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.

APPLICANTS

# FACTUM OF THE APPLICANTS

**(Motion for Authorization Order and for Creditors Meetings Order)**

May 13, 2022

**OSLER, HOSKIN & HARCOURT LLP**
100 King Street West, Suite 6200
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

**Michael De Lellis** (LSO# 48038U)
Tel: 416.862. 5997
Email: mdelellis@osler.com

**Jeremy Dacks** (LSO# 41851R)
Tel: 416.862.4923
Email: jdacks@osler.com

Lawyers for the Applicants

**TO: THE SERVICE LIST**

## PART I - NATURE OF THIS MOTION

1. The Applicants obtained relief under the C*ompanies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") by an initial order dated March 9, 2021. The CCAA Court subsequently granted an Amended and Restated Initial Order ("**ARIO**") and a Second ARIO. On April 2, 2021, the U.S. Bankruptcy Court granted the Final Recognition Order under Chapter 15 of the United States *Bankruptcy Code*, which, among other things, granted the ARIO full force and effect with respect to the Just Energy Entities' U.S. property. On September 15, 2021, the CCAA Court granted an Order (the "**Claims Procedure Order**") establishing a process to determine the nature, quantum, and validity of claims against the Just Energy Entities and their directors and officers.

2. The Applicants now seek an "**Authorization Order**": (i) approving the Plan Support Agreement (the "**Support Agreement**"), the Backstop Commitment Letter, and the issuance of the Backstop Commitment Fee Shares; (ii) approving the Termination Fee and granting the Termination Fee Charge; (iii) sealing unredacted versions of the Support Agreement and Backstop Commitment Letter; (iv) amending the Claims Procedure Order to allow the U.S. Bankruptcy Court to adjudicate certain claims based on the specific energy related regulatory regime in Texas, in its discretion; (v) extending the CCAA Stay to July 29, 2022; and (vi) approving the fees of the Monitor and its counsel.

3. The Applicants also seek a "**Meetings Order**": (i) accepting the filing of the Just Energy Entities' Plan of Compromise and Arrangement, dated May 26, 2022 (as may be amended, the "**Plan**"); (ii) authorizing two classes of creditors for the purpose of considering and voting on the Plan; (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**"); and (iv) establishing certain rules and procedures for the voting mechanisms at the Creditors' Meetings.

4. The orders represent the culmination of months of negotiations among key stakeholders in this restructuring, and will facilitate the Just Energy Entities' going concern exit from these proceedings for the benefit of their stakeholders, including employees, suppliers, and customers.

## PART II - SUMMARY OF FACTS

### A. RESTRUCTURING PLAN

5. Since May 2021, the Just Energy Entities, in consultation with the Monitor, have engaged extensively with their key stakeholders, including the entities who are DIP Lenders and significant Term Loan Lenders, the Credit Facility Lenders, and Shell (the largest commodity supplier to, and a significant secured creditor of, the Just Energy Entities), to develop a restructuring plan that: (a) preserves the going concern value of the businesses; (b) maintains relationships with Commodity Suppliers; (c) preserves the employment of most of the Just Energy Entities' more than 1000 employees; (d) maintains critical relationships with Canadian and U.S. regulators; and (e) sustains relationships with hundreds of other vendors and business critical stakeholders.[1]

6. The combined effect of the Plan and the related agreements will result in a recapitalization of the Just Energy Entities by the conversion of certain secured priority claims and unsecured claims to equity and the injection of new capital into the Just Energy Entities by means of the New Equity Offering (backed by the obligations set out in the Backstop Commitment Letter) and the New Credit Facility. However, before those transactions are considered at the Creditors' Meetings and by the Court at the Plan Sanction Hearing, interested parties will have an approximately two-month "Voting Period" to propose a superior alternative transaction for the Just Energy Entities.[2]

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1 Affidavit of Michael Carter, sworn May 12, 2022 (the "**Eleventh Carter Affidavit**"), paras. 14-16, Applicants' Motion Record dated May 12, 2022 ("**Applicants' MR**"), Tab 2, p. 87. Capitalized terms not otherwise defined have the same meaning as in the Eleventh Carter Affidavit.

2 Eleventh Carter Affidavit, paras. 18-19, Applicants' MR, Tab 2, p. 90.

**(a)** ***Support Agreement***

7. The Support Agreement was executed on May 12, 2022 among the Just Energy Entities, the Plan Sponsor[3] and CBHT Energy I LLC ("**CBHT**")[4] (in its capacity as the assignee of all secured prefiling claims previously held by BP – the "**BP Claim**"), Shell, the Credit Facility Lenders and significant Term Loan Lenders. The parties to the Support Agreement (who account for more that $1 billion of the Just Energy Entities' secured and unsecured debt) have agreed to cooperate in good faith and use commercially reasonable efforts to implement the Restructuring.[5]

8. Pursuant to the Support Agreement, the Just Energy Entities have agreed not to directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal.[6] However, two key protections will ensure there is an adequate opportunity for interested third parties to put forward a superior proposal in the CCAA process:

(a) 62-Day "Voting Period": The Milestones in the Support Agreement provide a 62-day period between the mailing of Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022), which will allow any interested third parties to complete due diligence and submit a proposal. The Just Energy Entities are permitted to consider and respond to such proposals, provide access to non-public information, negotiate, and other related activities.[7]

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3 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 also comprises all of the "Initial Backstop Parties" under the Backstop Commitment Letter (discussed below); see Eleventh Carter Affidavit, para. 21(a) Applicants' MR, Tab 2, p. 92.

4 CBHT is an affiliate of the Plan Sponsor: Eleventh Carter Affidavit, para. 21(c), Applicants' MR, Tab 2, p. 92.

5 Eleventh Carter Affidavit, paras. 21-22; Exhibit C, Applicants' MR, Tab 2, p. 92.

6 Eleventh Carter Affidavit, para. 26, Applicants' MR, Tab 2, p. 96.

7 Eleventh Carter Affidavit, para. 27, Applicants' MR, Tab 2, p. 96.

(b) "Fiduciary Out": The Just Energy Board may terminate the Support Agreement if it determines, following receipt of advice from outside counsel and financial advisors, that (a) proceeding with the Restructuring would be inconsistent with its fiduciary duties or applicable law, or (b) it would be consistent with its fiduciary duties to pursue a Superior Proposal. Importantly, the Fiduciary Out continues until termination of the Support Agreement or sanction of the Plan.[8]

9. The Plan Sponsor may terminate the Support Agreement if: (a) the Just Energy Entities fail to meet the Milestones; or (b) the Just Energy Entities determine to accept an alternative proposal.[9]

**(b)** ***Backstop Commitment Letter***

10. Under the Plan, the Just Energy Entities will be reorganized such that, upon implementation, an entity organized in the U.S. (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**").[10]

11. The New Equity Offering is open for participation to the Backstop Parties and the Beneficial Term Loan Claim Holders, or their designees (each a "**New Equity Offering Eligible Participant**") and is supported by the Backstop Commitment Letter. The Backstop Commitment Letter, which has been entered into among Just Energy U.S. and the Initial Backstop Parties, forms

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8 Eleventh Carter Affidavit, para. 28, Applicants' MR, Tab 2, p. 98.

9 Eleventh Carter Affidavit, para. 40, Applicants' MR, Tab 2, p. 102.

10 Eleventh Carter Affidavit, para. 47, Applicants' MR, Tab 2, p. 106. The New Equity Offering is subject to dilution by the equity issued or issuable pursuant to the Management Incentive Plan ("**MIP**").

Exhibit D to the Support Agreement. Its termination would entitle the Plan Sponsor, the Just Energy Entities, Shell, and the Credit Facility Lenders to terminate the Support Agreement.[11]

12. Pursuant to the Backstop Commitment Letter, each Backstop Party has agreed to subscribe for and receive a *pro rata* share of the New Equity Offering, along with its pro rata share of any unsubscribed New Common Shares. The purpose of the Backstop Commitment is to ensure the New Equity Offering is taken up and fully funded, thereby ensuring that the Just Energy Entities raise the necessary funds to pay all required amounts under the Plan.[12]

13. Under the Backstop Commitment Letter, the New Just Energy Parent will issue and deliver to the Backstop Parties the Backstop Commitment Fee Shares, representing 10% of the outstanding New Common Shares on the Effective Date.[13]

14. Additionally, a U.S. Just Energy Entity will pay the Initial Backstop Parties and any Additional Backstop Parties a cash fee of US $15 million (the "**Termination Fee**") if (i) the Just Energy Entities terminate the Support Agreement in reliance on the Fiduciary Out or determine to pursue a Superior Proposal, or (ii) the Plan Sponsor terminates the Support Agreement because the Just Energy Board determines to proceed with an alternative proposal. No Termination Fee is payable upon consummation of the Restructuring or if the Support Agreement is terminated for any other reason.[14]

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[11] The Backstop Commitment Letter also allows each holder of a Term Loan Claim on May 11, 2022 to become party to the Backstop Commitment Letter upon becoming signatory thereto ("**Additional Backstop Parties**", with the Initial Backstop Parties and any designated affiliates, the "**Backstop Parties**"). Eleventh Carter Affidavit, paras. 45-46 and 48, Applicants' MR, Tab 2, pp. 104-106.

[12] Subject to various assumptions and forecasted financial projections leading up to the Effective Date. Eleventh Carter Affidavit, paras. 46, 49-50, Applicants' MR, Tab 2, pp. 104-107.

[13] Eleventh Carter Affidavit, para. 52(a), Applicants' MR, Tab 2, p. 107.

[14] Eleventh Carter Affidavit, para. 52(b), Applicants' MR, Tab 2, pp. 107-108.

15. The Termination Fee is proposed to be secured by the Termination Fee Charge, which will have priority over all other security interests, charges and liens, except that it will rank subordinate to all other Charges granted to date within the CCAA proceedings.[15]

**(c)** ***The Proposed Plan***

16. The Just Energy Entities are seeking this Court's authority to file the Plan and to call, hold and conduct the Creditors' Meetings to allow Affected Creditors to vote on Plan approval.[16]

17. If implemented, the Plan contemplates that the Just Energy Entities' operations will continue in the normal course. The New Just Energy Parent will become the ultimate parent of the Just Energy Entities and will be the issuer of the New Preferred Shares and the New Common Shares under the Plan.[17]

18. Further, 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**") pursuant to which a first lien revolving credit facility in the amount of $250 million will be available. The undrawn letters of credit presently issued under the current Credit Agreement will continue or be replaced under the New Credit Facility, and up to $20 million of the current Credit Facility Claim will be permitted to remain outstanding as initial principal under the New Credit Agreement. A new Intercreditor Agreement will also be executed.[18]

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15 Eleventh Carter Affidavit, para. 55, Applicants' MR, Tab 2, p. 109.

16 Eleventh Carter Affidavit, para. 57, Applicants' MR, Tab 2, p. 110.

17 Eleventh Carter Affidavit, paras. 58(a), (b), and (c), Applicants' MR, Tab 2, p. 110.

18 Eleventh Carter Affidavit, paras. 58(e) and (f), Applicants' MR, Tab 2, p. 111.

19. On the Effective Date, the New Just Energy Parent will complete the New Equity Offering. The DIP Lenders will receive an amount equal to the DIP Lenders' Claim in cash in satisfaction of that claim and CBHT will received 100% of the New Preferred Shares of New Just Energy Parent in satisfaction of the BP Claim. Additionally, the Just Energy Entities will deliver the aggregate of (i) CDN $1.9 million (the "**Administrative Expense Reserve**"); and (ii) $10 million (the "**General Unsecured Creditor Cash Pool**").[19]

20. The Plan establishes two Classes of Creditors for Plan voting and distribution:

(a) The Secured Creditor Class: consisting of the Credit Facility Lenders in respect of the Credit Facility Claim. On the Effective Date, the Credit Facility Agent will receive an amount equal to the Credit Facility Claim in full in cash (less any Credit Facility Remaining Debt), and the New Credit Agreement will become effective;[20]

(b) The Unsecured Creditor Class: consisting of all holders of the Term Loan Claim, General Unsecured Creditor Claims, Subordinated Note Claim and Convenience Claims. On the Effective Date, Term Loan Claim Holders will receive their pro rata share of 10% of the New Common Shares.[21] Convenience Claims will each be paid in full up to the amount of $1,500. General Unsecured Creditors with Accepted Claims will be paid their pro rata share of the General Unsecured Creditor Cash Pool (after payment of Convenience Claims and permitted costs and expenses).[22]

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19 Eleventh Carter Affidavit, para. 58(d), (g), and (h), Applicants' MR, Tab 2, pp. 110-112.

20 Eleventh Carter Affidavit, paras. 58(i) and (j), Applicants' MR, Tab 2, p. 112.

21 Eleventh Carter Affidavit, para. 58(i) and (k)(i) and 59, Applicants' MR, Tab 2, pp. 112-116.

22 Such distribution is subject to the terms of the Trust Indenture between Just Energy and Computershare Trust Company of Canada dated September 28, 2020 and the "turnover" provisions set forth in the Subordinated Note indenture and in the Plan. Eleventh Carter Affidavit, para. 58(k)(ii), Applicants' MR, Tab 2, pp. 113-114.

21. Unaffected Claims will not be entitled to a vote on or distribution from the Plan.[23]

## PART III - ISSUES AND THE LAW

22. The principal issues on this Motion are whether:

(a) the Support Agreement, Backstop Commitment Letter and Termination Fee should be authorized and the Termination Fee Charge granted;

(b) the Plan should be accepted for filing and the Creditors' Meetings authorized; and

(c) the CCAA Stay should be extended to August 19, 2022.

## A. THE SUPPORT AGREEMENT AND BACKSTOP SHOULD BE APPROVED

23. This Court has the jurisdiction to approve the Support Agreement and the Backstop Commitment Letter under section 11 of the CCAA, which provides the authority to make any order it thinks fit. Section 11 also provides this Court with the jurisdiction to approve the Termination Fee and to grant the Termination Fee Charge.

### (a) *Support Agreement and BackStop are in the Best Interests of Stakeholders*

24. The Support Agreement and Backstop Commitment Letter represent an essential step towards a going-concern exit by the Just Energy Entities from these CCAA and Chapter 15 proceedings. They demonstrate material support for the proposed Restructuring by the Just Energy Entities' key secured and unsecured creditors and stakeholders, including: (i) the Plan Sponsor's funded commitment to provide sufficient liquidity to exit the CCAA Proceedings as a going concern; (ii) the Credit Facility Lenders' commitment to provide a new loan including letters of

[23] These include claims secured by a CCAA Charge, Commodity Supplier Claims, Responsible Person Claims, and holders of Equity Claims and/or Existing Equity: see Eleventh Carter Affidavit, paras. 58(l) and (n), and 84, Applicants' MR, Tab 2, pp. 114-115, and 137.

credit needed to operate in the Just Energy Entities' highly regulated environment and additional liquidity to support the implementation of the Plan; and (iii) Shell's commitment to continue supplying the company in accordance with existing arrangements.

25. Support agreements are commonly approved by CCAA Courts. For example, in *U.S. Steel*, this Court granted approval of a plan sponsor agreement, in reliance on section 11 of the CCAA and its powers to vary a stay of proceedings under s. 11.02 (2) of the CCAA, over the objections of certain stakeholders. The Court noted that any constraints on negotiations of alternative restructurings arising in the wake of the authorization were the product of the economic circumstances in which the creditors found themselves, including the lack of other restructuring options that would provide a better outcome, rather than any terms of the authorization order.[24]

26. The Court in *U.S. Steel* cited the decision of the Ontario Court of Appeal in *Stelco*, which relied on the same CCAA provisions in approving a plan sponsor agreement and other related agreements, and expressly confirmed the Court's jurisdiction to make such orders in furtherance of an exit from the CCAA proceeding. The creditors, other than those who have committed in advance to support the plan, remain free to vote in favour or against the plan, and the Court retains the power to assess the fairness and reasonableness of the plan at the sanction hearing.[25]

27. The stability provided by advancing a going concern Plan, with demonstrable and committed support by the major funded debtholders of the Just Energy Entities, while allowing for a final period of time for alternative restructuring proposals to be presented and considered, strikes

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[24] *Re U.S. Steel Canada Inc.*, 2016 ONSC 7899 at paras. 39 and 48 ("***U.S. Steel***"). See also: *Cinram International Inc., Re,* 2012 ONSC 3767; *Re Sino-Forest Corp.*, 2012 ONSC 7050 at para. 17 ("***Sino-Forest***"), leave to appeal ref'd 2013 ONCA 456; *SkyLink Aviation Inc., Re*, 2013 ONSC 1500.

[25] *U.S. Steel* at paras. 40-41, citing *Re Stelco* (2005), 78 OR (3d) 254 (CA) at paras. 18-19 ("***Stelco* (Agreement Authorization Appeal)**").

the appropriate balance between moving the Plan forward, while providing a reasonable opportunity to determine whether any more favourable alternative is available.[26]

28. Absent receipt of a superior proposal during the Voting Period, the proposed Restructuring is currently the best available option to allow the businesses of the Just Energy Entities to continue as a going concern. The Just Energy Entities' financial advisor ("**BMO**") agrees.[27]

29. The Just Energy Entities' businesses have been broadly marketed over the past two and a half years without generating any proposals which are superior to the Plan:

(a) A special committee of independent directors of the Just Energy Board conducted a formal review process in June 2019 with the assistance of sale advisors. Potential acquirors were solicited, 19 potential bidders were contacted, and Just Energy entered into NDAs with 15 different parties. No binding bids were received.[28]

(b) Just Energy continued to engage with parties who had expressed an interest, including between September 2019 and April 2020 and in June 2020. None of the proposals received provided sufficient returns to be acceptable. On September 28, 2020, Just Energy completed a balance sheet recapitalization transaction through a plan of arrangement under section 192 of the *CBCA*.[29]

(c) During these CCAA proceedings, BMO and/or the Just Energy Entities received inquiries from 24 third parties regarding potential acquisition or plan sponsorship

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[26] Eleventh Carter Affidavit, para. 19, Applicants' MR, Tab 2, p. 91.

[27] Eleventh Carter Affidavit, paras. 60 and 42, Applicants' MR, Tab 2, pp. 116 and 103; Affidavit of Mark Caiger, sworn May 12, 2022 ("**Caiger Affidavit**"), paras. 25 and 31, Applicants' MR, Tab 3, pp. 1785 and 1788.

[28] Eleventh Carter Affidavit, paras. 32-34, Applicants' MR, Tab 2, pp. 99-100.

[29] Eleventh Carter Affidavit, para. 35, Applicants' MR, Tab 2, p. 100.

> opportunities. The Just Energy Entities facilitated due diligence by three third parties (and engaged in extensive discussions with two of those third parties) with respect to potential acquisition opportunities for all or portions of the Just Energy Entities' business. These discussions did not result in any opportunities that were superior to the Restructuring, taking into account the regulatory and other risks associated with the opportunities.[30]

30. The pool of potential purchasers for the Just Energy Entities' business is limited in light of the capital-intensive and highly regulated nature of the business. Given extensive prior marketing efforts, and the fact that these CCAA proceedings have been ongoing for over a year without any alternative executable transaction materializing, the Just Energy Entities believe, in their business judgment, that a further formal process is not necessary.[31]

31. The Support Agreement nevertheless provides the "Voting Period", together with the Fiduciary Out, to provide a final opportunity for interested parties to present an Alternative Restructuring Proposal that provides better recoveries. The 62-day duration of the Voting Period is, in BMO's view, sufficient for third parties to complete due diligence and submit a proposal.[32]

32. The Support Agreement provides the Just Energy Entities with "exceptionally broad" latitude to respond to proposals which "exceed[s] the scope of market standard 'fiduciary out' provisions in Canada over the past number of years".[33] If a viable alternative proposal arises, the

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30 Eleventh Carter Affidavit, para. 31, Applicants' MR, Tab 2, p. 99; Caiger Affidavit, para. 27(c), Applicants' MR, Tab 3, p. 1787.

31 Eleventh Carter Affidavit, paras. 31 and 36, Applicants' MR, Tab 2, pp. 99 and 100-101; Caiger Affidavit, paras. 27-28, Applicants' MR, Tab 3, pp. 1786-1787.

32 Caiger Affidavit, at paras. 27-28, Applicants' MR, Tab 3, pp. 1786-1787.

33 Caiger Affidavit, at para. 30, Applicants' MR, Tab 3, p. 1788.

Fiduciary Out gives the Just Energy Entities the right to pursue and enter into such an alternate transaction, if it is in the best interests of the Just Energy Entities to do so.[34]

33. The CCAA allows debtors to develop restructuring proposals that are tailored to and appropriate in the circumstances of each case. The protections outlined above are intended to ensure that the restructuring process undertaken by the Just Energy Entities is fair and transparent and achieves the best transaction possible in the circumstances.[35]

### (b) *The Termination Fee and Termination Fee Charge Are Reasonable*

34. The Termination Fee is both fair and reasonable. It recognizes the time and effort expended by the Plan Sponsor and Initial Backstop Parties in developing the transaction that will be the foundation for the Plan. It is the *quid pro quo* for the latitude provided under the Support Agreement for Just Energy to entertain further overtures from third parties who may wish to advance an alternative proposal, and for the Fiduciary Out, all of which create risk for the Plan Sponsor that the Plan will not be completed as currently contemplated.

35. Similar fees have been approved in many other CCAA proceedings. For example, in *Stelco*, the Court approved a termination or "break" fee when it approved various plan sponsor and related agreements.[36] Such fees and related charges have also been approved in a formal sale process involving a stalking horse bid, or in other circumstances where the beneficiary of the fee and charge assumes the risk that its proposed transaction can be "trumped" by a superior offer.[37]

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34 Eleventh Carter Affidavit, paras. 28-29, Applicants' MR, Tab 2, p. 98.

35 Eleventh Carter Affidavit, para. 30, Applicants' MR, Tab 2, pp. 98-99.

36 *Re Stelco Inc.*, [2005] OJ No 4310 at para. 5, aff'd *Stelco* (Agreement Authorization Appeal). See also *Quest University (Re)*, 2020 BCSC 1845 at paras. 56-57 ("***Quest University***"), citing numerous examples of cases in which break fees and break fee charges have been granted.

37 See, for example, *Quest University* at paras. 59-60: Factors that have influenced the Courts' decisions to approve

36. Case law involving stalking horse bids – applicable by analogy here – have approved termination or "break" fees in ranges between 1.8% to 5% of the "value of the bid."[38] Under the Plan, there is no "purchase price". However, the Termination Fee represents 3.4% of the equity to be contributed by the Plan Sponsor and CBHT to the restructuring of the Just Energy Entities – which, in the view of BMO, is reasonable and in line with market terms.[39] The Termination Fee is also well within the range that has been considered acceptable in the jurisprudence.

## B. THE MEETINGS ORDER SHOULD BE GRANTED

### (a) *Threshold For Granting Meeting Order is Low*

37. Section 4 of the CCAA provides that the Court may order a meeting of creditors, or class of creditors, to vote on a compromise or an arrangement.

38. The standard for issuing a meeting order is low. As the Ontario Court of Appeal held in *Nova Metal Products*, the feasibility of a plan is a relevant factor to be considered in determining whether to order a meeting of creditors. However, the Court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset.[40]

39. Courts are not required to address the fairness and reasonableness of the Plan at this stage. Unless it is obvious that a plan cannot **(legally)** be approved by the affected creditors, a debtor

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a termination or "break" fee and an accompanying charge include whether: (a) the agreement was the result of arm's length negotiations; (b) the agreement was approved by the debtor's board of directors; (c) the relief is supported by the major creditors; (d) the amount of the fee could create a chilling effect on the market; (e) the amount of the fee/charge is reasonable, given the bidder's time, resources and risk in the process; (f) the fee/charge will enhance the prospects of a viable compromise or arrangement; and (g) the Monitor supports the fee/charge.

[38] See, for example, *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para. 13; *Re Brainhunter Inc.*, 2009 CanLII 72333 (Ont Sup Ct) at para. 20; *Re Danier Leather Inc.*, 2016 ONSC 1044 at paras. 12, 42; *Re Green Growth Brands Inc.*, 2020 ONSC 3565 at para. 52.

[39] Caiger Affidavit, paras. 32-38, Applicants' MR, Tab 3, pp. 1789-1792.

[40] *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 OAC 282 (CA) at para. 90.

company should be authorized to present its plan to its creditors at a meeting and issues of fairness are to be considered at the sanction hearing, if the plan is approved by the required majorities of creditors at the meetings.[41] The Plan does not contain any provisions that would render it incapable of being approved by creditors and implemented, if approved by the Court.

40. The Plan is the result of extensive negotiations with the Just Energy Entities' key stakeholders over a more than 11-month period. The Just Energy Entities believe that the Plan, combined with the establishment of the Voting Period, will provide 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. Moreover, although the benefits of the Plan and its fairness will be fully considered at the Plan Sanction Hearing, the Plan, if approved, is expected to significantly deleverage the Just Energy Entities' balance sheet by eliminating their funded debt and providing at minimum $75 million of liquidity through the New Equity Offering and New Credit Facility.[42]

**(b)** ***Proposed Classification of Creditors for Voting and Distribution is Appropriate***

41. Section 22(1) of the CCAA provides that a debtor company may divide creditors into classes for the purpose of a meeting in respect of a plan of compromise or arrangement. Section 22(2) of the CCAA provides that creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest, taking into account (among other things) (a) the nature of debts, liabilities or obligations giving rise to their claims; (b) the nature of any security in respect of their claims, as well as the remedies available to those creditors in the

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41 *Re ScoZinc Ltd.,* 2009 NSSC 163 at paras. 4-7; *Re Jaguar Mining Inc.,* 2014 ONSC 494 at para. 48; *Arrangement relatif à Bloom Lake*, 2018 QCCS 1657 at para. 19.

42 Eleventh Carter Affidavit, paras. 60 and 61, Applicants' MR, Tab 2, p. 116.

absence of the compromise or arrangement being sanctioned; and (c) the extent to which those creditors would recover claims by exercising those remedies.

42. Section 22(2) codifies principles that applied under the jurisprudence that pre-dates the 2009 amendments to the CCAA, which added section 22.[43] Before and after 2009, classification of creditors is guided by certain fundamental principles, including that the starting point must be the objectives of the CCAA and its purpose in facilitating the restructuring of debtor companies.[44]

43. The basis for creditor classification is commonality of legal interest of the creditors relative to the debtor. However, those creditors do not have to have an identity of interests in order to be placed in the same class. In other words, creditors with different legal rights can be included within the same class, as long as their interests are not so dissimilar as to make it impossible for them to consult together with a view to voting in their common interest.[45]

44. The proposed Plan contemplates two Classes: the Secured Creditor Class and the Unsecured Creditor Class. *Prima facie,* this classification is based on the rights and remedies of the class of creditors against the debtor (i.e. whether those creditors hold security for their claims). This is an extremely common basis for classification. Specifically, the classification of all unsecured creditors in one class has been recognized by CCAA Courts as appropriate.[46]

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[43] L.W. Houlden, G.B. Morawetz & Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Carswell, 2009) (loose-leaf revision 2022-2), § 23:12.

[44] *Re SemCanada Crude Co.*, 2009 ABQB 490 at para. 16 ("***SemCanada Crude***"), citing *Re Canadian Airlines Corp*. (2000), 19 CBR (4th) 12 (Alta QB) at para. 14 ("***Canadian Airlines***"), leave to appeal ref'd 2000 ABCA 149.

[45] *Canadian Airlines* at para. 17, citing *Sovereign Life Assurance Co. v Dodd* (1891), [1892] 2 QB 573 (Eng CA).

[46] *Re Stelco Inc.*, [2005] OJ No 4814 at para. 13 ("***Stelco* (Classification Endorsement)**"), aff'd 78 OR (3d) 24 (CA) ("***Stelco* (Classification Appeal)**").

45. Classification of creditors is a fact-specific determination that must be evaluated in the unique circumstances of every case. It must be approached with the flexible and remedial jurisdiction of the CCAA in mind – namely, to facilitate reorganization, if at all possible.[47] One of the principle objectives of classification is the avoidance of unnecessary fragmentation. As Farley J. stated in *Stelco*, "fragmentation if necessary, but not necessarily fragmentation."[48] Excessive fragmentation of creditor classes is generally antithetical to a successful restructuring because it can confer an effective veto on those creditors who are placed in separate classes.[49]

46. The implication of these principles is that, for a particular stakeholder to establish that there should be a further fragmentation of classes, a compelling justification is needed, given the potential effect on the success of the restructuring. No such justifications exist here.

47. Absent bad faith, the motivations of creditors to approve or disapprove of the plan are irrelevant to classification. The interests to be considered are the legal interests of the creditor *qua* creditor in relation to the debtor company. Thus, for example, the fact that one unsecured creditor within a class is motivated to support the plan because of its own economic interests as plan sponsor has been held not to justify placing that creditor in a separate class.[50]

48. The fact that creditors within the same class may receive different recoveries than others under a proposed plan does not preclude those creditors from being placed in the same class as

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47 *Canadian Airlines* at para. 18.

48 *Stelco* (Classification Endorsement) at para. 13, cited in *SemCanada Crude* at para. 21.

49 *Atlantic Yarns Inc., Re*, 2008 NBQB 144 at para. 59, citing *Stelco* (Classification Appeal) at paras. 35-36; *Canadian Airlines* at para. 30, citing *Sklar-Peppler Furniture Corp v Bank of Nova Scotia*, 86 DLR (4th) 621 at paras. 13-14.

50 See *Canadian Airlines* at para. 31. In this case, Air Canada, the plan sponsor, had bought up unsecured claims and proposed to vote those claims in favour of the Plan. Paperny J. held that this did not require Air Canada to be placed in a separate class for voting purposes. See also *SemCanada Crude* at para. 38.

those others, if they have sufficiently common legal interests.[51] Under the Plan, the Term Loan Claim Holders will receive equity entitlements and others within the General Unsecured Class will receive cash. While the form of their recovery is different, BMO explains that, based on certain assumptions and the enterprise value multiple that is implied by the Plan to the estimated Fiscal 2023 EBITDA, the percentage of the recoveries for the Term Loan Claim Holders and the other General Unsecured Creditors are reasonably equivalent, regardless of the magnitude of unsecured Claims that are finally accepted or the amount of the General Unsecured Creditor Cash Pool ultimately available for distribution.[52]

49. The Term Loan Claim Holders have unsecured claims against all the Just Energy Entities. The Convenience Creditors and the General Unsecured Creditors have unsecured claims against various Just Energy Entities. They would have similar remedies against the applicable Just Energy Entities outside this proceeding and would be treated in a similar, if not identical, manner on a liquidation. As such, the Term Loan Claim Holders properly belong in the General Unsecured Creditor Class. The Plan Sponsor's economic motives to support the Plan are entirely *bona fide*, resulting from the very material contributions they have made to the Just Energy Entities' businesses both prior to and during the CCAA proceeding, including as DIP Lenders.

50. Further fragmentation of the General Unsecured Creditor Class – for example, to segregate the Term Loan Claim Holders in a separate class – would give the other General Unsecured Creditors, who have contributed nothing to the Plan or to the ongoing survival of the Just Energy Entities' business, an inappropriate veto over its approval. Furthermore, in the absence of a

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[51] E.g.: *SemCanada Crude* at para. 26; *Re Target Canada Corp.*, 2016 ONSC 3651 ("***Target***"), in which all affected creditors voted as a single class, although certain landlord creditors were entitled to different recoveries from other creditors in the same class; see also *Re Banro Corp.*, 2018 ONSC 2064; *Sino-Forest*.

[52] Details of the valuation comparison are set out in the Caiger Affidavit at paras. 9-24, Applicants' MR, Tab 3, pp. 1780-1785.

Superior Proposal, there is no alternative available that will provide a better outcome to the other General Unsecured Creditors.[53]

51. The Just Energy Entities submit that the proposed classification is consistent with the objectives of the CCAA and the interests of the Creditors, and should be approved.

### (c) *Convenience Class is Commonly Accepted Mechanism in CCAA Plans*

52. The proposed Plan establishes a "Convenience Class" of creditors who will receive 100% recovery of their Accepted Claims and be deemed to vote in favour the Plan.[54] This is a typical mechanism used in CCAA plans to assist small creditors and improve efficiencies by immediately resolving claims that have little relative importance in a debtor's overall restructuring. There are numerous examples of CCAA plans that provide for a convenience class being sanctioned.[55]

53. The British Columbia Court recently granted a meeting order in *Quest University*, concluding that the inclusion of the convenience class creditors as part of a single voting class was appropriate. Like in the proposed Plan, the convenience class creditors would receive full recovery and be deemed to vote in favour of the plan. The Court noted: "[The Affected Creditors] all hold unsecured claims against Quest and they all rank the same in priority. While the Convenience and Cash Election Creditors will be treated slightly differently, practical reasons justify this approach, and they are common in CCAA plans".[56]

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53 Eleventh Carter Affidavit, para. 60, Applicants' MR, Tab 2, p. 116.

54 Subject to De Minimis Claims in the amount of $10 or less which will not receive a distribution. Eleventh Carter Affidavit, paras. 71(d), 72(b)(i), and 87(b)(ii), Applicants' MR, Tab 2, pp. 124-125 and 139.

55 E.g.: *Re Nelson Financial Group Ltd.*, 2011 ONSC 2750 at para. 14; *Target* at para 8.

56 *Quest University* at para 45. See also *Trican Well Service Ltd v Delphi Energy Corp* (11 September 2020), Calgary, 2001-05124 (Alta QB) (Transcript of reasons) at 76ff, leave to appeal ref'd 2020 ABCA 363, where the Alberta Court of Queen's Bench approved such a mechanism in the plan, in the face of allegations that the use of a convenience class had the effect of swamping certain claimants and amounted to "ballot stuffing."

54. In any event, any issues of fairness regarding the deemed voting of the Convenience Class Creditors and the effect on Plan approval is properly addressed at the Plan Sanction Hearing.

**(d)** ***Voting of Representative Claims***

55. The Meeting Order proposes that the following litigation claims will be voted as representative claims, with each representative entitled to one vote: (i) a certified class proceeding, brought in Ontario (*"***Omarali***"*) and two uncertified class proceedings filed in the United States ("**Jordet**" and "**Donin**", and with Omarali the "**Subject Class Action Claims**");[57] and (ii) approximately 364 claims filed on a representative basis by four US law firms on behalf of alleged Texas customers related to the February 21, 2021 weather event (the "**Texas Power Interruption Claim**", together with the Subject Class Action Claims, the "**Contingent Litigation Claims**").[58]

56. The authorized representative in relation to the Subject Class Actions each filed one Proof of Claim and the four authorized representatives in relation to the Texas Power Interruption Claims filed two Proofs of Claim.[59] Each of the Contingent Litigation Claims is filed on this basis – i.e. by the representative plaintiff in the Omarali certified class proceeding, by the proposed representative plaintiffs in the Donin and Jordet proceedings, and by the four law firms representing the individual claimants in the Texas Power Interruption Claim. As such, the proposed

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[57] Eleventh Carter Affidavit, para. 71(b)(i), Applicants' MR, Tab 2, pp. 120-123.

[58] Based on the Just Energy Entities' records, 141 of these claims were submitted by claimants who were not customers of the Just Energy Entities during the relevant time period. Ninety two of these claims have since been withdrawn: Eleventh Carter Affidavit, para. 71(b)(ii), Applicants' MR, Tab 2, pp. 123-124.

[59] Eleventh Carter Affidavit, Exhibits I, O, and R, Applicants' MR, Tab 2, pp. 894-900, 939-1140, and 1185-1386.

Meetings Order and Plan contemplate that each of the representatives filing a Contingent Liquidation Claim shall have one vote.[60]

57. This is the only feasible approach in the circumstances and it treats the Contingent Litigation Claims equitably. The Contingent Litigation Claims have been disallowed by the Just Energy Entities, in consultation with the Monitor, as having no legal and/or evidentiary foundation.[61]

58. Even if the Just Energy Entities bear some liability to the Contingent Litigation Claimants, such liability is incapable of individual proof in relation to the underlying claimants at this stage. Neither the Just Energy Entities, nor the Court, have enough information in relation to any of the Contingent Litigation Claims to determine which underlying individual claimants, if any, would have legitimate claims for voting purposes. As a result, there is no basis on which the individual claimants underlying the Contingent Litigation Claims could be accorded more than one vote per representative at the Creditor Meetings.

59. Any alternative approach that involves providing a vote to individual claimants, a significant portion of which likely have no provable claim, risks skewing the "head count" as well as providing unjustified leverage to such claimants. It also creates unacceptable risks of jeopardizing the success of the Restructuring.

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[60] Eleventh Carter Affidavit, para. 87(b)(iii), Applicants' MR, Tab 2, pp. 139-140; Meetings Order, para. 53-54, Applicants' MR, Tab 5, p. 1833; Plan, section 3.4, para. 1(c), Eleventh Carter Affidavit, Exhibit A, Applicants' MR, Tab 2A, p. 199.

[61] The Notices of Disallowance are attached as Exhibits K, L, P, S, and U-X to the Eleventh Carter Affidavit, Applicants' MR, Tab 2 and pp. 914-928, 1141-1151, 1387-1397, 1431-1544.

**(e)** ***Valuation of Disputed Claims for Voting***

60. Section 20(1)(c) of the CCAA provides that a creditor's claim is the amount of which proof may be made under the *Bankruptcy and Insolvency Act*. If the amount is not admitted by the debtor company, the amount is to be determined by the court by way of a summary process.

61. The Just Energy Entities intend to comply with this requirement in determining the amount of all Disputed Claims for the purpose of establishing entitlements to receive distributions under the Plan. However it is not possible to resolve all Disputed Claims prior to the Creditors' Meetings, nor is it possible to delay the Creditors' Meetings until the resolution of all Disputed Claims has taken place without jeopardizing the entire Restructuring.[62]

62. To address this issue, each Affected Creditor with a Disputed Claim (other than the Contingent Litigation Claimants) will be entitled to vote at the Creditors' Meeting at the dollar value 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**"), sent to the Affected Creditor. If no Negative Notice Claims Package or Acceptance Value was sent, the Affected Creditor is entitled to vote the value set out in their Proof of Claim.[63]

63. The Contingent Litigation Claims have all been disallowed by the Just Energy Entities, in consultation with the Monitor, on the basis (*inter alia*) that they are speculative, remote and incapable of proof.[64] The Contingent Litigation Claimants have all disputed these disallowances.

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62 Eleventh Carter Affidavit, para. 88, Applicants' MR, Tab 2, pp. 140-141; Affidavit of Michael Carter, sworn February 2, 2022 (the "**Seventh Carter Affidavit**"), at paras 14 and 65, Applicants' Motion Record dated February 2, 2022, Tab 2, at pp. 13 and 37.

63 Eleventh Carter Affidavit, para. 89, Applicants' MR, Tab 2, p. 141.

64 Eleventh Carter Affidavit, Exhibits K, L, P, S, and U-X, Applicants' MR, Tab 2, and pp. 914-928, 1141-1151, 1387-1397, 1431-1544.

64. The complexity of the Contingent Litigation Claims is such that the disputes of such disallowances cannot be resolved prior to the Creditors Meetings.[65] This Court has already refused to impose an unachievable schedule which would require that the Donin and Jordet Claims be valued prior to the Creditor Meetings.[66] The evidence at the hearing of counsel's motion to impose such schedule demonstrated that there is no scenario in which these highly contingent, complex proceedings, which are not yet certified and which are vastly expanded relative to the original pleadings, could be fairly and fully resolved prior the Creditors Meetings.[67]

65. The Just Energy Entities urgently need to emerge from these CCAA proceedings. Given the nature of the business, the length of the proceedings, the complexities and time-consuming nature of the multiparty negotiations, and the volatility of the energy market, any significant delays in the conclusion of the restructuring could have damaging effects on the outcome for stakeholders and the support of the financial participants for the proposed restructuring.[68]

66. The Just Energy Entities therefore propose that the value of those claims will be accepted at $1 for voting purposes, without prejudice to the right of the Contingent Litigation Claimants to dispute that amount for distribution.[69]

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65 Eleventh Carter Affidavit, para. 88, Applicants' MR, Tab 2, pp. 140-141.

66 *Re Just Energy Group Inc.* (23 February 2022), Toronto, CV-21-00658423-00CL (Ont Sup Ct) (Endorsement regarding plaintiffs' counsel's motion for advice and directions), pp. 10-12. Counsel to the Donin and Jordet representatives has filed an application for leave to appeal from this Court's order.

67 Seventh Carter Affidavit, at paras 52-55 and 58-65, Applicants' Motion Record dated February 2, 2022, Tab 2, at pp. 31-33, and 34-37.

68 Seventh Carter Affidavit, at para 14, Applicants' Motion Record dated February 2, 2022, Tab 2, at p. 13.

69 Eleventh Carter Affidavit, para. 87(b)(iii), Applicants' MR, Tab 2, pp. 139-140; Meetings Order, para. 53-54, Applicants' MR, Tab 5, p. 1833.

67. The Plan's treatment for voting purposes of the Contingent Litigation Claims is appropriate in the circumstances and is consistent with similar treatment of unresolved contingent claims in other plans that have been approved by this Court. Thus, for example, in *Red Cross*, the Court approved a claims procedure order in which the plaintiffs in a number of tainted blood class proceedings had their claims valued at $1 for voting purposes, with the distribution of value of those claims to be calculated later.[70] Similarly, the meeting orders in *Target*, *Abitibi* and *Nortel* provided that unliquidated, unresolved contingent claims would be valued for voting at $1.00.[71]

68. Any attempt to attribute another real value to the Contingent Litigation Claims at this stage would be wholly arbitrary, as there is insufficient information before this Court to attribute even an estimated value to these claims. The only other alternative, given the impossibility of valuing the Contingent Litigation Claims prior to the Creditors' Meetings, would be to allow the Contingent Litigation Claimants to vote the face value of their Claims. The plaintiffs in the Subject Class Actions have claimed damages in excess of $100 million (*Omarali*) and US $3.6 billion (*Donin* and *Jordet*).[72] These amounts are vastly overstated, for reasons set out in the Notices of Revision and Disallowance that have been issued in relation to the Contingent Litigation Claims.[73]

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[70] *The Canadian Red Cross Society/La Société Canadienne de la Croix-Rouge, Re.* (5 May 1999), Toronto, 98-CL-002970 (Ont Sup Ct) (Order establishing a claims procedure in respect of transfusion claimants) at para. 16.

[71] *Target Canada Co. (Re)* (13 April 2016), Toronto, CV-15-10832-00CL (Ont Sup Ct) (Meeting Order) at para. 30; *AbitibiBowater Inc., Re* (9 July 2010), Montreal, 500-11-036133-094 (Qc Sup Ct) (Creditors' Meeting Order) at para. 5, approving the draft Cross-Border Voting Protocol, which references the valuation of contingent claims at para. 29; *Re Nortel Networks Corporation et al* (1 December 2016), Toronto, 09-CL-7950 (Ont Sup Ct) (Plan Filing and Meeting Order) at para. 57.

[72] Eleventh Carter Affidavit, Exhibits I, J, O, and R, Applicants' MR, Tab 2, pp. 894-900, 901-913, 939-1140, and 1185-1386.

[73] Eleventh Carter Affidavit, Exhibits K, L, P, and S, Applicants' MR, Tab 2, pp. 914-928, 1141-1151, and 1387-1397.

69. Allowing the Contingent Litigation Claimants to vote the exaggerated face amount of their claims would effectively grant them a veto over the Restructuring and allow them to hold all other creditors with ascertainable, provable claims for ransom, not to mention the Plan Sponsor and other funded debtholders who have made real contributions to this Restructuring (unlike the Contingent Litigation Claimants). As a result, it is appropriate, in the circumstances, to attribute a value of $1 to the Contingent Litigation Claims for voting, without prejudice to the rights of those creditors to have their claims valued through appropriate adjudication processes.

70. Any unfairness resulting from this approach is a matter for the Plan Sanction Hearing. To this end, 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 to those votes at the Plan Sanction Hearing. If the 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.[74]

## C. STAY EXTENSION SHOULD BE GRANTED

71. The Stay Period has been extended a number of times, most recently to May 26, 2022. The Applicants submit that the extension of the Stay Period to August 19, 2022 should be granted, as they continue to act in good faith and with due diligence.[75]

## D. AMENDMENT TO CLAIMS PROCEDURE ORDER SHOULD BE GRANTED

72. The Just Energy Entities have received certain Texas Power Interruption Claims, the adjudication of which requires an understanding of the utility regulatory regime in Texas. These

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74 Eleventh Carter Affidavit, para. 119(h), Applicants' MR, Tab 2, p. 160.

75 CCAA, ss. 11.02(2) to 11.02(3).

claims are thus particularly suited for determination by the U.S. Bankruptcy Court in Texas.[76] As such, the Just Energy Entities are seeking to amend the Claims Procedure Order to permit them, in their sole discretion and in consultation with the Monitor, to have any Texas Power Interruption Claims adjudicated and determined by the U.S. Bankruptcy Court, in its discretion.

## E. SEALING ORDER SHOULD BE GRANTED

73. The Just Energy Entities seek an order permitting them to file the unredacted Support Agreement and Backstop Commitment Letter under seal pending further order of the Court, as they contain confidential, commercially sensitive information that the Support Agreement requires be kept confidential.[77] A similar sealing order was granted in *U.S. Steel* in relation to plan support documents.[78] Granting a sealing order in this case meets the test articulated in *Sherman Estate*.[79]

## PART IV - NATURE OF THE ORDER SOUGHT

74. The Applicants submit that this Court should grant the relief requested and issue Orders substantially in the form attached at Tab 4 and Tab 5 of the Applicants' Motion Record**.**

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of May, 2022.

per Marc Wasserman / Michael De Lellis / Jeremy Dacks

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76 Eleventh Carter Affidavit, para. 126, Applicants' MR, Tab 2, p. 162.

77 Eleventh Carter Affidavit, Confidential Exhibits D, F and paras. 44 and 56, Applicants' MR, Tab 2, pp. 104 and 109.

78 *U.S. Steel* at paras. 74 and 75.

79 *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 37 and 38; see also *Ontario Securities Commission v Bridging Finance Inc.*, 2021 ONSC 4347 at para. 23.

## SCHEDULE "A" – LIST OF AUTHORITIES

**Case Law**

1. *AbitibiBowater Inc., Re* (9 July 2010), Montreal, 500-11-036133-094 (Qc Sup Ct) (Creditors' Meeting Order)
2. *AbitibiBowater Inc., Re* (7 July 2010), Montreal, 500-11-036133-094 (Qc Sup Ct) (Cross-Border Voting Protocol, Exhibit R-3 to motion materials)
3. *Arrangement relatif à Bloom Lake*, 2018 QCCS 1657
4. *Atlantic Yarns Inc., Re*, 2008 NBQB 144
5. *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750
6. *Cinram International Inc., Re,* 2012 ONSC 3767
7. *Nova Metal Products Inc. v Comiskey (Trustee of)* (1990), 41 OAC 282 (CA)
8. *Ontario Securities Commission v Bridging Finance Inc.*, 2021 ONSC 4347
9. *Quest University (Re)*, 2020 BCSC 1845
10. *Re Banro Corp.*, 2018 ONSC 2064
11. *Re Brainhunter Inc.*, 2009 CanLII 72333 (Ont Sup Ct)
12. *Re Canadian Airlines Corp*. (2000), 19 CBR (4th) 12 (Alta QB), leave to appeal ref'd 2000 ABCA 149
13. *Re Danier Leather Inc.*, 2016 ONSC 1044
14. *Re Green Growth Brands Inc.*, 2020 ONSC 3565
15. *Re Jaguar Mining Inc.,* 2014 ONSC 494
16. *Re Just Energy Group Inc.* (23 February 2022), Toronto, CV-21-00658423-00CL (Ont Sup Ct) (Endorsement regarding plaintiffs' counsel's motion for advice and directions)
17. *Re Nelson Financial Group Ltd.*, 2011 ONSC 2750
18. *Re Nortel Networks Corporation et al* (1 December 2016), Toronto, 09-CL-7950 (Ont Sup Ct) (Plan Filing and Meeting Order)
19. *Re ScoZinc Ltd.,* 2009 NSSC 163
20. *Re SemCanada Crude Co.*, 2009 ABQB 490
21. *Re Sino-Forest Corp.*, 2012 ONSC 7050, leave to appeal ref'd 2013 ONCA 456
22. *Re Stelco Inc.*, [2005] OJ No 4310, aff'd 78 OR (3d) 254 (CA)

**Case Law**

23. *Re Stelco Inc.*, [2005] OJ No 4814, aff'd 78 OR (3d) 24 (CA)

24. *Re Target Canada Corp.*, 2016 ONSC 3651

25. *Re U.S. Steel Canada Inc.*, 2016 ONSC 7899

26. *Sherman Estate v. Donovan*, 2021 SCC 25

27. *Sklar-Peppler Furniture Corp v Bank of Nova Scotia*, 86 DLR (4th) 621

28. *SkyLink Aviation Inc., Re*, 2013 ONSC 1500

29. *Sovereign Life Assurance Co. v Dodd* (1891), [1892] 2 QB 573 (Eng CA)

30. *Target Canada Co. (Re)* (13 April 2016), Toronto, CV-15-10832-00CL (Ont Sup Ct) (Meeting Order)

31. *The Canadian Red Cross Society/La Société Canadienne de la Croix-Rouge, Re.* (5 May 1999), Toronto, 98-CL-002970 (Ont Sup Ct) (Order establishing a claims procedure in respect of transfusion claimants)

32. *Trican Well Service Ltd v Delphi Energy Corp* (11 September 2020), Calgary, 2001-05124 (Alta QB) (Transcript of reasons), leave to appeal ref'd 2020 ABCA 363

**Secondary Sources**

33. L.W. Houlden, G.B. Morawetz & Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Carswell, 2009) (loose-leaf revision 2022-2)

## SCHEDULE "B" – TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Companies' Creditors Arrangement Act*, RSC, 1985, c C-36**

**Compromise with unsecured creditors**

**4** Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

[…]

**General power of court**

**11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[…]

**Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

> **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
>
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**(3)** The court shall not make the order unless

> **(a)** the applicant satisfies the court that circumstances exist that make the order appropriate; and
>
> **(b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[…]

**Fixing deadlines**

**12** The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

[…]

**Determination of amount of claims**

**20 (1)** For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

**(a)** the amount of an unsecured claim is the amount

**(i)** in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

**(ii)** in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

**(iii)** in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

**(b)** the amount of a secured claim is the amount, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

[…]

**Company may establish classes**

**22 (1)** A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

**Factors**

**(2)** For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, 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.

[…]

**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-21-00658423-00CL

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

PROCEEDING COMMENCED AT Toronto

**FACTUM OF THE APPLICANTS**

**OSLER, HOSKIN & HARCOURT LLP**
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

**Michael De Lellis** (LSO# 48038U)
Tel: 416.862.5997
Email: mdelellis@osler.com

**Jeremy Dacks** (LSO# 41851R)
Tel: 416.862.4923
Email: jdacks@osler.com

Lawyers for the Applicants