SUIT CLAUSE (CANADA)**  
(Action against Insurer)

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is Royal Bank Plaza South Tower, 200 Bay Street, Suite 2930, P.O. Box 51 Toronto, Ontario M5J 2J2.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 2

**INTENTION FOR AIF TO BIND CLAUSE**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 3

**MADE IN CANADA CLAUSE**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

For the purpose of the *Insurance Companies Act* (Canada), this Canadian Policy was issued in the course of Lloyd's Underwriters' insurance business in Canada.

The business insured/reinsured herein meets the necessary conditions to qualify as, and is being transacted as, "insuring in Canada a risk" in accordance with Part XIII of the *Insurance Companies Act* (Canada).

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 4

**LLOYD'S UNDERWRITERS' POLICYHOLDERS' COMPLAINT PROTOCOL**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

Lloyd's strives to enhance your customer experience with us through superior service and innovative insurance products.

We have developed a formal complaint handling protocol in accordance with the Insurance Companies Act of Canada to ensure your concerns as our valued customer are addressed expeditiously by our representatives. This protocol will assist you in understanding the steps we will undertake to help resolve any dispute which may arise with our product or service. All complaints will be handled in a professional manner. All complaints will be investigated, acted upon, and responded to in writing or by telephone by a Lloyd's representative promptly after the receipt of the complaint. If you are not satisfied with our products or services, you can take the following steps to address the issue:

- Firstly, please contact the broker who arranged the insurance on your behalf about your concerns so that he or she may have the opportunity to help resolve the situation.
- If your broker is unable to help resolve your concerns, we ask that you provide us in writing an outline of your complaint along with the name of your broker and your policy number.

Please forward your complaint to:

**Lloyd's Underwriters**

Attention: Complaints Officer:

1155 rue Metcalfe, Suite 2240, Montréal (Québec) H3B 2V6

Tel: 1-877-455-6937 - Fax: (514) 861-0470

E-mail: [info@lloyds.ca](mailto:info@lloyds.ca)

Your complaint will be directed to the appropriate business contact for handling. They will write to you within two business days to acknowledge receipt of your complaint and to let you know when you can expect a full response. If need be, we will also engage internal staff in Lloyd's Policyholder and Market Assistance Department in London, England, who will respond directly to you, and in the last stages, they will issue a final letter of position on your complaint.

In the event that your concerns are still not addressed to your satisfaction, you have the right to continue your pursuit to have your complaint reviewed by the following organizations:

**General Insurance OmbudService (GIO):** assists in the resolution of conflicts between insurance customers and their insurance companies. The GIO can be reached at:

Toll free number: 1-877-225-0446

[www.giocanada.org](http://www.giocanada.org)

**For Quebec clients:**

**Autorité des marchés financiers (AMF):** The regulation of insurance companies in Quebec is administered by the AMF. If you remain dissatisfied with the manner in which your complaint has been handled, or with the results of the complaint protocol, you may send your complaint to the AMF who will study your file and who may recommend mediation, if it deems this action appropriate and if both parties agree to it. The AMF can be reached at

Toll Free: 1-877-525-0337

Québec: (418) 525-0337

Montréal: (514) 395-0311

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)



If you have a complaint specifically about Lloyd's Underwriters' complaints handling procedures you may contact the FCAC.

**Financial Consumer Agency of Canada (FCAC)** provides consumers with accurate and objective information about financial products and services, and informs Canadians of their rights and responsibilities when dealing with financial institutions. FCAC also ensures compliance with the federal consumer protection laws that apply to banks and federally incorporated trust, loan and insurance companies. The FCAC does not get involved in individual disputes. The FCAC can be reached at:

427 Laurier Avenue West, 6th Floor, Ottawa ON K1R 1B9  
Services in English: 1-866-461-FCAC (3222)  
Services in French: 1-866-461-ACFC (2232)  
[www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca)

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 5

**PRIVACY: NOTICE CONCERNING PERSONAL INFORMATION**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

**Who we are**

We are the Lloyd's underwriter(s) identified in the insurance contract and/or the certificate of insurance. Your privacy is important to us. This Privacy notice explains what personal information we collect, use and disclose about policyholders, beneficiaries, claimants and witnesses and for what purposes, in compliance with applicable Canadian privacy laws.

**What personal information we collect**

Personal information is any information about an identified and or identifiable individual. The personal information that is collected for a clear and legitimate use and disclosure generally includes the following:

- Identification and contact information (name, address including postal code, country, telephone number, email address, month and date of birth, drivers licence, employer, job title, employment history, family details)
- Policy information (policy number, policy amounts, policy terms)
- Claim information (claim number, information relating to a potential or existing claim)
- Payment information (credit card details, bank account details, credit score)
- Other information related to your insurance cover or a claim only for legitimate business purposes

We also collect personal information about you when you visit [www.lloyds.com](http://www.lloyds.com). Further details can be found on our online Cookies policy at <http://www.lloyds.com/common/privacy-and-cookies-statement>

We will not use your personal information for marketing purposes and we will not sell your personal information to other parties.

**How we use your information**

By purchasing insurance from certain Lloyd's Underwriters ("Lloyd's"), a customer provides Lloyd's with his or her explicit consent to the collection, use and disclosure of personal information. Meaningful consent is subject to the customer's understanding of the nature, purpose and consequences of the collection, use or disclosure of their personal information.

Information is generally collected, used, disclosed and stored in order to provide you with the insurance products that you have requested, including to:

- Identify you and provide you with insurance cover
- Communicate with Lloyd's policyholders
- Calculate, collect or refund premiums
- Underwrite policies and facilitate policy administration
- Evaluate and process claims
- Detect and prevent fraud, carry out anti-money laundering and sanctions checks
- Investigate and prosecute fraud
- Meet our regulatory and other legal obligations
- Enforce terms or exercise rights under the insurance contract
- Analyze insurance risk and business results
- Improve our services and offerings
- Provide general client care

- Defend or prosecute legal claims
- Renew your insurance policy
- Transfer of books of business, company sales and reorganisations

Or as may be otherwise required or authorized by law.

**Your information may be shared and disclosed:**

In order to fulfil the purposes described in this Privacy notice, we may share your personal information with other third parties that we have engaged to provide services on our behalf, or who otherwise assist us in providing you with services, such as affiliated organizations, sub-contractors, agents/coverholders, legal counsel, insurers, brokers, reinsurers, loss adjusters and other service providers.

We will limit this disclosure to only the Personal Information that is reasonably necessary for the purpose or service for which the third party or affiliate will provide. We will use contractual and other means to provide a comparable level of protection while the information is being processed by these service providers, including limiting such providers to using your Personal Information solely to provide Lloyd's with the specific service for which they were engaged, and for no other purpose. You can obtain more information about our policies and practices with respect to the use of Personal Information by Third Party Service Providers by contacting us as described below, under the section "How to Contact Us" at the end of this document.

Some of these entities may be located outside Canada, therefore your information may be processed in a foreign jurisdiction, where it will be subject to the laws of that jurisdiction, which may be different than the laws in your province. Personal information that is stored or processed outside Canada may also be accessible to the law enforcement and national security authorities of that jurisdiction.

We may also share or transfer your Personal Information where reasonably required in the context of a sale, merger or amalgamation of all or part of our business or the insurance or securitization of our assets. In any such case, the recipient parties will be contractually required to keep the information confidential and use it only for the purposes of the transaction, or proposed transaction, in question. In the event a business transaction is affected, assignees or successors of Lloyd's or our business or assets, or those of our affiliated entities, may use and disclose Personal Information only for the purposes as set out in this Privacy notice, unless further consent is obtained.

We may also share your Personal Information with law enforcement, national security agencies or other governmental officials, as required or permitted by law, such as in response to a court order or a verified request relating to a criminal investigation or alleged illegal activity, where we are legally obligated to contribute information to compulsory insurance databases, or where required to detect, prevent or prosecute fraud.

**Authority to collect, use and disclose personal information**

When you share information with us for particular purposes, such as providing you with insurance, you give us explicit consent to collect, use and disclose your information for those purposes. Canadian law also authorizes us to collect, use and disclose personal information without consent in certain circumstances prescribed by law, which may include the following:

- Detecting or suppressing fraud
- Investigating or preventing financial abuse
- For communication with the next to kin or authorized representative of an injured, ill or deceased individual
- Investigating a breach of an agreement or a contravention of the laws of Canada or a foreign jurisdiction where obtaining consent would compromise the availability or accuracy of the information
- Witness statement necessary to assess, process or settle insurance claims
- Information that is produced in the course of an individual's employment, business or

### profession

There may be situations where we need your additional consent to collect, use, and disclose information about you. In those situations, we will ask you for consent separately. You do not have to give your consent and, subject to legal and contractual restrictions, you can withdraw your consent to us collecting, using and disclosing your information at any time. However, withdrawing your consent may affect our ability to provide you with insurance cover or other services.

### **Retention and security**

We retain personal information for as long as necessary to provide you with insurance cover and meet the other purposes for collection, use and disclosure described in this Privacy notice, or as otherwise required or permitted by law. When your Personal Information is no longer required, we will make all reasonable efforts to ensure all electronic and hard copies of such information are securely destroyed and irreversibly deleted from our systems.

We use various physical, technical and administrative security measures, appropriate to the sensitivity of the personal information, that are designed to protect against loss, theft, unauthorized access, disclosure, copying, use or modification by. Although we will take reasonable measures to protect personal information, the transmission of information through the internet or other electronic means is not guaranteed to be secure and may create risks for the privacy and security of your information.

### **How to access your personal information**

Subject to certain exceptions provided by applicable law, you have the right to access your personal information, request corrections about your personal information if you identify any inaccuracies, and request that we delete your information. If you would like to exercise any of these rights, please contact the Ombudsperson at [info@lloyds.ca](mailto:info@lloyds.ca).

The Ombudsperson can also provide additional information about Lloyd's policies and practices, answer questions about the collection, use, disclosure or storage of personal information by Lloyd's and its service providers located outside Canada, as well as discuss any complaints you may have regarding the collection, use and disclosure of your personal information.

### **Changes**

We may amend this Privacy notice from time to time as our business evolves, in response to legal developments, as new technologies become available, or as we introduce new features, products or services.

When we make changes to wording of this Privacy notice we will revise the "last updated" date at the bottom of this Privacy notice. You should check back here periodically to find out if any changes have been made to this Privacy notice. If we make substantial changes we will, as appropriate prominently post these changes to our Site or notify registered Users directly.

### **How to contact us**

Further information about Lloyd's personal information protection policy may be obtained by visiting, <https://www.lloyds.com/lloyds-around-the-world/americas/canada/market-conduct> from your broker, or by contacting Lloyd's by phone: 514 861 8361, 1 877 455 6937 or email: [info@lloyds.ca](mailto:info@lloyds.ca).

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 6

## **LLOYD'S AGENTS CODE OF CONSUMER RIGHTS AND RESPONSIBILITIES**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

Insurers (including Lloyd's Underwriters), along with the brokers and agents who sell home, auto and business insurance are committed to safeguarding your rights both when you shop for insurance and when you submit a claim following a loss. Your rights include the right to be informed fully, to be treated fairly, to timely complaint resolution, and to privacy. These rights are grounded in the contract between you and your insurer and the insurance laws of your province. With rights, however, come responsibilities including, for example, the expectation that you will provide complete and accurate information to your insurer. Your policy outlines other important responsibilities. Insurers and their distribution networks, and governments also have important roles to play in ensuring that your rights are protected.

### **Right to Be Informed**

You can expect to access clear information about your policy, your coverage, and the claims settlement process. You have the right to an easy-to-understand explanation of how insurance works and how it will meet your needs. You also have a right to know how insurers calculate price based on relevant facts. Under normal circumstances, insurers will advise an insurance customer or the customer's intermediary of changes to, or the cancellation of a policy within a reasonable prescribed period prior to the expiration of the policy, if the customer provides information required for determining renewal terms of the policy within the time prescribed, which could vary by province, but is usually 45 days prior to expiry of the policy.

You have the right to ask who is providing compensation to your broker or agent for the sale of your insurance. Your broker or agent will provide information detailing for you how he or she is paid, by whom, and in what ways.

You have a right to be told about insurers' compensation arrangements with their distribution networks. You have a right to ask the broker or agent with whom you deal for details of how and by whom it is being paid. Brokers and agents are committed to providing information relating to ownership, financing, and other relevant facts.

### **Responsibility to Ask Questions and Share Information**

To safeguard your right to purchase appropriate coverage at a competitive price, you should ask questions about your policy so that you understand what it covers and what your obligations are under it. You can access information through one-on-one meetings with your broker or agent. You have the option to shop the marketplace for the combination of coverages and service levels that best suits your insurance needs. To maintain your protection against loss, you must promptly inform your broker or agent of any change in your circumstances.

### **Right to Complaint Resolution**

Insurers, their brokers and agents are committed to high standards of customer service. If you have a complaint about the service you have received, you have a right to access Lloyd's Underwriters' complaint resolution process for Canada. Your agent or broker can provide you with information about how you can ensure that your complaint is heard and promptly handled. Consumers may also contact their respective provincial insurance regulator for information. Lloyd's is a member of an independent complaint resolution office, the General Insurance OmbudService.

### **Responsibility to Resolve Disputes**

You should always enter into the dispute resolution process in good faith, provide required information in a

timely manner, and remain open to recommendations made by independent observers as part of that process.

**Right to Professional Service**

You have the right to deal with insurance professionals who exhibit a high ethical standard, which includes acting with honesty, integrity, fairness and skill. Brokers and agents must exhibit extensive knowledge of the product, its coverages and its limitations in order to best serve you.

**Right to Privacy**

Because it is important for you to disclose any and all information required by an insurer to provide the insurance coverage that best suits you, you have the right to know that your information will be used for the purpose set out in the privacy statement made available to you by your broker, agent or insurance representative. This information will not be disclosed to anyone except as permitted by law. You should know that Lloyd's Underwriters are subject to Canada's privacy laws - with respect to their business in Canada.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 7

**WAR AND CIVIL WAR EXCLUSION CLAUSE**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact



ENDORSEMENT NUMBER: 8

**RADIOACTIVE CONTAMINATION AND EXPLOSIVE NUCLEAR ASSEMBLIES EXCLUSION  
CLAUSE**

To be attached to and made a part of Policy No. 21G196460101, issued to  
Just Energy Group Inc. by Syndicate 4141.

This Policy does not cover

- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- (b) any legal liability of whatsoever nature  
directly or indirectly caused by or contributed to by or arising from
  - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
  - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 9

**DELETE SECTION IX. POLICY TERMINATION**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

In consideration of the premium charged, it is agreed that Section IX of the Policy is deleted in its entirety.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 10

**AMEND SUBROGATION**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

In consideration of the premium charged:

- (1) Section VII. SUBROGATION AND RECOVERIES is deleted in its entirety.
- (2) The Insurer's subrogation rights shall be the same as those set forth in the **Primary Policy**.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 11

**AMEND CONFORMITY TO STATUTE PROVISION**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

In consideration of the premium charged, it is agreed that Section X of the Policy is amended to read in its entirety as follows:

X. CONFORMITY TO STATUTE

Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy are hereby amended to conform to such laws. However, in the event that there is an inconsistency between a state amendatory attached to this Policy and any term or condition of this Policy, then where permitted by law, the Insurer shall apply those terms and conditions of either the state amendatory or the Policy which are more favorable to the **Insureds**.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 12

**DELETE SECTION II.B  
CANCELLATION OF UNDERLYING INSURANCE**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

In consideration of the premium charged, it is agreed that:

(1) Section II.B of the Policy is deleted in its entirety. However, nothing in this endorsement is intended, nor shall it be construed, to relieve the **Insured** of its obligation under Section VIII.B to give the Insurer written notice as soon as practicable of any cancellation of **Underlying Insurance**. Moreover, in the event a policy of **Underlying Insurance** is cancelled, the Insurer shall not be liable under this Policy earlier or to any greater extent than it would have been had the policy of **Underlying Insurance** not been cancelled.

(2) The second sentence of Section II.A is deleted and replaced with the following:

The Insurer shall not be liable under this Policy earlier or to any greater extent than it would have been if the **Insureds** had complied with this condition.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact

ENDORSEMENT NUMBER: 13

**FOLLOW PRIMARY RUN-OFF ENDORSEMENT**

To be attached to and made a part of Policy No. 21G196460101, issued to Just Energy Group Inc. by Syndicate 4141.

In consideration of the premium charged, it is agreed that this Policy will follow the form of, and coverage under this Policy is amended in accordance with, Endorsement No. 6 to the **Primary Policy**, except that the additional premium for the excess run-off coverage afforded under this Policy shall be \$0.

All other terms, conditions and limitations of this Policy will remain unchanged.

Complete the following only when this endorsement is not prepared with the Policy or is not to be effective with the Policy.

Effective date of this endorsement:

By: \_\_\_\_\_  
Attorney-in-Fact



**Tokio Marine HCC**  
1 Aldgate  
London EC3N 1RE, UK  
Tel: +44 (0)20 7648 1100  
tmhcc.com/international

## **EXCESS INDEMNITY POLICY**

**PLEASE NOTE:**

**THIS IS A CLAIMS MADE POLICY.**

THE COVER PROVIDED BY THIS POLICY IS LIMITED TO LIABILITY FOR WRONGFUL ACTS FOR CLAIMS WHICH ARE FIRST MADE AGAINST AN INSURED DURING THE PERIOD OF INSURANCE OR ANY DISCOVERY PERIOD PURCHASED.

FOR THE PURPOSES OF THE INSURANCE COMPANIES ACT (CANADA), THIS DOCUMENT WAS ISSUED IN THE COURSE OF HCC UNDERWRITING LTD'S INSURANCE BUSINESS IN CANADA.

THE INSURED IS REQUESTED TO READ THIS POLICY AND SCHEDULE CAREFULLY. IF IT IS INCORRECT PLEASE RETURN IT IMMEDIATELY FOR ALTERATION TO: TOKIO MARINE HCC – D&O GROUP, 8 FOREST PARK DRIVE, FARMINGTON, CT 06032, USA.

A subsidiary of HCC Insurance Holdings, Inc., **HCC Underwriting Agency Ltd.** is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and Prudential Regulation Authority. Registered with the Companies House of England and Wales No. 04632146. Registered office: 1 Aldgate, London, EC3N 1RE, UK.

## EXCESS INDEMNITY POLICY

**This is a claims made policy. Please read it carefully.**

In consideration of the payment of the premium, and in reliance upon all statements made and information furnished to the Insurer and to the issuers of the **Underlying Insurance** and subject to the Declarations and the limitations, conditions, provisions, any endorsements to and all other terms of this Policy, the Insurer and the **Insureds** agree as follows

### I. INSURING AGREEMENT

The Insurer shall provide the **Insureds** with insurance excess of the **Underlying Insurance** scheduled in ITEM 4 of the Declarations. Except as specifically set forth in the terms, conditions or endorsements of this Policy, coverage hereunder shall apply in conformance with the terms, conditions, limitations and endorsements of the policy immediately underlying this Policy, except that coverage hereunder shall attach only after all **Underlying Insurance** has been exhausted by actual payment of claims or losses thereunder.

### II. PRIMARY AND UNDERLYING INSURANCE

#### A. Maintenance of Underlying Insurance

All of the **Underlying Insurance** scheduled in ITEM 4 of the Declarations shall be maintained during the **Policy Period** in full effect except for any reduction of the limits of liability available under the **Underlying Insurance** solely by reason of actual payment of claims or losses thereunder. Subject at all times to Section II.B of this Policy, the Insurer shall not be liable under this policy earlier or to any greater extent than it would have been if the **Insureds** had complied with this condition.

#### B. Cancellation of Underlying Insurance

This Policy shall terminate immediately upon the cancellation of any one or more of the policies scheduled in ITEM 4 of the Declarations, whether cancelled by the **Insureds** or the applicable insurer. Notice of cancellation or non-renewal of any such policies duly given by any of the applicable insurers shall serve as notice of the cancellation or non-renewal of this Policy by the Insurer.

#### C. Amendment of Underlying Insurance

No amendment to any **Underlying Insurance** during the **Policy Period** shall be effective in extending the coverage or limits of liability afforded by this Policy unless the Insurer so agrees in writing.

### III. DEFINITIONS

- A. **Insured** means any person or organization insured under the policy immediately underlying this Policy
- B. **Policy Period** means the period from the inception date to the expiration date set forth in ITEM 2 of the Declarations, or to any earlier cancellation date.
- C. **Primary Policy** means the policy scheduled as such in ITEM 4 of the Declarations.
- D. **Underlying Insurance** means all policies scheduled in ITEM 4 of the Declarations and any policies replacing them.



## IV. LIMITS OF LIABILITY

- A. The amount or amounts stated in ITEM 3 of the Declarations are the limits of the Insurer's liability and shall be the maximum amount(s) payable by the Insurer under this Policy. The limits of liability available under this Policy to pay damages or settlements shall be reduced, and may be exhausted, by the payment of defense expenses.
- B. In the event of the reduction of the limits of liability of the **Underlying Insurance** solely as the result of actual payment of claims or losses thereunder by the applicable insurers, this Policy shall, subject to the Insurer's limits of liability and to the other terms, conditions and endorsements of this Policy, continue to apply to claims or losses as excess insurance over the amount of insurance remaining under such **Underlying Insurance**.
- C. In the event of the exhaustion of all of the limits of liability of such **Underlying Insurance** solely as the result of actual payment of claims or losses thereunder, the remaining limits available under this Policy shall, subject to the Insurer's limits of liability and to the other terms, conditions and endorsements of this Policy, continue for subsequent claims or losses as primary insurance. Under such circumstances, any retention or deductible specified in the **Primary Policy** shall also apply to this Policy.

## V. SETTLEMENT

The **Insureds** shall not admit liability for or settle any claim for any amount that would involve the coverage afforded by this Policy without the Insurer's prior written consent.

## VI. CLAIM PARTICIPATION

The Insurer may, at its sole discretion, elect to participate in the investigation, settlement and/or defense of any claim against the **Insureds** even if the **Underlying Insurance** has not been exhausted.

## VII. SUBROGATION AND RECOVERIES

- A. In the event of any payment under this Policy, the Insurer shall be subrogated to all the **Insureds'** rights of recovery against any person or organization, and the **Insureds** shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights.

Any amount recovered after payment under this Policy shall be apportioned in the inverse order of payment to the extent of actual payment. The expenses of all such recovery proceedings shall be apportioned in the same ratio as the recoveries.

## VIII. NOTICES

- A. If the **Insureds** give any notice of any matter under the **Underlying Insurance**, the **Insureds** must also give the Insurer written notice of such matter in the same manner as required by the terms and conditions of the **Primary Policy**, except that such written notice must be sent to the Insurer at the address set forth in ITEM 6 of the Declarations. The Insurer will be deemed to have received notice of claim upon receipt by Tokio Marine HCC – D&O Group.
- B. The **Insureds** shall give the Insurer notice in writing as soon as practicable of:
1. the cancellation of any **Underlying Insurance**, or
  2. any additional or return premiums charged or allowed in connection with any **Underlying Insurance**.

## IX. CLIENT MONEY

Tokio Marine HCC – D&O Group will receive premiums or **Claims** as a tied insurance agency of the Insurer and will hold the money on the Insurer's behalf. This means that, in effect, premium is considered to have been paid to the Insurer as soon as it is received by Tokio Marine HCC – D&O Group. So, if (for any reason) Tokio Marine HCC – D&O Group does not pay the premium to the Insurer, the Named Corporation cannot be obliged to pay it again.

## X. POLICY TERMINATION

- A. This Policy may be canceled by the **Insureds** at any time either by surrender of this Policy or by written notice stating when thereafter such cancellation is to be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this policy shall terminate at the date and hour specified in such notice.
- B. The Insurer shall refund the unearned premium computed at the customary short rate if the Policy is canceled by the **Insureds**.

## XI. CONFORMITY TO STATUTE

Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy are hereby amended to conform to such laws.

## XII. APPLICABLE LAW AND JURISDICTION

This Policy is to be governed by, and its terms are to be construed in accordance with, the applicable law of Canada. Any dispute or difference arising under or in respect of this Policy is to be subject to and determined within the exclusive jurisdiction of Canada.

## XIII. PERSONAL DATA PROTECTION

**The** interested party is hereby informed that any personal data, including all data provided in this document and all subsequent data provided related to the fulfillment of the insurance contract, will be included in a data file controlled by HCC Underwriting Agency LTD. The data will be processed for the purpose of fulfilling the insurance contract, and to enable HCC Underwriting Agency LTD to send information on its products and services. The **Insured** hereby provides its express consent for the data to be transferred to other entities for coinsurance, reinsurance, portfolio assignment or management or for the adoption of anti-fraud measures. The **Insured** provides its express consent for the data to be transferred to other companies belonging to the same group as Tokio Marine HCC – D&O Group and HCC Underwriting Agency LTD located in countries outside the European Union, with the exclusive purpose that these may provide data processing services. The **Insured** may at any time exercise its right to access, rectify, cancel or object to its data being held, by notifying HCC Underwriting Agency LTD, 1Aldgate, London EC3N 1RE, United Kingdom, pursuant to the provisions of the UK Data Protection Act 1998.

Should the **Insured** provide HCC Underwriting Agency LTD with information related to the **Insured**, any damaged parties or any third person, the **Insured** hereby declares that all the data related to the **Insured**, the damaged parties or any third person given to the Insurer have been provided by them, and that the Insured, the damaged parties or any third person have provided their consent for their data to be transferred by the **Insured** to the Insurer for the fulfillment of the insurance contract in the terms established in this clause.

#### XIV. COMPLAINTS PROCEDURE

Tokio Marine HCC – D&O Group is dedicated to providing a high-quality service at all times to the Insurer's clients. Should the Named Corporation or the **Insureds** feel that Tokio Marine HCC – D&O Group has not offered them a first-class service, please inform Tokio Marine HCC – D&O Group who will do their best to resolve the problem.

For any questions or concerns about the policy or any claim's handling please contact:

The Compliance Officer,  
TOKIO MARINE HCC – D&O GROUP  
8 Forest Park Drive  
Farmington, CT 06032

If your concerns are not addressed to your satisfaction and you wish to make a complaint, or if their resolution is within the direct control of the Insurer, then please write to:

Head of International Compliance HCC  
UNDERWRITING AGENCY LTD  
1 Aldgate  
London EC3N 1RE  
United Kingdom

In the event that you remain dissatisfied and wish to make a complaint it may be possible in certain circumstances for you to refer the matter to the Policyholder & Market Assistance Department. Their address is:

Policyholder & Market  
Assistance Lloyd's Market  
Services One Lime Street  
London EC3M 7HA  
United Kingdom

#### XV. FINANCIAL SERVICES COMPENSATION SCHEME

Lloyd's Underwriters are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the Scheme if a Lloyd's Underwriter is unable to meet its obligations to you under this contract. If you were entitled for compensation under the Scheme, the level and extent of the compensation would depend on the nature of this contract. Further information about the Scheme is available from the Financial Services Compensation Scheme (7<sup>th</sup> Floor, Lloyd's Chambers, Portsoken Street, London E1 8BN) and on their website ([www.fscs.org.uk](http://www.fscs.org.uk)).

#### XVI. AUTHORIZATION AND NOTICES

The person or entity named in ITEM 1 of the Declarations shall be the sole agent, and shall act on behalf, of the Insureds with respect to all matters under this Policy, including but not limited to giving and receiving notices and other communication, effecting or accepting any endorsements to or notice of cancellation of this Policy, paying premium and receiving any return premiums.

#### XVII. NO ALTERATIONS WITHOUT ENDORSEMENT

No change in or modification of this Policy shall be effective unless made by endorsement signed by an authorized employee of the Insurer or any of its agents relating to this Policy.

In witness whereof, the Insurer has caused this Policy to be executed by its authorized representative, but this Policy will not be valid unless signed on the Declarations Page by a duly authorized representative of the Insurer.

**THIS IS EXHIBIT LL REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
[www.paragonbrokers.com](http://www.paragonbrokers.com)  
Email  
[info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**WYLIE CRUMP LTD**

301-1620 West 8th Avenue  
Vancouver  
British Columbia V6J 1V4  
Canada

Contract: B0146ERINT2100865

Date: 12 March 2021

**Insured: Just Energy Group, Inc.**

Further to your instructions to bind coverage we have effected insurance in accordance with the attached contract.

Please examine this contract carefully and notify us immediately if it is incorrect, does not meet your requirements, or if the insurer(s) is / are unacceptable.

**Duty to Disclose:**

The insurance cover is based on the information you provided to us and on which we and the insurer(s) have relied. If you have not provided to us all material information or you discover that the information you have provided is inaccurate, please advise us immediately in order that we may seek revalidation of terms with the insurer(s).

We take this opportunity to remind you that you have a duty to disclose all information which a) is material to the coverage requirements, b) might influence the insurer(s) in deciding whether or not to accept your business, c) might affect which terms and conditions the insurer(s) impose, or d) might affect the premium the insurer(s) charge. This duty to disclose is an ongoing responsibility for the duration of the contract and failure to make such disclosure may allow the insurer(s) to cancel the policy, avoid a claim or even avoid the contract.

**Premium Payment Terms:**

We draw your attention to the premium payment terms. Payment of the premium is a condition of the contract. If the insurer(s) have imposed a payment warranty you must make sure that the premium is paid to us early enough to give us sufficient time to pay the insurer(s). Failure to pay the premium or to meet a payment warranty may enable the insurer(s) to avoid the contract.

**Claims:**

In the event of any claim or circumstance that might lead to a claim, please follow the instructions in the attached contract. If you have any questions relating to claims or doubts as to what constitutes a circumstance then please contact Simon Witham on +44 (0)20 7280 8227 or [switham@paragonbrokers.com](mailto:switham@paragonbrokers.com)

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping, slanted lines.

**Director / Authorised Signatory**



## PARAGON INTERNATIONAL INSURANCE BROKERS LIMITED

### CONTRACT OF INSURANCE

**Unique Market Reference: B0146ERINT2000453**

Thank you for choosing Paragon International Insurance Brokers Limited for your Insurance requirements.

This document contains the full terms and conditions of your Insurance. It is a legal document that you must read to ensure that you understand what is covered and what is excluded by your Insurance.

If you have any questions or concerns please contact us; we would be happy to hear from you.



## Important Information

(Please Read Carefully)

### Material Facts

All material facts must be disclosed to us. Failure to do so may affect your rights under this insurance. A material fact is a fact likely to influence an insurer in the acceptance or assessment of this Insurance. If you are uncertain whether a fact is 'material', then for your own protection it should be disclosed to us so that we can advise you.

### Policy Terms

The coverage afforded by this insurance is subject to all the terms, conditions and exclusions contained in the original contract. If you have any questions or concerns about this insurance, you should first contact us at the address set out below.

### Subjectivities

If this contract contains subjectivities then you must take the necessary steps to provide the information requested by insurers and / or comply with their instructions. Failure to comply with the subjectivities may limit or restrict some, or all, of the coverage under this insurance. In some instances insurers may be able to avoid the contract.

### Our Services

We are committed to providing you with a high quality service, which we expect to maintain throughout the duration of the policy. In order for you to appreciate this level of service we ask that in the first instance you carefully read through this document to ensure that you understand the extent of the coverage provided, the terms, conditions and exclusions that apply. In particular please note what is required of you if and when you become aware of a claim, or a circumstance which may give rise to a claim, being made against you.

### Contact Address:

Paragon International Insurance Brokers Ltd.,  
140, Leadenhall Street,  
London,  
EC3V 4QT

**Tel:** 020 7280 8200

**Fax:** 020 7280 8270

**Email:** [info@paragonbrokers.com](mailto:info@paragonbrokers.com)

**RISK DETAILS:****UNIQUE MARKET REFERENCE:**

B0146ERINT2100865

**TYPE:**

EXCESS MANAGEMENT LIABILITY INSURANCE

**NAMED INSURED:****JUST ENERGY GROUP INC.****PRINCIPAL ADDRESS:**100 King Street West, Suite 2630  
Toronto  
Ontario  
M5X 1E1  
Canada**POLICY PERIOD:**From: 9 March 2021  
To: 9 March 2022

Both dates at 12.01 a.m. Local Time at the Principal Address stated above.

**INTEREST:**

Management liability, as per underlying Policy wording.

**LIMIT OF LIABILITY:****USD5,000,000** each claim, including costs and expenses incurred in the defense or settlement of such claim.**USD5,000,000** Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims

In Excess of Underlying Limits of:

**USD10,000,000** Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims**TERRITORIAL SCOPE:**

Worldwide, as per underlying Policy wording

**CONDITIONS:**

1. Policy wording: Excess Wording as attached, plus amendments detailed hereon.
2. Notification Pursuant to Clause VI shall be given to: Hiscox, Attn Public Directors and Officers Claims, 1 Great St Helen's, London EC3A 6HX, or Hiscox Syndicate 33 using the following email address: [LondonMarketD&OClaims@hiscox.com](mailto:LondonMarketD&OClaims@hiscox.com) (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))
3. LMA5028 Service of Suit (Canada) Clause naming Attorney in Fact for Lloyds Underwriters, 1155 rue Metcalfe, Suite 2220, Montreal, Canada H3B 2V6
4. LMA5180 Intention for AIF to Bind Clause
5. Followed Policy and Underlying Insurance as detailed under "INFORMATION" herein.
6. Lloyd's Insurance Company S.A. Amendatory Endorsement
7. German Insurance Premium Tax Payment Clause



POLICY NUMBER: B0146ERINT2100865

PAGE 2 OF 5

NOTICES: None.SUBJECTIVITIES: **Coverage is provided under this contract at the terms and conditions specified herein, subject to satisfactory responses to the following:**

1. Receipt, review and acceptance of the full and final primary policy language within 14 days of inception. The policy will be cancelled ab initio if this subjectivity is not met

If the above deadline is not met, the policy will be cancelled ab initio.

In the event Insurers exercise their right to impose any additional terms, conditions, exclusions or additional premium charge, then the Insured shall have the right to refuse to accept such additional terms, conditions, exclusions or additional premium charge which will have the effect of canceling this Policy as at the date such additional terms, conditions, exclusions or additional premium charge were imposed, and Insurers shall be entitled to the pro rata proportion of the premium hereon

CHOICE OF LAW AND JURISDICTION (DISPUTES CLAUSE):

Choice of Law: Ontario, Canada  
Jurisdiction as per Service of Suit Clause

PREMIUM: **USD560,000.00** (100%) for the Policy Period, plus any tax as applicable. Premium split as follows:

USD2,099.39 in respect of the EEA

USD557,900.61 in respect of the Rest of the World

For the purposes of the split of premium above the UK is treated as a non-EEA country

PREMIUM PAYMENT TERMS:

LSW585 - 30-day Premium Payment Warranty. Premium is fully earned at inception.

TAXES PAYABLE BY ASSURED AND ADMINISTERED BY INSURERS:

See attached Schedule of Regulatory Risk Locations and Applicable Taxes stated under INFORMATION herein

RECORDING, TRANSMITTING & STORING INFORMATION:

Paragon International Insurance Brokers Ltd will maintain risk and claims data, information and documents, which may be held on paper or electronically.

INSURER CONTRACT DOCUMENTATION:

This contract documentation details the contract terms entered into by (re)insurer(s) and constituted the contract document. Any further documentation changing this contract agreed in accordance with the contract change provisions set out in this contract shall form the evidence of such change.

**INFORMATION**

SIC Code: 4924  
 Market Cap: \$115.425m (as of March 10<sup>th</sup>, 2021)

**Followed Policy:**

Insurer: XL Specialty Insurance Company  
 Policy No.: ELU173707-21  
 Limit of Liability: USD5,000,000 Maximum Aggregate Limit of Liability each Policy Period (including Defense Expenses) for all Loss from all Claims, Investigation Demands and Interviews

**Underlying Insurance:**

Insurer: Tokio Marine HCC  
 Policy No.: Certain Underwriters at Lloyd's, London  
 Limit of Liability: USD5,000,000 excess of USD5,000,000

German Address: Kapstadtring 10, 22297 Hamburg, Germany

Schedule of Regulatory Risk Locations and Applicable Taxes

**Taxes Payable by Insured and Administered by Insurers:**

EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Germany	6,594,500	0.3749%	19.000%	2,099.39	398.88
<b>Total EEA</b>		<b>0.3749%</b>		<b>2,099.39</b>	<b>398.88</b>
Non-EEA Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
Canada (Alberta)	124,546,651	7.0803%	See Below	39,649.93	0.00
Canada (BC)	493,537	0.0281%	See Below	157.12	0.00
Canada (Manitoba)	1,278,371	0.0727%	See Below	406.97	0.00
Canada (Ontario)	88,522,860	5.0324%	See Below	28,181.61	0.00
Canada (Quebec)	3,082,438	0.1752%	See Below	981.31	0.00
Canada (Sask)	9,529,627	0.5417%	See Below	3,033.80	0.00
United States	1,525,000,000	86.6946%	0.000%	485,489.88	0.00
<b>Total Non-EEA</b>		<b>99.6251%</b>		<b>557,900.61</b>	<b>0.00</b>
Non-Licensed Countries	Revenues		Tax Rate	Premium Allocation	Tax Amount
	No.	%			
<b>Total Non-Licensed</b>		<b>0.0000%</b>		<b>0.00</b>	<b>0.00</b>
<b>Total Non-EEA</b>				<b>557,900.61</b>	<b>0.00</b>
<b>POLICY TOTAL</b>		<b>100.0000%</b>		<b>560,000.00</b>	<b>398.88</b>

**Taxes Payable by Insured and Administered by Insured or their representatives:**

Country	Tax	Tax Rate	Attributable Premium	Tax Amount
Canada (Manitoba)	Retail Sales Tax	8.000%	\$406.97	\$32.56
Canada (Ontario)	Retail Sales Tax	8.000%	\$28,181.61	\$2,254.53
Canada (Quebec)	Retail Sales Tax	9.000%	\$981.31	\$88.32
Canada (Sask)	Retail Sales Tax	6.000%	\$3,033.80	\$182.03

**SECURITY DETAILS****INSURERS  
LIABILITY:**

In respect of EEA locations:

**SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

In respect of Rest of the World excluding EEA locations:

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES: Percentage of Whole

SIGNING PROVISIONS:

In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

MODE OF EXECUTION CLAUSE:

This contract and any changes to it may be executed by:

- a. electronic signature technology employing computer software and a digital signature or digitiser pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated;
- b. a unique authorisation provided via a secure electronic trading platform
- c. a timed and dated authorisation provided via an electronic message/system;
- d. an exchange of facsimile/scanned copies showing the original written ink signature of paper documents;
- e. an original written ink signature of paper documents (or a true representation of a signature, such as a rubber stamp).;

The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this contract. This contract may be executed in one or more of the above counterparts, each of which, when duly executed, shall be deemed an original.

## DECLARATIONS

### Excess Insurance Policy

SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THE FOLLOWED POLICY, THIS POLICY MAY ONLY APPLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD PROVIDED THAT SUCH CLAIM IS REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE POLICY PROVISIONS. AMOUNTS INCURRED AS COSTS AND EXPENSES INCURRED IN THE DEFENSE OR SETTLEMENT OF CLAIMS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY AMOUNTS AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

#### Policy Number: **B0146ERINT2100865**

- Item 1.      Named Insured:            **Just Energy Group Inc.**
- Principal Address:        100 King Street West, Suite 2630  
   Toronto  
   Ontario  
   M5X 1E1  
   Canada
- Item 2.      Policy Period:
- From:        9 March 2021
- To:            9 March 2022
- Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.
- Item 3.      Limit of Liability:
- USD5,000,000**            Each claim, including costs and expenses incurred in the defense or settlement of such claim.
- USD5,000,000**            Aggregate for the **Policy Period**, including costs and expenses incurred in the defense or settlement of all claims, sublimited to
- In Excess of Underlying Limits of:
- USD10,000,000**            Aggregate for the Policy Period, including costs and expenses incurred in the defense or settlement of all claims
- Item 4.      Premium:      **USD560,000.00**      (100%) for the **Policy Period**, plus any tax as applicable.  
   Premium split as follows:
- USD2,099.39            in respect of the EEA
- USD557,900.61        in respect of the Rest of the World
- For the purposes of the split of premium above the UK is treated as a non-EEA country

Item 5. Notification pursuant to Clause VI. shall be given to:

Hiscox, Attn Public Directors and Officers Claims, 1 Great St Helen's, London EC3A 6HX, or Hiscox Syndicate 33 using the following email address: [LondonMarketD&OClaims@hiscox.com](mailto:LondonMarketD&OClaims@hiscox.com) (with copy to [claims@paragonbrokers.com](mailto:claims@paragonbrokers.com))

Item 6. Followed Policy:

Insurer: XL Specialty Insurance Company  
Policy No.: ELU173707-21  
Limit of Liability: USD5,000,000 Maximum Aggregate Limit of Liability each Policy Period (including Defense Expenses) for all Loss from all Claims, Investigation Demands and Interviews

Item 7. Underlying Insurance:

Insurer: Tokio Marine HCC  
Policy No.: Certain Underwriters at Lloyd's, London  
Limit of Liability: USD5,000,000 excess of USD5,000,000

Endorsements Effective at Inception:

Item 8.

As attached hereto

# Excess Insurance Policy

In consideration of the payment of the premium, in reliance upon all information and representations provided or made available by the **Insureds** to the Underwriters in connection with the underwriting of this Policy, the Underwriters and **Named Insured**, on behalf of all **Insureds**, agree as follows:

## I. INSURING CLAUSE

This Policy shall provide coverage in accordance with all of the terms, conditions and limitations (including, but not limited to, the exclusions and notice requirements) of the **Followed Policy** except for the Limit of Liability, the premium or as otherwise set forth herein. Coverage hereunder shall attach only after all of the **Underlying Limits** have been exhausted through payments by, or on behalf of, or in place of the insurers of the **Underlying Insurance** of amounts under the **Underlying Insurance**. The risk of uncollectibility of any **Underlying Insurance** (in whole or in part), whether because of financial impairment or insolvency of an insurer of the **Underlying Insurance** or for any other reason, is expressly retained by the **Insureds** and is not insured by or assumed by the Underwriters.

## II. DEFINITIONS

- A. **Followed Policy** means the insurance policy identified in Item 6. of the Declarations.
- B. **Insureds** mean all persons and entities covered under the **Followed Policy**.
- C. **Named Insured** means all persons and entities set forth in Item 1. of the Declarations.
- D. **Policy Period** means the period set forth in Item 2. of the Declarations.
- E. **Underlying Insurance** means the **Followed Policy** and all other underlying insurance policies, if any, identified in Item 7. of the Declarations.
- F. **Underlying Limits** mean an amount equal to the aggregate of all limits of liability of the **Underlying Insurance**.

## III. LIMIT OF LIABILITY

The amount set forth in Item 3. of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters for all coverage under this Policy, regardless of the number of claims made against the **Insureds** or the time of payment and regardless of whether or not an extended reporting period applies.

## IV. CHANGES TO UNDERLYING INSURANCE AND DEPLETION OF UNDERLYING LIMITS

If, subsequent to the inception date of this Policy, the terms, conditions or limitations of an **Underlying Insurance** are modified, the **Insureds** must notify the Underwriters in writing, as soon as practicable, of such modification.

If any changes to the **Followed Policy**: (a) expand coverage, (b) change the policyholder name or address, or (c) modify premium, this Policy shall not follow those changes unless the Underwriters agree in writing to do so. If any coverage under any **Underlying Insurance** is subject to a sub-limit, then this Policy provides no coverage excess of such sub-limit, but the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount. Furthermore, if any amount covered under any policy issued to the **Insureds** outside of the United States of America (a "Foreign Policy") and the **Underlying Insurance** expressly provides for the reduction of the **Underlying Limit** by reason of payment of such amount under the applicable Foreign Policy, then the Underwriters shall recognize payment of such amount as reducing the **Underlying Limit** by such amount.

## V. UNDERWRITERS RIGHTS

The Underwriters have the same rights and protections as the insurer of the **Followed Policy** and shall have the right, but not the obligation, at their sole discretion, to elect to participate in the investigation, settlement, prosecution or defense of any claim.

## VI. NOTICES

Where notice is permitted or required by the **Followed Policy**, the **Insureds** have the same rights and obligations to notify the Underwriters under this Policy, except that such notice shall be given to the Underwriters at the address set forth in Item 5. of the Declarations. Notice to any other insurer shall not constitute notice to the Underwriters unless also given to the Underwriters as provided above.

Attaching to and forming part of Policy No: **B0146ERINT2100865**

Issued to: **Just Energy Group Inc.**

Endorsement No. **01**

**SERVICE OF SUIT CLAUSE (CANADA)**  
**(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

LMA5028  
10/08/06

Form approved by Lloyd's Market Association



Attaching to and forming part of Policy No: **B0146ERINT2100865**

Issued to: **Just Energy Group Inc.**

Endorsement No: **02**

#### **INTENTION FOR AIF TO BIND CLAUSE**

Whereas Lloyd's Underwriters have been granted an order to insure in Canada risks under the Insurance companies Act (Canada) and are registered in all provinces and territories in Canada to carry on insurance business under the laws of these jurisdictions or to transact insurance in these jurisdictions.

And whereas applicants for insurance coverage in respect of risks located in Canada and Canadian Cedants wish that Lloyd's insurance and reinsurance coverage be provided in a manner that requires Lloyd's Underwriters to vest assets in trust in respect of their risks pursuant to the Insurance Companies Act (Canada);

- a) This contract shall be in force and shall be the governing contract pending the decision by Lloyd's Underwriters' attorney and chief agent in Canada (the "AIF") to confirm coverage in accordance with both the terms and conditions set out in this contract and applicable Canadian law;
- b) The AIF shall confirm Lloyd's Underwriters' coverage by signing in Canada a policy that will contain the terms and conditions set out in this contract (the "Canadian Policy"), and by communicating from Canada the issuance of that policy to the policyholder or his broker;
- c) This contract shall cease to have effect upon the communication by the AIF from Canada of the Canadian Policy to the policyholder or his broker, and the Canadian Policy will replace and supersede this contract.

01/11/11  
LMA5180

Attaching to and forming part of Policy No: **B0146ERINT2100865**

Issued to: **Just Energy Group Inc.**

Endorsement No. **03**

### **LLOYD'S INSURANCE COMPANY S.A. AMENDATORY ENDORSEMENT**

It is hereby understood and agreed that notwithstanding anything contained herein to the contrary:

1. Where coverage is afforded by both (a) Underwriters at Lloyd's, London and (b) Lloyd's Insurance Company S.A. the following shall apply:

#### **Shared Limit of Liability Clause**

The total amount payable under the applicable Limit of Liability of this contract of Insurance (covering Worldwide excluding EEA) combined with the corresponding Limit of Liability of this contract (covering EEA) in respect of each and every loss and in the aggregate, shall not exceed the applicable limits of this contract of Insurance.

2. Solely with respect to the participation of Lloyd's Insurance Company S.A. the following amendments shall apply:

#### **A. Service of Suit and Jurisdiction Clause**

It is agreed that this Insurance shall be governed exclusively by the law and practice of Ontario, Canada and any disputes arising under, out of or in connection with this Insurance shall be exclusively subject to the jurisdiction of any competent court in Canada.

Lloyd's Insurance Company S.A. hereby agrees that all summonses, notices or processes requiring to be served upon it for the purpose of instituting any legal proceedings against them in connection with this Insurance shall be properly served if addressed to it and delivered to its care of

Attorney In Fact in Canada for Lloyd's Underwriters,  
1155, rue Metcalfe, Suite 2220,  
Montreal,  
Quebec, H3B 2V6.

who in this instance, has authority to accept service on its behalf.

Lloyd's Insurance Company S.A. by giving the above authority does not renounce its right to any special delays or periods of time to which it may be entitled for the service of any such summonses, notices or processes by reason of its residence or domicile in Belgium.

This Service of Suit and Jurisdiction Clause will not be read to conflict with or override the obligations of the parties to resolve their disputes as provided for in any other clause in this Policy and, to the extent required, shall apply to give effect to that process.

LBS0006A  
01/12/2019

#### **B. Complaints Clause**

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 39  
E-mail: [enquiries.lloydsbrussels@lloyds.com](mailto:enquiries.lloydsbrussels@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made.

Issued to: **Just Energy Group Inc.**

A decision on your complaint will be provided to you, in writing, within 8 (eight) weeks of the complaint being made.

Should you remain dissatisfied with the final response or if you have not received a final response within 8 (eight) weeks of the complaint being made, you may be eligible to refer your complaint to the Financial Ombudsman Service in the United Kingdom. The contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
United Kingdom

Telephone: +44 20 7964 0500 (from outside the UK)

Telephone: 0800 023 4 567 (from inside the UK)

Fax: +44 20 7964 1001

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

LBS0045  
01/01/2019

#### C. **SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to their extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001 (Insurance) 08/94

All other terms, conditions, exclusions and limitations remain unchanged.

Attaching to and forming part of Policy No: **B0146ERINT2100865**

Issued to: **Just Energy Group Inc.**

Endorsement No. **04**

**GERMAN INSURANCE PREMIUM TAX PAYMENT CLAUSE**

It is noted and agreed that, for German Insurance Premium Tax purposes only, Insurers within this Contract are obliged to provide their German Tax Identification Number as follows:

Lloyd's of London

807/V90807004451

Lloyd's Insurance Company SA

807/V20000025027

Attaching to and forming part of Policy No: **B0146ERINT2100865**

Issued to: **Just Energy Group Inc.**

Endorsement No. **05**

**PREMIUM PAYMENT WARRANTY**

IT IS WARRANTED that all Premiums due to the Underwriters under this Policy are paid within 30 days from Inception.

Non-receipt by Underwriters of such premiums by Midnight on the Premium Due date shall render this Insurance Policy void with effect from Inception.

LSW585(11/93) Copyright Marketform Limited

Attaching to and forming part of Policy No: **B0146ERINT2100865**

Issued to: **Just Energy Group Inc.**

Endorsement No. **06**

#### **CHOICE OF LAW CLAUSE**

It is hereby understood and agreed by both the **Named Insured** and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of Ontario, Canada.

All other terms and conditions of this Policy remain unchanged.

Attaching to and forming part of Policy No: **B0146ERINT2100865**

Issued to: **Just Energy Group Inc.**

Endorsement No. **07**

### **INSURERS LIABILITY CLAUSE**

#### **(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

#### **Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

Paragon International  
Insurance Brokers  
140 Leadenhall Street  
London EC3V 4QT

Telephone  
+44 (0)20 7280 8200  
Facsimile  
+44 (0)20 7280 8270

Website  
www.paragonbrokers.com  
Email  
info@paragonbrokers.com



Unique Market Reference: B0146ERINT2000453  
Date: 3rd April 2020

Page: 1 of 1

## **Market Security:**

### **In respect of Non-EEA countries (the UK is deemed to be a Non-EEA country)**

Signed Line %	Insurer
---------------	---------

100.00 %	Certain Lloyd's Underwriters as per the Schedule below
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Schedule of Underwriters at Lloyd's being:

Signed Line %	Syndicate No.	Pseudonym	Syndicate Full Name
---------------	---------------	-----------	---------------------

50.00 %	4633		Hiscox D&O Consortium (comprising Lloyd's Syndicates HIS 33 (92%) and MRS 457 (8%))
---------	------	--	---

50.00 %	1301		StarStone
---------	------	--	-----------

100.00 %			
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### **In respect of EEA countries**

Signed Line %	Insurer
---------------	---------

100.00 %	Lloyd's Insurance Company S.A.
----------	--------------------------------

### **Please Note**

All premiums specified herein exclude U.S. State Surplus Lines Taxes, Self / Direct Procurement Taxes, Federal Excise Taxes, local Provincial Taxes, Filing Fees and other parafiscal charges unless specifically stated.



**THIS IS EXHIBIT MM REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



6345 Dixie Road, Suite 200  
Mississauga, Ontario L5T 2E6

T 905.670.4440  
F 905.670.9160  
info@justenergy.com

November 01, 2021

XL Specialty Insurance Company  
First Canadian Place  
100 King Street West, Suite 3020  
Toronto, Ontario M5X 1C9

Re: Notice of Circumstance  
Policy: ELU173707-21, Executive and Corporate Securities Liability  
Policy Period: From 09 March 2021 to 09 March 2022

Dear Sir/Madam:

In accordance with the reporting provisions of the above referenced policy (the "Policy"), Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (collectively, "Just Energy") hereby give notice of facts or circumstances that may give rise to a claim.

Just Energy are defendants in a class action proceeding under the Ontario Class Proceedings Act bearing Court File No. CV-15-52749300CP (the "Class Action"). The Class Action alleges that Just Energy misclassified class members as independent contractors thereby denying them certain protections that they would be entitled to as employees under the Employment Standards Act. No directors or officers of Just Energy are named as defendants in the Class Action. As a result of an Initial Order dated March 9, 2021 pursuant to the Companies' Creditors Arrangement Act (the "CCAA Proceedings") granted to Just Energy and certain of their affiliates by the Ontario Superior Court of Justice (Commercial List) (the "Court"), the trial that had been set for November 2021 has been stayed and will not be proceeding at this time.

On September 15, 2021, Just Energy obtained a Claims Procedure Order of the Court in the CCAA Proceedings establishing a Claims Process for claimants to assert claims against Just Energy and their officers and directors. The Claims Procedure Order established a Claims Bar date for the filing of such claims of November 1, 2021.

On October 8, 2021, Just Energy received correspondence from counsel for the representative plaintiff in the Class Action stating that the Proof of Claim to be filed on behalf of the class members will include claims on behalf of the class members against Just Energy's directors on the basis that the damages claimed in the Class Action constitute unpaid wages. Should the class members proceed to file a Proof of Claim against any directors of Just Energy on or prior to the Claims Bar Date we will supplement this notice at that time.

Please promptly acknowledge receipt and confirm that this matter is accepted as a notice of facts or circumstances that may subsequently give rise to a claim in satisfaction of the applicable reporting provisions of the Policy.

For further discussion, please contact Amir Andani, Chief Risk Officer at (416) 433-4742 or [aandani@justenergy.com](mailto:aandani@justenergy.com).

Sincerely,

Just Energy Group Inc.

A handwritten signature in black ink, appearing to read "Amir Andani".

Amir Andani  
Chief Risk Officer

**THIS IS EXHIBIT NN REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



6345 Dixie Road, Suite 200  
Mississauga, Ontario L5T 2E6

T 905.670.4440  
F 905.670.9160  
info@justenergy.com

November 01, 2021

Wylie-Crump Limited  
320 – 151 East 2nd Avenue  
Vancouver BC V5T 1B4

Re: Notice of Circumstance  
Policy: Tokio Marine HCC - D&O Group, 21G196460101, Executive and Corporate Securities Liability  
Policy Period: From 09 March 2021 to 09 March 2022

Dear Sir/Madam:

In accordance with the reporting provisions of the above referenced policy (the "Policy"), Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (collectively, "Just Energy") hereby give notice of facts or circumstances that may give rise to a claim.

Just Energy are defendants in a class action proceeding under the Ontario Class Proceedings Act bearing Court File No. CV-15-52749300CP (the "Class Action"). The Class Action alleges that Just Energy misclassified class members as independent contractors thereby denying them certain protections that they would be entitled to as employees under the Employment Standards Act. No directors or officers of Just Energy are named as defendants in the Class Action. As a result of an Initial Order dated March 9, 2021 pursuant to the Companies' Creditors Arrangement Act (the "CCAA Proceedings") granted to Just Energy and certain of their affiliates by the Ontario Superior Court of Justice (Commercial List) (the "Court"), the trial that had been set for November 2021 has been stayed and will not be proceeding at this time.

On September 15, 2021, Just Energy obtained a Claims Procedure Order of the Court in the CCAA Proceedings establishing a Claims Process for claimants to assert claims against Just Energy and their officers and directors. The Claims Procedure Order established a Claims Bar date for the filing of such claims of November 1, 2021.

On October 8, 2021, Just Energy received correspondence from counsel for the representative plaintiff in the Class Action stating that the Proof of Claim to be filed on behalf of the class members will include claims on behalf of the class members against Just Energy's directors on the basis that the damages claimed in the Class Action constitute unpaid wages. Should the class members proceed to file a Proof of Claim against any directors of Just Energy on or prior to the Claims Bar Date we will supplement this notice at that time.

Please promptly acknowledge receipt and confirm that this matter is accepted as a notice of facts or circumstances that may subsequently give rise to a claim in satisfaction of the applicable reporting provisions of the Policy.

For further discussion, please contact Amir Andani, Chief Risk Officer at (416) 433-4742 or [aandani@justenergy.com](mailto:aandani@justenergy.com).

Sincerely,

Just Energy Group Inc.

A handwritten signature in black ink, appearing to read "Amir Andani".

Amir Andani  
Chief Risk Officer

***THIS IS EXHIBIT OO REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023***

---

***COMMISSIONER FOR TAKING AFFIDAVITS***

***VLAD CALINA (LSO NO. 69072W)***

**THIS IS EXHIBIT PP REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**Via Electronic Mail**

Amir Andani  
Just Energy Group Inc.  
100 King Street West, Suite 2630  
Toronto Ontario, CANADA M5X 1E1  
*aandani@justenergy.com*

December 16, 2021

**Re:**           **Insured:**       **Just Energy Group Inc.**  
**Policy:**       **ELU173707-21**  
**Ref. No.:**     **0006918731**  
**Subject:**     **Notice of Circumstance**

Dear Ms. Andani:

We are writing to follow up on our communication dated November 4, 2021, acknowledging our receipt of correspondence from your insurance broker USI dated November 1, 2021, and to provide our initial response to the matter identified in that correspondence, which is also referenced on the subject line above.

XL Professional - Hartford is the claim manager for XL Specialty Insurance Company (“XL”) in connection with this matter. We have addressed this to you as the Insured’s representative for receipt of insurance materials. If you are not the appropriate person to whom such materials should be directed or if you would like any other party not already copied on this letter to receive future communications, please advise accordingly. Also, please take note of the reference number indicated above and kindly refer to that number in all future correspondence.

The above-referenced policy (the “Policy”) provides a \$5 million maximum aggregate limit of liability for all Claims made against Insured Persons for the policy period of March 9, 2021 to March 9, 2022 for which no other indemnification is available. XL has no obligation to defend any Claim under the Policy.

We are in receipt of correspondence dated November 1, 2021 from Michelle Beach of USI Southwest, Inc. attaching a letter dated November 1, 2021 (the “Letter”). Generally, the Letter states that plaintiffs in a pending wage and hour class action may seek bankruptcy approval to add Just Energy Group Inc. directors and officers as parties to that litigation.

We have undertaken a preliminary review of this matter in light of the coverage available under the Policy in order to identify possible coverage issues that may exist. Accordingly, we provide our initial views on coverage below. Please note that these views are not intended, by any means, to be exhaustive or exclusive, and we expressly reserve all of XL's rights under the Policy, at law and otherwise, including, but not limited to, the right to raise additional policy terms and conditions as defenses to coverage when appropriate.

We accept the November 1, 2021 communication for handling under the Policy's potential claims reporting clause at Sec. VI. General Conditions (A) Notice (3) of the Policy. Please let us know immediately in the event a Claim is made against an Insured Person in the future.

XL also respectfully points out that Endorsement No. 3 of the Policy (the "Prior Acts Endorsement") excludes coverage for Wrongful Act prior to March 9, 2021.

Please understand that the foregoing is not intended to be exhaustive, and XL does not in any way waive the right to raise additional defenses to coverage when appropriate. Therefore, in addition to the issues discussed above, Indian Harbor reserves all rights it may have under the Policy, applicable law, and otherwise in connection with this matter, including but not limited to the right to amend or supplement this letter as circumstances may warrant.

Very truly yours,



Wayne Boulton  
Senior Claims Specialist

cc: Michelle Beach, [michelle.beach@usi.com](mailto:michelle.beach@usi.com)



**THIS IS EXHIBIT QQ REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal flourish extending to the right.

---

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**December 23, 2021**

**Via Email**

**Re: Letter to insurers**

**Policy:** Amendment to B0146ERINT1900452, Primary Management Liability Insurance

**Policy:** Excess Directors and Officers Liability/Continental Casualty Company/MEX 665412022

**Policy:** Director's and Officers and Company Reimbursement Insurance/20G196460000

**Policy:** B0146ERINT1900453

**Policy:** B0146 ERINT 1900454 Excess Management

**Policy:** B0146 ERINT 1900455

**Policy:** B0146ERINT20000768

**Policy:** B0146ERINT2000774

By letter dated April 5, 2021 (the "**CCAA Notice**"), Just Energy Group Inc. ("**Just Energy**") provided notice to insurers stating that it and a number of its subsidiaries had filed for and obtained protection under the *Companies' Creditors Arrangement Act* (CCAA) on March 9, 2021. The initial order under the CCAA was provisionally recognized on the same day by the United States Bankruptcy Court under Chapter 15 of the United States *Bankruptcy Code* and formally recognized on April 2, 2021.

The CCAA Notice supplemented an earlier notice dated March 5, 2021 pursuant to which Just Energy noted that, due to an extreme weather event that occurred in Texas in February 2021, it was experiencing financial difficulties and that claims could therefore be made under the policy (the "**Weather Event Notice**").

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **Claims Procedure Order**

On September 15, 2021, Just Energy obtained a Claims Procedure Order from the Ontario Court in the CCAA Proceedings establishing a Claims Process for claimants to assert claims against Just Energy, its subsidiaries who obtained CCAA protection, and their officers and directors. The Claims Procedure Order established a Claims Bar date of November 1, 2021 for the filing of such claims. A copy of the Claims Procedure Order can be found [here](#).

Pursuant the Policy, this letter provides notice regarding a number of Proofs of Claim that were received by Just Energy on or before the Claims Bar Date and that assert claims against directors

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and officers of Just Energy and/or its affiliates (“D&O Claims”). Additionally, this letter updates the Delisting Notice.

Just Energy, as contemplated in the Claims Procedure Order, is in the process of reviewing the D&O Claims. Following this review, Just Energy may, in consultation with the court-appointed Monitor, accept, revise or reject each D&O Claim. If a D&O Claim is to be revised or rejected, Just Energy will send the claimant a Notice of Revision or Disallowance. Named directors and officers (if any) may also be consulted before determining the appropriate course of action in respect of a D&O Claim. Just Energy may not accept or revise any portion of a D&O Claim without consent of the applicable directors and/or officers, or further order of the Court (see Claims Procedure Order, para. 33).

Once a claimant receives a Notice of Revision or Disallowance in relation to a D&O Claim, the claimant has 30 days in which to file a Notice of Dispute of Revision or Disallowance, failing which the claimant has no further right to assert a disallowed D&O Claim or dispute the amount of a revised D&O Claim. All disputed D&O Claims are resolved in accordance with the procedures in the Claims Procedure Order, which could include adjudication by a Claims Officer or the Court.

**Nature of D&O Claims Received**

At this stage, we have not enclosed copies of the Proofs of Claim and documentation (if any) supporting the D&O Claims. This material is voluminous and we would be pleased to discuss whether these materials should be provided at this stage, and if so, in what format.

[REDACTED]

Briefly, the D&O Claims received by Just Energy consist of the following (grouped into categories):<sup>1</sup>

A. [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

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<sup>1</sup> This is intended to be a summary only of the nature of the D&O Claims received. The Proofs of Claim and any supporting material contain the full, definitive description of each D&O Claim.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

Class Action or Representative Claims:

<sup>2</sup> Note that there appears to be a duplicate of this Claim filed. Claims 5002 and 5003 (as designed by the Claims Agent) are identical.

<sup>3</sup> The currency is not specified.

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[Redacted]

- [Redacted]

- A claim by Haldar Omarali, as representative plaintiff in the Class Action. The Proof of Claim asserts that the damages claimed in the Class Action (CDN \$105,854,794.52) are jointly and severally owed by the individual directors and officers listed in Schedule A to the Proof of Claim. Schedule A lists a number of individual directors and officers of two entities: Just Energy Group Inc. and Just Energy Corp. Schedule B shows the years in which these individuals served as directors.

The claim is stated to impose joint and several liability on the named directors and officers under section 81 of the *Employment Standards Act* (Ontario), section 119 of the *Canada Business Corporations Act*, and section 131 of the *Business Corporations Act* (Ontario). The claim relates to amounts owing for the time period from 2012 onwards. The claimed amount is stated to consist of \$100,000,000 for the claim, plus pre-judgment interest for the period commencing May 4, 2015 to March 9, 2021 (the CCAA filing date).

Although Just Energy is still considering the issue, Just Energy expects to disallow the D&O Claim on several bases. These include, but are not limited to: (i) the directors and officers were not named as defendants to the class action when it was certified; (ii) the D&O Claim is a damages claim, not a wages claim; (iii) the D&O Claim is now time-barred; and (iv) in any event, the D&O Claim is so remote and contingent that it has an effective value of \$0.

- [Redacted]

Confidential

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Confidential

As noted, the proposed disallowance of any particular D&O Claim as referenced in this correspondence is not determinative of the merits of such claim pending the exercise of dispute rights by claimants under the Claims Procedure Order. If the claimants dispute the disallowance, further processes will be necessary to resolve the amount owing, if any, in accordance with the Claims Procedure Order, as described above.

We would be pleased to provide further details regarding these claims upon request. We will also provide further updates of any material developments, as they occur.

Sincerely,

Just Energy Group Inc.

Amir Andani

Chief Risk Officer

**THIS IS EXHIBIT RR REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**



**December 23, 2021**

**Via Email**

XL Specialty Insurance Company  
 First Canadian Place  
 100 King Street West, Suite 3020  
 Toronto, Ontario M5X 1C9

**Re: Policy:** ELU173707-21, Executive and Corporate Securities Liability

Policy Period: From 09 March 2021 to 09 March 2022

As you are aware, Just Energy Group Inc. (“**Just Energy**”) and a number of its subsidiaries filed for and obtained protection under the *Companies’ Creditors Arrangement Act* (CCAA) on March 9, 2021. The initial order under the CCAA was provisionally recognized on the same day by the United States Bankruptcy Court under Chapter 15 of the United States *Bankruptcy Code* and formally recognized on April 2, 2021.

[REDACTED]

Furthermore, on October 8, 2021, Just Energy provided notice (the “**Omarali Notice**”) that it and certain of its affiliates are defendants in a class action proceeding under the Ontario Class Proceedings Act bearing Court File No. CV-15-52749300CP (the “**Class Action**”). In the Omarali Notice, Just Energy notified the Insurer of the newly stated intention of class counsel to file a Proof of Claim against Just Energy’s directors on the basis that the damages claimed in the Class Action constitute unpaid wages.

Copies of the [REDACTED] and the Omarali Notice are attached to this letter.

**Claims Procedure Order**

On September 15, 2021, Just Energy obtained a Claims Procedure Order from the Ontario Court in the CCAA Proceedings establishing a Claims Process for claimants to assert claims against Just Energy, its subsidiaries who obtained CCAA protection, and their officers and directors. The Claims Procedure Order established a Claims Bar date of November 1, 2021 for the filing of such claims. The Claims Procedure Order can be found [here](#).

Pursuant to clause VIII(A) of the Primary Policy, this letter provides notice regarding a number of Proofs of Claim that were received by Just Energy on or before the Claims Bar Date and that assert claims against directors and officers of Just Energy and/or its affiliates (“**D&O Claims**”). Additionally, this letter updates the Delisting Notice and the Omarali Notice.

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Just Energy, as contemplated in the Claims Procedure Order, is in the process of reviewing the D&O Claims. Following this review, Just Energy may, in consultation with the court-appointed Monitor, accept, revise or reject each D&O Claim. If a D&O Claim is to be revised or rejected, Just Energy will send the claimant a Notice of Revision or Disallowance. Named directors and officers (if any) may also be consulted before determining the appropriate course of action in respect of a D&O Claim. Just Energy may not accept or revise any portion of a D&O Claim without consent of the applicable directors and/or officers, or further order of the Court (see Claims Procedure Order, para. 33).

Once a claimant receives a Notice of Revision or Disallowance in relation to a D&O Claim, the claimant has 30 days in which to file a Notice of Dispute of Revision or Disallowance, failing which the claimant has no further right to assert a disallowed D&O Claim or dispute the amount of a revised D&O Claim. All disputed D&O Claims are resolved in accordance with the procedures in the Claims Procedure Order, which could include adjudication by a Claims Officer or the Court.

**Nature of D&O Claims Received**

At this stage, we have not enclosed copies of the Proofs of Claim and documentation (if any) supporting the D&O Claims. This material is voluminous and we would be pleased to discuss whether these materials should be provided at this stage, and if so, in what format.

[Redacted]

Briefly, the D&O Claims received consist of the following (grouped into categories):<sup>1</sup>

A. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Confidential

<sup>1</sup> This is intended to be a summary only of the nature of the D&O Claims received. The Proofs of Claim and any supporting material contain the full, definitive description of each D&O Claim.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

Class Action or Representative Claims:

[REDACTED]

- [REDACTED]

\_\_\_\_\_  
2

[REDACTED]

- [REDACTED]

Confidential



[Redacted]

[Redacted]

[Redacted]

[Redacted]

As noted, the proposed disallowance of any particular D&O Claim as referenced in this correspondence is not determinative of the merits of such claim pending the exercise of dispute rights by claimants under the Claims Procedure Order. If the claimants dispute the disallowance, further processes will be necessary to resolve the amount owing, if any, in accordance with the Claims Procedure Order, as described above.

We would be pleased to provide further details regarding these claims upon request. We will also provide further updates of any material developments, as they occur.

By copy of this letter we are also providing the excess carriers with this notice.

Sincerely,

Just Energy Group Inc.

Amir Andani

Chief Risk Officer

Confidential

cc:

Tokio Marine HCC – Policy No. 21G196460101

Hiscox - Policy No. B0146ERINT2100865

Confidential

**THIS IS EXHIBIT SS REFERRED TO IN THE  
AFFIDAVIT OF JAMIE SHILTON  
AFFIRMED BEFORE ME THIS 18<sup>TH</sup> DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', written over a horizontal line.

**COMMISSIONER FOR TAKING AFFIDAVITS**

**VLAD CALINA (LSO NO. 69072W)**

# Kennedys

## By Email

Amir Andani  
 Chief Risk Officer  
 Just Energy Group Inc.  
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 Toronto, ON, Canada M5X 1A0  
[aandani@justenergy.com](mailto:aandani@justenergy.com)

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June 15, 2022

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**Re:**           **Insurer:**           **Lloyd’s Underwriter Syndicate No. 2003 XLC (“AXA XL”)**  
**Insured:**           **Just Energy Group Inc. (“Just Energy”)**  
**Policy No.:**       **B0146ERINT2000452 (the “AXA XL Policy”)**  
**Policy Period:**   **April 1, 2020 to March 9, 2021**  
**Limit:**           **USD \$5 million**  
**Retention:**       **USD \$2.5 million**  
**Matter:**           **December 23, 2021 D&O Claims Notice**

Dear Mr. Andani:

Our law firm represents AXA XL as coverage counsel in connection with the D&O Claims Notice. The purpose of this letter is to provide you with AXA XL’s preliminary coverage position for the D&O Claims Notice, to request certain information detailed below, and to reserve AXA XL’s rights under the AXA XL Policy.

The matters listed in the D&O Claims Notice do not trigger any Insuring Agreement, because they are not a “Claim” or “Securities Claim.” At this time, AXA XL does not have sufficient information to confirm which matters in the D&O Claims Notice the Insured believes may “may reasonably give rise to a Claim.” For each matter the Insured believes may reasonably give rise to a Claim, please provide us with the Proof of Claim and the reasons why the Insured reasonably anticipates the Proof of Claim may give rise to a covered Claim, with full particulars of the dates, acts, and persons involved. AXA XL will review this information and provide you with its updated coverage position in due course. In the interim, AXA XL reserves all rights.

Kennedys is a trading name of Kennedys CMK LLP. Kennedys Law LLP, a UK Limited Liability Partnership, is a partner of Kennedys CMK LLP

*Kennedys offices, associations and cooperations:* Argentina, Australia, Belgium, Bermuda, Brazil, Chile, China, Colombia, Denmark, Dominican Republic, England and Wales, France, Guatemala, Hong Kong, India, Ireland, Israel, Italy, Mexico, New Zealand, Northern Ireland, Norway, Pakistan, Panama, Peru, Poland, Portugal, Puerto Rico, Russian Federation, Scotland, Singapore, Spain, Sweden, Thailand, United Arab Emirates, United States of America.

Amir Andani  
June 15, 2022

# Kennedys

## I. Background

On March 5, 2021, Just Energy advised AXA XL that due to extreme weather in Texas in February 2021, the company was experiencing financial difficulties (the “Weather Event Notice”).

On March 9, 2021, Just Energy filed for bankruptcy protection in Canada and the United States.

On March 10, 2021, Just Energy issued a press release announcing that the Toronto and New York Stock Exchanges were evaluating whether to delist the company’s shares, in light of the company’s filing for bankruptcy protection.

[REDACTED]

On April 5, 2021, Just Energy advised AXA XL that the company obtained formal bankruptcy protection in Canada and the United States (the “CCAA Notice”).

[REDACTED]

## II. December 23, 2021 D&O Claims Notice

On December 23, 2021, Just Energy advised AXA XL of “a number of Proofs of Claim that were received by Just Energy on or before the Claims Bar Date [in the bankruptcy proceeding] and that assert claims against directors and officers of Just Energy and/or its affiliates” (the “D&O Claims Notice”). The D&O Claims Notice includes the following categories of matters:

- [REDACTED]
- [REDACTED]



Amir Andani  
June 15, 2022

# Kennedys

- Class Action or Representative Matters: [REDACTED]

[REDACTED] a Proof of Claim filed by Haldar Omarali, as lead plaintiff in an unspecified securities class action. Mr. Omarali's Proof of Claim names Just Energy and certain directors and officers as defendants and seeks recovery of \$100,000,000 for unspecified violations of law occurring between May 4, 2015 and March 9, 2021; [REDACTED]

### III. The AXA XL Policy

AXA XL issued Primary Management Liability Insurance Policy No. B0146ERINT2000452 to Just Energy for the April 1, 2020 to April 1, 2021 Period Policy.<sup>1</sup> The AXA XL Policy provides a USD \$5 million maximum aggregate Limit of Liability, excess of a USD \$2.5 million Securities Retention applicable to Loss arising out of a Securities Claim. Insuring Agreements B and C of the AXA XL Policy provide:

#### (B) Company Reimbursement Cover

The *insurer*<sup>2</sup> shall reimburse or pay on behalf of the *company* any *loss* which the *company* is required or permitted to pay as indemnification to any of the *insured persons* resulting from a *claim* first made against the *insured persons* during the *policy*

<sup>1</sup> The AXA XL Policy went into run-off effective March 9, 2021, for a period of six years ended March 9, 2027.

<sup>2</sup> Capitalized or **bolded** terms are defined in the AXA XL Policy.

Amir Andani  
June 15, 2022

# Kennedys

*period*, for a *wrongful act* or *employment practices wrongful act*.

#### (C) Company Securities Claim Cover

The *insurer* shall pay the *loss* of the *company* resulting from any *securities claim* first made against the *company* during the *policy period*, for a *company wrongful act*.

#### IV. Coverage Discussion

As noted, in order to trigger the Insuring Agreement, there must be a “Claim . . . made against the Insured Persons” or “Securities Claim . . . made against the Company.”

“Claim” means, in relevant part, “a written demand for monetary or non-monetary relief” or a “civil proceeding in a court of law or equity, or arbitration.”

“Securities Claim” means “a Claim, other than an administrative or regulatory proceeding against or investigation of a Company, made against an Insured: (1) for any actual or alleged act, error, omission, misleading statement, breach of duty or violation of any rules, regulations or laws (whether statutory or common law), relating to Securities, which is: (i) brought by any person or entity based upon, arising out of, directly or indirectly resulting from, or in any way involving the purchase or sale of, or offer to purchase or sell, Securities of the Company; or (ii) brought by a Security holder of the company with respect to such Security holder’s interest in the Securities of the Company; or (2) brought derivatively on behalf of the Company by a Security holder of such Company.”

The matters listed in the D&O Claims Notice are not “Claims” or “Securities Claims.” The matters are not “written demands for monetary or non-monetary relief” or a “civil proceeding in a court of law.” Rather, the matters are form submissions filed by creditors and other parties in connection with Just Energy’s bankruptcy proceeding. In addition, many of the matters which name Just Energy are raised by customers, not Security holders, and are not for any actual or alleged violation of laws relating to Securities.

Clause VIII(A)(3) of the AXA XL Policy provides:

During the *policy period*, the *insured* may also notify the *insurer* of any fact or circumstance which may reasonably give rise to a *claim*. Such notice must include the reasons why the *insured* reasonably anticipates that the fact or circumstance may give rise to a *claim* with full particulars of the dates, acts, and persons involved.

Amir Andani  
June 15, 2022

# Kennedys

At this time, AXA XL does not have sufficient information to confirm which matters in the D&O Claims Notice the Insured believes may “may reasonably give rise to a Claim.” For each matter the Insured believes may reasonably give rise to a Claim, please provide us with: (1) the Proof of Claim; (2) the reasons why the Insured reasonably anticipates the Proof of Claim may give rise to a covered Claim under the AXA XL Policy, including “full particulars of the dates, acts, and persons involved.” AXA XL will review this information and provide you with its updated coverage position in due course.

Please also notify us immediately of any developments related to the matters listed in the D&O Claims Notice, including, but not limited to, any demands, lawsuits, or any other related correspondence. In the interim, AXA XL reserves all rights.<sup>3</sup>

\*

\*

\*

AXA XL reserves the right to amend, alter and/or supplement this letter based upon receipt of any additional information discovered or provided. Nothing in this letter is intended to, nor should be interpreted to, modify, abridge or otherwise restrict any of AXA XL’s rights under the AXA XL Policy. AXA XL reserve all rights and defense under the AXA XL Policy and at law.

Please feel free to contact us with any questions or concerns you may have regarding this letter or AXA XL’s coverage position.

Very truly yours,

**/s/Maurice Pessa**

**Maurice Pessa**  
Partner  
for Kennedys

cc: James Gifford ([james.gifford@contractor.axaxl.com](mailto:james.gifford@contractor.axaxl.com))  
Jonah Davids ([JDavids@justenergy.com](mailto:JDavids@justenergy.com))  
Peter Bannister ([Pbannister@paragonbrokers.com](mailto:Pbannister@paragonbrokers.com))  
Michelle Beach ([Michelle.Beach@usi.com](mailto:Michelle.Beach@usi.com))

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<sup>3</sup> In light of the limited information available at this time, AXA XL reserves all rights on policy placement for any Claim which “alleges, arises out of, is based upon or attributable to any Interrelated Wrongful Act which was basis of” a matter listed in the D&O Claims Notice, including the right to deem any such Claim first made prior to inception of the AXA XL Policy.

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 **JUST ENERGY GROUP INC. et al**  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

Court File No. CV-21-00658423-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**SECOND REPORT OF THE MONITOR**

**Thornton Grout Finnigan LLP**

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Lawyers for the Court-appointed Monitor,  
FTI Consulting Canada Inc.

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

Court File No.: CV-21-00658423-00CL

AND IN THE MAATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST  
ENERGY GROUP INC., *et al.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF JAMIE SHILTON  
(AFFIRMED AUGUST 18, 2023)**

**KOSKIE MINSKY LLP**

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**Counsel for Haidar Omarali in his capacity as  
Representative Plaintiff *Omarali v. Just Energy***

Court File No. CV-21-00658423-00CL

**ONTARIO**  
**Superior Court of Justice**  
**(Commercial List)**

THE HONOURABLE MR. ) , THE  
 JUSTICE MCEWEN ) DAY OF

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 14487893 CANADA INC., 11368, LLC, 12175592 CANADA INC., DRAG MARKETING LLC, JUST SOLAR HOLDINGS CORP., JUST ENERGY CONNECTICUT CORP., AND JUST ENERGY (FINANCE) HUNGARY ZRT. (each, an "**Applicant**", and collectively, the "**Applicants**")

**ORDER**

**THIS MOTION**, made by Haidar Omarali in his capacity as representative plaintiff (the "**Representative Plaintiff**") of the certified class (the "**Class**" or the "**Class Members**") in *Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.*, Court File No. CV-15-52749300 CP (the "**Class Action**") was heard this day by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the Notice of Motion of the Representative Plaintiff, the affidavit of Jamie Shilton affirmed August 18, 2023, the Motion Records and Transcripts filed in the motion heard June 11-12, 2019, and on hearing the submissions of counsel for the Representative Plaintiff, counsel for XL Specialty Insurance Company, Tokio Marine HCC and Hiscox (collectively, the "**Insurers**"), ●, no one else appearing although duly served from the affidavits of service of ●;

1. **THIS COURT DECLARES** that the Insurers (as defined herein) are necessary parties to this proceeding for the purpose of this Motion within the meaning of r. 5.03 of the *Rules of Civil*

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*Procedure*, R.R.O. 1990, Reg. 194.

2. **THIS COURT ORDERS** that notwithstanding anything to the contrary, nothing in this Order gives any person, including the Class Members, any rights of enforcement or recovery as against the Protected JE Parties, Residual Co. 1 and Residual Co. 2 or the Administrative Expense Amount held by the Monitor (all such foregoing capitalized terms as defined in the AVO).

3. **THIS COURT DECLARES** that Class Members were "employees" of Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario L.P. (collectively, the "**Specified JE Entities**") pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("**ESA**").

4. **THIS COURT DECLARES** that Class Members were not exempt from Parts VII, VIII, IX, X and XI of the ESA because the Class Members were "route salespersons" pursuant to section 2(1)(h) of O. Reg. 285/0.

5. **THIS COURT DECLARES** that minimum requirements of the ESA with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay are terms of the contracts with the Class Members.

6. **THIS COURT DECLARES** that the Specified JE Entities failed to make the prescribed employer CPP or EI contributions on behalf of the Class Members.

7. **THIS COURT DECLARES** that,

- a. all CPP and EI payments that the Specified JE Entities failed to make on the wages actually paid to Class Members is an unpaid debt for services performed for the corporation owed to Class;

Click or tap here to enter text.

- b. all employment expenses paid by the Class Members in the course of their employment, which were not reimbursed by the Specified JE Entities is an unpaid debt for services performed for the corporation owed to the Class;
  - c. the unpaid minimum wage, overtime pay, vacation and public holiday and premium pay for the hours the Class Members worked is an unpaid debt for services performed for the corporation owed to the Class; and
  - d. the CPP and EI contributions on the wages owed to the Class are an unpaid debt for services performed for the corporation owed to the Class.
8. **THIS COURT DECLARES**, that the Specified JE Entities were obligated to pay the aggregate damages amount of \$● to be distributed to Class Members on an average or proportional basis in accordance with s. 24 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.
9. **THIS COURT DECLARES** the average or proportionate amounts to be paid to each Class Member according to paragraph 9 above is a "debt" owed to each Class Member within the meaning of section 131 of the *Business Corporations Act*, R.S.O. 1990, c. B. 16 and section 119 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.
10. **THIS COURT DECLARES** that the average or proportionate amounts determined in paragraph 9 and referenced in paragraph 10 are a loss covered under insurance policy ELU173707-21 (the "**XL Policy**"), No. 21G196460101(the "**TM Policy**") and No. B0146ERINT2100865 (the "**Hiscox Policy**", and collectively with the XL Policy and TM Policy, the "**Insurance Policies**").
11. **THIS COURT ORDERS** the Insurers to pay the amounts owed under the Insurance Policies set out in paragraph 10 pursuant to and in accordance with the coverage and deductibles



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set out in the Insurance Policies.

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

Court File No. CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
14487893 CANADA INC., *et al.*

*Applicants*

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

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**Counsel for Haidar Omarali in his  
capacity as Representative Plaintiff  
*Omarali v. Just Energy***

DRAFT

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

AND IN THE MAATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST  
ENERGY GROUP INC., *et al.*

Court File No. CV-21-00658423-00CL

*Applicants*

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF HAIDAR  
OMARALI IN HIS CAPACITY AS  
REPRESENTATIVE PLAINTIFF**

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**Counsel for Haidar Omarali in his  
capacity as Representative Plaintiff  
*Omarali v. Just Energy***