

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Haidar Omarali

Plaintiff

-and-

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

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**PLAINTIFF'S MOTION RECORD
(VOLUME 1 OF 7)**

(Summary Judgment Motion Returnable June 11-13, 2019)

September 5, 2018

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC #51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC #58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiff

TO: FASKEN MARTINEAU DUMOULIN LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Paul J. Martin
Tel: 416-865-4439
Fax: 416-364-7813

Lawyers for the Defendants

TABLE OF CONTENTS

Tab No.	Description	Page No.
<u>VOLUME 1 OF 7</u>		
A.	Notice of Motion dated September 5, 2018	1
B.	Affidavit of Katlyn Schwantz, sworn August 29, 2018	11
1.	Exhibit "A" – Text Messages with Joel Stewart	18
C.	Affidavit of Jennifer Borg, sworn August 29, 2018	54
D.	Affidavit of Jamie Acton, sworn August 29, 2018	61
E.	Affidavit of Roland Lavigne, sworn August 30, 2018	68
F.	Affidavit of Behram Nemati, sworn August 30, 2018	75
G.	Affidavit of Daniel Barbien, sworn September 2, 2018	82
H.	Affidavit of Michelle Alexander, sworn September 5, 2018	89
1.	Exhibit "1" - Amended Statement of Claim	105
2.	Exhibit "2" - Statement of Defence	125
3.	Exhibit "3" - Reasons (Certification), dated July 27, 2016	144
4.	Exhibit "4" - Certification Order	170
5.	Exhibit "5" - Reasons (Denying Leave), dated November 17, 2016	177
6.	Exhibit "6" - Affidavit of Haidar Omarali, sworn August 6, 2015	180
7.	Exhibit "7" - Affidavit of Mortuza Awal, sworn August 2, 2015	475
8.	Exhibit "8" - Affidavit of Petra Filipovic, sworn August 7, 2015	482
9.	Exhibit "9" - Transcript from the cross-examination of Haidar Omarali	489
10.	Exhibit "10" - Transcript from the cross-examination of Petra Filipovic	645
11.	Exhibit "11" - Transcript from the cross-examination of Mortuza Awal	684

Tab No.	Description	Page No.
<u>VOLUME 2 OF 7</u>		
12.	Exhibit "12" - JE00004714	719
13.	Exhibit "13" - JE00007730	725
14.	Exhibit "14" - JE00006819	731
15.	Exhibit "15" - Excerpts from transcript of Ravi Maharaj, dated January 24, 2018	747
16.	Exhibit "16" - Excerpts from transcript of Ravi Maharaj, dated January 25, 2018	917
17.	Exhibit "17" - June 20, 2018 Answers arising from discovery related documents	1074
18.	Exhibit "18" - July 5, 2018 Answers arising from discovery related documents	1200
19.	Exhibit "19" - July 31, 2018 Answers arising from discovery related documents	1304
<u>VOLUME 3 OF 7</u>		
20.	Exhibit "20" - Copy of correspondence from counsel to the defendants	1537
21.	Exhibit "21" - Letter to the defendants dated May 19, 2015	1541
22.	Exhibit "22" - Letter to the defendants dated April 21, 2017	1546
23.	Exhibit "23" - Proposed discovery plan	1548
24.	Exhibit "24" - JE00007378	1568
25.	Exhibit "25" - JE00007712	1599
26.	Exhibit "26" - JE00006037	1631
27.	Exhibit "27" - JE00007304	1826
28.	Exhibit "28" - JE00007145	1961
29.	Exhibit "29" - JE00009545	1963

Tab No.	Description	Page No.
30.	Exhibit "30" - JE00007172	2071
31.	Exhibit "31" - JE00004614	2210
32.	Exhibit "32" - JE00007593	2213
33.	Exhibit "33" - JE00007592	2215
34.	Exhibit "34" - JE00007295	2218
35.	Exhibit "35" - JE00008591	2236
36.	Exhibit "36" - JE00007565	2238
37.	Exhibit "37" - JE00007749	2240
38.	Exhibit "38" - JE00007750	2269
39.	Exhibit "39" - JE00007751	2314
40.	Exhibit "40" - JE00002950	2316
<u>VOLUME 4 OF 7</u>		
41.	Exhibit "41" - JE00002951	2318
42.	Exhibit "42" - JE00002946	2323
43.	Exhibit "43" - JE00002947	2331
44.	Exhibit "44" - JE00002948	2334
45.	Exhibit "45" - JE00002949	2337
46.	Exhibit "46" - JE00002940	2361
47.	Exhibit "47" - JE00002941	2363
48.	Exhibit "48" - JE00002942	2365
49.	Exhibit "49" - JE00002943	2367
50.	Exhibit "50" - JE00002944	2372
51.	Exhibit "51" - JE00002945	2374

Tab No.	Description	Page No.
52.	Exhibit "52" - JE00002939	2377
53.	Exhibit "53" - JE00008187	2380
54.	Exhibit "54" - JE00009502	2382
55.	Exhibit "55" - JE000010495	2393
56.	Exhibit "56" - JE00009417	2395
57.	Exhibit "57" - JE00008821	2408
58.	Exhibit "58" - JE00007436	2421
59.	Exhibit "59" - JE00009418	2434
60.	Exhibit "60" - JE00008822	2445
61.	Exhibit "61" - JE00000635	2456
62.	Exhibit "62" - JE00009419	2477
63.	Exhibit "63" - JE00000636	2486
64.	Exhibit "64" - JE00002477	2503
65.	Exhibit "65" - JE00009739	2520
66.	Exhibit "66" - JE00009420	2537
67.	Exhibit "67" - JE00006271	2548
68.	Exhibit "68" - JE00008314	2559
69.	Exhibit "69" - JE00009421	2570
70.	Exhibit "70" - JE00008825	2587
71.	Exhibit "71" - JE00007441	2604
72.	Exhibit "72" - JE00009392	2621
73.	Exhibit "73" - JE00008310	2638
74.	Exhibit "74" - JE00000638	2655

Tab No.	Description	Page No.
75.	Exhibit "75" - JE00002482	2688
76.	Exhibit "76" - JE00004895	2721
77.	Exhibit "77" - JE00000540	2754
78.	Exhibit "78" - JE00000541	2783
79.	Exhibit "79" - JE00007201	2812
80.	Exhibit "80" - JE00009416	2816
81.	Exhibit "81" - JE00000523	2819
<u>VOLUME 5 OF 7</u>		
82.	Exhibit "82" - JE00000522	2935
83.	Exhibit "83" - JE00008237	2968
84.	Exhibit "84" - JE00008239	3009
85.	Exhibit "85" - JE00003039	3052
86.	Exhibit "86" - JE00003040	3054
87.	Exhibit "87" - JE00003041	3073
88.	Exhibit "88" - JE00003042	3180
89.	Exhibit "89" - JE00003043	3182
90.	Exhibit "90" - JE00003044	3188
91.	Exhibit "91" - JE00003045	3214
92.	Exhibit "92" - JE00001304	3233
93.	Exhibit "93" - JE00001306	3237
94.	Exhibit "94" - JE00008143	3299
95.	Exhibit "95" - JE00008812	3341
96.	Exhibit "96" - JE00008469	3346

Tab No.	Description	Page No.
97.	Exhibit "97" - JE00008607	3354
98.	Exhibit "98" - JE00000056	3358
99.	Exhibit "99" - JE00006300	3368
100.	Exhibit "100" - JE00000060	3372
101.	Exhibit "101" - JE00008575	3486
102.	Exhibit "102" - JE00008771	3492
103.	Exhibit "103" - JE00008780	3514
104.	Exhibit "104" - JE00008538	3518
105.	Exhibit "105" - JE00008559	3520
<u>VOLUME 6 OF 7</u>		
106.	Exhibit "106" - JE00008144	3526
107.	Exhibit "107" - JE00008145	3528
108.	Exhibit "108" - JE00008581	3570
109.	Exhibit "109" - JE00008592	3572
110.	Exhibit "110" - JE00008540	3574
111.	Exhibit "111" - JE00008577	3576
112.	Exhibit "112" - Chart of Weekly Calls	3579
<u>VOLUME 7 OF 7</u>		
112.	Exhibit "112" - ...Continuation of Tab 112 (Tabs AA-FF)	4279
113.	Exhibit "113" - JE00006025	4525
114.	Exhibit "114" - JE00009139	4528
115.	Exhibit "115" - JE00006049	4531
116.	Exhibit "116" - JE00005652	4588

Tab No.	Description	Page No.
117.	Exhibit "117" - JE00005626	4590
118.	Exhibit "118" - JE00005038	4653
119.	Exhibit "119" - JE00005639	4701
120.	Exhibit "120" - JE00005653	4703
121.	Exhibit "121" - JE00005638	4705
122.	Exhibit "122" - JE00004859	4707
123.	Exhibit "123" - JE00008955	4736
124.	Exhibit "124" - JE00005689	4771
125.	Exhibit "125" - JE00007801	4787
126.	Exhibit "126" - JE00001700	4807
127.	Exhibit "127" - JE00006237	4810
128.	Exhibit "128" - JE00008919	4812
129.	Exhibit "129" - JE00002435	4815
130.	Exhibit "130" - JE00007610	4820
131.	Exhibit "131" - JE00007611	4840
132.	Exhibit "132" - JE00006124	4863
133.	Exhibit "133" - JE00008146	4867
134.	Exhibit "134" - JE00005695	4871
135.	Exhibit "135" - JE00006880	4873
136.	Exhibit "136" - JE00005906	4875

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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*

**NOTICE OF MOTION FOR SUMMARY JUDGMENT
(returnable June 11-13, 2019)**

THE PLAINTIFF will make a motion to the Honourable Justice Edward Belobaba on June 11-13, 2019, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. Summary Judgment in favour of the Plaintiff on the Common Issues, as follows:
 - (i) that the Class Members (defined below) are "employees" of the Defendants pursuant to the *Employment Standards Act, 2000* ("ESA");
 - (ii) that the Class Members are in "pensionable employment" of the Defendants pursuant to the *Canada Pension Plan* ("CPP");

- (iii) that the Class Members are in "insurable employment" of the Defendants pursuant to the *Employment Insurance Act* ("EI");
- (iv) that 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. 285/01;
- (v) that 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;
- (vi) that the Defendants owed a contractual duty and/or a duty of good faith to the Class Members 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) Ensure the proper classification of the Class Members;
 - (D) Ensure the Class Members were advised of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted;
 - (E) Ensure the Class Members were compensated with vacation pay; and
 - (F) Ensure the Class Members were compensated with public holiday and premium pay;
- (vii) that the Defendants breached their contractual duties and/or a duty of good faith;

- (viii) that the Defendants failed to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*;
- (ix) that the Defendants failed to make the prescribed employer *CPP* and/or *EI* contributions on behalf of the Class Members;
- (x) that the Defendant owed a duty of care to the Class Members to:
 - (A) Ensure that Class Members were properly classified as employees;
 - (B) Ensure Class Members were advised 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 were monitored and accurately recorded; and
 - (D) Ensure that Class Members were appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay;
- (xi) that the Defendants breached any of said duties of care found to exist, including the extent to which they were breached;
- (xii) that the Defendants were unjustly enriched by virtue of failing to compensate the Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay, in accordance with the *ESA*, and/or failing to make the prescribed employer *CPP* and/or *EI* contributions on behalf of the Class Members.
- (xiii) that the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) are not barred by the two-year limitation period set out in the *Limitations Act, 2002*;

2. An award of damages to the Class, or a declaration to that effect, on the basis of:
 - (i) all *CPP* and *EI* payments the Defendants failed to make on the wages actually paid to the Class;
 - (ii) all employment expenses paid by the Class in the course of their employment, which were not reimbursed by the Defendants;
 - (iii) the minimum wage, overtime pay, vacation pay and public holiday and premium pay for the hours the Class Members worked; and
 - (iv) *CPP* and *EI* contributions on the wages owed to the Class Member;
3. A declaration that damages sustained by Class Members can be assessed on an aggregate basis, and if so, an award of such damages in the amount this Honourable Court deems appropriate or to establish a process to do so;
4. In the alternative to (3) above, directions on the establishment of an individual assessment process pursuant to section 25 of the *Class Proceedings Act, 1992* to determine damages owing to the to the Class Members on account of minimum wage, overtime pay, vacation pay and public holiday and premium pay not paid;
5. Costs of the motion and of this action on a substantial indemnity basis, fixed and payable forthwith, including interest; and
6. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. This certified class proceeding concerns the misclassification of the Defendants' "Sales Agents" as "independent contractors" instead of as "employees";
2. This class proceeding was certified by Justice Belobaba on July 27, 2016;
3. The certified class covers "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");
4. There is no genuine issue requiring a trial on the Common Issues;
5. Each of the Common Issues can be determined in a summary fashion without the need for a trial;
6. If the Plaintiff is successful on Summary Judgment on the Common Issues, this class proceeding can be completely resolved on its merits, effecting judicial economy and access to justice for thousands of Class Members without the need of a trial;
7. The Defendants have classified the Class Members as "independent contractors" and have admitted that they did not ensure that minimum wages were paid to the Class Members, did not pay overtime pay, vacation pay, public holiday and premium pay pursuant to the *ESA* to the Class Members, did not make *CPP* or *EI* contributions on behalf of any Class Member, and did not reimburse Class Members for expenses they incurred in the course of their work for the Defendants;
8. The Class Members are "employees" of the Defendants pursuant to the *ESA* as:
 - (i) the Class Members' employment was highly controlled and systemically directed by the Defendants;
 - (ii) the Class Members worked exclusively for the Defendants in the Defendants' enterprise;
 - (iii) the Defendants provided the Class Members with all the tools of employment;
 - (iv) the work the Class Members performed for the Defendants was a core function of the Defendants' enterprise;

- (v) the Defendants controlled and directed the locations where the Class Members would perform their work; and
 - (vi) the Class Members were in the employ of the Defendant and not in business for themselves;
9. There is no exemption from the *ESA* applicable to the Class;
10. By virtue of the nature of their relationship, the Defendants owed a contractual duty and/or a duty of good faith to the Class Members to:
- (i) Ensure that the Class Members were compensated with the minimum wage;
 - (ii) Ensure that the Class Members' hours of work were monitored and accurately recorded;
 - (iii) Ensure the proper classification of the Class Members;
 - (iv) Ensure the Class Members were advised of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted;
 - (v) Ensure the Class Members were compensated with vacation pay; and
 - (vi) Ensure the Class Members were compensated with public holiday and premium pay;
11. By virtue of their relationship, the Defendants owed a common law duty to the Class Members to:
- (i) Ensure that Class Members were properly classified as employees;
 - (ii) Ensure Class Members were advised of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
 - (iii) Ensure that the Class Members' hours of work were monitored and accurately recorded; and

- (iv) Ensure that Class Members were appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay;

12. The Defendants have admitted that they:

- (i) did not classify or treat the Class Members as employees;
- (ii) did not track the hours that Class Members worked;
- (iii) did not ensure that Class Members were paid minimum wage in accordance with the *ESA*;
- (iv) did not pay the Class Members overtime pay, vacation pay and public holiday and premium pay pursuant to the *ESA*;
- (v) did not make the prescribed employer *CPP* and *EI* contributions on behalf of the Class Members pursuant to the *Canada Pension Plan* and the *Employment Insurance Act*; and
- (vi) did not reimburse Class Members for expenses they incurred in the course of their work for the Defendants.

13. The Defendants therefore violated the *ESA*, breach their contractual and common law duties of care to the class and were unjustly enriched to the detriment of the Class;

14. The Defendants therefore misclassified their Sales Agents, and accordingly:

- (i) have denied the Class Members minimum wage, overtime pay, vacation pay and public holiday and premium pay pursuant to the *ESA*;
- (ii) failed to make the prescribed employer *CPP* and *EI* contributions on behalf of the Class Members pursuant to the *Canada Pension Plan* and the *Employment Insurance Act*; and
- (iii) were enriched by failing to reimburse Class Members for expenses they incurred in the course of their employment for the Defendants;

15. The Defendants owe the Class Members damages on the following bases:
 - (i) *CPP* and *EI* contributions on the payments actually made by the Defendants to the Class Members;
 - (ii) the minimum wage, overtime pay, vacation pay and public holiday and premium pay for the hours the Class Members worked;
 - (iii) *CPP* and *EI* contributions on the wages owed to the Class Member; and
 - (iv) all expenses paid by the Class Members in the course of their work for the Defendants that were not reimbursed by the Defendants;
16. There is sufficient evidence to awarded damages to the Class Members on all of the bases noted above;
17. In the alternative, declarations should be made as to the Class Members' entitlement to damages on the bases claims and directions be provided on the establishment of an individual assessment process pursuant to section 25 of the *Class Proceedings Act, 1992* to determine damages owing to the to the Class Members;
18. The *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
19. The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
20. The *Court of Justice Act*, R.S.O. 1990, c. C.43, as amended;
21. The *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended;
22. The *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
23. The *Employment Insurance Act*, S.C. 1996, c. 23, as amended; and
24. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The pleadings and proceedings filed herein;
2. The affidavit and transcription evidence served and filed in relation to this motion in accordance with the timetable to be set; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

September 5, 2018

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#51143A
Tel: 416-595-2700
Fax: 416-204-2894
Jody Brown LSUC#58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiff

TO: FASKEN MARTINEAU DUMOULIN LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Paul J. Martin LSUC# 24140B
Tel: 416-865-4439
Laura F. Cooper LSUC# 35426A
Tel: 416-865-5471
Janna L. Young LSUC# 68320T
Tel: 416-865-3547

Fax: 416-364-7813

Lawyers for the Defendants

Haidar Omarali
Plaintiff

v.

JUST ENERGY GROUP INC. et al.
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION
FOR SUMMARY JUDGMENT

Koskie Minsky LLP
20 Queen Street West,
Suite 900, Box 52
Toronto ON M5H 3R3

David Rosenfeld LSUC#51143A
Tel: 416-595--2700
Fax: 416-204-2894

Jody Brown LSUC #58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiff

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**AFFIDAVIT OF KATLYN SCHWANTZ
(Sworn August 29^m, 2018)**

I, Katlyn Schwantz, of the City of Cambridge MAKE OATH AND SAY:

1. I worked for Just Energy as a Sales Agent for approximately one month in September 2013 and as a Crew Coordinator from approximately October 2013 to December 2014. As such, I have knowledge of the matters deposed to herein. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to I verily believe to be true.
2. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
3. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A. Background

4. I was hired by Just Energy in approximately September 2013. I attended an interview at the Just Energy Kitchener office and within several days was brought back for a day long group training session in which I had to write and pass a quiz about energy sales in Ontario. After the group wrote the quiz and passed, everyone had their picture taken and they were given a Just Energy I.D. badge with their picture.

5. As part of the hiring process, new Sales Agents are given the same form contract after passing the quiz mentioned above. No time is provided to review this contract prior to signing it. The contract I signed purported to be an independent contractor agreement with Just Energy. I never received a copy of the agreement I signed and I do not have a copy now, even though I asked for a copy. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurs over one (1) day.

6. There is no previous experience or specialized training required to become a Sales Agent, at most two days of training are given: the day long group training when Sales Agents wrote the quiz, and one day of shadowing in the field.

7. After approximately a month of working as a Sales Agent, I was promoted to Crew Coordinator.

8. I worked at the Kitchener office of Just Energy from approximately September 2013 to December 2014. I observed the hiring process described above occur each week at the Kitchener office.

B. Just Energy Salesforce Structure

9. The Kitchener office marketing model employed Sales Agents at the very bottom of a hierarchy of control. This structure consisted of:

- (a) There were two National Distributors in Canada during my time, also called a National Director. The National Distributors were in charge of the Canadian offices under their respective jurisdiction. The Kitchener

office where I worked reported to the National Distributor, Dan Camirand;

- (b) a Regional Distributor, also called a Regional Director, who was in charge of the office and whom everyone at the Kitchener office reported to;
- (c) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Director; and
- (d) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.

10. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Director.

11. Crew Coordinators take on the role of field training for many new Sales Agents.

C. Daily Job Tasks and Daily Control

12. As a Crew Coordinator, my job was to supervise and manage the Sales Agents. I also had to train the sales agents and provide support to agents in the field.

13. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

14. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven by the Crew Coordinators to locations where they have to market.

15. The standard day for me and the other Crew Coordinators consisted of the following:

- (a) Attending the Kitchener office between 9:30 a.m. and 10:00 a.m. to start work. I would review maps for marketing and Sales Agents pairing for the day with the Regional Distributor. The specific locations where the Sales Agents were permitted to market door to door were reviewed and approved by the Regional Distributor;
- (b) From 10:00 a.m. -11 a.m. I would hold an optional training session to go over sales tactics with my Crew;
- (c) From 11:00 a.m. to 12:00 a.m. I would attend a morning meeting with the Regional Distributor, other Crew Coordinators and Sales Agents. In these meetings, the Regional Distributor would set the marketing locations for the day and sales goals. We would also review sales statistics, sales tactics, and sales targets. If we did not meet the weekly sales goal set for us, the Regional Distributor would require us to work on Sunday;
- (d) The Regional Distributor would ensure that the Sales Agents were all wearing their Just Energy uniform and badge prior to leaving the Kitchener office, we had to wear the pin which said "we are not the utility" and we had no choice about this;
- (e) There was a weekly call at about 10 a.m. with all the Regional Distributors and the National Distributor to report on sales and to go over recent developments in the energy market that could be applicable to the Sales Agents' marketing. The call was conducted by Darren Pritchett, the VP of sales at Just Energy, if Darren was not available, Richard Texiera would hold the call. They would identify each Regional Distributor to ask about sales targets;
- (f) I would then drive Sales Agents to a specific location to market door to door;
- (g) If we exhausted the area provided, I would ask the Regional Distributor to provide us with another area to market;

- (h) The door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (i) Sales Agents potential contracts and sales had to be reported on a group i-message board for the entire office and the Regional Distributor would message the group to direct more sales;
- (j) Throughout the day, I would supervise the Sales Agents, provide assistance if needed, and also market door to door;
- (k) At approximately 9:00p.m. our marketing work would end and I would pick up the Sales Agents from their marketing area. I would then have to drive back to Kitchener and drop agents at a Tim Hortons to pick up their cars, or drop them at their houses if they did not own a car.

16. During my time at Just Energy, I would perform the above tasks six (6) days a week, every week. I worked approximately eighty four (84) hours weekly, including travel. The above daily structure was enforced by the Regional Distributor.

17. As a result of the work demands of a eighty four (84) hour week, I would not have been able to work for any other business while also working for Just Energy. To my knowledge, no other Sales Agents or Crew Coordinators worked for other businesses while working for Just Energy.

18. Just Energy never tracked my hours or the hours of Sales Agents. This was consistent for my entire employment with Just Energy.

19. I retained texts from Joel Stewart, the Regional Distributor during my time at Just Energy. Attached and marked at Exhibit "A" are a series of texts from Joel Stewart assigning me specific locations where I would bring Sales Agents to market door to door.

20. Sales Agents are not free to market where or when they want. In my experience, generally Sales Agents who market in areas not approved for the day would receive a warning from the Regional Director or threats of termination. If Sales Agents asked to market locally closer to their home or other area of choice, the Regional Distributor would let them go.

21. For one week or two weeks each month, a "push week" would be mandatory. During a push week, the Crew Coordinators would drive the Sales Agents in their Crew to a more distant location that would require staying in a motel or hotel. The door knocking hours during a push week were from 11:00 a.m. to 9 p.m. for seven days a week. Each morning of a push week, we would do a group call with the entire Crew and the Regional Distributor to confirm locations for marketing and sales tactics for the day.

D. Compensation

22. As described above, along with the other Sales Agents, when I was a Sales Agent I worked a fourteen (14) hour shift, six (6) days a week. I was only paid commission on contracts that were accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

23. While working for Just Energy, I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay.

24. When I was a Crew Coordinator, I received "overrides" on the commissions of Sales Agents, meaning that I, along with the other Crew Coordinators, received a payment based on the approved contracts of the Sales Agents.

25. I make this affidavit in support of the plaintiff's motion for summary judgment and for no other purpose.

SWORN BEFORE ME at the City of Cambridge,
this 29^m day of August, 2018.



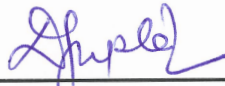
A Commissioner for taking Affidavits (or as may be)



KATLYN SCHWANTZ

Dinesh Kumar Gupta
Barrister, Solicitor & Notary Public
679 Coronation Blvd.
Cambridge, Ontario, Canada N1R 3G5
Tel (226) 786-0290 Fax: (226) 786-0291

*THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF KATLYN SCHWANTZ
SWORN BEFORE ME, THIS 29TH DAY OF AUGUST, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Dinesh Kumar Gupta
Barrister, Solicitor & Notary Public
679 Coronation Blvd.
Cambridge, Ontario, Canada N1R 3G5
Tel (226) 786-0290 Fax: (226) 786-0291

Edit

Messages



Search



legolasri@gmail.c... 10:56 PM
I'm just reAding through messages



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing hockey



Alison Short 2014-11-30
Message Send Failure



nicholasrichard... 2014-11-28
Thanks

Joel

Contact 19



Please update postal code. Wrong postal code was entered. Correct postal code is L4R 0B9. Thanks

Wed, Jul 2, 4:14 PM

You slowing down?

Wed, Jul 2, 7:16 PM

Who's Kenny working with?

Himself

Why what's up?

Wed, Jul 2, 9:25 PM

Josh and Suad are going to waubashene tomorrow. Tell then work it tight and I expect 10 deals minimal from them vombined

Thu, Jul 3, 9:55 AM

Kate and Kenny - midland
Matt and Henok - cold water
Josh and Suad - wab
Piotr, Dj Moore and chike (working by himself) in Victoria harbour

Matt And henok don't have area in Victoria harbour?

Supposedly they worked it all

Cold water us spreading installs too far

Is it

Put them in port mcnichil

Or penantang



Send

Edit

Messages



Joel

Contact

Search



legolasri@gmail.c... 10:56 PM

I'm just reAding through messages



Joel, clarkson1... 2014-12-12

Rise and grind!!!!...



lucianmarta@ho... 2014-12-05

2Dealz



Joel Stewart 2014-12-05

Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05

Tonight 4-8 BOC



r.allison_short@... 2014-12-05

How did today go ??



rj_finley@hotmail... 2014-12-04

How long are you going to be



jesse_denstedt... 2014-12-04

Coming



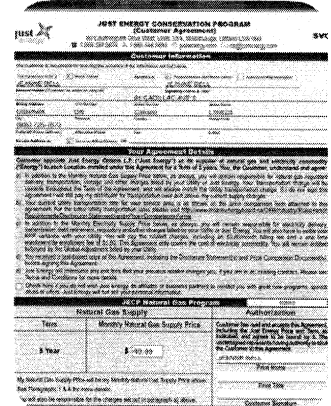
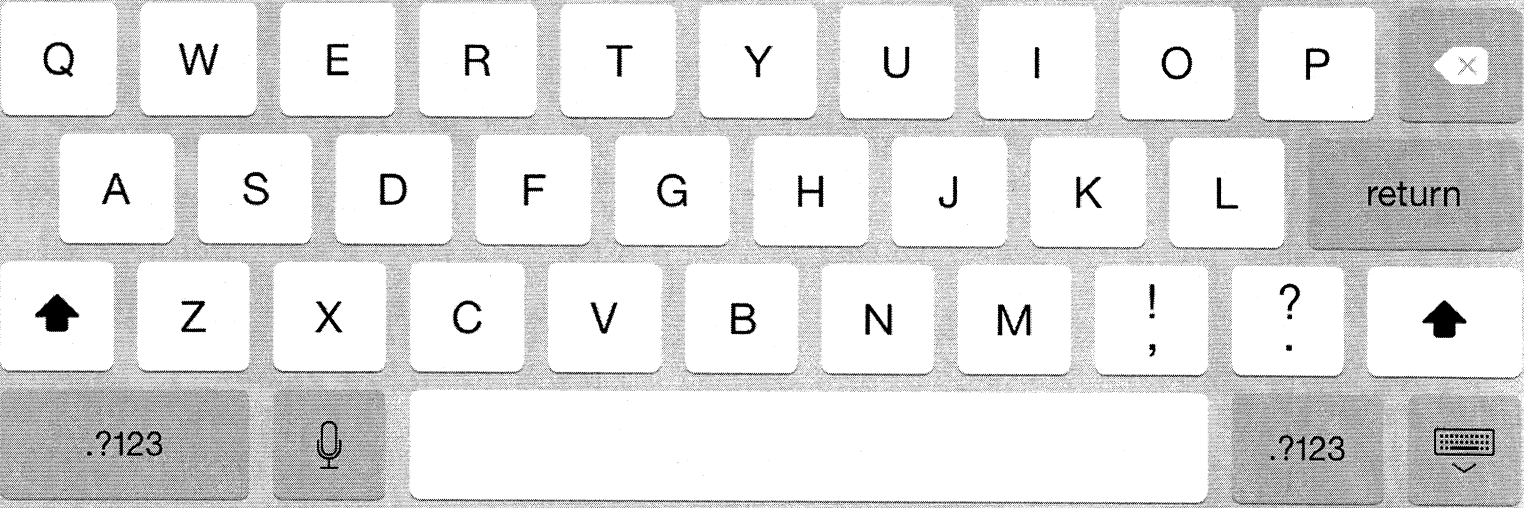
bmasters_94@h... 2014-12-04

50 Melbourne



|

Send



Tonight 4-8

Sun, Aug 3, 6:19 PM

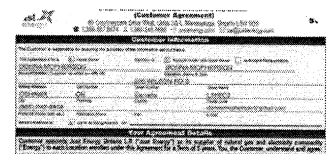
No dispos for 30 min or so

For who

Kilmenny smokie

I think
System is a little wacky but that's how
it looked

Ok I called her after so they say they're
working.



Edit

Messages



Joel

Contact

Search



legolasri@gmail.c... 10:56 PM
I'm just reAding through messages



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming

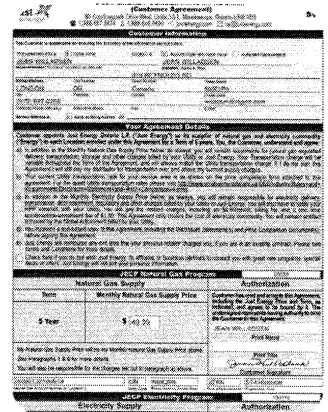
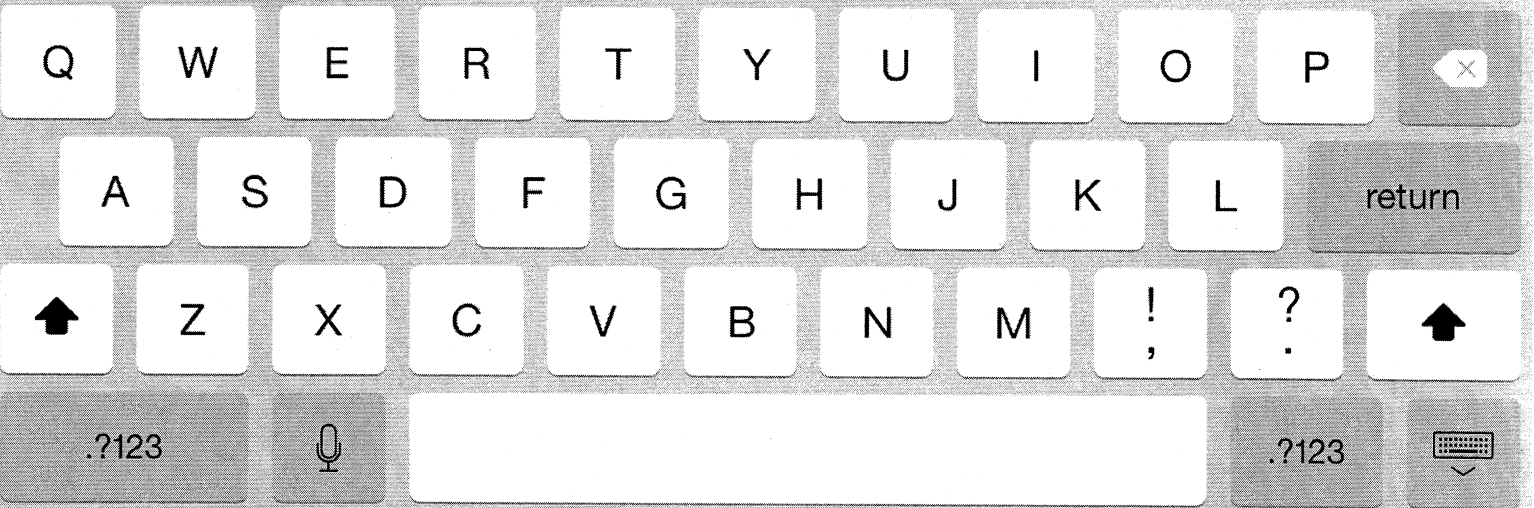


bmasters_94@h... 2014-12-04
50 Melbourne



|

Send

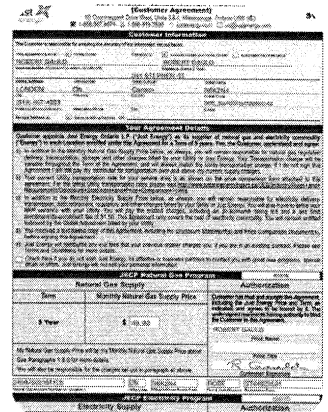


Tonight 4-8

Tue, Aug 5, 7:42 PM

Don't stop at 8:30. If no one has deals.

Take the team to get signatures. Today is shit



Tonight 4-8

Edit

Messages



Joel

Contact

Search



legolasri@gmail.c... 10:56 PM
I'm just reAding through messages



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming

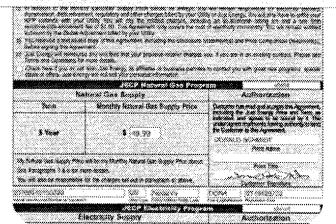


bmasters_94@h... 2014-12-04
50 Melbourne



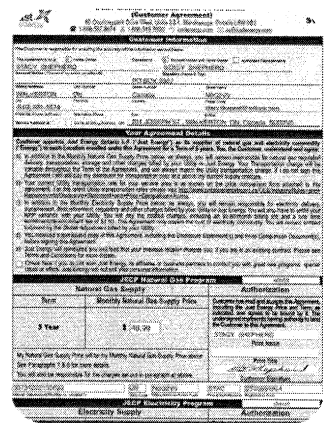
Message input field

Send



ASAP please

Tue, Aug 12, 4:36 PM



Tonight 4-8

Tue, Aug 12, 6:41 PM

Need you at 5 minimal today
Get on your horse !!

Tue, Aug 12, 7:54 PM



Edit

Messages



Joel

Contact

Search



legolasri@gmail.c... 10:56 PM
I'm just reAding through messages



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



|

Send

Q W E R T Y U I O P

A S D F G H J K L return

↑ Z X C V B N M ! , ? .

.?123

Thu, Sep 4, 6:57 PM

NET ENERGY CONSERVATION PROGRAM
Customer Information

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

View Agreement Details

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

NET ENERGY CONSERVATION PROGRAM
Customer Information

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

View Agreement Details

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

Tonight 4-8 BOC

Thu, Sep 4, 8:53 PM

Need another deal from you 4 doesn't cut the cheese

Fri, Sep 5, 4:52 PM

NET ENERGY CONSERVATION PROGRAM
Customer Information

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

View Agreement Details

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

NET ENERGY CONSERVATION PROGRAM
Customer Information

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

View Agreement Details

Customer Name: **GENCO, CALISTO**
Address: **51 HITCHCOCK BLVD ST.**
City: **ST. GEORGE**
State: **VT**
Zip: **05670**

Edit

Messages (1)



Joel

24

Contact

Search



legolasri@gmail.c... 10:50 PM
Definitely



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing
hockey



Alison Short 2014-11-30
Message Send Failure



nicholasrichard... 2014-11-28
Thanks

No. He's crazy. Legit

He needs serious help

Is Wes not working

Why what happened

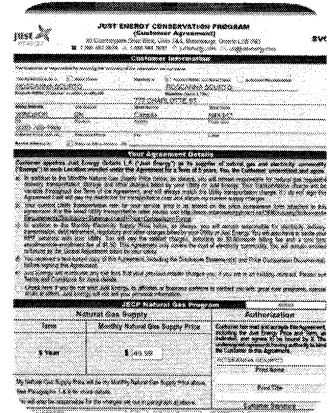
He just text the craziest shit

When he doesn't wanna work he
causes shit so he doesn't have to work

I'm done with him. He's a headache

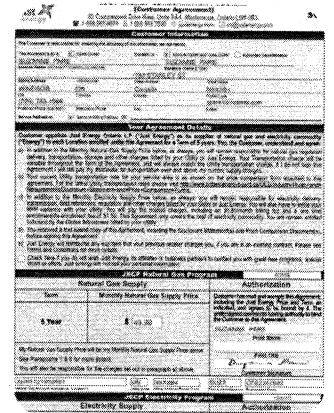
Yup makes sense

Sat, Sep 13, 7:30 PM



Tomorrow 8-12. Not booked on call.

Sun, Sep 14, 1:05 PM



Today 12-4 not booked on call



Send

Edit

Messages (1)



Search



legolasri@gmail.c... 10:50 PM
Definitely



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing
hockey



Alison Short 2014-11-30
Message Send Failure



nicholasrichard... 2014-11-28
Thanks

Joel

25

Contact

I'll check

They wouldn't be flowing yet

Yup I called in marked as active

Nice and warmed up for ya

Don't stop for review do it on the fly.
Just one guy to train. Should t need to
stop

Show him big money that's what will
stick him

JOEL ENERGY CONSERVATION PROGRAM
(Customer Agreement)

Customer Information

Customer Name: JOEL STUART
Address: 480 JAMES ST
City: LONDON ONT
Postal Code: N6A 1K6

Service Address

Service Address: 480 JAMES ST
City: LONDON ONT
Postal Code: N6A 1K6

Service Dates

Start Date: 12/18/14
End Date: 12/18/14

Service Description

Service Description: Energy Audit

Customer Signature: JOEL STUART
Date: 12/18/14

Installer Signature: [Blank]
Date: [Blank]

Tonight 4-8 BOC

Thu, Sep 18, 6:49 PM

JOEL ENERGY CONSERVATION PROGRAM
(Customer Agreement)

Customer Information

Customer Name: JOEL STUART
Address: 480 JAMES ST
City: LONDON ONT
Postal Code: N6A 1K6

Service Address

Service Address: 480 JAMES ST
City: LONDON ONT
Postal Code: N6A 1K6

Service Dates

Start Date: 12/18/14
End Date: 12/18/14

Service Description

Service Description: Energy Audit

Customer Signature: JOEL STUART
Date: 12/18/14

Installer Signature: [Blank]
Date: [Blank]

Not compatible please :)

Thu, Sep 18, 8:51 PM

People knock til 9 Kate.



Send

Edit

Messages (1)



Joel

Contact

Search



legolasri@gmail.c... 10:50 PM
Definitely



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing
hockey



Alison Short 2014-11-30
Message Send Failure



nicholasrichard... 2014-11-28
Thanks

Thu, Sep 18, 8:51 PM

People knock til 9 Kate.

Set proper expectations

The guys are coming over if you would like to join us

No thanks.

The way you decide to read and interpret text is what creates conflict

You need to get in control of your emotions

I agree if it is accurate and I'm not having false accusations come my way via text or on phone.

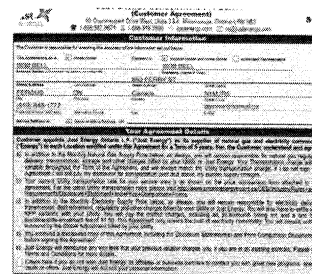
Head office guests tomorrow

Don't stop for review do it on the fly. Just one guy to train. Should t need to stop

Show him big money that's what will stick him

That was my direction from earlier in the day.

Fri, Sep 19, 3:49 PM



Send

Edit

Messages



Joel

Contact



legolasri@gmail.... 2015-04-07

Ugh why did I let you talk me into this situation, I was perfec...



Joel, clarkson1... 2014-12-12

Rise and grind!!!!!!...



lucianmarta@ho... 2014-12-05

2Dealz



Joel Stewart 2014-12-05

Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05

Tonight 4-8 BOC



r.allison_short@... 2014-12-05

How did today go ??



rj_finley@hotmail... 2014-12-04

How long are you going to be



jesse_denstedt... 2014-12-04

Coming



bmasters_94@h... 2014-12-04

50 Melbourne



clarkson1723@... 2014-12-02

Just saw your cousin playing hockey



nicholasrichard... 2014-11-28

Thanks



kidneybeanmac... 2014-11-28

No problem. Tear it up!

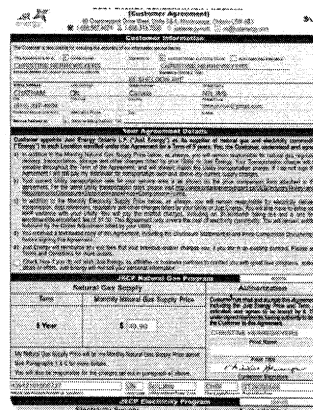


Joel, clarkson1... 2014-11-26

Nice push guys.

Load Earlier Messages

Sep 22, 2014, 8:56 PM



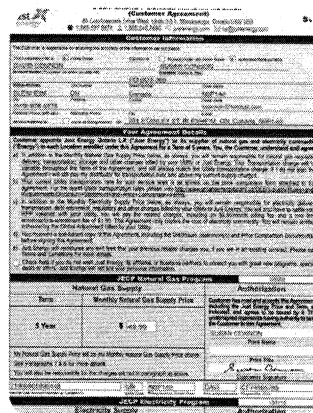
Tomorrow 4-8 not booked on call. All full

Kate 6
Josh 0
Total: 6

You gotta work with him tomorrow
Plus cops were giving Ryan and josh a hard time today about permits so the team should go to Blenheim tomorrow and we can revisit today's pairs and area on Wednesday

Ok yeah just hearing about all that now.

Sep 23, 2014, 12:19 PM



Today 4-8 BOC



Send

Edit

Messages



Joel

Contact



legolasri@gmail.... 2015-04-07
Ugh why did I let you talk me into this situation, I was perfec...



Joel, clarkson1... 2014-12-12
Rise and grind!!!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing hockey



nicholasrichard... 2014-11-28
Thanks



kidneybeanmac... 2014-11-28
No problem. Tear it up!



Joel, clarkson1... 2014-11-26
Nice push guys.

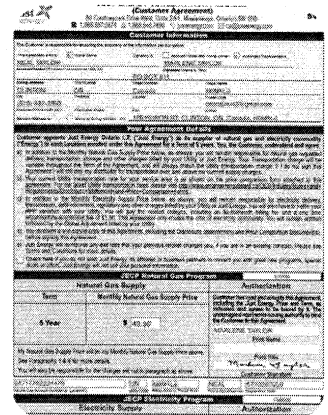
Load Earlier Messages
Oct 6, 2014, 7:36 PM

Ok ya still on hold waiting.

How the customer ?

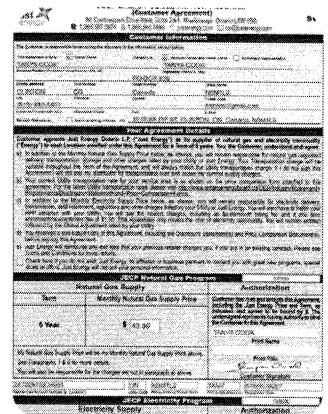
Finally got through. Double dirty

Oct 7, 2014, 3:24 PM



Tonight between 345-5 please

Oct 7, 2014, 5:01 PM



Not compatible.

Please have RJ shadow you for refresher

Thanks



[Empty text input field]

Send

Edit

Messages



Joel

Contact



legolasri@gmail.... 2015-04-07

Ugh why did I let you talk me into this situation, I was perfec...



Joel, clarkson1... 2014-12-12

Rise and grind!!!!!!...



lucianmarta@ho... 2014-12-05

2Dealz



Joel Stewart 2014-12-05

Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05

Tonight 4-8 BOC



r.allison_short@... 2014-12-05

How did today go ??



rj_finley@hotmail... 2014-12-04

How long are you going to be



jesse_denstedt... 2014-12-04

Coming



bmasters_94@h... 2014-12-04

50 Melbourne



clarkson1723@... 2014-12-02

Just saw your cousin playing hockey



nicholasrichard... 2014-11-28

Thanks



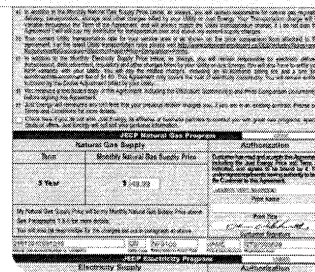
kidneybeanmac... 2014-11-28

No problem. Tear it up!



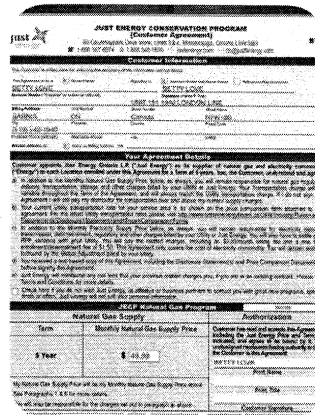
Joel, clarkson1... 2014-11-26

Nice push guys.



Tonight 4-8 NBOC. All full

Oct 29, 2014, 12:15 PM



Today 12-4 BOC. retrain Anthony. Again using sales representative. Mentioned this yesterday. Still doing it.

rom: Regional Kitchener >

IMG_6220.png retrain
October 29, 2014 at 12:18 PM

Hi Ravi,

CSR is still using sales representative in script. A simple change to just representative is fine.

Can we have this addressed or do we have to learn to deal with it?

This is the third time we have asked to have this addressed with him.

Email I sent. I will call csr manager now to follow up.

If it happens again let me know right away

Thanks



[Empty text input field]

Send

Edit

Messages



Joel

Contact



legolasri@gmail.... 2015-04-07
Ugh why did I let you talk me into this situation, I was perfec...



Joel, clarkson1... 2014-12-12
Rise and grind!!!!!!...



lucianmarta@ho... 2014-12-05
2Dealz

Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing hockey



nicholasrichard... 2014-11-28
Thanks



kidneybeanmac... 2014-11-28
No problem. Tear it up!

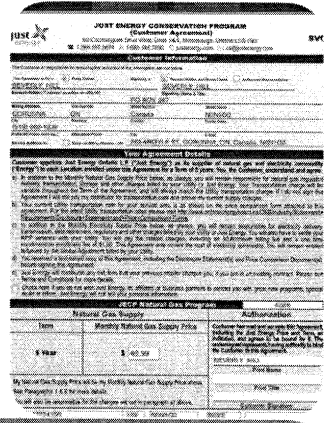


Joel, clarkson1... 2014-11-26
Nice push guys.



Tonight 4-8 BOC

Oct 30, 2014, 6:43 PM



Tomorrow 8-12. BOC. 10-12 please ***

Oct 30, 2014, 8:27 PM

Not me. I did 253 BESSBOROUGH days ago.

I gonna stab dispatch lol

Ya that's ridiculous

What's with 211 BESSBOROUGH

No idea. Lol.
Will explain later.

That may have been a deal from Austin??

Ok.

K
Thanks

Your not sitting in your van are you?

On call with a customer

Joel Stewart +15195699177



DC will be at office in morning
Everyone have badges and not utility pins on.
9:39 PM



Fri, 11/07/2014



Manager battle standings
Katlyn marina 2 ties
Alfred Matt - al up 1-0
Ryan and Uz tied
3 days left to win it
12:18 PM



83 deals remaining for office goal. I expect that each of you will be doing everything possible to hit your personal and team targets.
12:27 PM

Can you please erase your profile and austin please
12:43 PM



Enter message



Mon, 11/10/2014



Why are we getting started so late?

1:55 PM

Brandon was talking for a few minutes left at 12 15 got to Hamilton Ate at 115 . Finished at 145 and got to Area.

2:04 PM



Tue, 11/11/2014



We have had lots of talks about this. I am not ok with these long lunches. It's 2pm and no knocks for you or RJ

2:02 PM



It's Hamilton not St Thomas.

2:03 PM

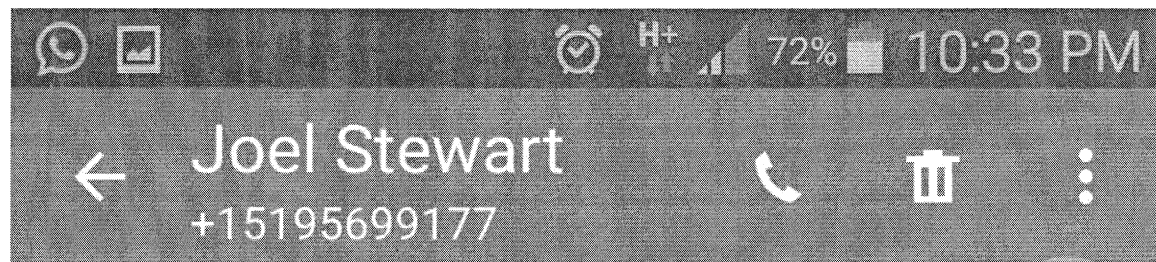
We have been Knocking since 115. We didn't have a long lunch.

2:04 PM



Enter message





Rj is off of paper today because he didn't charge his iPad last night

2:04 PM



Tell him to get his shit together

2:04 PM

Will do. Just so you know I do listen to what you say. I know when we need to start knocking by

2:05 PM



I'm Sorry. I saw no knocks for him and assumed the other
My apologies

Have a great day

My bad buddy

2:06 PM

Wed, 11/12/2014



Coordinators: we are 109 off our goal
We need some 30 + days



Enter message



Sun, 11/16/2014



Team:
 We have important guests from head office coming tomorrow

Everyone be there at 10:30. With paperwork done
 If it's not done be there at 10am

Be dressed in your JE gear and look professional.

Badges and pins on

8:56 PM



Reminder coordinators 10am tomorrow

11:28 PM

Mon, 11/17/2014



Where's your coat?


9:56 AM

I don't have one remember?



Enter message



Mon, 11/17/2014 



Where's your coat?
9:56 AM

I don't have one remember?
9:57 AM



It hasn't come.
9:57 AM



Matt just leant me one
9:59 AM



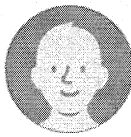
Remember business cards at every door,
No utility name
10:03 AM

Yes :)
10:10 AM



Enter message





Ask Erika for the DNS list for Walkerton and Hanover

One copy
For each IC
10:14 AM



OK will do :)
10:15 AM



Begin role playing with IC's
10:18 AM

OK just finishing area
10:19 AM



I will wait until Brandon is done.
Asked ryan but he is saying no.

10:23 AM



As for objection handling... Nothing aggressive nothing toooo persistent
10:33 AM

You show your pitch



Enter message





LTE

72%

10:34 PM



Joel Stewart

+15195699177



I will wait until Brandon is done.
Asked ryan but he is saying no.

10:23 AM



As for objection handling.... Nothing
aggressive nothing toooo persistent

10:33 AM



You show your pitch

Not Tom and Justin

10:48 AM

I know. Tom already blew it. I have to
try the new pitch. Lol

10:48 AM



Get him to stop talking

10:48 AM



!!!!

10:48 AM





Talk about body language and
tonality



Enter message





Joel Stewart
+15195699177
10:34 PM



Talk about body language and tonality
It's general
10:52 AM



You did 25 in 5 days last week but set the same goal for your self this week.

You need to get in control of your expectations and start stretching yourself. Your in cruise control
2:17 PM

Kate 1
Total 1
9:27 PM



Tue, 11/18/2014



Need you here by 10:05
9:13 AM

OK sounds good.




Enter message
Share

Edit

Delete




LTE

71%

10:35 PM



Joel Stewart

+15195699177



Fri, 11/21/2014



63 deals remaining for goal
12:34 PM

Can you erase torque account
please

1:09 PM



Need 20 min something wrong with
app
1:09 PM

OK

1:19 PM



Good now
1:23 PM

Thanks

1:30 PM



A lady pays her bills but rents and
wants stabel rates .. So I just don't



Enter message





LTE

71%

10:35 PM



Joel Stewart

+15195699177



A lady pays her bills but rents and wants stabel rates .. So I just don't tell her about the thermostat?

From tesla.
Please help her with this

3:30 PM



What are you booking everything for Monday?

3:39 PM



Go help her lol

4:07 PM



Let her have it

4:07 PM

She isn't there

4:13 PM



What's up!

Let's go?!!

6:35 PM



Enter message





Joel Stewart

+15195699177



I am. In an area just worked last week. Knocking away

6:37 PM



Just sell.

7:07 PM



Your knocking right?

7:49 PM

No I have no Id. I can't find it. I spent 40 minutes retracing my steps and can't find it. After all this compliance stuff I do not want to risk getting a complaint for not wearing id and get suspended or have that on my record

7:50 PM



Kate 2
Telsa 0
Lucian 0
Total 2

9:49 PM



Do you want coordinators to be at



Enter message



WhatsApp icons: back, forward, alarm, H+, signal, 72%, battery, 10:33 PM

Joel Stewart
+15195699177

Call, Delete, More options icons

12:25 PM



Jees
12:26 PM



Jesse knocking?
7:19 PM

Yeah he is at a door across street
7:20 PM



Been talking to a guy for a bit
7:20 PM



Nice
7:20 PM

Why what's up
7:21 PM



Didn't see knocks
Just curious
7:22 PM

Attachment icon, Enter message, Send icon

Edit

Messages



legolasri@gmail.... 2015-04-07
Ugh why did I let you talk me into this situation, I was perfec...



Joel, clarkson1... 2014-12-12
Rise and grind!!!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing hockey



nicholasrichard... 2014-11-28
Thanks



kidneybeanmac... 2014-11-28
No problem. Tear it up!



Joel, clarkson1... 2014-11-26
Nice push guys.

Joel

Contact

Boston pizza on franklin

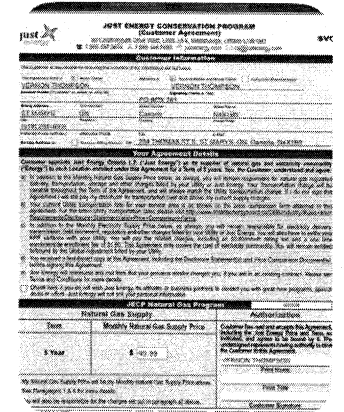
Just got in and went to plug in my iPad and got this message. Remember this is my iPad not phone so I don't check it once I'm done work

Nov 25, 2014, 3:19 PM

Can Cody do boilers??!?

If they have inspection tags probably

Nov 25, 2014, 9:16 PM



Retrain CSR brutal

Kate 4
Lucian 1
Total 5

My recommendation is to

Tell Lucian he gets spin tomorrow on you to ensure he's in to go in road

:)

Nov 26, 2014, 10:38 AM

You owe me 100\$

Invest in your team!!!

:)



[Empty text input field]

Send

Tue, 11/25/2014



You need to increase your deal count.
In a hurry
8:22 PM

Based on last week and the start of this week I agree.



8:37 PM



Awesome
Eyes on the prize Katlyn.
The prize and only the prize
8:41 PM


Wed, 11/26/2014



It's now mandatory that all IC must disposition.
Need you to start as of now.
4:48 PM

Thanks




 Enter message
Share


Edit


Delete





LTE

71%

10:36 PM

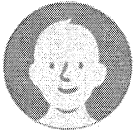


Joel Stewart

+15195699177



Wed, 11/26/2014



It's now mandatory that all IC must disposition.

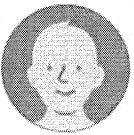
Need you to start as of now.

4:48 PM



Thanks

4:48 PM



It's now mandatory that all IC must disposition.

Need you to start as of now.

This is for you as well Katlyn

Cheers

8:36 PM

Kate 4
Lucian 0
Toral 4
10:05 PM



Reminder your working Sunday



Enter message



Edit

Messages



Joel

46

Contact



legolasri@gmail.... 2015-04-07
Ugh why did I let you talk me into this situation, I was perfec...



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing hockey



nicholasrichard... 2014-11-28
Thanks



kidneybeanmac... 2014-11-28
No problem. Tear it up!



Joel, clarkson1... 2014-11-26
Nice push guys.

Hal harley
6 FIRELANE
NIAGARA on the lake
519-301-1551

Nov 27, 2014, 2:22 PM

Need an extension of area please.
Almost done ours.

One sec

Nov 27, 2014, 9:14 PM

Kate 2
Lucian 0
Total 2

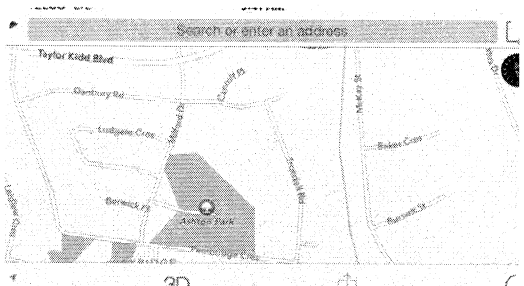
Nice perseverance

Thanks

I think everyone is going to BP

Nov 28, 2014, 9:39 AM

Can you send me area for today please.



Check this out

I don't think that will be enough for us to knock for 10 hours. Is there area around it we can take for extension if need be.

Ya one sec



LTE

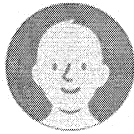
71%

10:36 PM



Joel Stewart

+15195699177



Reminder your working Sunday
when booking your room

10:35 PM



One sec

10:39 PM



Phone died.
We can talk tomorrow

11:22 PM

It's all good. There isn't any point.
You're right and I'm clearly dear
wrong.

11:24 PM



I am trying to help you.
Good night

11:27 PM

Thu, 11/27/2014

Can you please erase telsa profile.
Thank you



Enter message





LTE

71%

10:37 PM



Joel Stewart

+15195699177



OK cool.

12:34 PM



I forgot one paper contract to submit. Will hand it in with next week's I guess. Sorry

1:32 PM



Please bring for tomorrow morning

1:33 PM



OK awesome. didn't know I could still submit it. Will do

1:34 PM



You and Lucian aren't done for the night are you?

8:46 PM



Please talk to him about knocking until 9 pm minimal

9:03 PM



Tue, 12/02/2014



Enter message



Edit

Messages



Joel

49

Contact

Search



legolasri@gmail.c... 10:56 PM
I'm just reAding through messages



Joel, clarkson1... 2014-12-12
Rise and grind!!!!...



lucianmarta@ho... 2014-12-05
2Dealz



Joel Stewart 2014-12-05
Tried Jamie twice more
No answer...



Joel & installs.ki... 2014-12-05
Tonight 4-8 BOC



r.allison_short@... 2014-12-05
How did today go ??



rj_finley@hotmail... 2014-12-04
How long are you going to be



jesse_denstedt... 2014-12-04
Coming



bmasters_94@h... 2014-12-04
50 Melbourne



clarkson1723@... 2014-12-02
Just saw your cousin playing hockey



Alison Short 2014-11-30
Message Send Failure



nicholasrichard... 2014-11-28
Thanks

Ok won't even go through just disconnects immediately when I call you. Call me ?

Weird
I am having troubles

Need more deals from you at least / more

2

Same day available

I'm on some country road

Ya probably one

Send quick

Just started hold up
15214 hwy 12

Send installer

Need contract

So Dj Moore left? To cancel a good life fitness contract ?

He's fucked. He can't afford the 40\$ a month

Is installer doing mine tonight

Bring it up to team that he can't afford it do he had to go home to cancel

Because he takes long breaks and doesn't apply what he's taught

40\$ a month. Lol



Message input field

Send



LTE

70%

10:38 PM



Joel Stewart

+15195699177



Sat, 12/06/2014

Hey just at a tim Hortons on hespeler road having diarrhea and vomiting. May be held up here a bit.

12:37 PM



From a runny nose to vit and diarrhea?

12:41 PM

Yeah I don't Know what's going on. You can come check on me if you want. I'm not feeling well at all.

12:42 PM



Ok. Well figure it out. Need you in field.

12:44 PM

I will try. If I can't leave a toilet I won't be able to do the field. Will do my best.

12:45 PM



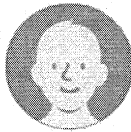
Katlyn
Stop it



Enter message



← Joel Stewart +15195699177 [Phone] [Trash] [More]



Katlyn
Stop it.
I just saw you!!!
12:45 PM



OK and you saw I was sick.
Obviously not my self. I'm not lying.
You are welcome to check on me.
12:46 PM



That's what someone who is lying
would say
12:52 PM

Wow.
12:53 PM



Ya wow is right
12:53 PM

What would I gain from pretending
that I'm sick? I'm not a liar. But
thanks for accusing Me of being one.
12:55 PM





Katlyn. I'm not stupid.

And I'm not going to pay you to act like an IC when your being counted on to be a coordinator.

Weekends have been an ongoing issue.

You sat on your phone texting the entire meeting.

Now your deathly I'll !!!??

1:02 PM



And yes!

I've caught you in many lies.

1:07 PM

Sun, 12/07/2014



Tony working today in Brantford
2500 pts for every deal

11:14 AM

I saw on the bink board. Thanks for the update. I have been in bed since



Enter message



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

**AFFIDAVIT OF KATLYN SCHWANTZ
(Sworn August 29, 2018)**

KOSKIE MINSKY LLP
900-20 Queen St W
PO Box 52
Toronto ON M5H 3R3

David Rosenfeld LS#: 51143A
Tel: (416) 595-2700 / Fax: (416) 204-2894
Jody Brown LS#: 58844D
Tel: (416) 595-2709 / Fax: (416) 204-2815

Lawyers for the Plaintiff

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**AFFIDAVIT OF JENNIFER BORG
(Sworn August 29, 2018)**

I, Jennifer Borg, of the City of Camran MAKE OATH AND SAY:

1. I worked for Just Energy as a Sales Agent for approximately one month in June 2012 and as a Crew Coordinator from approximately July 2012 to June 2016. As such, I have knowledge of the matters deposed to herein. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to I verily believe to be true.
2. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
3. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A. Background

4. I was hired by Just Energy in approximately the June 2012. I attended at the Just Energy Toronto office to write a quiz about energy sales in Ontario. After I wrote the quiz and passed, I had my picture taken and was given a Just Energy I.D. badge with my picture.

5. As part of the hiring process, new Sales Agents are given the same form contract after passing the quiz mentioned above. No time is provided to review this contract prior to signing it. The contract I signed purported to be an independent contractor agreement with Just Energy. I never received a copy of the agreement I signed and I do not have a copy now. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurred over one (1) day.

6. There is no previous experience or specialized training required to become a Sales Agent, at most two days of training are given: the day long group training when Sales Agents wrote the quiz, and one day of shadowing in the field.

7. I worked at the Toronto office of Just Energy from approximately June 2012 to June 2016. I observed the hiring process described above occur each week at the Toronto office.

B. Just Energy Salesforce Structure

8. The Toronto office marketing model employed Sales Agents at the very bottom of a hierarchy of control. This structure consisted of:

- (a) National Distributor, also called a National Director, who was in charge of all the Canadian offices. The Toronto office reported to the National Distributor;
- (b) a Regional Distributor, also called a Regional Director, who was in charge of the office and whom everyone at the Toronto office reported to;

- (c) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Director; and
- (d) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.

9. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Director.

10. Crew Coordinators take on the role of field training for many new Sales Agents.

C. Daily Job Tasks and Daily Control

11. As a Crew Coordinator, my job was to supervise and manage the Sales Agents.

12. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

13. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven by the Crew Coordinators to locations where they have to market.

14. The standard day for me and the other Crew Coordinators consisted of the following:

- (a) Attending the Toronto office between 9:30 a.m. and 10:00 a.m. to start work;
- (b) From 10:00 a.m. to 11:00 a.m. I would attend a morning meeting with the Regional Distributor, other Crew Coordinators and Sales Agents. In these meetings, the Regional Distributor would set the marketing locations for

the day and sales goals. We would also review sales statistics, sales tactics, and sales targets;

- (c) The Regional Distributor would ensure that the Sales Agents were all wearing their Just Energy uniform and badge prior to leaving the Toronto office;
- (d) There was a weekly call at about 10 a.m. with all the Regional Distributors and the National Distributor to report on sales and to go over recent developments in the energy market that could be applicable to the Sales Agents' marketing;
- (e) I would then drive Sales Agents to a specific location to market door to door;
- (f) If we exhausted the area provided, I would ask the Regional Distributor to provide us with another area to market;
- (g) The door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (h) I would collect information about Sales Agents potential contracts and report the information to the Regional Distributor throughout the day;
- (i) Throughout the day, I would supervise the Sales Agents, provide assistance if needed, and also market door to door;
- (j) At approximately 9:00p.m., I would pick up the Sales Agents from a designated location and then drive them back to the Toronto office; and,
- (k) After driving the Sales Agents back to the Toronto office, I would review potential locations for the next day's door knocking. The locations would have to be approved by the Regional Distributor that night or the next

morning. There were zones known as "red zones" where Just Energy could not knock doors due to not having the relevant licenses. "Red Zones" had to be avoided in setting the locations for the next day.

15. During my time at Just Energy, I would perform the above tasks six (6) days a week, every week. I worked approximately seventy-two (72) hours weekly. The above daily structure was enforced by the Regional Distributor.

16. As a result of the work demands of a seventy-two (72) hour week, I would not have been able to work for any other business while also working for Just Energy. To my knowledge, no other Sales Agents or Crew Coordinators worked for other businesses while working for Just Energy.

17. Just Energy never tracked my hours or the hours of Sales Agents. This was consistent for my entire employment with Just Energy.

18. Sales Agents are not free to market where or when they want. In my experience, generally Sales Agents who market in areas not approved for the day would receive a warning from the Regional Director or threats of termination.

19. Every two weeks or every month, a "push week" would be mandatory. During a push week, the Crew Coordinators would drive the Sales Agents in their Crew to a more distant location that would require staying in a motel or hotel. The door knocking hours during a push week were from 9:00 a.m. to 9 p.m. for seven days a week. Each morning of a push week, we would do a group call with the entire Crew and the Regional Distributor to confirm locations for marketing and sales tactics for the day.

D. Compensation

20. As described above, along with the other Sales Agents, when I was a Sales Agent I worked the standard twelve (12) hour shift, six (6) days a week. I was only paid commission on contracts that were accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

21. While working for Just Energy, I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay.

22. When I was a Crew Coordinator, I received "overrides" on the commissions of Sales Agents, meaning that I, along with the other Crew Coordinators, received a payment based on the performance of the Sales Agents they are responsible for.

23. I make this affidavit in support of the plaintiff's motion for summary judgment and for no other purpose.

SWORN BEFORE ME at the City of Geneau
this 29 day of August, 2018.

[Signature]
A Commissioner for taking Affidavits (or as may be)
lawyer # 3285791

[Signature]
JENNIFER BORG

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

AFFIDAVIT OF JENNIFER BORG
(Sworn August 29, 2018)

KOSKIE MINSKY LLP
900-20 Queen St W
PO Box 52
Toronto ON M5H 3R3

David Rosenfeld LS#: 51143A
Tel: (416) 595-2700 / Fax: (416) 204-2894
Jody Brown LS#: 58844D
Tel: (416) 595-2709 / Fax: (416) 204-2815

Lawyers for the Plaintiff

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**AFFIDAVIT OF JAMIE ACTON
(Sworn August 29, 2018)**

I, Jamie Acton, of the City of Ottawa, MAKE OATH AND SAY:

1. I worked for Just Energy as a Crew Coordinator for about four (4) to six (6) months from approximately November 2013 to April 2014. As such, I have knowledge of the matters deposed to herein. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to I verily believe to be true.
2. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as “Just Energy”, unless I refer specifically to one of those entities.
3. In this affidavit I refer to “Sales Agents”, meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A. Background

4. I was hired by Just Energy in approximately November 2013. I attended at the Just Energy Ottawa office to write a quiz about energy sales in Ontario. After I wrote the quiz and passed, I had my picture taken and was given a Just Energy I.D. badge with my picture.

5. As part of the hiring process, new Sales Agents are given the same form contract after passing the quiz mentioned above. No time is provided to review this contract prior to signing it. The contract I signed purported to be an independent contractor agreement with Just Energy. I never received a copy of the agreement I signed and I do not have a copy now. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurred over one (1) day.

6. There is no previous experience or specialized training required to become a Sales Agent, at most two days of training are given: the day long group training when Sales Agents wrote the quiz, and one day of shadowing in the field.

7. I worked at the Ottawa office of Just Energy from approximately November 2013 to April 2014. I observed the hiring process described above occur each week at the Ottawa office.

B. Just Energy Salesforce Structure

8. The Ottawa office marketing model employed Sales Agents at the very bottom of a hierarchy of control. This structure consisted of:

- (a) National Distributor, also called a National Director, who was in charge of the Ottawa office and Toronto Dundas Office, along with several offices located in the United States. The Ottawa office reported to the National Distributor;
- (b) a Regional Distributor, also called a Regional Director, who was in charge of the office and whom everyone at the Ottawa office reported to;

- (c) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Director. Crew Coordinators perform daily door to door marketing; and
- (d) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.

9. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Director.

10. Crew Coordinators take on the role of field training for many new Sales Agents.

C. Daily Job Tasks and Daily Control

11. As a Crew Coordinator, my job was to supervise and manage the Sales Agents.

12. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

13. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven by the Crew Coordinators to locations where they have to market.

14. The standard day for me and the other Crew Coordinators consisted of the following:

- (a) Attending the Ottawa office between 9:30 a.m. and 10:00 a.m. to start work;
- (b) From 10:00 a.m. to 11:00 a.m. I would attend a morning meeting with the Regional Distributor, other Crew Coordinators and Sales Agents. In these meetings, the Regional Distributor would set the marketing locations for

the day and sales goals, with assistance from the Assistant Regional Distributor and Crew Coordinators. We would also review sales statistics, sales tactics, and sales targets;

- (c) The Regional Distributor would ensure that the Sales Agents were all wearing their Just Energy uniform and badge prior to leaving the Ottawa office;
- (d) There was a weekly call at about 10 a.m. with all the Regional Distributors and the National Distributor to report on sales and to go over recent developments in the energy market that could be applicable to the Sales Agents' marketing. While I did not attend these calls, I remember them happening;
- (e) I would then drive Sales Agents to a specific location to market door to door;
- (f) If we exhausted the area provided, I would ask the Regional Distributor to provide us with another area to market;
- (g) When marketing out of the Ottawa office, the door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (h) I would collect information about Sales Agents potential contracts and report the information to the Regional Distributor throughout the day;
- (i) Throughout the day, I would supervise the Sales Agents, provide assistance if needed, and also market door to door; and,
- (j) At approximately 9:00p.m., I would pick up the Sales Agents from a designated location and then drive them back to the Ottawa office.

15. During my time at Just Energy, I would perform the above tasks six (6) days a week, every week. When we were marketing out of the Ottawa office, I worked approximately seventy-two (72) hours weekly. The above daily structure was enforced by the Regional Distributor.

16. As a result of the work demands of a seventy-two (72) hour week, I would not have been able to work for any other business while also working for Just Energy. To my knowledge, no other Sales Agents or Crew Coordinators worked for other businesses while working for Just Energy.

17. Just Energy never tracked my hours or the hours of Sales Agents. This was consistent for my entire employment with Just Energy.

18. Sales Agents are not free to market where or when they want. In my experience, generally Sales Agents who market in areas not approved for the day would receive a warning from the Regional Director or threats of termination.

19. Occasionally there would be a "push week", which is mandatory. During a push week, the Crew Coordinators would generally drive the Sales Agents in their Crew to a more distant location that would require staying in a motel or hotel. We would do a group call with the entire Crew and the Regional Distributor to confirm locations for marketing and sales tactics for the day. During a push week, door knocking was 7 days instead of the usual 6 days.

D. Compensation

20. As described above, along with the other Sales Agents, when I was a Sales Agent I worked the standard twelve (12) hour shift, six (6) days a week. I was only paid commission on contracts that were accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

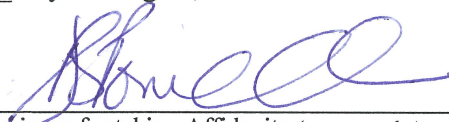
21. While working for Just Energy, I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions

with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay.

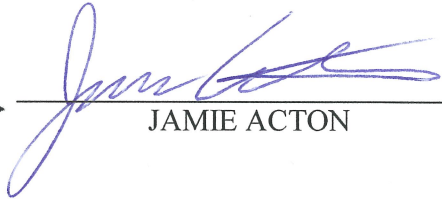
22. When I was a Crew Coordinator, I was supposed to receive "overrides" on the commissions of Sales Agents, meaning that I, along with the other Crew Coordinators, would receive a payment based on the performance of the Sales Agents they are responsible for. However, during my time at Just Energy I was never paid any of the overrides that I was entitled to.

23. I make this affidavit in support of the plaintiff's motion for summary judgment and for no other purpose.

SWORN BEFORE ME at the City of Ottawa
this 29th day of August, 2018.



A Commissioner for taking Affidavits (or as may be)



JAMIE ACTON

Deidre S. Powell
Barrister, Solicitor & Notary Public
503-900 Greenbank Road, Ottawa
Ontario K2J 4P6. CANADA

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF JAMIE ACTON
(Sworn August 29, 2018)**

KOSKIE MINSKY LLP
900-20 Queen St W
PO Box 52
Toronto ON M5H 3R3

David Rosenfeld LS#: 51143A
Tel: (416) 595-2700 / Fax: (416) 204-2894
Jody Brown LS#: 58844D
Tel: (416) 595-2709 / Fax: (416) 204-2815

Lawyers for the Plaintiff

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

AFFIDAVIT OF ROLAND LAVIGNE
(Sworn ~~August~~ ^{2 September} 4, 2018)

I, Roland Lavigne, of the City of Cambridge, MAKE OATH AND SAY:

1. I worked for Just Energy as a Crew Coordinator from approximately March 2015 to December 2015. As such, I have knowledge of the matters deposed to herein. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to I verily believe to be true.
2. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
3. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A. Background

4. I was hired by Just Energy in approximately March 2015. I attended at the Just Energy Kitchener office to write a quiz about energy sales in Ontario. After I wrote the quiz and passed, I had my picture taken and was given a Just Energy I.D. badge with my picture.

5. As part of the hiring process, new Sales Agents are given the same form contract after passing the quiz mentioned above. No time is provided to review this contract prior to signing it. The contract I signed purported to be an independent contractor agreement with Just Energy. I never received a copy of the agreement I signed and I do not have a copy now. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurred over one (1) day.

6. There is no previous experience or specialized training required to become a Sales Agent, at most two days of training are given: the day long group training when Sales Agents wrote the quiz, and one day of shadowing in the field.

7. I worked at the Kitchener office of Just Energy as a Sales Agent for approximately one month before I was promoted to Crew Coordinator. I worked out of the Just Energy Kitchener office from March 2015 to December 2015. I observed the hiring process described above occur each week at the Kitchener office.

B. Just Energy Salesforce Structure

8. The Kitchener office marketing model employed Sales Agents at the very bottom of a hierarchy of control. This structure consisted of:

- (a) National Distributor, also called a National Director, who was in charge of all the Canadian offices. The Kitchener office reported to the National Distributor;

- (b) a Regional Distributor, also called a Regional Director, who was in charge of the office and whom everyone at the Kitchener office reported to;
 - (c) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Director; and
 - (d) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.
9. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Director.

10. Crew Coordinators take on the role of field training for many new Sales Agents.

C. Daily Job Tasks and Daily Control

11. As a Crew Coordinator, my job was to supervise and manage the Sales Agents.

12. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

13. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven by the Crew Coordinators to locations where they have to market.

14. The standard day for me and the other Crew Coordinators consisted of the following:

- (a) Attending the Kitchener office between 9:30 a.m. and 10:00 a.m. to start work;

- (b) From 10:00 a.m. to 11:00 a.m. I would attend a morning meeting with the Regional Distributor, other Crew Coordinators and Sales Agents. In these meetings, the Regional Distributor would set the marketing locations for the day and sales goals. We would also review sales statistics, sales tactics, and sales targets;
- (c) The Regional Distributor would ensure that the Sales Agents were all wearing their Just Energy uniform and badge prior to leaving the Kitchener office;
- (d) There was a weekly call at about 10 a.m. with all the Regional Distributors and the National Distributor to report on sales and to go over recent developments in the energy market that could be applicable to the Sales Agents' marketing;
- (e) I would then drive Sales Agents to a specific location to market door to door;
- (f) If we exhausted the area provided, I would ask the Regional Distributor to provide us with another area to market;
- (g) The door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (h) I would collect information about Sales Agents potential contracts and report the information to the Regional Distributor throughout the day;
- (i) Throughout the day, I would supervise the Sales Agents, provide assistance if needed, and also market door to door; and,
- (j) At approximately 9:00p.m., I would pick up the Sales Agents from a designated location and then drive them back to the Kitchener office.

15. During my time at Just Energy, I would perform the above tasks six (6) days a week, every week. I worked approximately seventy-two (72) hours weekly. The above daily structure was enforced by the Regional Distributor.

16. As a result of the work demands of a seventy-two (72) hour week, I would not have been able to work for any other business while also working for Just Energy. To my knowledge, no other Sales Agents or Crew Coordinators worked for other businesses while working for Just Energy.

17. Just Energy never tracked my hours or the hours of Sales Agents. This was consistent for my entire employment with Just Energy.

18. Sales Agents are not free to market where or when they want. In my experience, generally Sales Agents who market in areas not approved for the day would receive a warning from the Regional Director or threats of termination.

19. Every two weeks or every month, a "push week" would be mandatory. During a push week, the Crew Coordinators would drive the Sales Agents in their Crew to a more distant location that would require staying in a motel or hotel. The door knocking hours during a push week were from 11:00 a.m. to 9 p.m. for seven days a week. Each morning of a push week, we would do a group call with the entire Crew and the Regional Distributor to confirm locations for marketing and sales tactics for the day.

D. Compensation

20. As described above, along with the other Sales Agents, when I was a Sales Agent I worked the standard twelve (12) hour shift, six (6) days a week. I was only paid commission on contracts that were accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

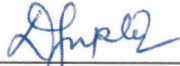
21. While working for Just Energy, I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions

with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay.

22. When I was a Crew Coordinator, I received "overrides" on the commissions of Sales Agents, meaning that I, along with the other Crew Coordinators, received a payment based on the performance of the Sales Agents they are responsible for.

23. I make this affidavit in support of the plaintiff's motion for summary judgment and for no other purpose.

SWORN BEFORE ME at the City of
Cambridge, this 4^m day of September, 2018.



A Commissioner for taking Affidavits (or as may be)



ROLAND LAVIGNE

Dinesh Kumar Gupta
Barrister, Solicitor & Notary Public
679 Coronation Blvd.
Cambridge, Ontario, Canada N1R 3G5
Tel (226) 786-0290 Fax: (226) 786-0291

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

AFFIDAVIT OF ROLAND LAVIGNE
(Sworn ~~August~~ ^{September} 4th, 2018)

KOSKIE MINSKY LLP
900-20 Queen St W
PO Box 52
Toronto ON M5H 3R3

David Rosenfeld LS#: 51143A
Tel: (416) 595-2700 / Fax: (416) 204-2894
Jody Brown LS#: 58844D
Tel: (416) 595-2709 / Fax: (416) 204-2815

Lawyers for the Plaintiff

Tel: 508.738.0321 Fax: (508) 738-0321
Cambridge, Ontario, Canada N1R 3G5
675 Colchester Blvd
Burlington, Ontario, Canada
Question: 10/10/01

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**AFFIDAVIT OF BAHRAM NEMATI
(Sworn August 30, 2018)**

I, Bahram Nemati, of the City of Toronto, MAKE OATH AND SAY:

1. I worked for Just Energy as a Sales Agent for roughly the Summer of 2013 and as a Crew Coordinator from Autumn to December 2015. As such, I have knowledge of the matters deposed to herein. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to I verily believe to be true.
2. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
3. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A. Background

4. I was hired by Just Energy in approximately the Summer of 2013. I attended at the Just Energy Toronto office to write a quiz about energy sales in Ontario. After I wrote the quiz and passed, I had my picture taken and was given a Just Energy I.D. badge with my picture.

5. As part of the hiring process, new Sales Agents are given the same form contract after passing the quiz mentioned above. No time is provided to review this contract prior to signing it. The contract I signed purported to be an independent contractor agreement with Just Energy. I never received a copy of the agreement I signed and I do not have a copy now. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurred over one (1) day.

6. There is no previous experience or specialized training required to become a Sales Agent, at most two days of training are given: the day long group training when Sales Agents wrote the quiz, and one day of shadowing in the field.

7. I worked at the Toronto office of Just Energy from approximately the Summer of 2013 to the Winter of 2014. I was then transferred to the Ottawa office of Just Energy where I worked as a Crew Coordinator from approximately the Winter of 2014 to December 2015. I observed the hiring process described above occur each week at the Toronto and Ottawa office.

B. Just Energy Salesforce Structure

8. The Toronto and Ottawa office marketing model employed Sales Agents at the very bottom of a hierarchy of control. This structure consisted of:

- (a) National Distributor, also called a National Director, who was in charge of all the Canadian offices. The Toronto and Ottawa offices office reported to the National Distributor;

- (b) a Regional Distributor, also called a Regional Director, who was in charge of the office and whom everyone at the office reported to. There was a different Regional Distributor at the Toronto office and the Ottawa office;
- (c) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Director; and
- (d) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.

9. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Director.

10. Crew Coordinators take on the role of field training for many new Sales Agents.

C. Daily Job Tasks and Daily Control

11. As a Crew Coordinator, my job was to supervise and manage the Sales Agents.

12. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

13. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven by the Crew Coordinators to locations where they have to market.

14. The standard day for me and the other Crew Coordinators consisted of the following:

- (a) Attending the Toronto or Ottawa office between 9:30 a.m. and 10:00 a.m. to start work;

- (b) From 10:00 a.m. to 11:00 a.m. I would attend a morning meeting with the Regional Distributor, other Crew Coordinators and Sales Agents. In these meetings, the Regional Distributor would set the marketing locations for the day and sales goals. We would also review sales statistics, sales tactics, and sales targets;
- (c) The Regional Distributor would ensure that the Sales Agents were all wearing their Just Energy uniform and badge prior to leaving the Toronto or Ottawa office;
- (d) There was a weekly call at about 10 a.m. with all the Regional Distributors and the National Distributor to report on sales and to go over recent developments in the energy market that could be applicable to the Sales Agents' marketing;
- (e) I would then drive Sales Agents to a specific location to market door to door;
- (f) If we exhausted the area provided, I would ask the Regional Distributor to provide us with another area to market;
- (g) The door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (h) I would collect information about Sales Agents potential contracts and report the information to the Regional Distributor throughout the day;
- (i) Throughout the day, I would supervise the Sales Agents, provide assistance if needed, and also market door to door; and,
- (j) At approximately 9:00p.m., I would pick up the Sales Agents from a designated location and then drive them back to the Ottawa office.

15. During my time at Just Energy, I would perform the above tasks six (6) days a week, every week. I worked approximately seventy-two (72) hours weekly. The above daily structure was enforced by the Regional Distributor.

16. As a result of the work demands of a seventy-two (72) hour week, I would not have been able to work for any other business while also working for Just Energy. To my knowledge, no other Sales Agents or Crew Coordinators worked for other businesses while working for Just Energy.

17. Just Energy never tracked my hours or the hours of Sales Agents. This was consistent for my entire employment with Just Energy.

18. Sales Agents are not free to market where or when they want. In my experience, generally Sales Agents who market in areas not approved for the day would receive a warning from the Regional Director or threats of termination.

19. Every two weeks or every month, a "push week" would be mandatory. During a push week, the Crew Coordinators would drive the Sales Agents in their Crew to a more distant location that would require staying in a motel or hotel. The door knocking hours during a push week were from 11:00 a.m. to 9 p.m. for seven days a week. Each morning of a push week, we would do a group call with the entire Crew and the Regional Distributor to confirm locations for marketing and sales tactics for the day.

D. Compensation

20. As described above, along with the other Sales Agents, when I was a Sales Agent I worked the standard twelve (12) hour shift, six (6) days a week. I was only paid commission on contracts that were accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

21. While working for Just Energy, I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions

with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay.

22. When I was a Crew Coordinator, I received "overrides" on the commissions of Sales Agents, meaning that I, along with the other Crew Coordinators, received a payment based on the performance of the Sales Agents they are responsible for.

23. I make this affidavit in support of the plaintiff's motion for summary judgment and for no other purpose.

SWORN BEFORE ME at the Town of Richmond Hill, this 30th day of August, 2018.

Boji

A Commissioner for taking Affidavits (or as may be)

*ABDUL-MANIN OSHOO
Notary Public*

B. Nemati

BAHRAM NEMATI

Haidar Omarali
Plaintiff

v.

Just Energy Group Inc. et al.
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF BEHRAM NEMATI

Koskie Minsky LLP
20 Queen Street West,
Suite 900, Box 52
Toronto ON M5H 3R3

David Rosenfeld LSUC#51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC #58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiff

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**AFFIDAVIT OF DANIEL BARBIERI
(Sworn September 2, 2018)**

I, Daniel Barbieri, of the City of ~~Stobcok~~ Stobcok, MAKE OATH AND SAY:

1. I worked for Just Energy as a Sales Agent for approximately two or three months beginning in September 2011 and as an Assistant Crew Coordinator and then a Crew Coordinator from approximately November 2011 to autumn 2013. As such, I have knowledge of the matters deposed to herein. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to I verily believe to be true.
2. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
3. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A. Background

4. I was hired by Just Energy in approximately September 2011. I attended an interview at the Just Energy Toronto office and during the same day I had to write and pass a quiz about energy sales in Ontario. After I wrote the quiz and passed, I had my picture taken and was given a Just Energy I.D. badge with my picture.

5. As part of the hiring process, new Sales Agents are given the same form contract after passing the quiz mentioned above. No time was provided for me to review this contract prior to signing it. The contract I signed purported to be an independent contractor agreement with Just Energy. I never received a copy of the agreement I signed and I do not have a copy now. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurred over one (1) day.

6. There is no previous experience or specialized training required to become a Sales Agent, at most two days of training are given: the day long training when Sales Agents write the quiz, and one day of shadowing in the field.

7. After approximately two or three months of working as a Sales Agent, I was promoted to Assistant Crew Coordinator. After approximately two or three months of working as an Assistant Crew Coordinator, I was promoted to Crew Coordinator.

8. I worked at the Toronto office of Just Energy from approximately September 2011 to autumn 2013. I observed the hiring process described above occur each week at the Toronto office.

B. Just Energy Salesforce Structure

9. The Toronto office marketing model employed Sales Agents at the very bottom of a hierarchy of control. This structure consisted of:

- (a) National Distributor, also called a National Director, who was in charge of all the Canadian offices. The Toronto office reported to the National Distributor;
- (b) a Regional Distributor, also called a Regional Director, who was in charge of the office and whom everyone at the Toronto office reported to;
- (c) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Director; and
- (d) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.

10. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Director.

11. Crew Coordinators take on the role of field training for many new Sales Agents.

C. Daily Job Tasks and Daily Control

12. As a Crew Coordinator, my job was to supervise and manage the Sales Agents.

13. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

14. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven by the Crew Coordinators to locations where they have to market.

15. The standard day for me and the other Crew Coordinators consisted of the following:

- (a) Attending the Toronto office between 9:30 a.m. and 10:00 a.m. to start work;
- (b) From 10:00 a.m. -11 a.m. I would attend a morning meeting with the Regional Distributor, other Crew Coordinators and Sales Agents. In these meetings, the Regional Distributor would set the marketing locations for the day and sales goals. We would also review sales statistics, sales tactics, and sales targets;
- (c) The Regional Distributor would ensure that the Sales Agents were all wearing their Just Energy uniform and badge prior to leaving the Ottawa office;
- (d) There was a weekly call at about 10 a.m. with all the Regional Distributors and the National Distributor to report on sales and to go over recent developments in the energy market that could be applicable to the Sales Agents' marketing;
- (e) I would then drive Sales Agents to a specific location to market door to door;
- (f) If we exhausted the area provided, I would ask the Regional Distributor to provide us with another area to market;
- (g) The door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (h) I would collect information about Sales Agents potential contracts and report the information to the Regional Distributor throughout the day;
- (i) Throughout the day, I would supervise the Sales Agents, provide assistance if needed, and also market door to door; and,

(j) At approximately 9:00p.m., I would pick up the Sales Agents from a designated location and then drive them back to the Toronto office.

16. During my time at Just Energy, I would perform the above tasks six (6) days a week, every week. I worked approximately seventy-two (72) hours weekly. The above daily structure was enforced by the Regional Distributor.

17. As a result of the work demands of a seventy-two (72) hour week, I would not have been able to work for any other business while also working for Just Energy. To my knowledge, no other Sales Agents or Crew Coordinators worked for other businesses while working for Just Energy.

18. Just Energy never tracked my hours or the hours of Sales Agents. This was consistent for my entire employment with Just Energy.

19. Sales Agents are not free to market where or when they want. In my experience, generally Sales Agents who market in areas not approved for the day would receive a warning from the Regional Director or threats of termination.

20. Every two weeks or every month, a "push week" would be mandatory. During a push week, the Crew Coordinators would drive the Sales Agents in their Crew to a more distant location that would require staying in a motel or hotel. The door knocking hours during a push week were from 11:00 a.m. to 9 p.m. for seven days a week. Each morning of a push week, we would do a group call with the entire Crew and the Regional Distributor to confirm locations for marketing and sales tactics for the day.

D. Compensation

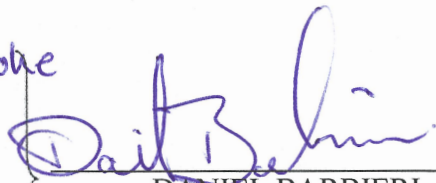
21. As described above, along with the other Sales Agents, when I was a Sales Agent I worked the standard twelve (12) hour shift, six (6) days a week. I was only paid commission on contracts that were accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

22. While working for Just Energy, I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay.

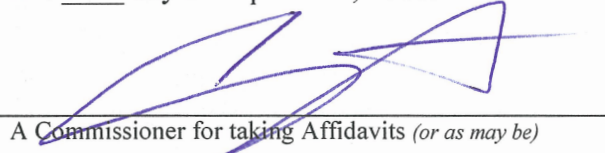
23. When I was a Crew Coordinator, I received "overrides" on the commissions of Sales Agents, meaning that I, along with the other Crew Coordinators, received a payment based on the performance of the Sales Agents they are responsible for.

24. I make this affidavit in support of the plaintiff's motion for summary judgment and for no other purpose.

SWORN BEFORE ME at the City of Groverdale
this 2nd day of September, 2018.



DANIEL BARBIERI


A Commissioner for taking Affidavits (or as may be)

Sanjeev Gupta
LSUC No.: 69119U

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AFFIDAVIT OF DANIEL BARBIERI
(Sworn September 2, 2018)

KOSKIE MINSKY LLP
900-20 Queen St W
PO Box 52
Toronto ON M5H 3R3

David Rosenfeld LS#: 51143A
Tel: (416) 595-2700 / Fax: (416) 204-2894
Jody Brown LS#: 58844D
Tel: (416) 595-2709 / Fax: (416) 204-2815

Lawyers for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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*

**AFFIDAVIT OF MICHELLE ALEXANDER
(sworn September 5, 2018)**

I, MICHELLE ALEXANDER, of the City of Toronto, in the Province of Ontario SWEAR THAT:

I am a clerk with the law firm of Koskie Minsky LLP, counsel for the plaintiff in this action, as such, I have knowledge of the matters to which I hereinafter depose. I have also been provided information by David Rosenfeld and Jody Brown, lawyers with primary carriage of this file, which I believe to be true. I have also been provided the transcripts, certain productions and undertaking answers which I have made specific note of below by way of explicit reference, when necessary.

My affidavit addresses documents in the following categories and in the following order:

A.	The Action	3
B.	Certification of the Action	3
i.	The Certified Class	3
ii.	The Common Issues	4
C.	Evidence From Certification Record	6
D.	Offers of Employment to Sales Agents	6
E.	Discovery	7
i.	Oral Examinations	7
ii.	Answers to Undertakings and Under Advisements	7
iii.	Text Messages	7
F.	Documentary Production Correspondence	8
G.	Regional Distributors	8
H.	Orientation and Training	9
I.	OEB Codes and Compliance Training	12
J.	OEB Compliance	12
K.	Weekly Call and Bi-Weekly Emails	13
L.	Marketing Locations	14
M.	JEM Management Site	14
N.	IC Trax	14
O.	Permits	15
P.	Do Not Solicit Lists	15
Q.	i-Pads	15
R.	Recruitment	15

A. The Action

1. This action was commenced by a Statement of Claim dated May 4, 2015. The Statement of Claim was amended pursuant to an order of the court dated November 13, 2015. The Amended Statement of Claim is attached as **Exhibit "1"**.
2. The Defendants filed a Statement of Defence on February 28, 2017, attached as **Exhibit "2"** is a copy of the Statement of Defence.

B. Certification of the Action

3. The reasons on certification, dated July 27, 2016 are attached as **Exhibit "3"**, the certification order is attached as **Exhibit "4"**. Leave to appeal the certification order was denied on November 17, 2016, the reasons denying leave are attached as **Exhibit "5"**.

i. The Certified Class

4. The certified class consists of:

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.

5. The class list received from the defendant in February 2017 contained a total of 7,914 names. The administrator received a total of 191 opt outs by the opt out deadline of June 20, 2017, leaving a total class of approximately 7,723, as of the date of the class list.

ii. The Common Issues

6. The certified common issues consist of:

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?

C. Evidence From Certification Record

7. The Affidavit of Haidar Omarali, sworn August 6, 2015, plus exhibits, is attached as **Exhibit "6"**.
8. The Affidavit of Mortuza Awal, sworn August 2, 2015 is attached as **Exhibit "7"**.
9. The Affidavit of Petra Filipovic, sworn August 7, 2015, is attached as **Exhibit "8"**.
10. The Transcript from the Cross-Examination of Haidar Omarali, is attached as **Exhibit "9"**.
11. The Transcript from the Cross-Examination of Petra Filipovic, is attached as **Exhibit "10"**.
12. Transcript from the Cross-Examination of Mortuza Awal, is attached as **Exhibit "11"**.

D. Offers of Employment to Sales Agents

13. After this case was certified and leave to appeal was denied, counsel for the Defendants wrote to Class Counsel to advise that Just Energy would be extending offers of employment to select independent contractors.
14. Documents from discovery responsive to the offers of employment and employee conversion are attached:
 - (a) attached as **Exhibit "12"** is JE00004714;
 - (b) attached as **Exhibit "13"** is JE00007730; and
 - (c) attached as **Exhibit "14"** is JE00006819.

E. Discovery

i. Oral Examinations

15. Mr. Ravi Maharaj was discovered as the representative of the Defendants on January 24, 2018 and January 25, 2018. Attached as **Exhibit "15"** is a copy of excerpts from the discovery transcript dated January 24, 2018, attached as **Exhibit "16"** is a copy of excerpts from the discovery transcript dated January 25, 2018.

ii. Answers to Undertakings and Under Advisements

16. The Defendants provided a number of answers to undertakings and under advisements arising from oral examinations, excerpts of which are provided below:

- (a) on June 20, a first set of answers arising from discovery and related documents were provided (the "June 20 Answers"). Attached as **Exhibit "17"** is a copy of excerpts from the June 20 Answers;
- (b) on July 5, further answers arising from discovery and related documented were provided (the "July 5 Answers"). Attached as **Exhibit "18"** is a copy of excerpts from the July 5 Answers;
- (c) on July 31, further answers arising from discovery and related documents were provided (the "July 31 Answers"). Attached as **Exhibit "19"** is a copy of excerpts from the July 31 Answers;

iii. Text Messages

17. In respect of the Defendants' answer provided to Question 1423 on the discovery of Mr. Maharaj, a subsequent answer was received by E-mail. On August 20, 2018, counsel for the Defendants advised that in respect of Mr. Maharaj's phone:

we have been advised that a deletion was made to Mr. Maharaj's text records after May 19, 2015. We understand further that a back-up of those text messages was made. Steps

have been undertaken to determine if the back-up can still be accessed but we do not yet have a determination of whether those efforts will be successful. In addition, it remains our position that the production of these records, if any, is subject to both relevance and proportionality.

18. Attached as **Exhibit "20"** is a copy of the correspondence from counsel to the Defendants.

F. Documentary Production Correspondence

19. On May 19, 2015, Class Counsel wrote to counsel for the Defendants. Attached as **Exhibit "21"** is a copy of the May 19, 2015 letter.

20. On April 21, 2017, Class Counsel wrote to counsel for the Defendants regarding the discovery plan. Attached as **Exhibit "22"** is a copy of the April 21, 2017 letter. Prior to April 21, Class Counsel provided a proposed discovery plan as referenced in the April 21 letter, attached as **Exhibit "23"** is a copy of proposed discovery plan of Class Counsel.

G. Regional Distributors

21. Two versions of the Regional Distributor Services Agreement are attached:

- (a) attached as **Exhibit "24"** is JE00007378; and
- (b) attached as **Exhibit "25"** is JE00007712.

22. The Defendants produced Regional Distributor Manuals and documents responsive to Regional Distributors:

- (a) attached as **Exhibit "26"** is JE00006037;
- (b) attached as **Exhibit "27"** is JE00007304;
- (c) attached as **Exhibit "28"** is JE00007145;
- (d) attached as **Exhibit "29"** is JE00009545;
- (e) attached as **Exhibit "30"** is JE00007172;
- (f) attached as **Exhibit "31"** is JE00004614;

- (g) attached as **Exhibit "32"** is JE00007593;
- (h) attached as **Exhibit "33"** is JE00007592; and
- (i) attached as **Exhibit "34"** is JE00007295.

H. Orientation and Training

- 23. There were Orientation Manuals and orientation flowcharts produced.
- 24. Flowcharts from the productions of the Defendants are attached below:
 - (a) attached as **Exhibit "35"** is JE00008591; and
 - (b) attached as **Exhibit "36"** is JE00007565.
- 25. The following Manuals were produced for April 1, 2011 to February 2013:
 - (c) attached as **Exhibit "37"** is JE00007749;
 - (d) attached as **Exhibit "38"** is JE00007750; and
 - (e) attached as **Exhibit "39"** is JE00007751.
- 26. The following documents responsive to binders for class members were also produced:
 - (a) attached as **Exhibit "40"** is JE00002950;
 - (b) attached as **Exhibit "41"** is JE00002951;
 - (c) attached as **Exhibit "42"** is JE00002946;
 - (d) attached as **Exhibit "43"** is JE00002947;
 - (e) attached as **Exhibit "44"** is JE00002948;
 - (f) attached as **Exhibit "45"** is JE00002949;
 - (g) attached as **Exhibit "46"** is JE00002940;
 - (h) attached as **Exhibit "47"** is JE00002941;
 - (i) attached as **Exhibit "48"** is JE00002942;

- (j) attached as **Exhibit "49"** is JE00002943;
- (k) attached as **Exhibit "50"** is JE00002944;
- (l) attached as **Exhibit "51"** is JE00002945;
- (m) attached as **Exhibit "52"** is JE00002939;
- (n) attached as **Exhibit "53"** is JE00008187;
- (o) attached as **Exhibit "54"** is JE00009502; and
- (p) attached as **Exhibit "55"** is JE00010495.

27. Just Energy produced training modules. Productions of the various training modules consists of:

(a) **Training Module 1 – Your Opportunity at Just Energy**

- (i) JE00009417 (2012) attached as **Exhibit "56"**;
- (ii) JE00008821 (2012) attached as **Exhibit "57"**;
- (iii) JE00007436 (2012) attached as **Exhibit "58"**;

(b) **Training Module 2- Energy Explained**

- (i) JE00009418 (2012) attached as **Exhibit "59"**;
- (ii) JE00008822 (2012) attached as **Exhibit "60"**;
- (iii) JE00000635 (2015) attached as **Exhibit "61"**;

(c) **Training Module 3- Commissions, Incentives & Rewards**

- (i) JE00009419 (2012) attached as **Exhibit "62"**;
- (ii) JE00000636 (2015) attached as **Exhibit "63"**;
- (iii) JE00002477 (2015) attached as **Exhibit "64"**;

(i) JE00009739 (2015) attached as **Exhibit "65"**;

(d) **Training Module 4- The Customer Experience:**

(i) JE00009420 (2012) attached as **Exhibit "66"**;

(ii) JE00006271 (2012) attached as **Exhibit "67"**;

(iii) JE00008314 (2014) attached as **Exhibit "68"**;

(e) **Training Module 5- The Customer Interaction:**

(i) JE00009421 (2012) attached as **Exhibit "69"**;

(ii) JE00008825 (2012) attached as **Exhibit "70"**;

(iii) JE00007441 (2012) attached as **Exhibit "71"**;

(iv) JE00009392 (2012) attached as **Exhibit "72"**;

(v) JE00008310 (2012) attached as **Exhibit "73"**;

(vi) JE00000638 (2015) attached as **Exhibit "74"**;

(vii) JE00002482 (2015) attached as **Exhibit "75"**;

(viii) JE00004895 (2015) attached as **Exhibit "76"**;

28. Just Energy produced documents responsive to the methods of training class members:

(a) attached as **Exhibit "77"** is JE00000540;

(b) attached as **Exhibit "78"** is JE00000541;

(c) attached as **Exhibit "79"** is JE00007201;

(d) attached as **Exhibit "80"** is JE00009416;

(e) attached as **Exhibit "81"** is JE00000523; and

(f) attached as **Exhibit "82"** is JE00000522.

I. OEB Codes and Compliance Training

29. Codes of Conduct from the Ontario Energy Board (OEB) are attached below from the productions of Just Energy:

- (a) attached as **Exhibit "83"** is JE00008237; and
- (b) attached as **Exhibit "84"** is JE00008239.

30. Just Energy produced documents responsive to OEB Training:

- (a) attached as **Exhibit "85"** is JE00003039;
- (b) attached as **Exhibit "86"** is JE00003040;
- (c) attached as **Exhibit "87"** is JE00003041;
- (d) attached as **Exhibit "88"** is JE00003042;
- (e) attached as **Exhibit "89"** is JE00003043;
- (f) attached as **Exhibit "90"** is JE00003044;
- (g) attached as **Exhibit "91"** is JE00003045;
- (h) attached as **Exhibit "92"** is JE00001304; and
- (i) attached as **Exhibit "93"** is JE00001306.

J. OEB Compliance

31. Just Energy produced documents responsive to compliance with the OEB:

- (a) attached as **Exhibit "94"** is JE00008143;
- (b) attached as **Exhibit "95"** is JE00008812;
- (c) attached as **Exhibit "96"** is JE00008469; and
- (d) attached as **Exhibit "97"** is JE00008607.

32. Just Energy produced documents relevant to their Corporate and Consumer Relations Department:

- (a) attached as **Exhibit "98"** is JE00000056;
- (b) attached as **Exhibit "99"** is JE00006300; and
- (c) attached as **Exhibit "100"** is JE00000060.

33. Just Energy produced documents responsive to compliance oversight:

- (a) attached as **Exhibit "101"** is JE00008575;
- (b) attached as **Exhibit "102"** is JE00008771;
- (c) attached as **Exhibit "103"** is JE00008780;
- (d) attached as **Exhibit "104"** is JE00008538;
- (e) attached as **Exhibit "105"** is JE00008559;
- (f) attached as **Exhibit "106"** is JE00008144;
- (g) attached as **Exhibit "107"** is JE00008145;
- (h) attached as **Exhibit "108"** is JE00008581;
- (i) attached as **Exhibit "109"** is JE00008592;
- (j) attached as **Exhibit "110"** is JE00008540; and
- (k) attached as **Exhibit "111"** is JE00008577.

K. Weekly Call and Bi-Weekly Emails

34. The representative on discovery for Just Energy, Mr. Maharaj, authored emails regarding:

- (a) summary of weekly calls;
- (b) the "Raview";
- (c) Ontario Reminder Emails; and

(d) Bi-Weekly Renewal Emails.

35. Attached as **Exhibit "112"** is a chart depicting productions produced responsive to the above categories. The chart identifies the document ID and location of a copy of the production by Tab within the Exhibit.

L. Marketing Locations

36. Emails were sent regarding marketing Locations, as attached below:

- (a) attached as **Exhibit "113"** is JE00006025;
- (b) attached as **Exhibit "114"** is JE00009139; and
- (c) attached as **Exhibit "115"** is JE00006049.

M. JEM Management Site

37. Just Energy has produced documents responsive to the JEM Site and i-Pad usage:

- (a) attached as **Exhibit "116"** is JE00005652;
- (b) attached as **Exhibit "117"** is JE00005626;
- (c) attached as **Exhibit "118"** is JE00005038;
- (d) attached as **Exhibit "119"** is JE00005639;
- (e) attached as **Exhibit "120"** is JE00005653; and
- (f) attached as **Exhibit "121"** is JE00005638.

N. IC Trax

38. Just Energy has produced documents responsive to IC Trax:

- (a) attached as **Exhibit "122"** is JE00004859; and

- (b) attached as **Exhibit "123"** is JE00008955.

O. Permits

- 39. Attached are documents responsive to permits:
 - (a) attached as **Exhibit "124"** is JE00005689;
 - (b) attached as **Exhibit "125"** is JE00007801; and
 - (c) attached as **Exhibit "126"** is JE00001700.

P. Do Not Solicit Lists

- 40. Attached below are production responsive to do not solicit lists:
 - (a) attached as **Exhibit "127"** is JE00006237; and
 - (b) attached as **Exhibit "128"** is JE00008919.

Q. i-Pads

- 41. Just Energy has produced documents responsive to the use of i-Pads:
 - (a) attached as **Exhibit "129"** is JE00002435;
 - (b) attached as **Exhibit "130"** is JE00007610;
 - (c) attached as **Exhibit "131"** is JE00007611;
 - (d) attached as **Exhibit "132"** is JE00006124; and
 - (e) attached as **Exhibit "133"** is JE00008146.

R. Recruitment

- 42. Just Energy has produced documents responsive to recruitment:
 - (a) attached as **Exhibit "134"** is JE00005695;

104

- (b) attached as **Exhibit "135"** is JE00006880; and
- (c) attached as **Exhibit "136"** is JE00005906.

43. I make this affidavit in support of the within motion for summary judgment and for no other purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
September 5, 2018.



Commissioner for taking affidavits



Michelle Alexander

*THIS IS EXHIBIT "1" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Court FileNo.CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

AMENDED THIS NOV 17 / 15
MODIFIE CE
PORSUANT TO
RULLE LA REGLE 26.02 (1)
CONFORMEMENT A
L'ORDONNANCE DU JUDGE Justice Bejtaba
DATED / FAIT LE 13 / 15
SUPERIOR COURT OF JUSTICE COUR SUPERIEURE DE 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.

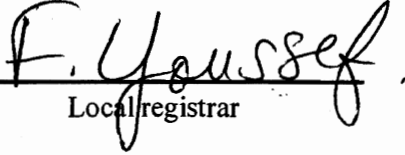
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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,
10th 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.

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#: 51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiff

KIA KORDESTANI Haidar Omarali
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

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#: 51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiffs

*THIS IS EXHIBIT "2" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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*

STATEMENT OF DEFENCE

1. The defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P., admit the allegations contained in the first two sentences of paragraph 2 and paragraphs 3 and 7 of the Amended Statement of Claim.

2. Except as otherwise expressly admitted in this Statement of Defence, the defendants deny all other allegations contained in the Amended Statement of Claim.

Overview

3. The plaintiff asserts on his own behalf and on behalf of other sales agents of the defendants that, notwithstanding his execution of an agreement (the "Independent Contractor Agreement") which expressly characterized his relationship with the defendants as being an independent contractor and not an employee, he nonetheless is entitled to claim certain benefits

and entitlements pursuant to the *Employment Standards Act, 2000* as if he had been an employee of the defendants.

4. The plaintiff does not deny his execution of the Independent Contractor Agreement, nor allege that he entered into the Independent Contractor Agreement under duress or other disability. Further, he does not allege that it was not his intention to be engaged by the defendants as an independent contractor operating his own business for his own benefit. Rather, the plaintiff alleges the nature of his engagement with the defendants created an employment relationship and that he ought to have been entitled to various benefits as a consequence.

5. Contrary to the plaintiff's allegations, the defendants have consistently acted in relation to the plaintiff and with all of the other sales agent class members in accordance with the provisions of the Independent Contractor Agreement which the plaintiff and all other class members agreed to execute prior to commencing any sales activity on behalf of the defendants. The defendants provided the plaintiff and all other class members the necessary independence, freedom and discretion to engage in their contracted-for sales activities as provided for in each of their agreements. Further, this independence, freedom and discretion was vital to many sales agents of the defendants whose success was related to the individual effort he or she chose to bring to the sales task, particularly as that related to their remuneration on a straight commission basis, and who welcomed and benefited from the flexibility afforded by the freedom from hourly or sales targets.

6. The defendants did not engage in any systemic or other practices which would have restricted the plaintiff or other sales agents in the manner or method of their sales activities. Further, any activities or practices of the defendants alleged by the plaintiff to have controlled

- 3 -

the ability of the plaintiff to conduct his sales activities in the manner of an independent contractor, as expressed in his Independent Contractor Agreement, were made available to the plaintiff on a voluntary basis and were directed to the development and betterment of the plaintiff as a sales agent.

7. In any event, even if any determination were made that the plaintiff or any other class member were to be classified as employees, which classification the defendants deny, the plaintiff and other class members are exempt from the subject provisions of the *Employment Standards Act, 2000* as they were at all times salespeople engaged in sales normally made away from an employer's place of business and were not otherwise engaged as route salespersons.

Just Energy

8. The defendant Just Energy Group Inc. is a public listed entity. It is a holding company and the defendant Just Energy Corp. is one of its subsidiaries. Just Energy Corp. is the contracting party with the plaintiff and all other class members. It is also the general partner of the defendant Just Energy Ontario L.P. Just Energy Ontario L.P. is the contracting party with customers who contract for natural gas, electricity and other energy products. The defendants are hereafter collectively referred to as "Just Energy".

9. Just Energy is a natural gas marketer and electricity retailer to residential and commercial customers across North America. It offers a choice of products to its customers such as fixed pricing and variable pricing under long term agreements. These agreements enable customers to offset their exposure to volatile changes in the price of these commodities.

10. From the commencement of its business in Ontario in 1997, Just Energy has utilized independent contractors ("Independent Contractors") to solicit contracts for natural gas

- 4 -

and electricity. The use of Independent Contractors has been a universal practice in not only the defendants' industry but in many other industries engaged in direct, door-to-door sales solicitations. These Independent Contractors engage in marketing activities, including door-to-door solicitations, with the purpose of persuading customers to execute contracts for their natural gas and electricity needs. Customers of Just Energy include both commercial and residential users, and both new and existing customers whose contracts may be up for renewal. Based upon the products contracted to be sold and the duration of those contracts, the Independent Contractors receive various commission payments in relation to the value of those contracts.

11. In addition to the promotion of its natural gas and electricity contracts, Just Energy has a complimentary array of energy related products. These products include "Smart Thermostats" and green energy programs.

The Plaintiff

12. The Plaintiff executed an Independent Contractor Agreement on July 23, 2012. He engaged in sales and marketing activities of Just Energy's products thereafter until ceasing those activities in or about December 2013. He was remunerated consistent with the provisions of his Independent Contractor Agreement.

Overview of the Independent Contractor Relationship

13. The foundation for the growth, development and success of Just Energy's business has been the entrepreneurial efforts of its outside door-to-door sales agents. Just Energy's business model has been to engage, motivate and support a full commission-based sales force of Independent Contractors.

- 5 -

14. No one who participates in the sale of Just Energy's products and services, including those who have advanced to more senior sales functions beyond door-to-door sales, are engaged in an employment relationship with Just Energy. Rather, anyone engaged in a sales role on behalf of Just Energy does so on the basis of a written agreement which confirms the intention of both parties to the agreement that the relationship is that of an Independent Contractor at law.

15. In establishing this Independent Contractor model for the conduct of Just Energy's sales functions, Just Energy did so for the mutual benefit of Just Energy and those individuals wishing to pursue the sales opportunity provided by Just Energy. That opportunity included the ability to earn substantial commissions based upon the successful efforts of any Independent Contractor, with the knowledge and understanding that each individual Independent Contractor was free to choose when, how and by what manner he or she might choose to direct their sales efforts.

16. In developing its Independent Contractor model for conducting its sales function, Just Energy was aware that not every person who might agree to become an Independent Contractor would succeed in the role. For many, this was their first experience in a sales environment and sales might not be to their liking. Others would commence selling but shortly move on to other opportunities. Still others would leave the sales role to pursue training or education in other fields. Nonetheless, any engagement with Just Energy was plain — both parties intended to and contracted for the relationship to be one of an Independent Contractor.

Formation of the Independent Contractor Relationship

17. Throughout the alleged class period, the complement of Just Energy's Independent Contractor sales force was quite variable. Accordingly, Just Energy would regularly be looking to add to its available complement of Independent Contractors. To do so, it would advertise in both local and online media and would also directly reach out to prospective sales people who might themselves have posted online or through other media that they were looking for sales opportunities.

18. Once contact occurred between the prospective Independent Contractor and Just Energy, an interview would be arranged at the Just Energy regional office proximate to the prospect. From the initial contact, through the interview process, and at the time that the prospect might agree to execute Just Energy's Independent Contractor Agreement, Just Energy insisted and made plain with any prospect that Just Energy would not engage a prospect in an employment relationship and that only those prospects intending to become an Independent Contractor would be offered the opportunity to execute the Independent Contractor Agreement.

19. In particular, and consistent with Just Energy's business model to only contract on an Independent Contractor basis, all prospects knew that:

- they would only be engaged if they agreed to the Independent Contractor relationship and agreed to execute the Independent Contractor Agreement;
- as an Independent Contractor, they would be remunerated solely by way of a commission structure in relation to any contracts they could successfully solicit;

- 7 -

- as an Independent Contractor, they would not be entitled to any benefits that one would associate with an employment relationship such as vacation pay, overtime, sick leave, medical and dental benefits, and the like;
- as an Independent Contractor, they would not be obliged to maintain and provide to Just Energy call logs, sales logs or the like, or to meet minimum quotas in relation to calls, sales and similar activities; and
- Just Energy offered support, sales training and development programs and initiatives but that, as an Independent Contractor, they could choose to participate or not in any sales training, team building, road trips or other activities that the more senior Independent Contractors in their regional office might organize from time to time.

20. Any obligation imposed upon an Independent Contractor that might proscribe their sales conduct was the result of adherence to relevant legal and regulatory requirements. Such mandated requirements included testing with respect to Ontario Energy Board Standards, the obligation to present appropriate identification during door-to-door solicitations, restrictions on when door-to-door sales could be solicited, the process by which contracts could be executed and/or cancelled and other similar regulatory standards to be adhered to as part of the sales function.

The Independent Contractor Agreement

21. Anyone wishing to provide door-to-door solicitation services to Just Energy executed an Independent Contractor Agreement. That agreement provides, in part, as follows:

This is an agreement (the "Agreement") between Just Energy Corp. ("JEC") and you, an independent contractor (the "Contractor").

WHEREAS, JEC has been retained by Just Energy Ontario L.P. ("JEOLP") to assist JEOLP in obtaining natural gas, electricity and green energy contracts ("Contracts") from consumers located in Ontario.

JEC has developed a door to door solicitation program designed to obtain Contracts for the benefit of JEOLP. The purpose of this Agreement is to confirm the terms and conditions under which the Contractor, acting as an independent contractor, will provide door to door solicitation services to JEC, to assist JEC in obtaining Contracts for the benefit of JEOLP.

1. **Marketing Activity.** The Contractor agrees to market Contracts for the benefit of JEOLP as an independent contractor of JEC. The Contractor understands and agrees that the terms and conditions of the Contracts may not be amended by the Contractor, and the Contractor shall have no authority to enter into any agreements of any kind on behalf of JEC, JEOLP, or any of the affiliates (collectively, "JUST ENERGY"), except as specifically provided in this Agreement. In no event shall the Contractor represent that he or she is an employee of, or connected with, JEC or JEOLP in any way, other than as provided herein.

...

5. **Independent Status:** The Contractor is, and will always be considered, an independent contractor under this Agreement. The Contractor understands and agrees that the Contractor shall be responsible for and neither JEC nor JEOLP will reimburse the Contractor for any transportation, accommodation, food or any other expenses incurred by the Contractor in the performance of the Contractor's services hereunder. The Contractor has control, independent of JUST ENERGY, over the time the Contractor chooses to solicit Contracts, the areas in which the Contractor chooses to solicit Contracts, and the manner in which Contracts are to be solicited, so long as such manner is in accordance with Applicable Law, the Codes and JEC's reasonable policies regarding treatment of potential customers (as described in any JUST ENERGY manual, code of conduct or other document provided to the Contractor by JUST ENERGY). JUST ENERGY does not employ Contractors and there is no employer/employee relationship between JUST ENERGY and the Contractor.

...

The Contractor is not, and shall make no claim that the Contractor is, an employee of JEC. The Contractor shall be responsible (as applicable) for the payment of, and JEC shall not deduct, withhold or pay, income tax, employment insurance premiums, government pension plan premiums, employer health tax premiums or any other similar amounts with respect to the Contract. The Contractor is also

responsible for the payment of workers compensation premiums or contributions and is not entitled to workers compensation. The Contractor is solely responsible for making all of these payments, if required.

THIS INDEPENDENT CONTRACTOR RELATIONSHIP DOES NOT QUALIFY THE CONTRACTOR FOR MINIMUM WAGE, WORKERS COMPENSATION OR OTHER EMPLOYMENT BENEFITS. CONTRACTORS WHO MUST COLLECT G.S.T., MUST HAVE THEIR OWN G.S.T. NUMBER.

...

7. Not Exclusive: The Contractor and JEC agree that the Contractor's services are not, and are not intended to be, exclusive to JEC. Notwithstanding the foregoing, the Contractor agrees not to provide services to other business entities that compete directly with the business carried on by JUST ENERGY during the term of this Agreement and for a period of three (3) weeks following the termination of this Agreement.

...

12. Release and Indemnity: The Contractor agrees to assume the full and complete risk of any injuries, damage or loss of any kind whatsoever, regardless of type or severity (collectively, "Loss") which the Contractor may sustain arising out of, or in connection with, or in any way associated with, the Contractor soliciting Contracts. The Contractor hereby fully releases and discharges JEC, JEOLP and its affiliates and their respective officers, directors, agents, servants and employees from any and all claims for any Loss sustained by the Contractor or related in any way to the Contractor soliciting Contracts. The Contractor further agrees to indemnify and hold JEC, JEOLP and its affiliates and its respective officers, directors, agents, servants and employees harmless from any claims, lawsuits, allegations, or liability, including costs or court and attorneys' fees, arising out of the Contractor's failure to comply with any Applicable Law or arising out of the Contractors' activities hereunder.

This Agreement contains the entire understanding of the parties and merges into it all prior oral and written communications between the parties with respect to the subject matter hereof.

BE SURE THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT BEFORE SIGNING.

Training and Sales Activities

22. Just Energy developed programs, including with respect to door-to-door solicitations, designed to secure customer contracts and the sale of ancillary products. Initial training of Independent Contractors related to the Just Energy programs, the Codes of Conduct proscribed by both the Ontario Energy Board and Just Energy, and an introduction to sales techniques in a door-to-door direct sales environment. Independent Contractors could choose to work on their own or to participate as a member of a crew at their regional office. An Independent Contractor could also choose to participate in further training and motivational exercises which were offered to all Independent Contractors.

23. A Just Energy regional office may have contained a number of interchangeable crews organized by more senior Independent Contractors such as crew coordinators or assistant crew coordinators. Sales crews might go out together into the field to solicit contracts. It has been Just Energy's experience that collaboration among Independent Contractors who work as a team can benefit the crew members who are encouraged to motivate, share experiences and push each other to be successful. This has particularly been demonstrated in respect of door-to-door residential sales efforts. It is a less common practice for Independent Contractors of Just Energy in the solicitation of commercial customers or with respect to the solicitation of existing customers with contracts coming up for renewal.

24. The head of a Just Energy regional office, the regional distributor, is an Independent Contractor as well. A regional distributor, and their assistant regional managers, crew coordinators and assistant crew coordinators, derive their compensation, in whole or in part, as a percentage of the sales of their offices. As such, they organize and manage the sales effort of their offices. That frequently included the management and finance of sales endeavours such

as road trips and bonus payments. A road trip could involve a group of Independent Contractors travelling to a remote town, city or region in Ontario that may not have recently been canvassed by any Independent Contractors. The expenses of these trips were underwritten by the regional distributor or their crews. An Independent Contractor might choose to go on any or none of the trips as they might determine.

25. The certified class includes Independent Contractors who may have had more senior sales roles as assistant crew coordinators, crew coordinators or assistant regional distributors. In those roles, these Independent Contractors would advise other Independent Contractors, should inquiries be made, respecting the status of Just Energy's sales agents as Independent Contractors and, in particular, any aspects of their remuneration as Independent Contractors.

26. Although there can be benefits to working as an Independent Contractor in a team environment, all Just Energy's Independent Contractors were unfettered with regard to when, how and where they might choose to sell Just Energy's products and services. As such, Independent Contractors did not keep time records, log sheets, call reports or other documents relating to their activities. Just Energy cannot determine when the plaintiff or other class members engaged in any sales activity or for how long in any time period they may have engaged in door-to-door or other sales.

27. In addition, Independent Contractors were not prohibited from engaging in other business activities with the exception of work on behalf of a Just Energy competitor. As a consequence, that has included Independent Contractors engaging in sales of other products while doing sales on behalf of Just Energy. Independent Contractors were able to, and did,

undertake their sales function through a corporate vehicle and they frequently incurred expenses, particularly related to travel, for which they were personally responsible and which they would expense for tax purposes.

28. The Independent Contractors providing services to Just Energy consisted of a number of subgroups that performed their services in fundamentally different ways. Specifically, the sales force included those who sold natural gas and electricity contracts to new residential customers; those who sold renewal natural gas and electricity contracts to current residential customers; those who sold natural gas and electricity contracts to new commercial entities; those who sold natural gas and electricity renewal contracts to existing commercial customers; and, those who for part of the class period sold water heaters. Only the subgroup selling to new residential customers might elect to work in a team environment, whereas the other subgroups generally worked alone and with their sales efforts directed to selected or targeted prospects or existing customers. Further, any Independent Contractor, subject to availability, could choose which category or categories he or she might choose to pursue at any particular time.

No Employment Relationship

29. Just Energy denies that any employment relationship is created between Just Energy and its Independent Contractors. Any training and direction provided by Just Energy to its Independent Contractors is either mandated by the nature of the regulated industry in which it operates or is accepted voluntarily by the Independent Contractors who appreciate the benefits that might be derived by accessing various aspects of Just Energy's sales program.

- 13 -

30. Just Energy denies that its Independent Contractors are told where they can solicit customer contracts or that permission is required to service particular locations of an Independent Contractor's choosing.

31. As a consequence of their status at law as independent contractors, the *Employment Standards Act, 2000* provisions are not implied terms of any of the Independent Contractor's agreements with Just Energy. As such, compensation with respect to minimum wage, overtime pay, vacation pay or public holiday and premium pay does not form any part of the contracts of Just Energy's Independent Contractors.

32. Further, even if this Court should find that the plaintiff and other class members should have been classified as employees, which the defendants deny, the *Employment Standards Act, 2000* expressly exempts the plaintiff and all other class members from any of the benefits conferred by that legislation. Specifically, the *Employment Standards Act, 2000* does not apply to a salesperson who receives remuneration as commissions on sales made away from an employer's place of business. The defendants plead and rely on paragraph 2(1)(h) of *Exemptions, Special Rules and Establishment of Minimum Wage, O.Reg. 285/01* in that regard. The defendants further deny that the plaintiff or any other class member were "route salespersons" as referenced in that exemption to the *Employment Standards Act, 2000*.

No Duty of Good Faith

33. Just Energy denies any contractual duties, including the alleged duty of good faith, were owed to the Independent Contractors beyond any obligations owed by Just Energy in relation to the express terms of any Independent Contractor Agreement. In particular, Just

Energy denies any obligation to advise any Independent Contractor with respect to employee status as no such status existed.

No Duty of Care

34. Just Energy denies that any special relationship existed between it and any Independent Contractor and, as such, denies any duty of care as alleged in respect of how Just Energy characterized or classified its Independent Contractors. To the contrary, all Independent Contractors of Just Energy knowingly engaged with Just Energy in accordance with the express terms of the Independent Contractor Agreement. In doing so, each Independent Contractor agreed and intended that their relationship with Just Energy would not be one of employment.

No Misrepresentation of Independent Contractor Classification

35. From its inception, Just Energy has structured its relationship with its door-to-door sales force to ensure their classification as Independent Contractors at law. Any prospective sales person who was unwilling to contract with Just Energy on that basis was not engaged by Just Energy in a contractual relationship. Just Energy denies any misrepresentation in that regard. Just Energy created a performance based sales model that left no doubt with a prospective sales person as to the nature of any ongoing relationship with Just Energy.

36. Just Energy's sales model has proven to be successful not only for Just Energy but for those Independent Contractors with abilities in a direct sales environment. Just Energy's sales model was premised on the understanding that not all Independent Contractors who would be provided with the opportunity to solicit contracts on behalf of Just Energy would necessarily be successful and that many would determine for a myriad of reasons that direct sales would not be a long term endeavour. As such, the Independent Contractor relationship provided for the

- 15 -

ability of any Independent Contractor of Just Energy to devote as much time or not as they saw fit and to terminate their relationship with Just Energy at any time.

37. Any complaint by an Independent Contractor with respect to the nature of their relationship with Just Energy must necessarily relate to a complaint that they were not provided with the requisite independence that they contracted for or provided with similar indicia of an independent contractor relationship. Such a complaint is necessarily individualistic and would require an examination of the surrounding circumstances and factual matrix of such Independent Contractor with respect to the formation of their contract with Just Energy, the examination of any alleged representations to them in respect of the Independent Contractor position, the negation by them of their express intent in entering into the Independent Contractor Agreement, and any post-contractual conduct relevant to determining their allegation of any breach of the express terms of the Independent Contractor Agreement.

No Systemic Negligence

38. Just Energy denies any duty was owed as alleged with respect to the characterization of its relationship with its Independent Contractors. If any such duty was owed, which is expressly denied, Just Energy denies that it systemically breached that duty.

No Unjust Enrichment

39. Just Energy denies any allegations that it has been unjustly enriched or that the plaintiff or other class members have been correspondingly deprived. In any event, the Independent Contractor Agreement is a juristic reason for any alleged unjust enrichment. Further, the Independent Contractors have had the benefit of those agreements and cannot therefore have been deprived. As a result, there is no basis for the claim for unjust enrichment.

No Damages

40. Just Energy denies the putative class members have suffered any damages as a consequence of its alleged actions. If any such damages have been suffered, such damages are excessive and remote and the class members have wholly failed to mitigate their damages. It further denies any alleged entitlement to punitive damages or to any other relief as may be alleged in the Amended Statement of Claim. Any statutory payments made by the Independent Contractors in respect of Canada Pension Plan or Employment Insurance contributions as alleged were consistent with the relationship between Just Energy and its Independent Contractors.

Claims Barred

41. The claims of any class member engaged as an Independent Contractor prior to May 5, 2013 are statute-barred, either in whole or in part. The defendants plead and rely upon the *Limitations Act, 2002*, S.O. 2002, c. 24.

Dismissal With Costs

42. The defendants ask that this action be dismissed with costs.

- 17 -

February 28, 2017

FASKEN MARTINEAU DuMOULIN LLP
Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Paul J. Martin (LSUC: 24140B)

Tel: 416 865 4439

Email: pmartin@fasken.com

Laura F. Cooper (LSUC: 35426A)

Tel: 416 865 5471

Email: lcooper@fasken.com

Janna L. Young (LSUC: 68320T)

Tel: 416 868 3547

Email: jyoung@fasken.com

Fax: 416 364 7813

Lawyers for the defendants

TO: **KOSKIE MINSKY LLP**
Barristers and Solicitors
20 Queen Street West
Suite 900
P.O. Box 52
Toronto ON M5H 3R3

David Rosenfeld
drosenfeld@kmlaw.ca
Tel: 416 595 2700
Fax: 416 204 2894

Lawyers for the plaintiff

KIA KORDESTANI HAIDAR OMARALI

Plaintiff

-and- JUST ENERGY GROUP INC. et al.

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at
Toronto**

STATEMENT OF DEFENCE

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Paul J. Martin (LSUC: 24140B)
Tel: 416 865 4439

Laura F. Cooper (LSUC: 35426A)
Tel: 416 865 5471

Janna L. Young (LSUC: 68320T)
Tel: 416 868 3547

Fax: 416 364 7813

Lawyers for the defendants

*THIS IS EXHIBIT "3" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

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*¹ 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

¹ *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.²

[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;³ 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.⁴ 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.⁵ I am not saying that an "archetypal misclassification case" can never be certified,⁶ 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*⁷ and *McCracken*⁸. 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

² See, for example, *McCracken v. Canadian National Railway*, 2012 ONCA 445, and *Brown v. Canadian Imperial Bank of Commerce*, 2014 ONCA 677.

³ *Rosen v. BMO Nesbitt Burns Inc.*, 2013 ONSC 2144.

⁴ *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.

⁵ *Brown v. Canadian Imperial Bank of Commerce*, 2012 ONSC 2377, at para. 175.

⁶ 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.

⁷ *Brown*, *supra*, note 2.

⁸ *McCracken*, *supra*, note 2.

requirements under s. 5(1) of the *Class Proceedings Act*⁹ 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-

⁹ *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.¹⁰

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.¹¹ Nor does the ESA provide any assistance in this regard. The ESA applies to employees.¹² 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.¹³ 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.¹⁴

¹⁰ England, *Individual Employment Law* (2008) at 22.

¹¹ *Ibid.*

¹² ESA, s. 3.

¹³ England, *supra*, note 10, at 22.

¹⁴ *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*.¹⁵ 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.¹⁶ 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*¹⁷ not three. The two that were added were these: whether the sales agent is limited exclusively to the

¹⁵ England, *supra*, note 10, at 18 and cases cited therein.

¹⁶ *Ibid.*

¹⁷ *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.¹⁸

[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.

¹⁸ 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 exemption¹⁹ 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.²⁰ 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.²¹

[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.”²² 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.²³

[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.

¹⁹ 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.

²⁰ *Employment Standards Act 2000 Policy and Interpretation Manual*, at 31-18.2.

²¹ *Ibid.*

²² *VanGrootel v. Advance Beauty Supply Limited*, 2016 CanLII 17209 (OLRB).

²³ *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.²⁴ 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.²⁵ 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.²⁶

²⁴ *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.”)

²⁵ *Dine v Biomet*, 2015 ONSC 7050 at paras. 15-19; *affd*, 2016 ONSC 4039 (Div.Ct.).

²⁶ *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.²⁷ In both cases, the defendants presented extensive evidence showing a "wide variability"²⁸ in the duties and responsibilities of employees having the same job title or

²⁷ *McCracken*, *supra*, note 2, at para. 104.

²⁸ *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.²⁹

[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*.³⁰

[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.³¹

[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.”

²⁹ *McCracken*, *supra*, note 2, at para. 128.

³⁰ *McCracken*, *supra*, note 2, at para. 104.

³¹ 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"³² or "lack of core commonality"³³ 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

³² *Brown*, *supra*, note 2, at para. 44.

³³ *Ibid.*

that issue is not decided by the content of the IC agreement but the “economic realities” of the parties’ relationship in practice.³⁴ 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.³⁵ 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*.³⁶ 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.

³⁴ *Supra*, note 13.

³⁵ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, at para. 38.

³⁶ 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.”³⁷

[67] The better approach, in my view, is to allow the defendants to add the limitations question as a common issue³⁸ 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 question³⁹ 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.

³⁷ Winkler, Perell, Kalajdzic and Warner, *The Law of Class Actions in Canada* (2014) at 294.

³⁸ *Ibid.*

³⁹ 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,⁴⁰ 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.⁴¹ 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.

⁴⁰ Recall above at paras.37-47.

⁴¹ 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*⁴² 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

⁴² *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*⁴³ 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.⁴⁴ 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 amount⁴⁵) 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.⁴⁶

[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.”⁴⁷ 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.”

⁴³ *Good v. Toronto (Police Services Board)*, 2016 ONCA 250.

⁴⁴ *Ibid.*, at para. 75.

⁴⁵ See the discussion in *Dine v Biomet*, *supra*, note 25, at paras. 58-60.

⁴⁶ *Ibid.*, at para. 55.

⁴⁷ 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.⁴⁸ 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)

⁴⁸ *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.⁴⁹

[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.⁵⁰

[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.

⁴⁹ *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.

⁵⁰ *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.

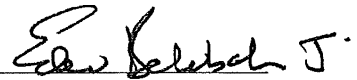
Conclusion

[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.⁵¹

[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.⁵²

[115] My thanks to counsel for their co-operation and for their additional written submissions.



Belobaba J.

Date: July 27, 2016

⁵¹ 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).

⁵² 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*?

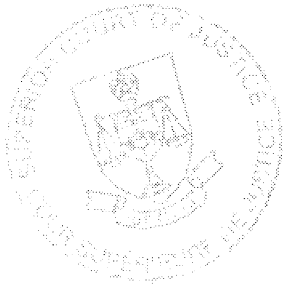
*THIS IS EXHIBIT "4" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 27TH
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.

Eder Peldach J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.

SEP 20 2016

PER / PAR:



KM-2306191v3

Haidar Omarali
Plaintiff

and

JUST ENERGY GROUP INC., et al.
Defendant

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

176

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

ORDER

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSCU #51143A
Tel: 416.595.2117
Fax: 416.204.2889

Jody Brown LSUC #58844D
Tel: 416.595.2117
Fax: 416.204.2889

Lawyers for the Plaintiff

*THIS IS EXHIBIT "5" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

CITATION: Omarali v. Just Energy Group Inc., 2016 ONSC 7096
DIVISIONAL COURT FILE NO.: 392/16
DATE: 20161117

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Haidar Omarali, Plaintiff/Responding Party

- and -

Just Energy Group Inc. et al., Defendants/Moving Parties

BEFORE: Swinton J.

COUNSEL: David Rosenfeld and Jody Brown, for the Plaintiff/Responding Party

Paul J. Martin and Laura F. Cooper, for the Defendants/Moving Parties

HEARD at Toronto: in writing

ENDORSEMENT

[1] The defendants seek leave to appeal the order of Belobaba J. dated July 27, 2016 in which he certified the present action as a class proceeding under the *Class Proceedings Act, 1992*. The class members are sales agents hired by the defendants to sell their energy products. They are paid on a commission basis and receive no benefits under the *Employment Standards Act* (“ESA”), as their contracts identify them as “independent contractors.” The essence of the plaintiff’s claim is that the class members are “employees” within the meaning of the *ESA* and entitled to compensation and benefits in accordance with the *ESA*.

[2] The defendants argue that the motions judge erred in identifying the following common issue: whether individuals who provide sales and marketing services to Just Energy are employees or route salespersons. They argue that the determination whether each class member is an employee, rather than an independent contractor, requires individualized consideration and consequently cannot be a common issue. As well, they argue that the motions judge erred in failing to limit the class definition to those whose claim arose within the two years preceding the issuance of the Statement of Claim. They argue that any claims outside that period are barred by the *Limitations Act, 2002*.

[3] In my view, the defendants have failed to satisfy either branch of the test for leave in rule 62.02(4). First, they have not identified a conflicting decision within the meaning of rule 62.02(4)(a). The motions judge applied the well-established legal principles to be considered in a certification motion.

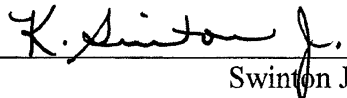
[4] The defendants argue that the motions judge's decision on the common issue respecting employee status conflicts with the Court of Appeal decisions in *Brown v. Canadian Imperial Bank of Commerce*, 2014 ONCA 677 and *McCracken v. Canadian National Railway Company*, 2012 ONCA 445, both misclassification cases where certification was denied. I disagree. The motions judge discussed in detail why the result in this case is different from that in *Brown* and *McCracken*. In particular, he explained that the evidentiary record before him led to the conclusion that the employee status issue was a common issue. See, for example, paras. 33 and 55 of his reasons. Thus, *Brown* and *McCracken* are not decisions based on conflicting legal principles; rather they are decisions that came to a different result respecting certification based on the evidence before the court.

[5] As to the other branch of the test for leave, the defendants have not demonstrated that there is good reason to doubt the correctness of the decision. The motions judge was satisfied on the evidence before him that there was some evidence that the defendants controlled the sales agents and did so on a class-wide basis (at para. 47). He concluded at para. 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'." He also commented that the plaintiff's evidence of systemic commonality was "quite compelling" and the defendants' evidence of the need for individualized inquiries was "surprisingly weak" (at para. 33). The evidentiary record amply supports his conclusion, and the motions judge made no error when he distinguished *Brown* and *McCracken* on the facts.

[6] With respect to the class definition, the motions judge concluded that it was premature to exclude claims outside the two year period preceding the commencement of the action. Instead, he added the limitation period as a common issue. It was reasonable to leave the issues of time bars and discoverability to be determined later on the merits, rather than to determine these issues on a certification motion, which is procedural in nature.

[7] Finally, this is not a case that satisfies the second part of the test for leave under rule 62.02(4)(b). The proposed appeal does not raise issues of general importance that warrant the attention of the Divisional Court. I share the view of Lederman J. in *Baroch v. Canada Cartage Diversified GP Inc.*, 2015 ONSC 3227 at paras. 30-31: the principles applicable to certification motions are well-established, as is the approach to be taken in a misclassification case.

[8] Accordingly, the motion for leave to appeal is dismissed. Costs to the plaintiff are awarded in the amount of \$17,000.00 all inclusive, an amount agreed upon by the parties.


Swinton J.

Date: November 17, 2016

*THIS IS EXHIBIT "6" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Court File No. CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIA KORDESTANI and HAIDAR OMARALI

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF HAIDAR OMARALI
(affirmed August 6, 2015)**

I, HAIDAR OMARALI, of the City of TORONTO, in the Province of Ontario
AFFIRM AND SAY:

1. I am one of the proposed representative plaintiffs in this action and as such I have knowledge of the matters deposed to herein, except where I have been informed of such facts, in which case I have stated the source of such facts and I hereby state that I believe such facts to be true.
2. I affirm this affidavit in support of the motion to certify this action as a class proceeding.
3. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
4. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

Overview of Just Energy's Business, Sales Agents and my Employment

5. Just Energy is one of the largest independent energy retailers in North America, operating in Canada and the US. Just Energy is a publicly traded corporation.

6. Pursuant to submissions by counsel to Just Energy L.P. (Gowlings LLP) to the Ontario Energy board in November 2014, Just Energy describes itself as "a provider of energy solutions to residential and commercial customers. Just Energy's products include fixed and variable electricity and natural gas supply, green energy gas and electricity supply, home and commercial HVAC and related appliances including energy efficiency products and energy brokerage services for larger volume customers." Attached as **Exhibit "A"** to my affidavit is a copy of the November 2014 submissions to the Ontario Energy Board made on behalf of Just Energy ("November 2014 Submissions"). The November 2014 Submissions are available on the Ontario Energy Board website.

7. The November 2014 Submissions also note that "[i]n Ontario, Just Energy employs [sic] over 700 people, in addition to the roughly **130 independent Sales Agents** engaged in selling Just Energy's products across the province. **We have 12 Sales offices in Ontario and 3 corporate offices.**" [emphasis added] This is consistent with my understanding of Just Energy's business structure through my own experiences and based on discussions with other Sales Agents in Ontario.

8. I worked as a Sales Agent for Just Energy in Ontario from approximately August 2012 January 2014. I worked out of a Just Energy's sales office in Toronto called the Dundas office.

9. From my experience, Sales Agents across the province market Just Energy products, mostly consisting of fixed rate utility contracts for gas and electricity, door to door.

10. Just Energy requires Sales Agents to sign an "independent contractor agreement" with Just Energy. From my work with Just Energy and speaking with other Sales Agents across the Province, I understand that Just Energy treats all of their Ontario door to door Sales Agents as independent contractors not employees.

11. From my experience and based on discussions with other Sales Agents, Sales Agents across the province only perform one task: going door to door and market the products of Just Energy. The door to door Sales Agent marketing is very repetitive and does not require any previous experience or specialized training. Each day Sales Agents do the exact same task again and again they attend a morning meeting at the sales office, they are driven in groups to marketing locations and they knock on doors soliciting potential contracts. Sales Agents are at the bottom of the Just Energy office hierarchies in Ontario.

12. From my experience, the standard work week for Sales Agents across the province is six (6) days a week, each day working from approximately 9:00 am to 9:00 pm. Generally the hours between 12:00 pm - 9:00 pm are spent travelling to marketing locations and marketing door to door.

13. I understand from Just Energy's November 2014 Submissions that there are approximately **130 "independent Sales Agents"** engaged in selling Just Energy's products across the province at any one time. The sales office I worked out of employed approximately 12-16 Sales Agents at any one time.

14. From my experience Sales Agents are paid on 100% commission directly from Just Energy Corp. Sales Agents have no control over the setting of agent commissions or prices, all of which Just Energy can alter in their sole discretion.

15. All consumers contract directly with Just Energy and Just Energy handles all complaints, renewals, payments and contract finalization. There is no ongoing relationship between consumers and Sales Agents after they are solicited.

16. There is a very high turnover of Sales Agents at Just Energy. In my experience at the Dundas office, there would be approximately 5-10 new Sales Agents each week, just to keep up with turnover.

17. The remainder of my affidavit describes in more detail the following:

- (a) hiring of Sales Agents;
- (b) Just Energy's independent contractor agreement and commission schedule;

- (c) regional office structure;
- (d) daily job tasks of Sales Agents and control;
- (e) Sales Agent compensation;
- (f) Ohio Class Action
- (g) OEB Documents
- (h) class definition and class size; and
- (i) litigation plan..

A Hiring of Sales Agents

18. From my experience Just Energy hires Sales Agents directly, often through online advertisements in the job classifieds section of websites like Kijiji. I understand that Just Energy employs Regional Recruiters and also has a National Recruiting Manager to coordinate the recruiting of Sales Agents.

19. In July/August of 2012 I was looking for work. I found an advertisement for employment in the classifieds, the advertisement offered employment with pay of at least \$800 a week. The advertisement did not specify who the company was. I do not have a copy of the advertisement from 2012.

20. I responded to the employment classified ad and a person answered told me to come into to the Just Energy office. She gave me a time and an office address in Toronto for an interview.

21. I went to the Just Energy Dundas sales office for my interview. The office had a Just Energy sign on the front and Just Energy signs inside, along with other Just Energy promotional materials.

22. The "interview" for the job was done in a group with approximately 10-12 other people in a board room of the Just Energy office. The "interview" wasn't a traditional

interview, instead it was training for the position. It consisted of a training session including lecture, videos and written materials on the door to door marketing of gas and electricity. After the training interview we had to take a short quiz. If we passed the quiz, we were hired as Sales Agents. The vast majority of applicants will pass the quiz.

23. Immediately after passing the quiz, all the new Sales Agents were given the same “independent contractor agreement”, which we were told to sign right away in order to start working. Along with the other people in the group, I signed the contract right away, which was kept by Just Energy. We then had our picture taken and the next day were given a Just Energy identification badge with our photo and the Just Energy logo on it. I do not have a copy of the independent contractor agreement, as Just Energy kept the contract I signed. A copy of the “Independent Contractor Agreement” that Kia Kordestani signed is attached as **Exhibit "B"** to my affidavit. I have reviewed the independent contractor agreement signed by Kia and I believe it is substantively similar to the one I would have signed.

24. The same hiring process described above reoccurred each week at the Just Energy Dundas office, with approximately 5-10 new recruits being hired each week. As a result of the high turnover at the office, a weekly recruiting process to replace people who were fired or who quit. From my discussions with Sales Agents at other offices in Ontario, I believe a similar weekly recruiting process occurred at other regional offices throughout Ontario.

B The Independent Contractor Agreement

25. As outlined above, in order to get the job with Just Energy, all new Sales Agents are given a standard form contract and are required to sign. No time is provided to review this contract prior to signing it. Kia’s contract purports to be an independent contractor agreement with Just Energy Corp., wherein the independent contractor agrees to provide door to door solicitation to obtain contracts for the benefit of Just Energy Ontario L.P.

Contract Highlights

26. Some relevant aspects of the “Independent Contractor Agreement” provided by Kia (Exhibit “B”), which is substantively similar to the agreement I would have signed, are as follows:

- (a) The contract permits the contractor [Sales Agent] to “market” and “solicit” contracts for the benefit of Just Energy Ontario L.P.;¹
- (b) “The Contractor acknowledges that they may not accept a ‘notice of termination’, ‘notice of cancellation’, or any other such document that intends or purports to terminate a customer agreement between Just Energy and a customer”;
- (c) **“The Contractor agrees to abide by the terms and conditions of Codes and to abide by the terms and conditions of any codes of behaviour prepared and delivered to the Contractor by [Just Energy], and to follow all instructions or directions provided by [Just Energy] from time to time.”**[emphasis in original agreement];²
- (d) the compensation of the contractor is by way of a commission schedule “which schedule may be amended from time to time by [Just Energy] in its sole discretion.”;³
- (e) Just Energy has declared 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. While Just Energy has a unilateral right to amend at any time by simply posting a new contract, No amendment made by the contractor is valid unless agreed to in writing by Just Energy;⁴
- (f) payments to contractors shall only be made for “Effective Contracts”. An Effective Contract requires Just Energy to confirm and complete a sale with a potential customer solicited by a Sales Agent. Sales Agents are dependent on

¹ paragraph 1.

² paragraph 2.

³ paragraph 4.

⁴ paragraph 16.

Just Energy to confirm and then complete contracts so that a Sales Agents can get paid. If a contract is cancelled, commissions to a Sales Agents can be “clawed back”. The contract specifically states that:

- (i) An Effective Contract is for “A Medium Volume Contract or a Large Volume Customer Contract shall be deemed “Effective” when it is (i) is properly completed and signed by the customer, (ii) approved and affirmed by [Just Energy Corp.] or [Just Energy Ontario L.P.]; and (iii) approved by the applicable local utility”;
- (ii) “A Small Volume Customer Contract shall be deemed “Effective” when it is properly completed and signed by the customer, and the customer has been provided a welcome call code and a registered pre paid card”;⁵
- (g) the contractor is purported to be independent of Just Energy. While the contract purported to provide independence to Sales Agents, this was not the case, as outlined further below;⁶
- (h) the contract states that contractors’ services are not exclusive to Just Energy, but simultaneously forbids contractors from working with any company that competes with Just Energy during the course of the contract and for three weeks following termination.⁷ As outlined below, it was impossible to work at any other company because of the 72 hour work week Sales Agents had to complete; and

⁵ paragraph 5.

⁶ paragraph 5.

⁷ paragraph 7.

- (i) Just Energy may compel a contractor to cease marketing and undergo retraining if concerns are raised regarding their performance.⁸

The Commission Schedule

27. The Sales Agents at Just Energy are paid on the basis of 100% commissions from the very first day of work. Attached at the end of each contract is the "Commission Schedule". As noted above, in the agreement Just Energy states that they can unilaterally change the Commission Schedule in their sole discretion without advance notice. Sales Agents have no control over the structure of commissions or how they may be charged through to consumers.

28. The Commission Schedule sets out three ways a Sales Agent could be paid commissions if a consumer contract is ultimately entered into between the customer and Just Energy:

- (a) an "Initial" commission. This is the commission paid for any "Effective Contracts" that are not canceled or deemed not to be "Effective" by Just Energy;⁹
- (b) a "Reconciliation" commission. 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; and
- (c) "Residual" commissions. This requires a Sales Agent to be an active Sales Agents for at least a year. A Residual commission is a payment of approximately \$5 on any contract that continues for one year past the date the utility started to flow to the consumer. In my experience it is rare for any Sales Agent to get Residuals because they have to stay at Just Energy for at least one year and also satisfy the definition of an "Active Contractor" as defined in the

⁸ paragraph 10.

⁹ An Effective Contract requires Just Energy to confirm and complete a sale with a potential customer solicited by a Sales Agent.

Commission Schedule. An "Active Contractor" as defined by Just Energy in the Commission Schedule is a contractor that:

- (i) has submitted Effective Contracts equal to at least 65 residential customer equivalents during the 3 month period prior to the Residual payment;
- (ii) has submitted Effective Contracts 30 days prior to the Residual payment; and
- (iii) has not provided services to any competitor of Just Energy or its Affiliates.

29. When a Sales Agent stops working for Just Energy they do not receive Residual payments in respect of any contracts which were a product of their marketing. In my experience, it is very rare for a Sales Agent to earn any Residual commissions. A consumer who signs on with Just Energy as a result of the efforts of a Sales Agent may continue to provide Just Energy with years of income, but Sales Agents will not see any of this income, because they either leave Just Energy, are terminated or cannot otherwise meet the criteria for Residual commissions.

Commission Claw Backs

30. The Commission Schedule also outlines that Sales Agents may be subject to claw backs. A claw back is when a commission payment is advanced to a Sales Agents, but then the consumer cancels or Just Energy deems the contract to be not be "Effective". As set out in the Commission Schedule, this claw back provision can actually result in a Sales Agent owing money to Just Energy if his commissions are less than the claw back for that period. The Commission Schedule provides that:

- (a) "Notwithstanding the foregoing, Just Energy and its Affiliates reserve the right to, at any time (including without limitation, following the reconciliation commission payment date) make deductions and/or offset against future commissions any amounts that have been paid or pre-paid by Just Energy or its

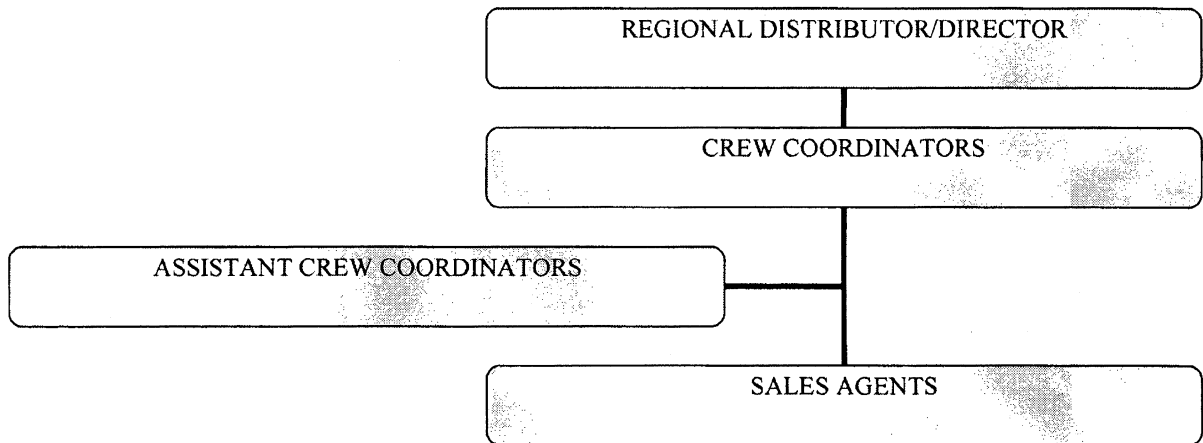
affiliate with respect to a Contract that is subsequently cancelled or determined not to be an Effective Contract.”

- (b) “Where there has been discounted pricing, or reduced Term, under an Effective Contract, Just Energy or its Affiliate may, at its sole discretion, discount the commission payable.”

31. Sales Agents have no control over whether or when a consumer may cancel a contract or whether it is Effective.

C Just Energy Salesforce Structure

32. All door to door Sales Agents work out of a regional office. Regional offices are located across Ontario. The structure of a Just Energy regional sales office is hierarchal, with the Sales Agents at the very bottom of the hierarchy. A vertical ladder of control exists at a sales office, consisting of the following levels:



33. In Just Energy’s November 2014 Submissions, counsel noted that there are approximately 12 sales offices in Ontario.

34. The Regional Distributor, also called a Regional Director sometimes, manages and is in charge of the regional office.

35. The regional offices have Crew Coordinators, who may or may not have an Assistant Crew Coordinator. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Distributor.

36. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day. This was often best done with vans that could transport many Sales Agents at a time.

37. Crew Coordinators receive “overrides” on the commissions of Sales Agents they are responsible for, meaning the Crew Coordinator gets a payment based on the performance of the Sales Agents they are responsible for. Crew Coordinators also take on the role of field training for many new Sales Agents.

38. Below the Crew Coordinators and the Assistant Crew Coordinators in the hierarchy are Sales Agents. Sales Agents are the entry level position at every regional sales office and the lowest position in the hierarchy. As detailed further below, the Sales Agents have the same singular task every single day and that is to knock on doors and market the products of Just Energy.

D Daily Job Tasks and Daily Control

39. The only task of each Sales Agent is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

40. In addition to the repetitive nature of the job, Sales Agents are told how to market contracts in the form of sales scripts and role playing training. Sales Agents are also told where to market and are driven to locations where they have to market. There is no previous experience or extensive training required to become a Sales Agent, at most two days of training are given.

41. The standard day for a Sales Agent in Ontario consists of the following:

- (a) attending the Just Energy regional sales office at 9:00 am to start work;

- (b) collecting blank contracts and promotional material at the regional sales office for the day's marketing efforts;
- (c) until 12:00 pm each day, attending a meeting with other Sales Agents and the Regional Distributor 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) Sales Agents are assigned to a Crew Coordinator by the Regional Distributor;
- (e) the Crew Coordinator drives the agents assigned to a specific location to market door to door;
- (f) the marketing door to door, or "door knocking time", is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (g) reporting all potential contracts to the regional sales office and Regional Distributor during the day or the next morning;
- (h) obeying the direction of the Regional Distributor if directed to change marketing locations and report to the Regional Distributor on present locations; and
- (i) concluding the day at 9:00 p.m. by reporting to the assigned Crew Coordinator, who picks up Sales Agents from a pre-arranged pick-up location and drops them back at the regional sales office.

42. Sales Agents perform these tasks six days a week.

43. As a result of the work demands of a seventy-two (72) hour week and explicit working restrictions placed on Sales Agents by Just Energy regarding competitors, I would not have been able to work for any other business while also working for Just Energy.

44. While my attendance at the Just Energy office was often tracked, by way of a morning sign in sheet, Just Energy never tracked my hours or the hours of other Sales Agents.

45. In my experience Just Energy exercises daily oversight, direction and control over the conduct of Sales Agents across Ontario, who are engaged in selling their products door to door.

46. Just Energy's November 2014 Submissions note some aspects of Just Energy's oversight:

- (a) "Daily reports from each Just Energy sales office outlining any complaints received the previous day involving sales people dispatched by the subject office.";
- (b) "Weekly reports of complaints by Sales Agent, providing metrics to evaluate the subject Sales Agent's conduct including numbers of contracts submitted and accepted, previous complaints and findings regarding those complaints.";
- (c) "Daily reports to Just Energy's compliance team listing terminated or suspended Sales Agents and cross-coding any continuing enrollments of customers whom the subject Sales Agent engaged so that the compliance team can track the customer experience for those sales and take mitigative action as appropriate.";
- (d) "Bi-weekly conference calls with each Just Energy sales office to review recent statistics and reports, address complaints, take applicable remedial actions, reiterate customer experience and compliance expectations, address coaching opportunities and provide guidance to address any areas of customer experience or compliance weakness identified through the reports generated.";
- (e) "On a weekly basis, letters are generated for each Sales Agent subject to a complaint to sign, acknowledging internal compliance findings, customer associated consequences, and expectations going forward.";

- (f) “In support of all of the foregoing activities, Just Energy applies a "point" system to transparently track the number of customer complaints received regarding any Sales Agent, and to ensure that continuing or recurring Sales Agent are readily identified , appropriate issues with a particular communicated and decisively addressed.”;
- (g) “Compliance team members are required to complete, monthly, Quality Assurance forms, designed to ensure that these compliance specialists remain accurate and consistent in their approaches to investigation and resolution of complaints.”;
- (h) “...Just Energy's Ontario operations and compliance teams commit more than 80 person hours per week on quality assurance and monitoring activities.”;
- (i) “Just Energy utilizes a full two day, in class training program , which program incorporates, and extends, the OEB's training requirements, and uses "role playing" techniques to model expected Sales Agent behaviour.”;
- (j) “Part of Just Energy's training protocols are "field shadowing" requirements for new Sales Agents by more experienced and trained supervisors.”;
- (k) “Just Energy sales representatives are **required** to wear Just Energy branded clothing.”;[emphasis in original]
- (l) “Just Energy sales representatives **must** wear a lapel pin which states: "Hi, We are NOT the utility.”;[emphasis in original]

47. The above description in Just Energy’s November 2014 Submissions , regarding the daily monitoring, supervision and direction of Sales Agents across Ontario is consistent with my personal experience.

48. Just Energy also directed the manner in which the Sales Agents perform their job duties:

- (a) Just Energy trains all the Sales Agents in their marketing duties during orientation sessions and through training manuals. Sales Agents are told how they can market Just Energy contracts, in the form of sales scripts, booklets, and sales presentations. Sales scripts, which dictate line by line guidance in approaching customers, are provided as part of the training of Sales Agents. Daily role playing is done to reinforce how Sales Agents are supposed to market the Just Energy contracts. Copies of some of the sales scripts given to me, are attached as **Exhibit "C"** to my affidavit;
- (b) Sales Agents are told where and when they can market Just Energy contracts every day. The hours between 1:00 pm - 9:00 pm were considered the "door knocking hours" and Sales Agents were not allowed to market before 1:00 pm or after 9:00 pm. Each day, Sales Agents were driven by Crew Coordinators to the locations they would have to market in for the day. A Sales Agent could not change locations without the express permission of the Regional Distributor or Crew Coordinator. I am aware of Sales Agents who were threatened with termination for trying to market in a location not approved by the Regional Distributor;
- (c) Sales Agents are required to call in potential contracts so Just Energy would be aware of potential sales in real time. If a Sales Agent was not reporting the number of potential contracts a regional office expected, the Regional Distributor or Crew Coordinator would contact the agent to demand an explanation for the slow productivity and direct the agent in obtaining more potential contracts;
- (d) the Sales Agents all must wear Just Energy clothing and represent themselves as acting for Just Energy. A Sales Agent cannot represent that they are working for themselves or an independent marketing company while working for Just Energy;

- (e) the Sales Agents use Just Energy marketing materials in the form of brochures, contracts, informational sheets and mandatory Just Energy branded clothing; and
- (f) all prices and commissions are fixed by Just Energy in their sole discretion, Sales Agents cannot offer personal discounts to customers or adjust pricing to attempt to get potential contracts.

49. Sales Agents have no direct contractual or ongoing relationship with any of the customers to which they market:

- (a) all the energy contracts are made between Just Energy and the consumer;
- (b) Sales Agents 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 Sales Agent's visit;
- (c) Just Energy maintains sole discretion whether to accept or reject any potential contract generated by the Sales Agents;
- (d) only Just Energy handles customer complaints about the Sales Agents or the services of Just Energy; and
- (e) when a Sales Agent leaves Just Energy, they receive no compensation for any contracts which they may have solicited which continue to provide income to Just Energy.

E Sales Agent Compensation

50. Sales Agent in Ontario receive payments from Just Energy Corporation which is the entity listed on the top of each cheque stub. As noted above, all of Just Energy's door to door Sales Agents are paid on 100% commission from the very first day of work. There is a high turnover of Sales Agents.

51. Below are the total amounts I was paid for my first four (4) weeks of work:

- (a) August 27, 2012: \$567.75;
- (b) September 3, 2012: \$90.00;
- (c) September 10, 2012: \$0; and
- (d) September 17, 2012: \$298.65.

Attached as **Exhibit "D"** to my affidavit are my pay stubs from my first month of work, except for September 10th, when I made \$0 and I do not believe I got a cheque stub.

52. As described above, along with the other Sales Agents, I worked the standard twelve (12) hour shift, six (6) days a week. For my first month I worked approximately 288 hours and I made a total of \$956.40, the equivalent to an hourly wage of \$3.32 per hour.

53. While working for Just Energy I had no other income and struggled financially to survive on the above payments. I took loans from family or friends to survive while working for Just Energy, under the impression that one day I would be making over \$1,500 a week.

54. My pay would fluctuate week-to-week depending on the number of contracts that Just Energy finalized with customers and accepted. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

55. While working for Just Energy I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay. In my experience Just Energy consistently treats door to door Sales Agents as purported independent contractors.

56. Each year I worked for Just Energy, I paid the Canada Pension Plan contributions based on Just Energy earnings, since Just Energy made no contributions on my behalf.

F Ohio Class Action

57. There is a class action for door to door Sales Agents of Just Energy in Ohio, *Hurt et al., v. Commerce Energy Inc. et al.* (the "Ohio Class Action"). I have reviewed the certification decision and summary judgment decision from the Ohio Class Action and also various news articles regarding this case. The following is my understanding from a review of those documents and as described by counsel.

58. I understand that the Ohio Sales Agents of Just Energy were classified by Just Energy as independent contractors, as in Ontario.

59. The Sales Agents in Ohio brought an action claiming they were improperly classified as employees and deprived of the corresponding minimum employment rights, including minimum wage and overtime, similar to this action. The Ohio Class Action was certified as a class proceeding. I understand that a trial was held which resulted in an award that the class members had been improperly classified as independent contractors exempt from minimum employment rights and that the Ohio Class Action is now proceeding to a determination of damages.

60. The certification decision of Justice James S. Gwin, dated August 15, 2013, in the Ohio Class Action, *Hurt et al., v. Commerce Energy Inc. et al.*, is attached as **Exhibit "E"** to my affidavit.

61. The summary judgment decision of Justice James S. Gwin, dated August 15, 2013, in the Ohio Class Action, *Hurt et al., v. Commerce Energy Inc. et al.*, is attached as **Exhibit "F"** to my affidavit.

62. A Just Energy Sales Presentation Script from the Ohio Class Action which was filed in respect of the certification decision (Doc#: 59-6) is attached as **Exhibit "G"** to my affidavit .

63. A Just Energy training document from the Ohio Class Action which was filed in respect of the certification decision (Doc#: 60-11), entitled "The Customer Interaction" including a description of "A Day in the Life of an Independent Contractor", is attached as **Exhibit "H"** to my affidavit .

64. A Just Energy training document from the Ohio Class Action which was filed in respect of the certification decision (Doc#: 60-12), entitled "The Introduction and Obtaining the Bill", is attached as **Exhibit "I"** to my affidavit.

65. Exhibits "E", "F", "G", "H" and "I" were provided to me by Koskie Minsky LLP.

66. The description of the Sales Agent work day and structure of marketing described in Exhibits E", "F", "G", "H" and "I" above from the Ohio Class Action is the same as I experienced in Ontario, namely that:

- (a) class members performed door to door marketing for Just Energy of Just Energy products;
- (b) class members were treated as independent contractors and all signed uniform "independent contractor" agreements;
- (c) class members were not paid overtime or the minimum wage;
- (d) Just Energy's Ohio training manuals stated that "As Independent Contractors, you will market to consumers at their homes. You will be dropped off by the Crew Coordinator at the location you will be working in for the day. You will work from early afternoon to early evening in one area, contacting customers."¹⁰ and they also say that "let's look at the components of a typical day as an independent contractor. An independent contractor typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork".¹¹ The description in the manual aligns with my experience in Ontario; and
- (e) Just Energy provided scripts to class members for the purposes of solicitation;

¹⁰ Exhibit "H" to my affidavit..

¹¹ Exhibit "H" to my affidavit.

67. These descriptions are consistent with my experience as a Sales Agent in Ontario.
68. I understand from a review of paragraph 5 of the summary judgment decision in the Ohio Class Action, dated August 15, 2013, that “Both parties agree, however, that the Plaintiffs worked approximately six to seven days a week for approximately twelve hours a day.” this aligns with the exact same work week in Ontario.

G Ontario Energy Board Documents

69. Just Energy Ontario L.P. is listed on the Ontario Energy Board (“OEB”) website as an “Electricity Retailer” and “Gas Marketer”.
70. The following documents were obtained from the OEB website:
- (a) Attached as **Exhibit "J"** is a copy of the OEB Electricity Retailer Code of Conduct, restated November 17, 2010.
 - (b) Attached as **Exhibit "K"** is a copy of the OEB Code of Conduct for Gas Marketers, restated November 17, 2010.
 - (c) Attached as **Exhibit "L"** is a copy of the OEB Electricity Reporting and Record Keeping Requirements, version dated May 13, 2015. Versions of this document dated April 15, 2015, March 7, 2014, October 15, 2013, January 1, 2013, March 7, 2012, May 1, 2012, and earlier are available on the OEB website.
 - (d) Attached as **Exhibit "M"** is a copy of the OEB Natural Gas Reporting and Record Keeping Requirements Gas Marketer Licence Requirements, version dated January 1, 2013. Versions of this document dated May 1, 2010 and December 22, 2004 are available on the OEB website.

H Definition of the Class and Class Size

71. I understand that the proposed class is currently 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

“Sales Agents”

72. The reference to “Sales Agents” is commonly used by Just Energy to refer to their door to door agents and I believe the reference to “...Sales Agent pursuant to an independent contractor agreement” would be readily understood by my former colleagues as encompassing them.

73. As part of completing the independent contractor agreement with Just Energy (as identified in Exhibit “B”), each new Sales Agent must complete a Privacy Notice and Consent form from the Ontario Energy Association (the “OEA” and the “OEA Form”). From a review of the OEA website [www.energyontario.ca], I understand the OEA is a membership based organization that has the stated goal of advocating for the interests of their members who are engaged in the energy sector in Ontario. The OEA publishes a list of their members on their website and Just Energy is listed as a current industry member.

74. The OEA Form is at the end of independent contractor agreement with Just Energy (see Exhibit “C” which is substantively similar to the agreement I would have signed). The OEA Form provides that:

- (a) the OEA Form is consent for Just Energy to collect the personal information of each new contractor and provide this to the OEA for the purposes of a database of those Sales Agents involved in door to door solicitation;
- (b) The OEA requires members, such as Just Energy, to register all of their Sales Agents;
- (c) the registration includes first and last names, along with dates of birth;

- (d) The OEA Form states in part that:
- (i) “The Ontario Energy Association (“OEA”) requires its retail energy members (i.e. Just Energy Ontario L.P.) involved in door-to-door consumer solicitation/sales to confirm that each of their respective **Sales Agents** has completed the OEA standardized training module on an annual basis. **The OEA members must also register their Sales Agents in a specific registry established for this purpose (the “OEA Registry”)**” [emphasis added]

75. In the November 2014 Submissions (Exhibit “A”) Just Energy has filed with the Ontario Energy board respecting door to door sales and compliance, Just Energy identifies the “**130 independent Sales Agents** engaged in selling Just Energy’s products across the province”. In addition, throughout the November 2014 Submissions repeated reference is made to Just Energy’s “Sales Agents”.

76. In a Voluntary Compliance Statement dated January 2, 2013, made to the Ontario Energy Board by Just Energy, Just Energy provides assurances regarding supervision and penalties with respect to alleged misconduct of two “Sales Agents”, PK and JL. Throughout the Voluntary Compliance Statement, Just Energy refers to:

- (a) “Two independent contractors acting as Sales Agents for Just Energy Ontario L.P. (“Just Energy”)”;
- (b) “Independent Contractor and Sales Agent JL was terminated on November 27, 2012”;
- (c) the “Sales Agent PK” 8 times in the document;
- (d) the “Sales Agent JL” 6 times in the document;
- (e) “Just Energy Independent Contractor and Sales Agent JL”; and
- (f) Just energy makes commitments with respect to the “independent contractors/Sales Agents” at Just Energy.

Attached as **Exhibit "N"** to my affidavit is the Voluntary Compliance Statement from Just Energy, dated January 2, 2013.

77. In a voluntary compliance statement made to the Ontario Energy Board, dated April 3, 2014, concerning alleged misconduct of a Sales Agent, Just Energy stated that "With respect to the Sales Agent conduct issue, Just Energy accepts responsibility for the alleged breaches set out above."

78. Attached as **Exhibit "O"** to my affidavit is the Voluntary Compliance Statement from Just Energy, dated April 3, 2014.

79. I believe the term "Sales Agents" is a commonly used at Just Energy to refer to the class members in this case.

Class Size

80. I understand that an estimate of the class size is required. Making such an estimate is difficult given that Just Energy possesses any records of Sales Agents. From my understanding of the operation of Just Energy from the November 2014 Submissions, Just Energy has approximately 130 Sales Agents in Ontario, located across 12 regional offices at any one time. From my personal experience, I believe there can be as many as 5-10 new Sales Agents each week at each office, with a similar number quitting or being fired. I understand that it is estimated that the class could be between 3,750 - 7,500 for each year of the class period.

81. A readily identifiable class list may be available as part of Just Energy's record keeping requirements pursuant to the OEB. I understand that, Pursuant to OEB Electricity Reporting and Record Keeping Requirements (Exhibit "L") and the Natural Gas Reporting and Record Keeping Requirements Gas Marketer Licence Requirements (Exhibit "M"), Just Energy has obligations to keep records of and report to the OEB records of sales personnel and a "list of its salespersons including their name and agent number where applicable".

82. In addition, Based on the OEA Form, I understand that a database is maintained by the OEA of all Sales Agents.

83. Given the registration information required to be submitted by Just Energy to the OEB and OEA, Just Energy should have a specific figures of the number of class members.

I Litigation Plan and Role as Representative Plaintiff

84. I understand that a litigation plan is required which would describe some of the steps of how this case is to proceed. The litigation plan, which has been drafted by counsel and reviewed by me, is attached as **Exhibit "P"**.

85. I am a class member and fully prepared to act as a representative plaintiff in the interests of the class as a whole in this matter. I have reviewed the common issues which have been drafted by counsel. I do not have, on the common issues, or any other issues that I am aware of, any interest which is in conflict with the interests of any other class member.

86. I have been advised by counsel, Koskie Minsky LLP and do believe to be true, that the major steps in a class action are generally as follows:

- (a) commencement of the action by issuance of a Statement of Claim;
- (b) motion for certification;
- (c) notice to the class of the certification and the right to opt-out;
- (d) discovery of documents (listing of relevant documents);
- (e) examinations for discovery (lawyers asking questions);
- (f) pre-trial conference (where a Judge may help the parties explore the possibility of settlement);
- (g) trial of the common issues;
- (h) notice to the class if individual participation is required;
- (i) determination of the individual issues, if required;
- (j) distribution of proceeds of resolution by way of judgment or settlement, if any;
- (k) appeals (at various stages of the proceedings); and
- (l) settlement (at any time).

87. I also understand that, in agreeing to seek and accept an appointment by the Court as a representative plaintiff in this class proceeding, it is my responsibility, among other things:

- (a) to fairly and adequately represent the class members' interests in this matter;
- (b) to become familiar with the issues to be decided by the Court;
- (c) to review the Statement of Claim and any amendments;
- (d) to assist in the preparation and execution of an affidavit in support of the motion for certification;
- (e) to attend if necessary for cross-examination on my affidavit;
- (f) to assist, if necessary, in the preparation and execution of an affidavit of documents, listing any relevant documents that I may have in my possession;
- (g) to attend, if necessary, with counsel at trial and give evidence regarding the case;
- (h) to express, in some circumstances, my opinion on strategy to class counsel;
- (i) to express my opinion to class counsel and to the Court if offers to settle are made; and
- (j) to express my opinion to class counsel and to the Court if settlement positions are to be formulated.

88. To date, I have taken the following steps and others to fairly and adequately represent the interest of the class members:


- (a) I retained Koskie Minsky LLP as class counsel;
- (b) I provided my personal information for the preparation of the Amended Statement of Claim and addition as a representative plaintiff;
- (c) I reviewed the Amended Statement of Claim;
- (d) I reviewed the application to the Class Proceedings Fund;
- (e) I attended the funding hearing at the Class Proceedings Fund; and
- (f) I reviewed and aided in the drafting of this affidavit.

89. I intend to take the following steps to continue to fairly and adequately represent the interests of the class members:

- (a) to assist with the interaction with other class members and to receive their input;
- (b) to communicate with class members who may contact me and provide them with the information to contact Koskie Minsky LLP;
- (c) continue to review court documents as they are provided to me; and
- (d) to instruct class counsel as appropriate.

90. I make this affidavit in support of the certification of this action as a class proceeding and for no other purpose.

Affirmed BEFORE ME at the City of Toronto, in the Province of Ontario on August 6, 2015.



Commissioner for Taking Affidavits



HAIDAR OMARALI

This is Exhibit "A" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 15th day of August, 2015.

Commissioner for Taking Affidavits



November 21, 2014

VIA RESS AND COURIER

Ms. Kirsten Walli
ONTARIO ENERGY BOARD
 P.O. Box 2319, 27th Floor
 2300 Yonge Street
 Toronto, Ontario
 M4P 1E4

Ian A. Mondrow
 Direct: 416-369-4670
 ian.mondrow@gowlings.com

Assistant: Cathy Galler
 Direct: 416-369-4570
 cathy.galler@gowlings.com

Dear Ms. Walli:

Re: EB-2014-0158: Consultation on the Effectiveness of Part II of the *Energy Consumer Protection Act, 2010 (ECPA)*.

Initial Comments of Just Energy

We are legal counsel for Just Energy Ontario L.P. (Just Energy) in respect of the captioned consultation. By letter dated October 23rd to all participants in this consultation the Board has invited written comments on a set of questions attached to the letter.

The Board has indicated in previous communications regarding these consultations (in particular in its letter to interested parties dated July 21, 2014) that it has retained external expertise to support the Board's consideration of the effectiveness of the *ECPA*. Innovative Research Group has been commissioned to conduct extensive consumer research. Professor Donald Dewees has been retained "to assist with the evaluation of the *ECPA* and related market issues". In addition to this external input, the Board Staff has gathered from retailers an extensive amount of historical data, dating back to 2009.

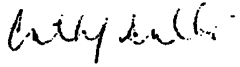
The Board has indicated that the results of its consumer research are to be one of the topics of discussion at the stakeholder forum currently scheduled for December 8th and 9th. To date, the Board has not published any materials in respect of the outcome of any of its investigations.

It would be premature to provide comprehensive response to the Board's questions without information on what the Board is being told by its staff and experts about the effectiveness of the *ECPA*. Just Energy currently intends to provide more comprehensive response to the Board's questions, and any conclusions or recommendations provided to the Board by its external experts and staff, once such conclusions or recommendations, and the basis therefore, have been disclosed. Just Energy expects that, in accord with basic procedural fairness, the Board will provide further opportunity for interested parties to comment once the substance of its deliberations and concerns, and the information supporting those deliberations and informing those concerns, is made public.

gowlings

In the interim Just Energy provides the attached initial comments, in support of an informed discussion at the upcoming stakeholder forum.

Yours truly,



Ian A. Mondrow

IAM:cag
Attach.

- c. **Jonah Davids (Senior Vice-President, Legal and Regulatory and General Counsel, Just Energy)**
Nola Ruzycki (Vice-President, Regulatory Affairs, Just Energy)
Martine Band (Associate General Counsel, OEB)


TOR_LAW 85655972

ONTARIO ENERGY BOARD


Consultation on the Effectiveness of Part II
of the *Energy Consumer Protection Act, 2010 (ECPA)*

Initial Comments of Just Energy Ontario L.P. (Just Energy)

Introduction to Just Energy

- 
1. Just Energy Group is a provider of energy solutions to residential and commercial customers. Just Energy's products include fixed and variable electricity and natural gas supply, green energy gas and electricity supply, home and commercial HVAC and related appliances including energy efficiency products and energy brokerage services for larger volume consumers. Just Energy is actively pursuing opportunities in the residential solar market.
 2. The Just Energy Group currently serves 21 markets across North America (6 Canadian provinces and 15 U.S. states) and the U.K. market, providing energy solutions to approximately 2 million homes and businesses.
 3. Established in 1997, Just Energy is a publicly traded corporation (NYSE:JE and TSX: JE) and parent to affiliate companies Amigo Energy, Commerce Energy, Hudson Energy, National Home Services¹, and Tara Energy.

¹ (Marketwired via COMTEX) -- Just Energy Group, Inc. ("Just Energy" or the "Company") announced that Reliance Comfort Limited Partnership ("Reliance") has received a "no-action letter" confirming that the Competition Bureau has reviewed Reliance's proposed acquisition of the shares of National Energy Corporation (which operates under the name National Home Services), Just Energy's water heater and HVAC home services business. The receipt of the "no-action letter" satisfies the *Competition Act* condition under the Purchase Agreement for the consummation of the transaction. Just Energy anticipates that the transaction will close prior to the end of November, 2014.

- 
4. In Ontario, Just Energy employees over 700 people, in addition to the roughly 130 independent sales agents engaged in selling Just Energy's products across the province. We have 12 sales offices in Ontario and 3 corporate offices.
 5. As is the case with other established energy and energy services retailers in the province, Just Energy is an active business, serving customers, transacting in the energy sector, and providing jobs to Ontarians.

Just Energy Green Energy Products

6. As a retailer of natural gas, electricity, and related energy services products, Just Energy is particularly proud of its green energy/energy conservation offerings. These offerings support government green energy and conservation policies, and respond to customers' increasing demands for green products and services.
7. In the case of "green" natural gas and electricity supply, Just Energy is among those sector participants meeting a consumer need that the regulated suppliers do not fulfill.
8. Just Energy is one of the largest green energy retailers in North America. Just Energy's green products and programs have helped to offset over 4.2 billion pounds of carbon emissions to date, the equivalent of taking over 400,000 cars off the road for a year. Just Energy has purchased over 8 million MWh of renewable energy to supply its customers; enough to power 500,000 homes for a year.
9. Just Energy's JustGreen Gas product purchases and retires independently certified carbon credits to offset 1.8 kgs of CO₂ for each cubic meter which the customer consumes, adjusted by the "JustGreen % Offset Gas" chosen by the customer in their agreement (ranging from 0% through 100%, depending on customer category and sales channel).

10. Just Energy's JustGreen Electricity product purchases and retires a block of renewable energy certificates or attributes equivalent to the customer's electricity use, multiplied by the "JustGreen % Renewable Energy" chosen by the customer in their agreement (ranging from 0% through 100%, depending on customer category and sales channel). The customer can discontinue the green electricity component of their agreement at any time.
11. In support of its Ontario JustGreen Electricity product, Just Energy commits to; a) obtaining carbon credits or green energy produced in the year, or in the preceding or following year; and b) sourcing its green energy supply, on a best efforts basis, from Ontario based green energy projects.
12. In support of its green electricity supply obligations, Just Energy purchases green power and/or green attributes from a variety of renewable sources including wind, solar and hydroelectric.
13. Through the Just Energy Conservation Program (JECF) product, Just Energy offers fixed monthly rate electricity and natural gas supply combined with a "SmartStat" smart thermostat. This product responds to customer's desire for predictable monthly energy payments (like they have for phone or cable services) while at the same time providing mechanisms and incentives to encourage efficient energy consumption.
14. The SmartStat which is supplied, installed and serviced without additional charge as part of the JECF product is an advanced user interface which is controllable through wifi and the internet. The algorithms programmed into the SmartStat take into account factors such as weather, size of home, number of occupants and type of HVAC system to maximize energy efficiency. The JECF product further incents energy savings by providing a \$200 customer rebate for natural gas consumption reductions of 10% or more and electricity consumption reductions of 5% or more. The service also includes monthly report cards grading a customer's energy efficiency relative to the average Ontario household.

Just Energy Corporate Social Responsibility

15. Just Energy also supports the communities in which it operates. Apart from job creation and participation in the commercial transactions at the wholesale and retail levels of the energy sector, Just Energy and its employees engage in energy and environment related event sponsorships, charitable donations and community and corporate fundraising.
16. As part of its corporate social responsibility program, Just Energy donates green energy and carbon offsets to Earth Rangers. Earth Rangers is an Ontario based not for profit organization that works with children to save animal habitats. Each year Earth Rangers visits schools across Canada to educate children about the environment, endangered species and ways they can help make a difference. As the official offset provider of the tour, Just Energy has ensured that the transportation emissions of the tour have been completely offset by local emission reduction projects. Just Energy also works with Earth Rangers to ensure that the equivalent of the energy they consume that they are unable to produce on their own is generated by local renewable energy sources such as wind and hydro power.
17. With the establishment of the Just Energy Foundation in December 2013, Just Energy has so far partnered with the following charitable organizations in Ontario: Daily Bread Food Bank (Toronto), the ALS Association (Canada), the Scott Mission (Toronto), Family Life Resource Centre (Brampton), Big Brothers Big Sisters of Toronto, and Free the Children. The Foundation was established to help registered Canadian and U.S. charitable organizations secure the resources required to promote the health and well-being of communities in need. Funded entirely by Just Energy, the Foundation invests in local programs that work to enhance the quality of life in Just Energy's operating markets towards building stronger and supportive communities.

18. Just Energy has traditionally supported charitable organizations in Canada and the United States that make positive contributions to energy consumers. These organizations have included the Salvation Army's Share the Warmth Fund, Gift of Warmth, and Neighbor For Neighbor Heat Fund, through which Just Energy provides financial aid to low income residents in need of energy bill payment assistance. Just Energy has provided similar assistance through the Mustard Seed organization in Alberta, The Heat & Warmth Fund (THAW) in Michigan, EnergyShare in New York, and Sheltering Arms Senior Services in Texas. Through such support, Just Energy will continue to help local organizations through the Just Energy Foundation that work to ensure the community's most vulnerable residents do not have to forego basic human needs, such as warm shelter.
19. Just Energy has also contributed towards building a stable and positive future for children. In California, Just Energy also supported the Orangewood Children's Foundation in Orange County through the donation of servers that help maintain and improve databases to better manage client cases, and assist foster youth in locating housing and community resources. Through a partnership with Tim Horton Children's Foundation, Just Energy provided local, economically-disadvantaged youth with the opportunity to High Five the Toronto Raptors basketball team as players enter the game court moments before tip-off. This provided children in our community with a chance to get up close to some of their biggest sports heroes and role models. Just Energy donated 2,000 Toronto Marlies tickets to the Tim Horton Children's Foundation to enable approximately 500 economically disadvantaged youth and their families attend a Toronto Marlies game.
20. In summary, as an active and socially responsible member of the business communities in the retail markets in which it remains active, Just Energy contributes to the health, well-being, education and vulnerable energy consumer support services in those communities.

Commitment to Consumer Protection

21. The energy retail sector has a bad reputation among many. Energy is a complex business for the average consumer, and attitudes of incumbent institutions towards innovative, entrepreneurial and different approaches to provision of energy services is not always positive.
22. Given this context in particular, Just Energy takes consumer protection very seriously. It has invested in excess of \$1 million to date, and continues to invest time and resources, in a number of leading edge internal quality assurance, monitoring and compliance processes in order to support its customers' experience. Both the operations teams (through Just Energy's quality assurance initiatives) and the compliance teams (through Just Energy's detailed compliance processes) are trained and engaged in support of these processes. All of Just Energy's external sales offices are contractually bound to support and adhere to these processes.
23. These leading quality assurance and compliance processes include:
 - a. Daily reports from each Just Energy sales office outlining any complaints received the previous day involving sales people dispatched by the subject office.
 - b. Weekly reports of complaints by sales agent, providing metrics to evaluate the subject sales agent's conduct including numbers of contracts submitted and accepted, previous complaints and findings regarding those complaints.
 - c. Daily reports to Just Energy's compliance team listing terminated or suspended sales agents and cross-coding any continuing enrollments of customers whom the subject sales agent engaged so that the compliance team can track the customer experience for those sales and take mitigative action as appropriate.
 - d. Bi-weekly conference calls with each Just Energy sales office to review recent statistics and reports, address complaints, take applicable remedial actions, reiterate customer experience and compliance expectations, address coaching opportunities and provide guidance to address any

areas of customer experience or compliance weakness identified through the reports generated.

- e. On a weekly basis, letters are generated for each sales agent subject to a customer complaint to sign, acknowledging internal compliance findings, associated consequences, and expectations going forward.
 - f. In support of all of the foregoing activities, Just Energy applies a "point" system to transparently track the number of customer complaints received regarding any sales agent, and to ensure that continuing or recurring issues with a particular sales agent are readily identified, appropriate communicated and decisively addressed.
 - g. Compliance team members are required to complete, monthly, Quality Assurance forms, designed to ensure that these compliance specialists remain accurate and consistent in their approaches to investigation and resolution of complaints.
 - h. A monthly compliance team review of an escalated complaint chosen by management, including its investigation and resolution, to facilitate consistency in future complaint handling and resolution.
 - i. Daily compliance team complaint pending reports and time tracking to facilitate meeting complaint resolution deadlines and other metrics.
24. In support of all of the foregoing activities, and additional compliance initiatives and responsibilities, Just Energy's Ontario operations and compliance teams commit more than 80 person hours per week on quality assurance and monitoring activities.
25. Just Energy has also voluntarily adopted "best practices" gleaned from its experience across jurisdictions in support of a robust and positive consumer experience. For example:
- a. Just Energy utilizes a full two day, in class training program, which program incorporates, and extends, the OEB's training requirements, and uses "role playing" techniques to model expected sales agent behaviour.
 - b. Part of Just Energy's training protocols are "field shadowing" requirements for new sales agents by more experienced and trained supervisors.
 - c. Just Energy sales representatives are required to wear Just Energy branded clothing.

- d. Just Energy sales representatives must wear a lapel pin which states: "Hi, We are NOT the utility."
 - e. Just Energy has developed a "plain language" consumer contract, which has been reviewed and approved by Service Alberta, that province's ministry of consumer services, whose mandate is to "ensure a fair marketplace for both buyers and sellers... investigate consumer complaints, enforce consumer protection legislation, license and register regulated businesses and charitable organizations... provide an appropriate regulatory framework and inform consumers and businesses of their rights and responsibilities".
 - f. In Ontario Just Energy sales people are required to undergo a compliance recertification process after 60 days of sales inactivity.
26. Just Energy is also a participant in "EnergyShop.com", a web based clearing house through which 39 energy suppliers active in Ontario currently offer their competitive retail energy products to the public in a manner that facilitates price comparisons and transparency regarding competitive retail energy offerings.
27. In summary, through sizeable investments of money and person hours, and state of the art compliance systems and processes, Just Energy seeks to ensure a positive, transparent and compliant customer experience.

Initial Comments on Board's Questions

Is the ECPA providing an appropriate level of protection for Ontario's low volume energy consumers?

28. Yes.
29. Interested parties should remain cognizant of the extensive protocols prescribed by the ECPA, including the detailed regulation there under, the Board's own retailer codes of conduct, and the detailed notifications and call scripts promulgated by the Board pursuant to the codes.
30. These extensive protocols include; i) tightly proscribed disclosure obligations; ii) extensive customer "cooling off" and cancellation rights; iii) a full list of "unfair

practices” the occurrence of any of which allow customers to not only cancel their supply agreements if they so choose, but to a full refund of monies paid under the agreement; iv) the need in the case of in person sales for subsequent recorded verification of the customer’s desire to proceed with the contract; v) caps on cancellation charges; and v) tightly proscribed renewal notifications and protocols. In fact, Ontario’s is the most heavily proscribed retail energy market of which Just Energy, which operates in 20 jurisdictions, is aware. Just Energy suggests that parties critical of retailing activities in the province should familiarize themselves with these instruments before embarking on criticisms and recommendations for more extensive consumer protections.

31. Ontario’s low-volume energy consumer protection requirements are exhaustive, to the point of being overly cumbersome and potentially confusing. Just Energy provides some suggested areas of reform that would simplify low-volume energy retailing in Ontario, enhance consumer understanding and experience with competitive and innovative retail energy products, and mitigate, to some extent, the transactional inconveniences presented by the current regime.

What specific aspects of the ECPA are working well in terms of consumer protection?

32. The introduction of the ECPA mandated new customer verification call, and the “reaffirmation call” before it, have all but eliminated retail energy contract forgeries in Ontario. In Just Energy’s view, this was one of the most helpful consumer protection measures in the retail energy sector. Just Energy does have some suggestions, below, to render this mechanism more customer informative and friendly, and less cumbersome for retailers, which will enhance the value and implementability of the procedure.
33. Just Energy notes that verification calls are not required for internet sales or other inbound marketing channels. Just Energy endorses these exceptions to the requirement as appropriate. The policy behind these exceptions is that in

instances where the consumer approaches the retailer, or responds to an earlier retailer promotion or contact, in an unpressured way, they clearly do so purposefully and with ample time to fully consider the products offered and their advantages and disadvantages. Just Energy believes that is sound policy, and strikes a balance between consumer protection and paternalism to the point of an unfriendly customer experience.

34. Just Energy also believes that the OEB's price comparison forms play an important and appropriate role in regularizing and ensuring appropriate retail energy customer disclosure. Subject to the modified practices suggested below, Just Energy endorses continuation of this approach.
35. Just Energy also endorses badging and business card presentation requirements for direct (door to door) sales agents. As noted above, Just Energy builds on, and adds to, these minimum requirements by mandating branded clothing and conspicuous (through the required button) disclaimer of relationship with a regulated utility.
36. In addition to the prescribed cancellation periods, Just Energy offers its new customers the first 30 days following receipt of their first Just Energy bill to cancel without reason or penalty.

What specific aspects of the ECPA are not working well in terms of consumer protection?

37. Just Energy offers a number of suggestions for modification of the Board's application of the *ECPA* to improve consumer information and the customer experience. None of these proposals require legislative change, or change to the *ECPA* regulation.
 - a. ***Price Comparison Forms.*** At present, discrete price comparison forms are required for residential and low-volume commercial customers. These forms are very proscribed, and changes by retailers are not permitted.

While it endorses the concept behind these forms, Just Energy has found a number of issues with the use of these prescribed forms.

The representative average volumes proscribed for the residential price comparison calculations are not representative of consumption for larger homes. In many instances, consumption in larger homes is more like consumption by small businesses.

The distinct forms for residential and low-volume commercial customers has created unnecessary confusion in particular when offering products to small business owners who are also interested in a retail energy supply arrangements for their home.

For retailers like Just Energy who sell gas and electricity products, as well as "dual fuel" offerings, the existence of multiple price comparison forms for the various gas distribution territories (Enbridge, Union North and Union South) necessitates that the sales agent carry, and present, a lot of paper during a sales discussion. The plethora of price comparison forms increases the risk of inadvertent non-compliance, in both presentation and preparation of forms.

Just Energy suggests that the foregoing issues could be mitigated by the consolidation of residential and low-volume commercial into one set of forms. In addition to decreasing the number of forms (and thus decreasing the risk of inadvertent non-compliance), the various volumes that would thus appear on each form would provide multiple price comparison points for would-be customers, enhancing the customer's ability to obtain a price comparison point that is meaningful for them, as well as to better understand the immediate cost impacts of the retail offering at different consumption levels (i.e. how much energy costs would vary, under both the retail and the default supply scenarios, at different consumption levels).

b. ***Verification of multiple utility accounts registered to one customer in one consolidated verification call.***

The Board currently requires that the same, highly proscribed, verification script be run through multiple times for low-volume customers signing multiple contracts as a result of having multiple locations. This is a tedious, time consuming process that customers neither understand nor appreciate.

Just Energy suggests that the Board modify its requirements to allow verification for multiple, expressly listed accounts, through one recitation of the prescribed verification script.

- c. ***Review of verification call scripts for less repetition and redundancy and enhanced flow and understandability.***

While endorsing verification calls as a robust consumer protection initiative for direct (including door to door) retail energy sales, Just Energy customer service representatives do struggle with the degree to which the Board's compliance staff demand strict adherence to heavily proscribed call scripts. Just Energy has found the scripts to present repetition and redundancy in several respects, and to preclude a natural and informative interaction between the retailer representative and the customer.

Just Energy understands the imperative for the verification call to be clear, and free of promotional statements. However, ***Just Energy suggests that the Board consider a review of the prescribed scripts, with input from retailers, to; i) reduce repetition and redundancy; and ii) to allow customer service representatives to depart from the scripts in order to respond to customer questions and thereby normalize the flow and informative aspects of the verification call.*** Just Energy would be pleased to work with Board Staff in support of such a review exercise.

- d. ***Attention by Board Staff to the conduct and compliance of LDC staff in engaging with customers regarding competitive retail offerings in the province.***

Just Energy has received numerous indications (in some cases actual complaints) from its customers that the staff at a number of Ontario LDCs are providing negative, misinformation regarding competitive energy retailers and the benefits and costs of their products.

Just Energy suggests that OEB compliance staff pay some attention to the conduct of LDCs in their roles as providers of unbiased and accurate information regarding retail energy issues, including the role of competitive retailers and their products. ***OEB compliance staff should audit utility calls for neutrality and compliance in respect of information provided on competitive retail offerings.***

What changes do you think should be made to the ECPA at this time?

38. In addition to the foregoing "practice" modifications that the Board could implement of its own accord, Just Energy suggests consideration of two legislative modifications of the competitive energy retailing regulatory framework in Ontario.

a. ***Decreasing minimum verification ability from 10 to 2 days.***

Just Energy has, subject to concerns about overly proscriptive scripting, endorsed the verification call mechanism as an important element in Ontario's energy consumer protection regime. The timing for such verification calls, however, has proven problematic.

Retailers are required to verify new contracts, but cannot initiate the verification call prior to 10 days after the date that the contract is signed. This mandated waiting period often has a negative impact on the customer experience. In an age of immediate purchase verification and one to two day product and service delivery, customers can't understand why Just Energy calls them 10 or more days after they have purchased a supply service to review questions the answers to which Just Energy has, or should have, by then.

Just Energy sees no reason why verification calls should not be permitted following a more reasonable "cooling off" period during which the customer can consider their decision if they are so inclined. ***Just Energy recommends changing the minimum amount of time prior to which retailers cannot verify new sales from 10 days to 2 days.*** Such change would not affect any of the other mandated "cooling off" periods.

b. ***Separate representation of the Global Adjustment charge on the low-volume electricity bill.***

The collapsing of global adjustment within the regulated price for default supply electricity customers in Ontario, and the requirement that the global adjustment charge be separately listed on the electricity bills to all other customers, continues to cause no end to customer confusion and to compromise comparability between low-volume default electricity supply and competitive retail options. Transparency, which should be a hallmark of consumer protection, is compromised by this artifice. Just Energy often receives calls from new customers who; i) see a new, significant and variable charge pop up on their bill immediately after signing for a fixed price retailer electricity supply contract; ii) report receiving "advice" from their local distribution utility that the global adjustment is unique to energy retailer customers; and/or iii) assume that the global adjustment is actually a switching penalty.

Just Energy recommends that the global adjustment be required to be separately represented and standardized on all low-volume customer bills, regardless of their supply choice.

c. ***Requirement to refund all monies paid under a cancelled contract.***

Several provisions of the *ECPA* and the regulation thereunder require that retailers refund to customers the full amounts paid by the customer under the contract in the event of contract cancellation. The circumstances in which this requirement applies includes cancellation of contracts based on relatively technical breaches of the legislation (failure to deliver copies of materials within the prescribed time, or in precisely the prescribed form, for example).

Just Energy acknowledges the importance of compliance, including technical compliance. Just Energy further acknowledges that breaches, even technical breaches, give rise to customer cancellation entitlements. Just Energy also acknowledges that in the event of such non-compliance driven cancellation customers are entitled to refunds of amounts paid under the contracts, even after the passage of a number of years, and even if the real reason for customer cancellation is not technical breach, but buyer's remorse (and this even in the face of retailer upstream commitments and associated costs to ensure energy supply to the customer). However, Just Energy sees no justification, in practice or policy, for refunds to customers beyond the difference, if any, between what a customer paid under their retail energy contract and what they would have paid under default supply pricing absent such contract. Indeed, the result of the application of such refund requirements is that customers use energy for free, not infrequently for a number of years.

Just Energy suggests that the ECPA refund provisions be reviewed and modified to limit refunds in circumstances of legitimate contract cancellation entitlements to the difference between payments under the subject contract and the default supply price applicable for the relevant periods.

Conclusion

39. Just Energy appreciates the opportunity to provide these submissions, and anticipates providing further input at the scheduled Stakeholder Forum and following review and consideration of the reports commissioned by the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
Gowling Lafleur Henderson LLP, per:

Ian A. Mondrow

for: Ian A. Mondrow
Counsel to Just Energy

November 21, 2014

TOR_LAW 857173413

This is Exhibit "B" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 1st day of August, 2015.



Commissioner for Taking Affidavits

INDEPENDENT CONTRACTOR AGREEMENT

This is an agreement (the "Agreement") between Just Energy Corp. ("JEC") and you, an independent contractor (the "Contractor").

WHEREAS, JEC has been retained by Just Energy Ontario L.P. ("JEOLP") to assist JEOLP in obtaining natural gas, electricity and green energy contracts ("Contracts") from consumers located in Ontario. JEC has developed a door to door solicitation program designed to obtain Contracts for the benefit of JEOLP. The purpose of this Agreement is to confirm the terms and conditions under which the Contractor, acting as an independent contractor, will provide door to door solicitation services to JEC, to assist JEC in obtaining Contracts for the benefit of JEOLP.

FOR VALUE RECEIVED, the parties agree as follows:

1. **Marketing Activity:** The Contractor agrees to market Contracts for the benefit of JEOLP as an independent contractor of JEC. The Contractor understands and agrees that the terms and conditions of the Contracts may not be amended by the Contractor, and the Contractor shall have no authority to enter into any agreements of any kind on behalf of JEC, JEOLP, or any of their affiliates (collectively, "JUST ENERGY"), except as specifically provided in this Agreement. In no event shall the Contractor represent that he or she is an employee of, or connected with, JEC or JEOLP in any way, other than as provided herein. The Contractor shall not operate under or otherwise use the trademarks or tradenames or logos of JUST ENERGY, except as expressly permitted in writing by JEC. The Contractor is responsible for ensuring that only the most recent form of Contract is used for marketing activity, and JEC may designate times when new Contract forms may be obtained from JEC and Contracts are to be returned to JEC. The Contractor acknowledges that they may not accept a "notice of termination", "notice of cancellation", or any other such document that intends or purports to terminate a customer agreement between Just Energy and a customer. The Contractor shall direct customers to abide by the notice or cancellation provisions in the customer's contract.

2. **Applicable Law and Code of Behaviour:** The Contractor shall comply with all applicable present and future federal, state and local laws, legislation, regulations, codes, common law, bulletins, rules, guides, ordinances, judgments, policies license requirements, official directives, or the like ("Applicable Law"). The Contractor shall not make any representation to any potential or actual customer of JUST ENERGY unless said representation is either contained in the written material published by JUST ENERGY from time to time for use by the Contractor or is absolutely true and not in any way misleading to the potential or actual customer. The Contractor understands that JEOLP has no affiliation to any government agencies or local utilities, and that the Contractor is only acting on behalf of JEC in the solicitation of Contracts for JEOLP. At all times when rendering services in furtherance of this Agreement, the Contractor shall display the Contractor's photo identification tag. The Contractor acknowledges having received a copy of, and having read, the JUST ENERGY manual and code of conduct and agrees to abide by the provisions of same related to appropriate treatment of potential customers. If the Contractor breaches any of the foregoing obligations, JEC may terminate this Agreement immediately, the Contractor shall return all JUST ENERGY material, and the Contractor may be pursued at law for all damages caused by its conduct. The Contractor shall return all sums received and earned during the course of engaging in actions prohibited by Applicable Law or contrary to JUST ENERGY's code of conduct to JUST ENERGY immediately upon request. The Contractor acknowledges having received a copy of, and having read the Ontario Energy Board "Codes of Conduct" for natural gas marketers and electricity retailers (the "Codes"). The Contractor agrees to abide by the terms and conditions of Codes and to abide by the terms and conditions or any codes of behaviour prepared and delivered to the Contractor by JEC, and to follow all instructions or directions provided by JEC from time to time.

3. **Confidentiality:** Except for disclosure to JUST ENERGY, the Contractor agrees to keep confidential (both during the term of this Agreement and afterwards) all information provided by potential and actual customers of JEOLP and all information provided to the Contractor by JUST ENERGY. The Contractor consents to the Contractor's commission information being disclosed to other Contractors or has notified or will notify JUST ENERGY in writing to the contrary, after which point such information will be maintained in confidence, other than such disclosure as is necessary to ensure proper commission payments in accordance with the commission structure. The Contractor consents to JUST ENERGY keeping personal information with respect to the Contractor, including, without limitation, information related to compensation and customer allegations and comments. The Contractor understands that calls to JUST ENERGY's customer service department are recorded and consents to the recording of the contractor's calls.

4. **Compensation:** A Medium Volume Customer Contract or a Large Volume Customer Contract shall be deemed "Effective" when it is (i) properly completed and signed by the customer, (ii) approved and affirmed by JEC or JEOLP; and (iii) approved by the applicable local utility. A Small Volume Customer Contract shall be deemed "Effective" when it is properly completed and signed by the customer, and the customer has been provided a welcome call card and a registered pre-paid card. For each Effective Contract that is not cancelled by the customer, the Contractor will be compensated according to the commission schedule in place at the time of submission of the Contract, which schedule may be amended from time to time by JEC in its sole discretion. JEC will notify the Contractor of any change in such schedule by posting the amended schedule at the JUST ENERGY office at which the Contractor retrieves his or her commission and making copies available for the Contractor upon request. The amended schedule is effective for all Contracts submitted after the schedule has been posted. The Contractor acknowledges having received a copy of the current commission schedule and understands that the Contractor may obtain copies of any current commission schedule upon request. The Contractor understands and agrees that JEC may advance potential commission prior to approval of Contracts by JEOLP and the applicable local utility or prior to becoming aware of any ineffectiveness or cancellation of the Contract.

JEC will offset against future commissions or collect through other means: (a) an amount equal to the commission advanced for a Contract that is subsequently determined not to be an Effective Contract; and (b) an amount equal to the commission advanced for any Effective Contract that is subsequently cancelled. Such rights of setoff and recovery are in addition to the right of JEC to seek damages from the Contractor for any claimed wrongful act or omission.

The Contractor agrees and acknowledges that all payments made and due by Just Energy hereunder will expire after 6 months from the date of the payment if the Contractor does not redeem the residual payment (i.e., if the Contractor does not cash his/her cheque), and if Just Energy is not otherwise able to contact the Contractor, within 6 months of the date of the issued payment.

5. **Independent Status:** The Contractor is, and will always be considered, an independent contractor under this Agreement. The Contractor understands and agrees that the Contractor shall be responsible for and neither JEC nor JEOLP will reimburse the Contractor for any transportation, accommodation, food or any other expenses incurred by the Contractor in the performance of the Contractor's services hereunder. The Contractor has control, independent of JUST ENERGY, over the time the Contractor chooses to solicit Contracts, the areas in which the Contractor chooses to solicit Contracts, and the manner in which Contracts are to be solicited, so long as such manner is in accordance with Applicable Law, the Codes and JEC's reasonable policies regarding treatment of potential customers (as described in any JUST ENERGY manual, code of conduct or other document provided to the Contractor by JUST ENERGY). JUST ENERGY does not employ Contractors and there is no employer/employee relationship between JUST ENERGY and the Contractor.

The Contractor is not, and shall make no claim that the Contractor is, an employee of JEC. The Contractor shall be responsible (as applicable) for the payment of, and JEC shall not deduct, withhold or pay, income tax, employment insurance premiums, government pension plan premiums, employer health tax premiums or any other similar amounts with respect to the Contract. The Contractor is also responsible for the payment of workers compensation premiums or contributions and is not entitled to workers compensation. The Contractor is solely responsible for making all of these payments, if required.

THIS INDEPENDENT CONTRACTOR RELATIONSHIP DOES NOT QUALIFY THE CONTRACTOR FOR MINIMUM WAGE, WORKERS COMPENSATION OR OTHER EMPLOYMENT BENEFITS. CONTRACTORS WHO MUST COLLECT G.S.T. MUST HAVE THEIR OWN G.S.T. NUMBER.

6. The Contractor shall not (i) do anything that might harm the reputation or goodwill of JEC; (ii) disparage JEC or its products, employees, consumers or customers; or (iii) present false or misleading information about JEC to consumers or to the general public; in any form or media, including, but not limited to, in telephone calls, newspaper, radio, television, or the Internet.

7. **Not Exclusive:** The Contractor and JEC agree that the Contractor's services are not, and are not intended to be, exclusive to JEC. Notwithstanding the foregoing, the Contractor agrees not to provide services to other business entities that compete directly with the business carried on by JUST ENERGY during the term of this Agreement and for a period of three (3) weeks following the termination of this Agreement. The Contractor

agrees not to solicit any employee, contractor or customer of JUST ENERGY for a period of two (2) years after the termination of this Agreement.

8. Term and Termination: This Agreement is for an initial term of one year, with automatic one year renewals thereafter. This Agreement will continue in force until terminated by either party, at either party's sole and unfettered discretion, without any damages being owed to the other party except as set out herein, whether before or after one year. Termination is effective immediately upon written notice by either party to the other, and neither party is required to have or provide any reason to terminate this Agreement. Additionally, this Agreement will be considered terminated without notice, and the Contractor's status will be converted to "inactive", if the Contractor does not submit any Contracts for three consecutive weeks.

On termination the Contractor must immediately return to JEC all materials and property relating in any way to JUST ENERGY, including, without limitation, all Contracts, contract forms, training materials, customer information, and the photo identification tag. Upon termination for any reason, the Contractor shall only be entitled to receive commissions on Effective Contracts in accordance with the then applicable commission schedule, and shall not be entitled to receive: (i) monetary commissions in the nature of "residual" payments, (ii) non-monetary prizes, such as trips, that have not yet taken place, and (iii) other incentive rewards such as bonuses that have not yet been given out. Additionally, upon termination, non-monetary prizes such as trips that have not yet taken place, or other incentive rewards that have not yet been given out, will be forfeited by the Contractor. Notwithstanding anything contained herein, where termination is as a result of breach of this Agreement by the Contractor, including, without limitation, breach of Applicable Law, the Codes, or any JUST ENERGY Information manual or code of conduct, or where upon termination, the Contractor fails to abide by its continuing obligations hereunder, all of the Contractor's unpaid commissions shall be set off against the cost of JEC's investigation into such breach, the damages for such breach, and rectification of breach, and JUST ENERGY shall have the right to sue for damages caused, directly or indirectly, by said breach.

9. Forgery, Fraud and Misrepresentation: The Contractor understands that falsification of information (including a customer signature), and obtaining information through misrepresentation, deceit or falsehood may constitute forgery and/or fraud. Forgery and fraud are criminal offences. The penalties for forgery and fraud include imprisonment. The Contractor agrees not to commit forgery or fraud while representing JUST ENERGY and understands and agrees that committing forgery, fraud or any other criminal offence while representing JUST ENERGY are actions that will result in termination of this Agreement. In addition, any wrongful behaviour by the Contractor, whether or not criminally punishable, will result in immediate termination of this Agreement. The Contractor acknowledges that they have received a copy of the "Compliance Bulletin: Independent Contractor Conduct" and that they have reviewed and understand the contents regarding any act that falsifies or includes erroneous information on contracts or during fixed price/price protection reservation code ("FPRC/PPRC") calls.

10. Integrity of Sales: JUST ENERGY is serious about upholding the highest standards of integrity and professionalism with respect to its representations to the public and its public image. If the Contractor deliberately misleads potential or actual customers or in any way impairs or damages the good image and reputation of JUST ENERGY, the Contractor may be subject to any remedies prescribed or permitted by law. JUST ENERGY has a compliance department to ensure integrity of sales and the Contractor may be held responsible for costs associated with compliance investigations (up to \$50 per investigation). JEC may also require that the Contractor re-train or suspend or terminate marketing activity in response to customer concerns.

11. Subcontracting. The Contractor shall not, without the express written consent of JEC, subcontract with or assign or transfer any of its rights or obligations under this Contract to any person or entity (each a "subcontractor"), unless the subcontractor (i) has undergone the product and consumer protection orientation program provided by JEC and/or its affiliates; (ii) has consented to a background check by JEC, its affiliates and/or backgroundchecks.com and been approved by JEC and/or its affiliates; (iii) agrees to display a photo identification tag provided by JEOLP at all times when rendering services in furtherance of this Agreement; and (iv) acknowledges having received a copy of, and having read, the JUST ENERGY information manual and code of conduct. If the Contractor breaches this obligation, JEC may terminate this Agreement immediately, Contractor shall return all JUST ENERGY material, and Contractor may be pursued at law for all damages caused by its conduct.

12. Release and Indemnity: The Contractor agrees to assume the full and complete risk of any injuries, damage or loss of any kind whatsoever, regardless of type or severity (collectively, "Loss") which the Contractor

may sustain arising out of, or in connection with, or in any way associated with, the Contractor soliciting Contracts. The Contractor hereby fully releases and discharges JEC, JEOLP and its affiliates and their respective officers, directors, agents, servants and employees from any and all claims for any Loss sustained by the Contractor or related in any way to the Contractor soliciting Contracts. The Contractor further agrees to indemnify and hold JEC, JEOLP and its affiliates and its respective officers, directors, agents, servants and employees harmless from any claims, lawsuits, allegations, or liability, including costs of court and attorneys' fees, arising out of the Contractor's failure to comply with any Applicable Law or arising out of the Contractor's activities hereunder.

13. Criminal Background Check. The Contractor understands and agrees that JEC conducts criminal background checks as part of its screening process and the Contractor agrees to complete the Consent for Disclosure of Personal Information form attached to this Agreement in accordance with the instructions thereon. The Contractor agrees to immediately notify JEC if the Contractor is convicted of any crime following the date hereof.

14. OEA Standardized Training Module. The Contractor agrees to complete the Ontario Energy Association ("OEA") standardized training module on an annual basis, or as otherwise may be required by JEC. The Contractor agrees not to disclose the contents of any test administered by the OEA to any other person, whether or not such person would be taking the test, and is responsible for payment of any fees in taking the test or training module. It is the Contractor's responsibility to ensure the training module is completed on an annual basis.

15. OEA Registry. The Contractor understands that JEC is required by the OEA to register all Contractors in a centralized registry administered by the OEA, and agrees to provide JEC with the necessary information to effect such registration. Failure by the Contractor to comply with the foregoing may result in immediate termination of this Agreement and any benefits attached thereto.

16. Miscellaneous: If any provision of this Agreement, or part thereof, is deemed unenforceable or invalid, the parties agree that said provision, or part thereof, is severable only to the extent of its unenforceability or invalidity. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. Any dispute arising out of or relating to this Agreement shall be resolved in a court of competent jurisdiction in the Province of Ontario, and the parties expressly agree that such court shall have personal jurisdiction over the parties. This Agreement contains the entire understanding of the parties and merges into it all prior oral and written communications between the parties with respect to the subject matter hereof. This Agreement can be amended at any time by JUST ENERGY by providing notice to the Contractor by means of posting said amended Agreement at the JUST ENERGY office at which the Contractor retrieves the Contractor's commission and by making copies of such amended Agreement available to the Contractor upon request. No amendment to this Agreement by the Contractor shall be binding on JEC unless agreed to in writing by JEC.

BE SURE THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT BEFORE SIGNING.

CONTRACTOR NAME (Printed)	CONTRACTOR SIGNATURE	DATE
Dolbrie Trotter	<i>Dolbrie Trotter</i>	5/29/12
WITNESS NAME (Printed)	WITNESS SIGNATURE	DATE

JEC AUTHORIZED SIGNATURE	DATE

ONTARIO ENERGY ASSOCIATION ("OEA")

PRIVACY NOTICE & CONSENT

The Ontario Energy Association ("OEA") requires its retail energy members (i.e. Just Energy Ontario L.P.) involved in door-to-door consumer solicitations/sales to confirm that each of their respective sales agents has completed the OEA standardized training module on an annual basis. The OEA members must also register their sales agents in a specific registry established for this purpose (the "OEA Registry").

OEA members will require you to confirm your identity for the purpose of the registration. You must present two pieces of identification, one of which must be a government-issued photo identification (e.g. a driver's licence.) Please note that identification numbers submitted (ex. driver's licence numbers) will not be inputted or otherwise stored in the OEA Registry.

OEA members will input your name, date of completion of the training, and information that may be used to identify you (e.g. office location, or contract number.) Your date of birth will also be used for the purpose of registering and accurately identifying sales agents with the same last name. To protect your privacy, your date of birth will not be retained, but will instead be electronically converted into a substitute code.

The OEA has implemented reasonable administrative, physical, and technical safeguards in an effort to protect your information from loss, theft, or unauthorized access, use, and disclosure. Your information is password-protected, and only accessible by the OEA member that has engaged you as a sales agent and any authorized OEA Registry personnel involved in the administration.

If you would like to review your record in the registry, or have any questions, please contact your Regional Distributor.

By signing below, I consent to the manner in which my personal information will be collected, used, disclosed and otherwise managed in the manner set-out above.

CONTRACTOR NAME CONTRACTOR SIGNATURE DATE

Debra Trotter [Signature] 5-21-12
WITNESS NAME WITNESS SIGNATURE DATE

CONTRACTOR NUMBER



V. Just Energy Ontario.2010.12.08

INDEPENDENT CONTRACTOR COMMISSION SCHEDULE FOR EFFECTIVE CONTRACTS

Commissions

Commission shall be payable to the Contractor in the amounts indicated in the following chart (subject to the notes below):

Commodity	Initial ⁽¹⁾	Reconciliation ⁽⁴⁾	E-CLIPSE Residual ⁽⁵⁾
Residential (SVC) Fees less than 10,000 kWh or 6,000 m³, as applicable for electricity and gas			
Just Clean Essential	\$30	\$10	\$5
Just Clean Choice	\$50	\$15	\$5
Electricity (M-Base)	\$35	\$27	\$5
Gas (M-Base) (for Energy Control)	\$35	\$27	\$5

- (1) The Initial commission payment, in the amount indicated in the chart above, is earned per Effective Contract (as defined in the Independent Contractor Agreement) submitted by the Contractor and is paid or advanced on a regular commission date that is at least 2 weeks following the submission of the Effective Contract by the Contractor (regular commission dates occur once per week).
- (2) A Contract shall be deemed "Effective" when it (i) is properly completed, signed by the customer, approved by the applicable Affiliate and local utility, and (ii) becomes effective in accordance with Applicable Law. A contract that has been terminated shall be deemed not to be an Effective Contract.
- (3) JEMC will offset against future commissions or collect through other means: (a) an amount equal to the commission advanced for a Contract that is subsequently determined not to be an Effective Contract; and (b) an amount equal to the commission advanced for any Effective Contract that is subsequently cancelled. Such rights of offset and recovery are in addition to the right of JEMC to seek damages from the Contractor for any claimed wrongful act or omission.
- (4) Reconciliation commission payment is earned after the flow of gas and electricity have commenced for at least 60 days with respect to a submitted Effective Contract and is advanced or paid in the amount indicated in the chart above on a Reconciliation commission date that is at least 60 days after the flow of gas and electricity has commenced with respect to the Effective Contract submitted, provided that gas continues to flow pursuant to said Effective Contract on the Reconciliation commission date (Reconciliation commission dates occur once per month). Deductions in respect of amounts paid or prepaid prior to the Reconciliation commission date for Contracts that are subsequently cancelled or are determined not to be Effective Contracts will be made on the Reconciliation commission date (which can result in negative payments and amounts owing by the Contractor to Just Energy). Just Clean reconciliation would take place 90 days from flow date.
- (5) Provided the Contractor is an Active Contractor (defined below), E-CLIPSE Residual commission payment is made for each Effective Contract that is still flowing one year after commencement of flow of energy (the "Anniversary Date") under the Effective Contract and is paid by the end of the month following the month of the Anniversary Date. E-CLIPSE Residual Commission payment may occur annually for the life of the Effective Contract. An "Active Contractor" is a Contractor that (i) has submitted Effective Contracts equal to at least 65 residential customer equivalents during the 3 month period prior to the E-CLIPSE Residual payment date; (ii) has submitted Effective Contracts within the 30 day period prior to the E-CLIPSE Residual payment date; and (iii) has not provided services to any competitor of Just Energy or its Affiliates during the eligibility period. Contractors that become inactive prior to the payment of any Residual payments will not be entitled to any Residual payment not yet paid.

just 

V. Just Energy Ontario 2010.12.08

- (6) Payment is advanced or paid in the amount indicated above per m³ of total annual gas consumption in m³ (based on historical usage as supplied by the utility) for each Effective Contract.
- (7) Payment is advanced or paid in the amount indicated above per Just Greengas unit sold multiplied by the total annual gas consumption in m³ (based on historical usage as supplied by the utility) for each Effective Contract.
- (8) Notwithstanding the foregoing, Just Energy and its Affiliates reserve the right to, at any time (including, without limitation, following the Reconciliation commission payment date) make deductions and/or offset against future commissions any amounts that have been paid or prepaid by Just Energy or its Affiliate with respect to a Contract that is subsequently cancelled or determined not to be an Effective Contract.
- (9) Where there has been discounted pricing, or reduced Term, under an Effective Contract, Just Energy or its Affiliate may, at its sole discretion, discount the commission payable.

Bonuses

In addition to any commissions paid to the Contractor, the Contractor may be advanced or paid the following Bonus amounts (subject to the notes below):

Residential Bonus

<u>Number of Approved Contracts per Week</u> ⁽¹⁾	<u>Bonus Payable</u> ⁽²⁾
10 - 14	\$150
15 - 19	\$300
20 - 29	\$500
30 - 39	\$750
40 or more	\$1,000

- (1) A "week" begins on a Monday and ends on the following Sunday. "Approved" contracts are defined as a contract that has a welcome call code and an approved status from the utility. An Independent Contractors start date is determined by the date in which the Independent Contractor Agreement has been submitted.
- (2) The Residential Bonus amount payable corresponds to the total number of approved contracts submitted by the Contractor for Effective Contracts submitted during a week (i.e. if a Contractor has 55 approved contracts in a week with respect to Effective Contracts submitted, the total Bonus payable for that week will be \$1,000). Bonus amounts will be paid once on the next initial commission date that is at least 2 weeks following submission of the Contracts by the Contractor and only in connection with Contracts that are Effective Contracts. Deductions in respect of Bonus amounts paid for Contracts that are subsequently cancelled or are determined not to be Effective Contracts prior to the Reconciliation commission date will be made on the next Reconciliation commission date (which can result in negative payments and amounts owing by the Contractor to Just Energy). Bonuses are offered at the discretion of Just Energy or its Affiliate and calculations may be revised from time to time. Just Energy and its Affiliates reserve the right to, at any time (including, without limitation, following the Reconciliation commission payment date), make deductions and/or offset against future commissions any Bonus amounts that have been paid or advanced by Just Energy or its Affiliate with respect to a Contract that is subsequently cancelled or determined not to be an Effective Contract.

JUST ENERGY CORP. Independent Contractor File Information

Contractor Information (PLEASE PRINT CLEARLY)

INDIVIDUAL NAME: _____
Given Middle Surname (Last)

NAME(S) COMMONLY USED (if applicable): _____

SOCIAL INSURANCE NUMBER (required): _____

BUSINESS NAME (if applicable): _____

(The above information will not be applied unless accompanied by business registration documents.)

CURRENT ADDRESS: _____
No. Street Apt #

City Province Postal Code

TELEPHONE NUMBER: (_____) _____ CELL NUMBER: (_____) _____

START DATE: _____ IDENTIFICATION PROVIDED (No.): SIN # CHIP

BUSINESS No. (if applicable): _____ GST No. (if applicable): _____

Additional Information

Have you previously entered into an Independent Contractor Agreement with Just Energy Corp., Just Energy Ontario LP., or any of its affiliates?

Yes, my contractor number was _____ No.

Are you currently employed or do you currently contract for any other companies? Yes No.

If you are currently employed or contract for any other companies, what is the name of the company or companies?

Can we contact any of the above companies? Yes No.

FOR SALES OFFICE USE ONLY

CONTRACTOR NUMBER: _____

Debbie Trotter have examined the identification of KIC K. K. K.
Print Name of JEC Representative Print Name of Contractor

and I am satisfied that the contractor and person depicted in the photo identification are one and the same. I have also reviewed all of the information submitted by the contractor and certify that it is complete and accurate.

Debbie Trotter _____ 5-29-12
Signature of JEC Representative Date

FOR HEAD OFFICE USE ONLY

Background check: Completed by: _____
(print name) (initialed)

ONTARIO ENERGY ASSOCIATION ("OEA")

PRIVACY NOTICE & CONSENT

The Ontario Energy Association ("OEA") requires its retail energy members (i.e. Just Energy Ontario L.P.) involved in door-to-door consumer solicitations/sales to confirm that each of their respective sales agents has completed the OEA standardized training module on an annual basis. The OEA members must also register their sales agents in a specific registry established for this purpose (the "OEA Registry").

OEA members will require you to confirm your identity for the purpose of the registration. You must present two pieces of identification, one of which must be a government-issued photo identification (e.g. a driver's licence.) Please note that identification numbers submitted (ex. driver's licence numbers) will not be inputted or otherwise stored in the OEA Registry.

OEA members will input your name, date of completion of the training, and information that may be used to identify you (e.g. office location, or contract number.) Your date of birth will also be used for the purpose of registering and accurately identifying sales agents with the same last name. To protect your privacy, your date of birth will not be retained, but will instead be electronically converted into a substitute code.

The OEA has implemented reasonable administrative, physical, and technical safeguards in an effort to protect your information from loss, theft, or unauthorized access, use, and disclosure. Your information is password-protected, and only accessible by the OEA member that has engaged you as a sales agent and any authorized OEA Registry personnel involved in the administration.

If you would like to review your record in the registry, or have any questions, please contact your Regional Distributor.

By signing below, I consent to the manner in which my personal information will be collected, used, disclosed and otherwise managed in the manner set-out above.

[Signature] CONTRACTOR NAME [Signature] CONTRACTOR SIGNATURE 5/21/12 DATE

Debbie Toffler WITNESS NAME [Signature] WITNESS SIGNATURE 5-21-12 DATE

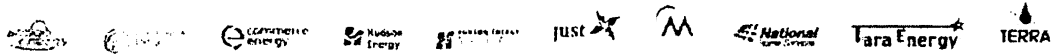
CONTRACTOR NUMBER

This is Exhibit "C" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 7th day of August, 2015.

Commissioner for Taking Affidavits



The customer interaction



JUST ENERGY – Ontario Conservation Program Sales Script	
Action taking place	Script
The Introduction	
<ul style="list-style-type: none"> <input type="checkbox"/> Knock on door and step back from the door. <input type="checkbox"/> Keep eyes down so as not to pressure potential customer. Do not look straight at the customer <input type="checkbox"/> Agreement is held out in plain view, use open body language. <input type="checkbox"/> Look confident upon first meeting with the customer. Your demeanour is casual, professional not intimidating <input type="checkbox"/> Acknowledge the customer with a friendly wave and do not make eye contact <input type="checkbox"/> Point to Just Energy badge and <u>Immediately Hand the customer the business card and Provide them with the Purpose for Your visit.</u> <input type="checkbox"/> Once you begin to speak, make consistent eye contact and be pleasant with the customer <input type="checkbox"/> Stand a bit sideways to the customer. This opens the space and is non-threatening body language. <p>Breaks eye contact after asking for the bill and step back a little bit.</p>	<p>Customer: Hello</p> <p>Contractor: Hi, how are you doing? My name is xxxxx and I'm a representative of Just Energy. We are an independent energy retailer licensed by the Ontario Energy Board and not affiliated with your local utility, the Government or the Ontario Energy Board.</p> <p><i>I am here in the neighbourhood today to see if you are eligible for Just Energy's Ontario Conversation Program. This program offers you a complete solution to your natural gas or electricity needs while allowing you to take control of when your home uses energy. It'll allow you to better manage your energy needs and budget like you've never had before.</i></p> <p><i>To see whether or not you qualify and are eligible for the program, I'll need a recent copy of both of your utility bills. I'll just wait here while you get those bills, thank you.</i></p> <p>Customer: Sure.</p>



Explaining the Program

- Motion your hand for the bill (without making eye contact) while customer hands it over
- Take the bill to involve customer in the process and keep the bill in plain view by placing it at the top of the binder.
- During the explanation, continue to stand a little sideways and keep the Agreement in plain view.
- While explaining program, try to maintain eye contact 70% of the time.
- Turn slightly, holding iPad to the customer. Break eye contact, "pen to paper" and ask for last name.
- After you asked for the last name, commence writing and answering questions.
- Point to the customer's bill where the name and price will appear once on the program.
- Show the rate and term to emphasize those to the customer.
- While holding iPad and facing customer, explain the Ontario Conservation program.
- Ensure the person you speak with is the Account Holder or authorized to sign the agreement.
- After customer says yes, fill in the agreement. This is the time to build rapport.

Contractor: Thank you for obtaining your utility bills. I can see that you are not enrolled in an agreement with a retailer.

Our Ontario Conservation Program combines protection and stability with smart energy consumption. Our program provides you with ONE rate for both your natural gas and electricity supply.

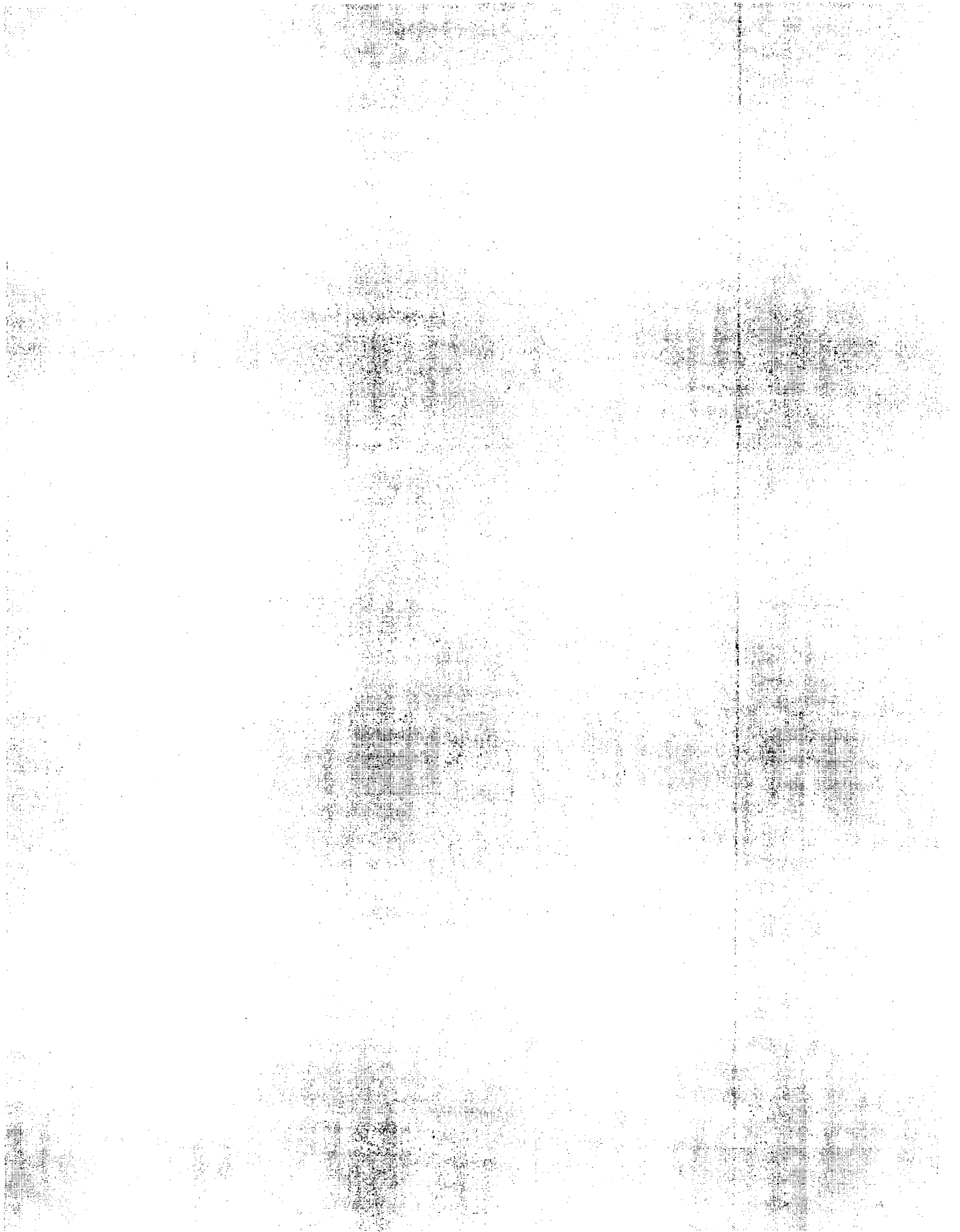
The benefit of having ONE rate that is secured through the lifetime of your agreement is that you'll never have to worry about fluctuating rates and have peace of mind in knowing you have a stable price for your energy supply.

Registering in Just Energy's Ontario Conservation Program also allows you to receive a SmartStat Thermostat which is our easy to read, high resolution colour display and intuitive smart phone app make it easy to control the comfort of your home from anytime from anywhere.

You'll be able to access your SmartStat remotely and see the temperature of your home. You'll see reports on your system's performance and can modify your thermostat, allowing you to reduce your overall energy consumption by up to 24%. Imagine, reducing your utility costs by that amount each and every month.

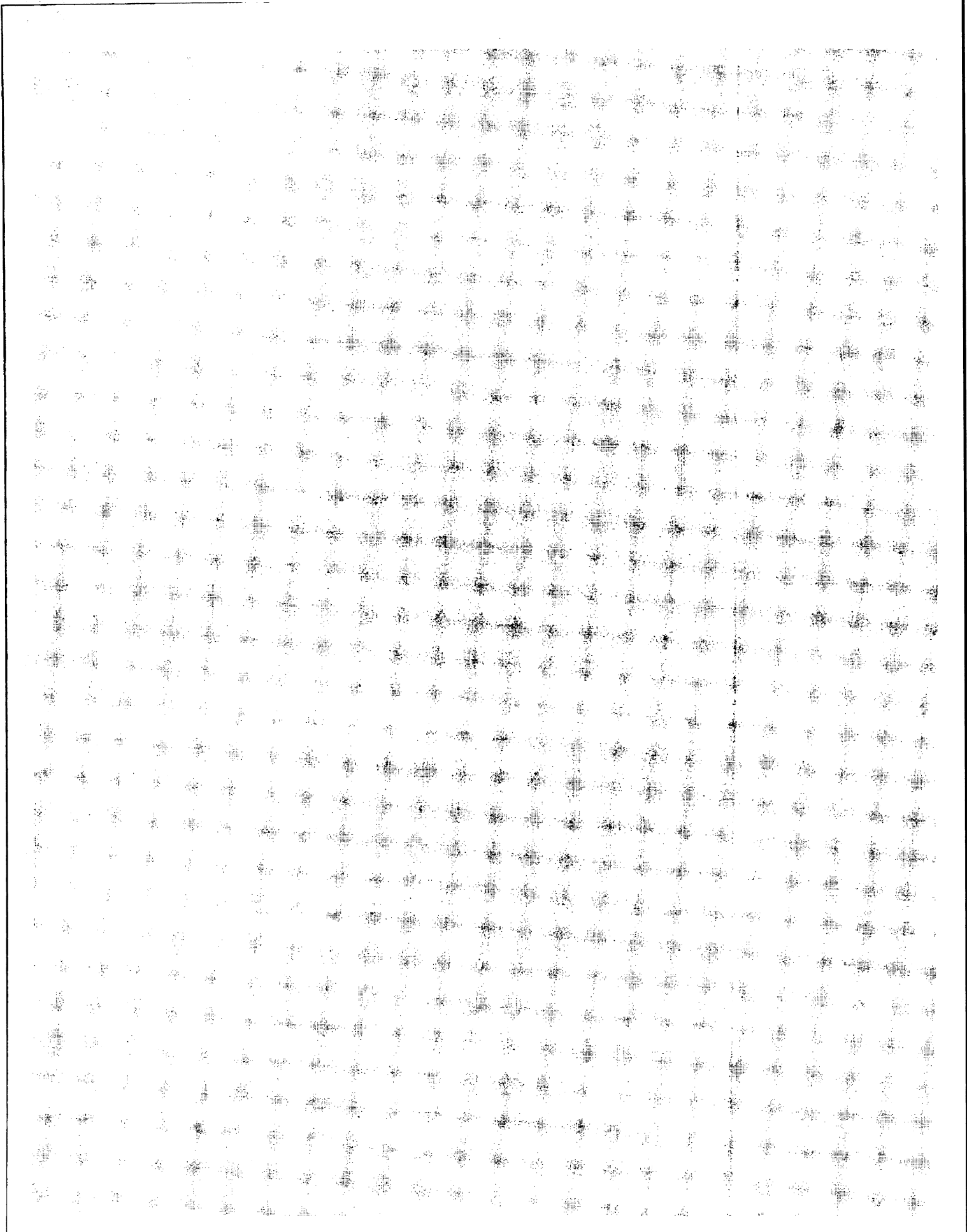
In addition to making a positive impact on the environment by reducing your energy consumption, you'll also receive a \$200 at the end of your term and will receive your first month for free. After your first month, the program will run you \$89.98 per month. Again, \$89.98 per month provides you with a secure rate for your natural gas and electricity supply and the installation of our SmartStat Thermostat that will save you up to 24% on your energy supply and delivery charges.

Just Energy's Ontario Conservation Program allows you to make a positive contribution to the environment without having to change a single behaviour. Simply log in remotely or program your SmartStat to ensure you reduce your energy consumption.



6	Customer:	I've never heard of your company.
	IC:	Yes sir, I do get that on occasion and the reason is, instead of spending millions of dollars on marketing costs, we decided as an organization to come see you directly. We currently have over 1.8 million customers throughout the United States and Canada. We are part of a billion dollar, multi-national publicly traded company with over 40 offices across the US and Canada. Now, to get you started on the Agreement...
7	Customer:	Do I have to sign a contract?
	IC:	Yes, sir. In order for us to give you an Energy Program for the next four or five years we have to go out and buy supply to meet our obligations to you. That's how we're able to give you that choice and peace of mind. All you have to do is pay your monthly bill. So, to get you started on the Agreement...
8	Customer:	Why do you need to see my bill?
	IC:	Well sir, some people are already on an Energy Program. The best way I can tell is to see a recent copy of your bill. It's going to show me right on your bill whether or not you are already on an Energy Program. It just takes a second to check. I'll just wait here while you get a copy of the bill.
	Customer:	Okay
9	Customer:	Someone has already been here before.
	IC:	That may have been for something else, this is for the Ontario Energy Conservation Program. So if to grab your recent energy bills, I can show you how this works. I'll just wait here while you get a copy of the bill.
	Customer:	Okay
10	Customer:	My current thermostat works fine.
	IC:	Of course it does however most thermostat technology is dated and very basic. Just Energy's SmartStat Thermostat gives you the ability to reduce your annual consumption by up to 20%. I'm sure you'll agree that your current thermostat cannot provide you those types of savings.
	Customer:	Okay
11	Customer:	How will it save me up to 20% in my annual consumption
	IC:	Great question sir, the SmartStat Thermostat is programmable which allows you to access your settings at any time, at any point and adjust based on your preference. For example, you can turn off your heating and cooling options during the day while at work, but have them turn back on, as you leave your work so that the temperature of your home is to your liking. It's connected to the Internet and uses a learning program to reduce consumption but still keeps the temperature at a comfortable level for the family.
	Customer:	Okay





Essential Agreement Information & Signatures, Welcome Call

- Hold the iPad and turn it to face customer and point to the Essential Agreement Information on the agreement.
- Break eye contact when asking the customer to make a decision so as not to exert pressure.
- Hand over your stylus pen. The customer takes the iPad and reads over the Essential Agreement Information.
- Customer takes the stylus pen and you point to where the customer's signature is needed. Customer signs.
- Bring up the Price Comparison PDF and review with customer. Customer **MUST** sign off on the Price Comparison Form.
- Bring up the Disclosure Statement PDF and review with customer. Customer **MUST** sign off on the Disclosure Statement Form.
- You are permitted to use your personal mobile phone for the welcome call or you may ask the customer to use their phone if they have a cordless phone. It's a toll-free number.
- Ensure that the customer has no further questions before proceeding with the welcome call and that they fully understand the details of the programs.
- Proceed with call once these items are covered and the customer has signed all documents.

Contractor: The full details of your agreement are set out in your Terms & Conditions. As you'll note, they're written on the back of the Agreement, in plain language for ease of reference.

Let's take a moment to review the key terms of your agreement and further information set out here on the front pages, under "Agreement Details" Section.

The Agreement Details states that you are aware that you are responsible for all other charges that your utility passes on to you such as taxes, delivery and transportation charges for both your natural gas and electricity. It also states that you have the right to have a copy of the agreement and materials left with you now even though a copy will be emailed to you. Lastly, it states that you are eligible to receive a reimbursement of \$250, each for natural gas and electricity, to offset any potential cancellation charges you may be subjected to if you were/are on with another energy retailer.

To get you started on the program, I simply need you to confirm your acceptance by signing the iPad Tablet. The OEB requires that I provide you a copy of your agreement which will be emailed to you shortly.

Let me open the PDF for the price comparison page. This will also be emailed to you, along with all the documents that we will cover off. The price comparison document is used to compare your current utility offering in comparison to our program. Keep in mind that the utility natural gas prices may change every three months and every 6 months for electricity, whereas our commodity price is locked in for the next five years. In addition, the price comparison form does not take into consideration the, up to, 24% reduction in energy consumption which will also reduce the charges on your utility bill such as taxes, delivery, transportation, etc...

Are you comfortable with the price comparison document and ready to proceed to the next document?

Customer: Yes.

Contractor: Great, sign here on the tablet. The next PDF is Just Energy's Disclosure Statement which ensures that you know your rights as a consumer in Ontario. Please take your time reviewing this document and yes, it will also be emailed to you for your records.

Are you comfortable with the disclosure statement and ready to proceed to the welcome call?

Customer: Yes.

Qualifying Customer

Once the customer has shown interest in the product, bring up the contract PDF on the iPad and begin taking down the customer's information.

Answer the customers' questions as they may come up. Do not look at this as a negative. Customer's asking questions is a positive sign, as it shows interest.

Be sure to provide further clarity with respect to the program. This is the opportunity to drive further details surrounding the value this program provides.

Confirm the customer is aware that installation of the SmartStat Thermostat will occur with the next 72 to 96 hours.

You **MUST** obtain the customer's email address so that a link can be sent to the customer.

If a customer does not have an email address, then a paper version must be used. Also, do not hesitate to provide the customer a copy of the agreement, price comparison form, brochure and disclosure form if requested.

Contractor: So to get you started on the program, I'll need some information. Now, I just want to confirm the spelling of your last name. Is it just how it appears on your utility bill?

Customer: Yes, Jones. J-O-N-E-S.

Contractor: Okay. Just to confirm, you are the account holder here and you're interested registering with Just Energy's Ontario Conservation Program?

Customer: Yes.

Contractor: Remember, you are choosing Just Energy as your supplier of natural gas and electricity. We will supply your natural gas and electricity to your utility company and they continue to deliver, read your meter and provide emergency services.

This agreement also will have Just Energy installing a SmartStat Thermostat in your home in about 72 hours. In addition, you will also be responsible for regulated delivery, transportation, transmission, etc. The only change you will see in a couple of months is our name and customer service phone number will appear on your utility bills, letting you know that you are now enrolled with Just Energy's Ontario Conservation Program.

Do you have any questions?

Customer: Not at this time.

Wrap up

- Customer receives all paperwork via email in a few minutes (otherwise they will receive the paperwork from you).*

- Once the call is completed, shake hands with the customer and leave the premise.*

Contractor: *The best part of having everything done electronically is that all these materials will be emailed to you, so let's confirm we have the right email address.*

Again, as I mentioned to you, my name is xxxxxx and I'm a representative of Just Energy. We are an independent energy retailer licensed by the Ontario Energy Board and are not affiliated with your local utility the Government or the Ontario Energy Board.

Remember, the benefit of our Ontario Conservation Program is that you no longer see spikes in the winter on your natural gas supply rates or in the summer with your electricity supply rates. You will simply pay one rate each month for your natural gas and electricity supply that will take the worrying from opening your utility bills throughout the year.

In addition, our SmartStat Thermostat gives you control of your energy use anytime and anywhere allowing you to save money and help the environment at the same time.

You'll continue to be serviced and billed by your current utility. As you provided an email address on the welcome call, you will be receiving a link to our portal which will give you the option to complete an internet agreement online. Remember, in going online, you are enrolling for a new agreement and a verification call will not be completed.

Your installation date of the SmartStat Thermostat is schedule for MM/DD/YY. Please ensure to give us a call if you need to reschedule for any reason. The installation process is quick and easy and will have you being more efficient with your energy use right away!

If after ten days, you haven't enrolled online, we'll call you verify the agreement, but that won't stop the installation of the SmartStat.

Have a great day and thank you for your time. It was nice to meet you.

Customer: *Thank you very much.*

Contractor: *Take care. All the best.*

Lastly, before we proceed with the welcome call, you also have the ability to verify your acceptance of the program. Once the call is complete, you will receive an email that will take you to a link where all your information has been prepopulated. Simply click on the link, follow the instructions are your set. No more phone calls asking for your verification, just one easy step!

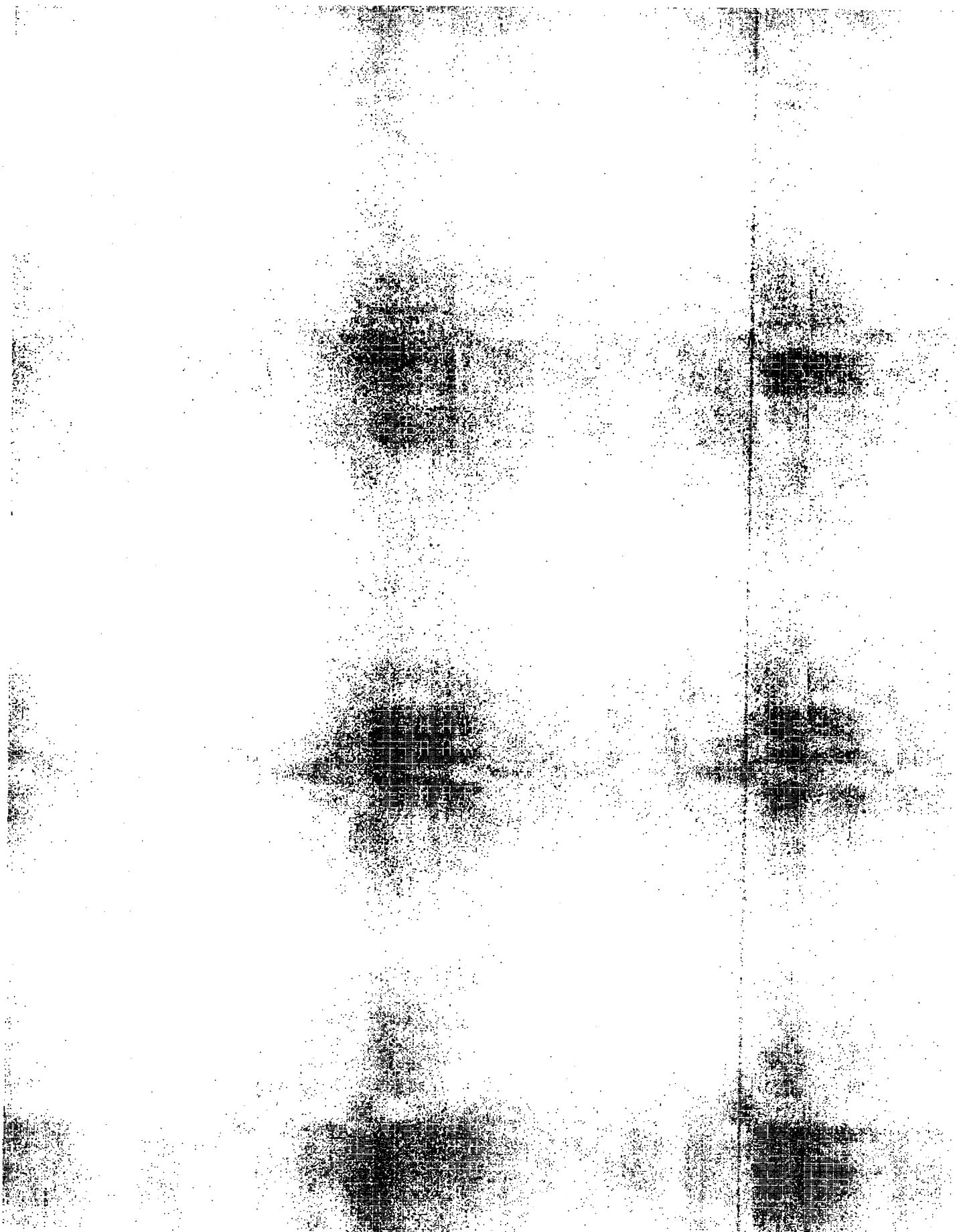
The next step will have us making a welcome call to confirm information regarding your agreement with Just Energy's Customer Service Team. Again, at the end of that call an email will be sent to you, give it about twenty minutes, where a link will direct you to an enrollment and verification website.

Sound good?

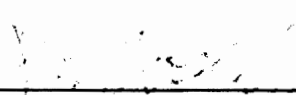
Customer: *Yes.*

Contractor: *Before we proceed with the welcome call, I just want to make sure that you have no further questions, as I'm not permitted to speak during the welcome call. They will confirm that I provided you with a business card from me and that you understand the details of the program.*

Are you all set?



This is Exhibit "D" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 17 day of August, 2015.



Commissioner for Taking Affidavits

JUST ENERGY CORP.

CHEQUE NO 589136

27-Aug-12

340107 V

Haidar Omarali
 19 Blue Ridge Rd.
 Willowdale ON
 M2K 1R6

+ Ontario Energy - Commission 2 Vouchers (24-Aug-12)

	Residential	Commercial
Gross Amount	\$337.75	\$0.00
Weekly Bonus	\$230.00	\$0.00
Loyalty Bonus	\$0.00	\$0.00
Commission Adj.	\$0.00	\$0.00
Deductions		\$0.00
Advances		\$0.00
Adjustments		\$0.00
GST		\$0.00
Net Amount		\$567.75

Please detach before presentation for payment

247

JUST ENERGY CORP.

CHEQUE NO 591036

03-Sep-12
340107 V
Haidar Omarali
19 Blue Ridge Rd.
Willowdale ON
M2K 1R6

Ontario Energy Commission 3 Vouchers (08-Aug-12)

	Residential	Commercial
Gross Amount	\$70.00	\$0.00
Weekly Bonus	\$20.00	\$0.00
Loyalty Bonus	\$0.00	\$0.00
Commission Adj.	\$0.00	\$0.00
Deductions		\$0.00
Advances		\$0.00
Adjustments		\$0.00
GST		\$0.00
Net Amount		\$90.00

Please detach before presenting for payment ...

JUST ENERGY CORP.

CHEQUE NO 595508

17-Sep-12

340107 V

Haidar Omarali
 19 Blue Ridge Rd.
 Willowdale ON
 M2K 1R6

Ontario Corp) - Commission 2 Vauchers (14-Sep-12)

	Residential	Commercial
Gross Amount	\$181.65	\$0.00
Weekly Bonus	\$170.00	\$0.00
Loyalty Bonus	\$0.00	\$0.00
Commission Adj.	\$0.00	\$0.00
Other - Branded Clothing		
Deductions		\$-53.00
Advances		\$0.00
Adjustments		\$0.00
GST		\$0.00
Net Amount		\$298.65

Please detach before presentation for payment

249

Check No: 595508

9/17/2012

340107

Haider Omarali

19 Blue Ridge Rd.

Willowdale ON

M2K1R6

Deductions

Other - Branded Clothing

(\$53.00)

Subtotal

(\$53.00)

This is Exhibit "E" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 11th day of August, 2015.

Commissioner for Taking Affidavits

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DAVINA HURT, *et al.*,

Plaintiffs,

vs.

COMMERCE ENERGY, INC, *et al.*,

Defendants.

CASE NO. 1:12-CV-00758

OPINION & ORDER
[Resolving Docs. No. 45, 46.]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this minimum wage and overtime case, the Plaintiffs' move to certify: (1) their state-law claims as a class action under Federal Rule of Civil Procedure 23^{1/} and (2) their federal claims as a conditional collective action under the Fair Labor Standards Act^{2/}. For the reasons below, the Court **GRANTS** the Plaintiffs' motions.

I. Background

The Fair Labor Standards Act^{3/} and the Ohio Minimum Fair Wage Standards Act (the "Ohio Wage Act")^{4/} require employers to pay a minimum wage and overtime to certain types of employees. With this action, the Plaintiffs say that the Defendants Just Energy Group, Commerce Energy, and Just Energy Marketing^{5/} violated the FLSA and the Ohio Wage Act by classifying them as exempt, independent contractors and by failing to pay them minimum wage and overtime.

^{1/}Doc. 45.

^{2/}Doc. 46.

^{3/}29 U.S.C. §§ 206(a), 207(a).

^{4/}Ohio Rev. Code §§ 411.03, 4111.10.

^{5/}In this opinion the Court refers to Commerce Energy, Inc, as "Commerce Energy"; Just Energy Marketing Corp as "Just Energy Marketing" and Just Energy Group, Inc. as "Just Energy." Collectively, the Court refers to the companies as "Just Energy."

Case No. 1:12-CV-00758
Gwin, J.

Defendant Just Energy Marketing hired the Plaintiffs to go door to door soliciting customers for Commerce Energy's electric power and natural gas products.^{6/} Commerce Energy, a subsidiary of Just Energy Group, operates in California, Georgia, Maryland, Massachusetts, New Jersey, Ohio, and Pennsylvania.^{7/} At various times from 2009 to 2013, the Plaintiffs worked out of Just Energy's Beachwood, Ohio office.^{8/}

Now the Plaintiffs move for conditional certification of a FLSA collective action for Just Energy door-to-door workers in the states where Commerce Energy operates.^{9/} The Plaintiffs also move for certification of a Rule 23 class action of Just Energy door-to-door workers in Ohio under the Ohio Wage Act.^{10/} Just Energy opposed these motions.^{11/}

II. Rule 23 Class Action

The Plaintiffs say that Just Energy violated the Ohio Minimum Wage by classifying its door-to-door workers as exempt, independent contractors and by failing to pay those workers overtime.^{12/}

The Plaintiffs now move to certify the following Ohio class:

- The named Plaintiffs and all other persons in Ohio since March 28, 2009 who:
- (a) were listed on their Just Energy contract as performing services for the "Commerce Energy" affiliate of Just Energy;
 - (b) were listed by Defendants as independent contractors;
 - (c) had the job of going door-to-door for Just Energy; and
 - (d) were not paid overtime.^{13/}

^{6/}Docs. 45 at 4; 52 at 3.

^{7/}Doc. 82 at 9.

^{8/}Doc. 45-7 at 3.

^{9/}Doc. 46.

^{10/}Doc. 45.

^{11/}Docs. 52; 53. The Plaintiffs also filed replies. Docs. 59; 60.

^{12/}Doc. 45 at 1.

^{13/}Doc. 45 at 1.

Case No. 1:12-CV-00758
Gwin, J.

A. Rule 23 Class Action & Ohio Wage Act

As an initial matter, the Court finds that the Plaintiffs may bring a Rule 23 class action for overtime violations under the Ohio Minimum Wage Act. Just Energy says that the Plaintiffs cannot maintain their Rule 23 class action because the Ohio Minimum Wage Act requires prospective plaintiffs to opt-in to the action.^{14/} Just Energy says that this opt-in requirement is incompatible with Rule 23's opt-out procedure.^{15/}

But the Ohio Legislature limited the Ohio Minimum Wage Act's opt-in requirement to *minimum wage* claims not *overtime* claims.^{16/} And here, the Plaintiffs limited their Rule 23 class to *overtime* violations.^{17/} While Just Energy cites to two cases to support its incompatibility argument, those cases were vacated on reconsideration.^{18/} Because the Ohio Minimum Wage Act's opt-in requirement does not apply to overtime violations, the Plaintiff's overtime claims are compatible with Rule 23's opt-out procedure.^{19/} The Plaintiffs may seek a Rule 23 class action for overtime

^{14/}Doc. 53 at 6.

^{15/}Doc. 53 at 6.

^{16/}See Ohio Rev. Code § 4111.14(K)(2) ("No employee shall join as a party plaintiff in any civil action that is brought under division (K) of this section by an employee, person acting on behalf of an employee, or person acting on behalf of all similarly situated employees unless that employee first gives written consent to become such a party plaintiff and that consent is filed with the court in which the action is brought."); § 4111.14(K) (Division K applies to "action[s] for equitable and monetary relief" brought "[i]n accordance with Section 34a of Article II, Ohio Constitution."); Ohio Const. art. II, § 34a ("state minimum wage rate"). See also Laichev v. JBM, Inc., 269 F.R.D. 633, 636 (S.D. Ohio 2008) ("Obviously, the drafters of the OMFWSA knew how to limit a civil action to an opt-in class and must have then specifically choose not to do so in drafting O.R.C. § 4111.10.").

^{17/}Doc. 45 at 1 (limiting the class definition to workers who "were not paid overtime").

^{18/}See Dillworth v. Case Farms Processing, Inc., No. 5:08-CV-1694, 2010 WL 776933 (N.D. Ohio Mar. 8, 2010), *vacated in part*, No. 5:08-CV-1694, 2010 WL 776933 (N.D. Ohio Mar. 8, 2010) ("The Court grants the requested reconsideration of its August 27, 2009 Memorandum Opinion and Order and vacates only that portion of the Order stating that 'Ohio's overtime statute allows only for an opt-in action similar to a collective action under [the] FLSA.'"); Williams v. Le Chaperon Rouge, No. 1:07-CV-829, 2007 WL 4521492 (N.D. Ohio Dec. 17, 2007), *vacated*, No. 1:07-CV-829, 2008 WL 2810619 (N.D. Ohio July 21, 2008) ("As a result, it would be improper for future litigants to rely upon this interlocutory ruling."). See also

^{19/}See Laichev, 269 F.R.D. at 636 ("Plaintiff may maintain a class action for violations of § 4111.10 under Fed.R.Civ.P. 23.").

Case No. 1:12-CV-00758
Gwin, J.

violations under the Ohio Minimum Wage Act.

B. Class Certification Standard

A member of a class may sue, as a representative, on behalf of all class members only if the prerequisites of Rule 23(a) are met:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.^{20/}

In addition, “the court [must] find[] that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”^{21/}

The Supreme Court has recently said that “Rule 23 does not set forth a mere pleading standard.”^{22/} Instead, a party seeking certification of a class action “must affirmatively demonstrate his compliance with the Rule.”^{23/} As a result, courts should give a “rigorous analysis,” which may “overlap with the merits of the plaintiff’s underlying claim.”^{24/} But courts should consider the merits of the case only to the extent that “they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.”^{25/}

^{20/}Fed. R. Civ. P. 23(a).

^{21/}Fed. R. Civ. P. 23(b)(3). Federal Rules of Civil Procedure 23(b)(1) and (2), which provide two alternative bases for maintaining a class action, are not at issue here. “If anything, Rule 23(b)(3)’s predominance criterion is even more demanding than Rule 23(a).” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997).

^{22/}*Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011).

^{23/}*Id.*

^{24/}*Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432 (2013) (quotations omitted).

^{25/}*Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1195 (2013).

Case No. 1:12-CV-00758
Gwin, J.

B. Class Certification Analysis

1. Numerosity

Under Rule 23(a)(1), the class must be “so numerous that joinder of all members is impracticable.”^{26/} But there is no particular number necessary to meet the numerosity requirement, nor does the class number need to be known with precision.^{27/}

Here, the Plaintiffs satisfy the numerosity requirement because Just Energy’s issued credentials to 2,540 Ohio workers that fit the Plaintiffs’ class definition.^{28/} Moreover, Just Energy does not dispute that the proposed class meets the numerosity requirement. The class is sufficiently numerous.

2. Commonality

Under Rule 23(a)(2), a plaintiff must show that “there are questions of law or fact common to the class.”^{29/} The Supreme Court has said that “[c]ommonality requires the plaintiff to demonstrate that the class members have suffered the same injury.”^{30/} Specifically, the plaintiff’s claims “must depend upon a common contention . . . of such a nature that it is capable of classwide resolution . . . which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” Put simply, plaintiffs must show that their common questions of law and fact can be resolved by common answers.^{31/}

^{26/}Fed. R. Civ. P. 23(a)(1).

^{27/}*Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006).

^{28/}Doc. 45-2 at 2.

^{29/}Fed. R. Civ. P. 23(a)(2).

^{30/}*Dukes*, 131 S. Ct. at 2551 (quotation marks and citations omitted).

^{31/}*In re Whirlpool Corp. Front-Loading Washer Products Liab. Litig.*, No. 10-4188, 2013 WL 3746205 (6th Cir. July 18, 2013).

Case No. 1:12-CV-00758
Gwin, J.

Here, the Plaintiffs show a legal question common to the class: Did Just Energy violate the Ohio Wage Act by failing to pay its door-to-door workers overtime? To make out this claim, the Plaintiffs must show that they: (1) were employees; (2) were non-exempt; and (3) suffered damages.^{32/} The Plaintiffs concede that the damages element varies within the class, and that individual class members will need to prove the damages they suffered.^{33/} But the Sixth Circuit has said that “[n]o matter how individualized the issue of damages may be, these issues may be reserved for individual treatment with the question of liability tried as a class action.”^{34/}

Moreover, the first two elements of the Plaintiffs’ overtime claim can be resolved with common answers. To distinguish between independent contractors and employees, courts focus on “whether, as a matter of economic reality, the worker is economically dependent upon the alleged employer or is instead in business for himself.”^{35/} Among other factors, this economic reality test often turns on the “degree of control exercised by the alleged employer.”^{36/} Similarly, whether an employee is exempt as an outside salesman can turn on the degree of control exercised by the employer.^{37/}

Here, the Plaintiffs’ evidence shows that answers to the degree of control question are common to the class. In *Wal-Mart Stores, Inc. v. Dukes*, the Supreme Court said that a plaintiff

^{32/} See Ohio Rev. Code § 4111.03(A) (“An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee’s wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and subject to the exemptions of . . . the ‘Fair Labor Standards Act of 1938.’”).

^{33/} Doc. 59 at 11.

^{34/} *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir.1988).

^{35/} *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 523 (6th Cir. 2011) (quotations marks omitted).

^{36/} *Id.*

^{37/} See, e.g., *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2159 (“Petitioners were not required to punch a clock or report their hours, and they were subject to only minimal supervision.”).

Case No. 1:12-CV-00758
Gwin, J.

satisfies Rule 23's commonality requirement by showing that his employer had a uniform practice that violated the law.^{38/} Just Energy says that its company policies for its door-to-door workers are consistent "with independent contractors performing exempt outside sales work."^{39/} Further, it says that the Plaintiffs have failed to show that Just Energy subjected its workers outside the Beachwood, Ohio offices to practices that violate the Ohio Wage Act.^{40/}

But Just Energy's own documents support the Plaintiffs' claim that Just Energy subjected *all* its Ohio door-to-door workers to a level of supervision that was arguably inconsistent with exempt, independent contractors. Specifically, Just Energy's Ohio training manuals say that the door-to-door workers "will be dropped off by the Crew Coordinator at the location you will be working in for the day."^{41/} They also say that the door-to-door workers "begin[] their day . . . with a meeting at the office before going on the road for the day."^{42/} This evidence contradicts Just Energy's statements that it allowed its door-to-door workers to choose the hours and the neighborhoods that they worked. Thus, because the Plaintiffs have identified state-wide policies that a jury could find are inconsistent with exempt, independent contractors, the Court finds that the proposed class satisfies the commonality requirement.

3. Typicality

Under Rule 23(a)(3), the claims of the plaintiffs purporting to represent the class must be typical of the claims . . . of the class."^{43/} "A claim is typical if it arises from the same event or

^{38/}131 S. Ct. at 2553.

^{39/}Doc. 53 at 16.

^{40/}Doc. 53 at 15.

^{41/}Doc. 60-12 at 1-7.

^{42/}Doc. 60-11 at 1-7.

^{43/}Fed. R. Civ. P. 23(a)(3).

Case No. 1:12-CV-00758
Gwin, J.

practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.”^{44/}

Here, the Plaintiff’s claim, that Just Energy violated the Ohio Wage Act by failing to pay them overtime, arises from the same allegedly prohibited conduct as the rest of the class members. Specifically, the Plaintiffs say that Just Energy exerted a level of supervision, over the Plaintiffs and the proposed class, that is inconsistent with the exempt, independent contractor classification. Moreover, Just Energy does not dispute that the proposed class meets the typicality requirement. Therefore, the Plaintiffs’ claim arises from the same “course of conduct” as all the other class members, and the proposed class satisfies the typicality requirement.

4. Adequacy

Under Rule 23(a)(4), a plaintiff seeking to represent the class must also show that he or she will “fairly and adequately protect the interests of the class.”^{45/} Adequacy has two requirements: “1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.”^{46/}

As noted above, the claims of the Plaintiffs, and the likely defenses against them, are common to the class. The same strategies that will vindicate the Plaintiffs’ claims will also vindicate those of the class. Similarly, Just Energy’s arguments why liability should not be imposed seem similar across the proposed class. Based on its involvement thus far, the Court concludes that there is no reason to believe that the Plaintiffs will not continue to vigorously prosecute the class’s

^{44/}*Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007) (citation and quotation marks omitted).

^{45/}Fed. R. Civ. P. 23(a)(4).

^{46/}*Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976).

Case No. 1:12-CV-00758
Gwin, J.

interests. The Court finds no antagonism between the Plaintiffs' interests and the interests of the unnamed members of the class.

Just Energy says that the Plaintiffs are "unable or unwilling to vigorously prosecute the interests of the other class members" because the Plaintiffs have limited their Rule 23 class to overtime claims—instead of pursuing claims for *both* overtime and minimum wage.^{47/} Thus, Just Energy says, the Plaintiffs have "jettisoned their putative members' minimum wage claims."^{48/} But Just Energy is wrong. The Plaintiffs have also moved for conditional certification of a national collective action under the FLSA.^{49/} Because this FLSA class includes both claims for overtime *and* minimum wage, and because Ohio is part of that class definition, the Court finds that the Plaintiffs share the Ohio workers' minimum wage claims.

The Court also finds that class counsel is adequate. Based on their extensive resumes^{50/} and representations that they will "vigorously represent the class,"^{51/} the proposed counsel "are qualified, experienced and generally able to conduct the litigation."^{52/} They appear to have extensive experience litigating class actions. Accordingly, the Court finds that Dworken & Bernstein Co. LPA will "fairly and adequately represent the interests" of the proposed class.^{53/} The adequacy requirement is satisfied.

5. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently

^{47/}Doc. 53 at 10-11.

^{48/}Doc. 53 at 10-11.

^{49/}Doc. 46.

^{50/}Docs. 45 at 13-14; 45-8 at 1-4.

^{51/}Doc. 45-8 at 1.

^{52/}*Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000).

^{53/}Fed. R. Civ. P. 23(g)(4).

Case No. 1:12-CV-00758
Gwin, J.

cohesive to warrant adjudication by representation.”^{54/} To satisfy this requirement, a plaintiff must establish that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole predominate over those issues that are subject only to individualized proof.^{55/} “[T]he mere fact that questions peculiar to each individual member of the class action remain after the common questions of the defendant’s liability have been resolved does not dictate the conclusion that a class action is impermissible.”^{56/}

Here, as discussed above in regards to commonality, the Plaintiffs show there are disputed issues that can be resolved through generalized proof. But Just Energy says that common questions . . . do not predominate over individual claims” because the “current opt-in Plaintiffs cannot even show that they are similar to . . . purported class members in other locations in Ohio.”^{57/} Specifically, Just Energy says that a “fact finder will need to conduct an individualized analysis on the central issue” of whether “Plaintiffs are employees of any of the Defendants.”^{58/}

But the evidence does not support Just Energy’s position. First, the Plaintiffs evidence shows that Just Energy applies uniform, state-wide policies to the Plaintiffs and the purported class. For example, with respect to all the door-to-door workers in Ohio, Just Energy: (1) hired through the same marketing channels;^{59/} (2) used a uniform employment agreement;^{60/} (3) distributed uniform orientation materials and policies;^{61/} (4) provided uniform marketing scripts; (6) paid the same

^{54/} *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997).

^{55/} *Beattie*, 511 F.3d at 564 (citations and quotation marks omitted).

^{56/} *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988).

^{57/} Doc. 53 at 14.

^{58/} Doc. 53 at 15.

^{59/} Doc. 59-4 at 5.

^{60/} Doc. 59-4 at 7.

^{61/} Docs. 59-3 at 3; 59-4 at 10.

Case No. 1:12-CV-00758
Gwin, J.

commission basis;^{62/} (5) required compliance with Just Energy's Codes of Ethics and Codes of Business Conduct;^{63/} and (6) enforced uniform disciplinary procedures.^{64/}

Second, the Plaintiffs have shown, with Just Energy's own documents, that Just Energy has state-wide policies that a jury could find are inconsistent with exempt, independent contractors.^{65/} Despite Just Energy's contention that its state-wide policies are consistent with the Ohio Wage Act, the Plaintiffs' evidence shows the contrary. Third, the Plaintiffs' evidence shows that the Plaintiffs and the purported class share the same roles and responsibilities: going door-to-door soliciting customers for Just Energy's services. While Just Energy says that job duties varied for certain Plaintiffs who worked as "crew coordinators," those difference are not of such a magnitude as to cause individual issues to predominate. Thus, the Court finds that the predominance requirement is satisfied.

6. Superiority

Under Rule 23(b)(3), the Court must find that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."^{66/} The "most compelling rationale for finding superiority in a class action" is the existence of a "negative value suit."^{67/} A negative value suit is one "in which the costs of enforcement in an individual action would exceed the expected individual recovery."^{68/}

^{62/}Doc. 59-6.

^{63/}Docs. 59-10; 59-4 at 9.

^{64/}Doc. 59-11.

^{65/}See *supra* notes 40-42.

^{66/}Fed. R. Civ. P. 23(b)(3).

^{67/}*In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 348 (N.D. Ohio 2001) (quotation marks and citations omitted).

^{68/}*Id.*

Case No. 1:12-CV-00758
Gwin, J.

Here, each individual plaintiff is unlikely to recover more than the cost of an individual action. As a result, vindication of these overtime claims would not be available, as a practical matter, without class treatment. Moreover, Just Energy does not dispute the superiority element. The Court therefore finds that a class action is the superior method for adjudicating the claims.^{69/}

Because the Plaintiffs have satisfied the prerequisites of Rule 23(a), and because the Plaintiffs have satisfied the predominance and superiority requirements of Rule 23(b), the Court grants the Plaintiff's motion for class certification.

III. FLSA Collective Action

The Plaintiffs say that Just Energy violated the FLSA by classifying them as exempt, independent contractors and by failing to pay them required wages and overtime.^{70/} Now the Plaintiffs move for conditional certification of a collective action under 29 U.S.C. § 216(b). They propose the following class definition:

- The named Plaintiffs and all other persons who at any point in the last 3 years
- (a) were listed on their Just Energy contract as performing services for the "Commerce Energy" affiliate of Just Energy;
- (b) were treated as independent contractors;
- (c) had the job of going door-to-door for Just Energy; and
- (d) were not paid minimum wage and/or overtime.^{71/}

A. Collective Action Standard

Under § 216(b), a plaintiff alleging a FLSA violation can bring a representative action for himself and similarly situated persons if the plaintiffs meet two requirements: "1) the plaintiffs must actually be 'similarly situated,' and 2) all plaintiffs must signal in writing their affirmative consent

^{69/}The Court also finds that no other similar actions are pending against Just Energy.

^{70/}Doc. 46 at 3.

^{71/}Doc. 46 at 3.

Case No. 1:12-CV-00758
Gwin, J.

to participate in the action.”^{72/} This FLSA representative action is called a collective action and is different from the Rule 23 representative action: under Rule 23 a putative plaintiff has the opportunity to opt-out of the class, but under the FLSA a putative plaintiff must affirmatively opt-in to the class.^{73/}

Neither the FLSA nor the Sixth Circuit have explicitly defined the term “similarly situated.”^{74/} Nevertheless, the Sixth Circuit has said that FLSA plaintiffs may proceed collectively in cases where “their claims [are] unified by common theories of defendants’ statutory violations, even if the proofs of these theories are inevitably individualized and distinct.”^{75/} Significantly, the Sixth Circuit has said that courts should not apply the more stringent criteria for class certification under Rule 23.^{76/}

B. Two-stage Certification Process

The Sixth Circuit has adopted a two-stage certification process to determine whether a proposed group of plaintiffs is “similarly situated.”^{77/} First, the “notice” stage takes focuses on determining whether there are plausible grounds for plaintiffs’ claims.^{78/} At this stage, a plaintiff must make only a “modest factual showing” and needs to show “only that his position is similar, not identical, to the positions held by the putative class members.”^{79/} Because the court has limited evidence at this stage, this standard is “fairly lenient,”^{80/} and “typically results in ‘conditional

^{72/} *Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 545 (6th Cir. 2006) (citations omitted).

^{73/} *Id.*

^{74/} *O’Brien v. Ed Donnelly Enterprises, Inc.*, 575 F.3d 567, 584 (6th Cir. 2009).

^{75/} *Id.* at 585.

^{76/} *Id.* at 584.

^{77/} *Id.* at 547.

^{78/} *Id.*

^{79/} *Id.*

^{80/} *Id.*

Case No. 1:12-CV-00758
Gwin, J.

certification' of a representative class.^{81/}

The second stage occurs after "all of the opt-in forms have been received and discovery has concluded."^{82/} The second stage determination is "typically precipitated by a motion for 'decertification' by the defendant."^{83/} Review at this stage is more stringent because a court has "more information on which to base its decision and makes a factual determination on the similarly situated question."^{84/}

Because the parties have conducted some discovery on the certification issue, the Court reviews the Plaintiffs' motion under a hybrid standard. Under this standard, the Plaintiffs must make a "modest 'plus' factual showing that there is a group of potentially similarly situated plaintiffs that may be discovered by sending opt-in notices."^{85/} The Court "does not weigh the relative merits of the parties' claims at this stage."^{86/} Instead, the Court preserves its "full and complete merit review" until stage two, when the Court and the parties have the benefit of a fully developed factual record of the putative opt-in plaintiffs.^{87/}

C. Conditional Certification

Here, the Court finds that the Plaintiffs have met their initial burden to show that a class of similarly situated employees exists. For these employees, the Plaintiffs' evidence shows that Just Energy: (1) treats its door-to-door workers as independent contractors exempt from FLSA;^{88/} (2)

^{81/}Hipp v. Liberty Nat'l Ins. Co., 252 F.3d 1208, 1218 (11th Cir. 2001) (quoting Mooney v. Aramco Servs. Co., 54 F.3d 1297, 1204 (5th Cir. 1995)).

^{82/}Comer, 454 F.3d at 546 (internal quotation and citation omitted).

^{83/}Mooney v. Aramco Servs. Co., 54 F.3d 1207, 1214 (5th Cir. 1995).

^{84/}Id.

^{85/}Creely v. HCR ManorCare, Inc., 789 F. Supp. 2d 819, 826 (N.D. Ohio 2011).

^{86/}Id. at 827.

^{87/}Creely, 789 F. Supp. 2d 823.

^{88/}Doc. 60-14 at 3.

Case No. 1:12-CV-00758
Gwin, J.

requires its door-to-door workers to perform the same job duties;^{89/} (3) hires its door-to-door workers through similar practices;^{90/} (4) pays its door-to-door workers on a commission basis;^{91/} (5) trains its door-to-door workers with uniform orientation materials;^{92/} and (6) requires its door-to-door workers to comply with Just Energy policies.^{93/} These common practices do not, however, violate the FLSA.

But the Plaintiffs' evidence also shows that Just Energy exerts significant supervision over its door-to-door workers. For example, Plaintiff Hurt says that Just Energy required her to work certain hours^{94/} and report to a Just Energy office every morning.^{95/} She also says that Just Energy determined where she could work and drove her to and from her work locations.^{96/} The other opt-in Plaintiffs' deposition testimony supports these allegations.^{97/} But because the opt-in Plaintiffs worked only out of Just Energy's Beachwood, Ohio office, their testimony supports only a local violation.

Just Energy's training manuals, however, give support for the Plaintiffs' claims that Just Energy has violated the FLSA in each of the states where Commerce Energy uses door-to-door workers. Specifically, those training manuals say that the door-to-door workers "will be dropped off by the Crew Coordinator at the location you will be working in for the day."^{98/} They also say that the door-to-door workers "begins[]their day . . . with a meeting at the office before going on the road

^{89/} Docs. 60-11; 60-12.

^{90/} Doc. 60-8 at 6.

^{91/} Doc. 60-14 at 3.

^{92/} Docs. 59-3 at 3; 59-4 at 10.

^{93/} Doc. 60-8 at 7.

^{94/} Doc. 60-1 at 3, 5.

^{95/} Doc. 60-1 at 4.

^{96/} Doc. 60-1 at 3.

^{97/} Docs. 60-2 at 3, 5-6; 60-3 at 6, 8, 9; 60-4 at 4, 6; 60-5 at 2, 4, 6; 60-6 at 5-7.

^{98/} Doc. 60-12 at 1-7.

Case No. 1:12-CV-00758
Gwin, J.

for the day.”^{99/} The Court finds that these documents are sufficiently consistent with the Plaintiffs’ allegations to justify conditional certification.

Just Energy says that the Court should deny the Plaintiffs’ motion because Plaintiffs Black and Scott have failed to show that they are similarly situated to the class. Specifically, Just Energy says that Black and Scott served as “crew coordinators” that have additional responsibilities beyond the typical duties of Just Energy’s door-to-door workers. But the Court properly undertakes factual determinations of whether the individual opt-in Plaintiffs are similarly situated to the representative Plaintiffs at the second-stage of certification, following full discovery of the opt-in Plaintiffs.^{100/} If the Court then concludes that the opt-in Plaintiffs are not similarly situated, it can grant a motion by Just Energy to de-certify the class.^{101/}

IV. Conclusion

A. Rule 23 Class Action

The Court **CERTIFIES** the following class of Ohio Plaintiffs:

The named Plaintiffs and all other persons in Ohio since March 28, 2009 who:

- (a) were listed on their Just Energy contract as performing services for the “Commerce Energy” affiliate of Just Energy;
- (b) were listed by Defendants as independent contractors;
- (c) had the job of going door-to-door for Just Energy; and
- (d) were not paid overtime.^{102/}

The Court **APPOINTS** the named Plaintiffs as class representatives. Further, after considering the Rule 23(g)(1) factors, the Court **APPOINTS** Dworken & Bernstein Co., LPA as

^{99/}Doc. 60-11 at 1-7.

^{100/}*Hipp v. Liberty Nat. Life Ins. Co.*, 252 F.3d 1208, 1218 (11th Cir. 2001); *Douglas v. GE Energy Reuter Stokes*, No. 1:07CV077, 2007 WL 1341779, at *6 (N.D. Ohio Apr. 30, 2007).

^{101/}*Hipp*, 252 F.3d at 1218.

^{102/}Doc. 45 at 1.

Case No. 1:12-CV-00758
Gwin, J.

class counsel.

The Court **ORDERS** Just Energy to provide the Plaintiffs with the name, last known home address (including zip code), last known telephone number, last known email address, and dates of employment of all individuals within the above-defined class. Just Energy is to provide this information to the Plaintiffs within fifteen days.

Additionally, the Court **ORDERS** that, within fifteen days of the date of this Order, the parties shall submit to the Court proposed language for notification apprising potential plaintiffs of their rights under the Ohio Wage Act and Rule 23. The proposed notification language must meet the requirements of Rule 23(c)(2).

B. FLSA Collective Action

The Court **GRANTS** conditional certification of the Plaintiffs' proposed collective action, and will conditionally certify a class consisting of:

- The named Plaintiffs and all other persons who at any point in the last 3 years
- (a) were listed on their Just Energy contract as performing services for the "Commerce Energy" affiliate of Just Energy;
 - (b) were treated as independent contractors;
 - (c) had the job of going door-to-door for Just Energy; and
 - (d) were not paid minimum wage and/or overtime.

The certification ordered here is conditional, and this Court will reexamine this certification at the second stage.

The Court **ORDERS** Just Energy to provide the Plaintiffs with the name, last known home address (including zip code), last known telephone number, last known email address, and dates of employment of all individuals within the above-defined class. Just Energy is to provide this information to the Plaintiffs within fifteen days.

Case No. 1:12-CV-00758
Gwin, J.

Additionally, the Court **ORDERS** that, within fifteen days of the date of this Order, the parties shall submit to the Court proposed language for notification and consent forms to be issued by the Court apprising potential plaintiffs of their rights under the FLSA to opt-in as parties to this litigation. In drafting the proposed notification language, the parties should “be scrupulous to respect judicial neutrality” and “take care to avoid even the appearance of judicial endorsement of the merits of the action.”^{103/}

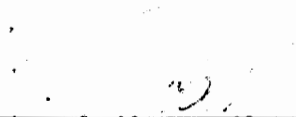
IT IS SO ORDERED.

Dated: August 15, 2013

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{103/}Hoffmann-La Roche Inc. v. Sperling, 493 U.S. 165, 174 (1989).

This is Exhibit "F" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 10th day of August, 2015.



Commissioner for Taking Affidavits

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DAVINA HURT, <i>et al.</i> ,	:	CASE NO. 1:12-CV-00758
	:	
Plaintiffs,	:	
	:	
vs.	:	OPINION & ORDER
	:	[Resolving Docs. No. <u>80</u> , <u>82</u> , <u>83</u> .]
COMMERCE ENERGY, INC, <i>et al.</i> ,	:	
	:	
Defendants.	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

This is a case about minimum wage and overtime under the Fair Labor Standards Act^{1/} and overtime under the Ohio Minimum Fair Wage Standards Act^{2/}. Plaintiffs are door-to-door workers who solicited residential customers for the Defendants' energy services. Now, Defendants Commerce Energy, Inc, Just Energy Marketing Corp, and Just Energy Group, Inc, have moved for summary judgement.^{3/} For the reasons below, the Court **GRANTS IN PART** and **DENIES IN PART** the Defendants' motion for summary judgement.

I. Background

In this case, the Plaintiffs are workers hired by Defendant Just Energy Marketing to say that Just Energy failed to pay them required wages and overtime. Just Energy responds that the Plaintiffs were independent contractors and exempt outside salesman who cannot make a claim under the FLSA. In deciding whether an outside sales exemption allows Just Energy to avoid overtime and

^{1/}29 U.S.C. §§ 201-219.

^{2/}Ohio Rev. Code §§ 4111.01-.03.

^{3/}Doc. 80. Throughout this opinion the Court refers to Commerce Energy, Inc, as "Commerce Energy"; Just Energy Marketing Corp as "Just Energy Marketing" and Just Energy Group, Inc. as "Just Energy." Collectively, the Court refers to the companies as "Just Energy."



Case No. 1:12-CV-00758
Gwin, J.

the minimum wage, the Court mostly looks to how much supervision Just Energy exerted over the Plaintiffs' work activities.

Just Energy Group, a Canadian company, provides electric power and natural gas supply to 1.8 million residential and commercial customers in Canada and the United States.^{4/} It operates in the U.S. through its licensed subsidiaries, including Defendant Commerce Energy.^{5/} Specifically, Commerce Energy operates in California, Georgia, Maryland, Massachusetts, New Jersey, Ohio, and Pennsylvania.^{6/} Another Just Energy Group subsidiary, Defendant Just Energy Marketing, hires employees who go door-to-door to solicit customers.^{7/} Finally, Just Energy hires "regional distributors" to hire, train, and manage these workers and run Just Energy's local offices.^{8/}

The Plaintiffs worked as door-to-door salespeople^{9/} for Just Energy Marketing. They worked at various times from 2009 to 2013 at Just Energy's Beachwood, Ohio office.^{10/} During most of that time, Dennis Piazza was the regional distributor for the Beachwood office.^{11/} Just Energy says that Piazza is an independent contractor himself, and his business is separately incorporated as Star Energy, Inc.^{12/}

A. Ohio Regulations & PUCO

Because Just Energy operates in multiple states, it adopted policies to have its door-to-door

^{4/}Docs. 1; 9; 82 at 8.

^{5/}Docs. 82 at 8; 80-1 at 8.

^{6/}Doc. 82 at 9.

^{7/}Docs. 82 at 9; 80-1 at 8.

^{8/}Doc. 80-1 at 11; 82 at 10.

^{9/}The Court's choice of the word "sales" here and throughout this opinion is descriptive. The word choice has no bearing on whether the Plaintiffs are exempt as outside *salesman* under FLSA.

^{10/}Doc. 80-1 at 11.

^{11/}*Id.*

^{12/}*Id.*

Case No. 1:12-CV-00758
Gwin, J.

workers comply with Ohio regulations.^{13/} Specifically, in Ohio, the Public Utilities Commission of Ohio (“PUCO”) regulates energy suppliers like Just Energy.^{14/} Generally, PUCO requires suppliers who solicit door-to-door to provide customers with acknowledgment forms; have independent third-party verification of at least fifty percent of all its customers; print terms and conditions in ten-point type or greater; and require the door-to-door solicitors to display a valid photo identification.^{15/}

But Just Energy’s door-to-door solicitors have additional requirements. In 2010, Commerce Energy entered into a settlement agreement with the Ohio PUCO to renew its retail natural gas supplier certificate.^{16/} That agreement resulted from an investigation into customer complaints about the sales, solicitation, and enrollment practices of Just Energy’s residential door-to-door solicitors.^{17/}

In the settlement, Commerce Energy agreed to implement an in-state quality assurance program “to provide the company with additional oversight of its sales force, as well as retrain all Ohio sales agents to assure compliance with PUCO’s rules.”^{18/} Commerce also agreed that all its new customers would be subject to a new third-party independent verification process.^{19/} That process requires door-to-door solicitors to initiate a third-party verification call before leaving the premises.^{20/} The solicitors cannot be present on the premises during the call, and they cannot return to the premises after the call.^{21/} Just Energy’s policies for its Ohio door-to-door solicitors reflect

^{13/}*Id.* at 8.

^{14/}*Id.* at 10.

^{15/}*Id.*

^{16/}80-1 at 10.

^{17/}*Id.*

^{18/}*Id.*

^{19/}Doc. 80-12 at 7.

^{20/}*Id.*

^{21/}*Id.*

Case No. 1:12-CV-00758
Gwin, J.

these requirements.^{22/}

B. Hiring and Orientation

For its door-to-door solicitors, Just Energy often hires low-skill workers, many without prior sales experience.^{23/} At its Beachwood office, Just Energy regional distributors and supervisors conducted short interviews before hiring these workers, sometimes completing the interviews in large groups.^{24/} After the interviews, Just Energy required its solicitors to sign employment contracts.^{25/}

The contracts required the Plaintiffs to comply with federal, state, and local laws and regulations and Just Energy Marketing's codes of behavior.^{26/} Further, the contracts said that the Plaintiffs would be paid a commission "according to the commission schedule in place at the time."^{27/} During the Plaintiffs' employment, the commission schedule said that Just Energy paid the Plaintiffs approximately \$35 for every order that they obtained.^{28/} According to Just Energy, the Plaintiffs also "enjoyed the potential to earn productivity bonuses and additional commissions if customers remained with Commerce for certain periods of time."^{29/} But if "a customer cancelled an agreement after signing, then no commissions were paid at all; if the customer cancelled after the commission was already paid, it was subject to recoupment."^{30/}

^{22/}Doc. 80-11 at 2.

^{23/}Doc. 82-3 at 11.

^{24/}Doc. 82-6 at 5.

^{25/}Docs. 80 at 11; 82 at 14.

^{26/}Doc. 80-13 at 2; 82 at 11.

^{27/}Doc. 80-13 at 3.

^{28/}Doc. 80 at 18; 82 at 13.

^{29/}Doc. 80 at 18.

^{30/}*Id.*

Case No. 1:12-CV-00758
Gwin, J.

After signing their employment contracts, Just Energy required its door-to-door workers to attend an orientation session led by a regional distributor.^{31/} These orientation sessions covered a number of topics “including company and industry background, the products and services being sold, and helpful sales techniques.”^{32/} After the orientation, Just Energy generally required the Plaintiffs to shadow a more experienced solicitor in the field^{33/} for one or two days before soliciting customers on their own.^{34/} Just Energy provided a script for the workers to use with customers.^{35/} The Plaintiffs used these scripts to varying degrees.^{36/}

C. Disputed Roles and Responsibilities

Just Energy and the Plaintiffs disagree about their respective roles and responsibilities. According to Just Energy, the Plaintiffs’ primary responsibilities were “knocking on potential customers’ doors, selling Commerce’s services and obtaining signed sales agreements for Commerce’s energy supplies.”^{37/} Just Energy says that the “Plaintiffs were absolutely allowed to travel and work independently.”^{38/} It says that they worked free from supervision, and Just Energy did not require them to work particular hours.^{39/} Both parties agree, however, that the Plaintiffs worked approximately six to seven days a week for approximately twelve hours a day.^{40/}

In contrast, the Plaintiffs say that Just Energy subjected them to significant supervision.^{41/}

^{31/}*Id.* 12.

^{32/}*Id.*

^{33/}*Id.* at 12.

^{34/}Docs. 80-1 at 12; 82 at 10.

^{35/}Docs. 80-1 at 13; 82 at 10.

^{36/}Doc. 80 at 12.

^{37/}Doc. 80-1 at 12.

^{38/}*Id.* at 16.

^{39/}*Id.* at 22.

^{40/}Docs. 80-1 at 13; 82 at 11.

^{41/}Doc. 82 at 9-12.

Case No. 1:12-CV-00758
Gwin, J.

They say that Just Energy regional distributors and supervisors controlled the length of the Plaintiffs' work week and work day by assigning them to a work crew and van, sending the vans to solicit specific neighborhoods, and prohibiting the vans from returning to the office before 9 p.m.^{42/} The Plaintiffs also say that Just Energy regional distributors required the Plaintiffs to knock on a specific number of doors and obtain a certain number of orders, required the Plaintiffs to report to the office every morning, prevented the Plaintiffs from working independently, controlled the Plaintiffs' break time, and required the Plaintiffs to purchase and wear Just Energy branded clothing.^{43/}

D. Court Proceedings

In March 2012, the Plaintiffs filed a complaint for unpaid wages and overtime under FLSA and unpaid overtime under the Ohio Wage Act.^{44/} Now Just Energy has filed a motion for summary judgment.^{45/} With the motion, Just Energy says that they are entitled to summary judgment because: (1) the Plaintiffs are exempt from FLSA and the Ohio Wage Act as outside salesman; (2) the Plaintiffs are independent contractors, not employees; and (3) Plaintiff Black's claims are untimely.^{46/} But Just Energy withdrew its argument that it properly classified the Plaintiffs as independent contractors for purposes of summary judgment only.^{47/} As a result, the Court examines only Just Energy's outside salesman and timeliness arguments.

II. Standard of Review

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings,

^{42/}*Id.* at 11.

^{43/}*Id.*

^{44/}Doc. 1.

^{45/}Doc. 80.

^{46/}*Id.*

^{47/}Defendants hereby withdraw their arguments in support of Plaintiffs' classification as independent contractors raised in support of their Consolidated Motion for Summary Judgment." Doc. 81 at 3.

Case No. 1:12-CV-00758
Gwin, J.

the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.”^{48/}

III. Law and Analysis

Federal law requires employers to pay employees a minimum wage and overtime pay for hours worked in excess of the statutory maximum.^{49/} Not all employees, however, are protected by this requirement. One exception is that “any employee employed . . . in the capacity of outside salesman” is not entitled to minimum wage or overtime.^{50/} Just Energy says that the Plaintiffs are exempted from FLSA under this outside salesman exemption.

Just Energy, as the employer, has the burden of proving that the Plaintiffs were exempt from the overtime provision.^{51/} Moreover, Just Energy must establish that the Plaintiffs meet every aspect of the definition for an exempt employee^{52/} because exemptions from FLSA’s coverage are narrowly construed against the employer who asserts them.^{53/} “[H]ow an employee spends his time is a question of fact, while the question of whether his activities fall within an exemption is a question

^{48/}*Daugherty v. Sajar Plastics, Inc.*, 544 F.3d 696, 702 (6th Cir. 2008). The moving party has the initial burden of showing the absence of a genuine issue of material fact as to an essential element of Plaintiffs’ case. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “A fact is material if its resolution will affect the outcome of the lawsuit.” *Martingale, LLC v. City of Louisville*, 361 F.3d 297, 301 (6th Cir. 2004). In responding to a summary judgment motion, Plaintiffs “cannot rely on the hope that the trier of fact will disbelieve the movant’s denial of a disputed fact, but must present affirmative evidence in order to defeat a properly supported motion for summary judgment.” *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989) (internal quotation omitted). In deciding a motion for summary judgment, the Court views the factual evidence and draws all reasonable inferences in favor of the non-moving party. *Thomas v. Cohen*, 453 F.3d 657, 660 (6th Cir. 2004) (citations omitted). Ultimately the Court must decide “whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Martingale*, 361 F.3d at 301.

^{49/}See 29 U.S.C. §§ 206, 207 (2010).

^{50/}29 U.S.C. § 213(a)(1) (2004).

^{51/}*Mich. Ass’n of Governmental Employees v. Mich. Dep’t of Corr.*, 992 F.2d 82, 83 (6th Cir. 1993).

^{52/}See *Corning Glass Works v. Brennan*, 417 U.S. 188, 196-97 (1974).

^{53/}*Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960).

Case No. 1:12-CV-00758

Gwin, J.

of law.”^{54/}

Ohio applies overtime pay the same as FLSA.^{55/} Therefore, the Court’s FLSA findings apply equally to the Plaintiffs’ claims under the Ohio Wage Act.

A. Making Sales

The Plaintiffs’ evidence raises a genuine issue of material fact about whether they were “making sales,” and thus, qualified as outside salesman. FLSA does not define “outside salesman,” instead leaving it to be “defined and delimited . . . by regulations of the Secretary [of Labor].”^{56/} The Department of Labor defines “outside salesman” as “any employee . . . [w]hose primary duty is . . . making sales within the meaning of [29 U.S.C. § 203(k)]” and who is “customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty.”^{57/} Section 203(k) defines a “sale” as “any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.”^{58/}

In *Christopher v. SmithKline Beecham Corp.*, the United States Supreme Court found that pharmaceutical representatives were exempt outside salespeople even though they did not actually accomplish a “sale” of drugs to the patient.^{59/} Because Congress meant to define sales broadly to

^{54/}*Reich v. Wyoming*, 993 F.2d 739, 741 (10th Cir. 1993). See also *Renfro v. In. Mich. Power Co.*, 233 F.Supp.2d 1174, 1180 (W.D. Mich. 2002); *Dalheim v. KDFW-TV*, 918 F.2d 1220, 1226 (5th Cir. 1990) (stating that “the ultimate determination of whether an employee is exempt [is] properly characterized as a conclusion of law,” even though “based on both historical fact and factual inferences”).

^{55/}See, e.g., *Douglas v. Argo-Tech Corp.*, 113 F.3d 67 n. 2 (6th Cir. 1997) (noting that Ohio’s wage and hour law “parallels the FLSA” and approaching the Ohio law and the FLSA in a “unitary fashion” is appropriate).

^{56/}29 U.S.C. § 213(a)(1).

^{57/}29 C.F.R. § 541.500 (2011). Here, “Plaintiffs deny they were making sales, but acknowledge that their work was performed primarily at potential customers’ residences.” Doc. 82 at 15.

^{58/}29 U.S.C. § 203(k). In light of *Christopher v. SmithKline Beecham Corp.*, the Court will not construe the term “sale” narrowly. See 132 S. Ct. 2156, 2172 n. 21 (2012).

^{59/}*Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2159 (2012).

Case No. 1:12-CV-00758

Gwin, J.

“accommodate industry-by-industry variations in methods of selling commodities,”^{60/} the Supreme Court said that courts should consider the impact of regulatory requirements or “arrangements that are tantamount, in a particular industry, to a paradigmatic sale of a commodity.”^{61/} Thus, because federal regulations prevented the pharmaceutical representatives from engaging in the actual sale of drugs to the patient, the Supreme Court found it was enough that the representatives “promoted” sales to doctors who in turn made “nonbinding commitments” to prescribe the drugs to their patients.^{62/}

In *Clements v. Serco*, the United States Court of Appeals for the Tenth Circuit held that military recruiters were not exempt outside salespeople because they lacked the authority to enlist a recruit.^{63/} There, recruiters “sold” potential recruits on the idea of the Army, but the Army retained the authority to enlist recruits.^{64/} The Tenth Circuit held that the recruiters did not “make sales” because the Army required the recruits to report to a military processing station for a physical, job selection, and an oath before enlisting.^{65/} Because the Army retained discretion to enlist a recruit, the recruiters were not outside salesman.^{66/}

Similarly, in *Wirtz v. Keystone Readers*, the United States Court of Appeals for the Fifth Circuit found that “student salesman” were not outside salesman.^{67/} There, a company hired student salesman to “obtain orders” for magazine subscriptions by door-to-door solicitation.^{68/} The company

^{60/}*Id.* at 2171.

^{61/}*Id.* at 2171-2.

^{62/}*Id.* at 2172.

^{63/}530 F.3d 1224, 1225 (2008).

^{64/}*Id.* at 1227.

^{65/}*Id.*

^{66/}*Id.* at 1228.

^{67/}*Wirtz v. Keystone Readers Serv., Inc.*, 418 F.2d 249, 253 (5th Cir. 1969).

^{68/}*Id.* at 252.

Case No. 1:12-CV-00758

Gwin, J.

required the student salesman to give their order cards to a “student manager,” who then contacted the customer, verified the customer met the company’s qualifications, and passed the order on to a “verifier.”^{69/} The verifier then checked the order to make sure that the customer met the company’s qualifications.^{70/} Only then did the company execute a contract.^{71/} The Fifth Circuit concluded that the student salesman were not outside salesman because they did not “mak[e] sales of their own.”^{72/}

Taking the evidence in the light most favorable to the Plaintiffs, Just Energy fails to show, as a matter of law, that the Plaintiffs “made sales.” Just Energy says that *Christopher* should control because the Plaintiffs obtained “far more” than the nonbinding commitments at issue in *Christopher*.^{73/} The Court agrees that the Plaintiffs obtained contracts, but *Christopher* is distinguishable.

Unlike the pharmaceutical representatives in *Christopher*, the Plaintiffs are not prohibited from completing a contract by state or federal regulations. Instead, Just Energy prevented the Plaintiffs from completing a sale by retaining unlimited discretion to accept and reject the orders obtained by the Plaintiffs. For example, in Just Energy’s New Customer User Guide, Just Energy says: “This Agreement will become firm and binding when (i) *Just Energy accepts this Agreement*, and (ii) the LDC [local distributor] accepts and successfully implements the Customer’s enrolment submission from Just Energy.”^{74/} Similarly, in Just Energy’s Regional Distributor Services Agreement, Just Energy says: “The Service Provider and the Principal understand and agree that

^{69/}*Id.*

^{70/}*Id.* at 253.

^{71/}*Id.*

^{72/}*Id.*

^{73/}Doc. 83 at 5.

^{74/}Doc. 82-17 at 6 (emphasis added).

Case No. 1:12-CV-00758

Gwin, J.

JUST ENERGY or any Affiliate thereof *retain the sole and unfettered discretion to reject any Energy Contract submitted* (whether by an Independent Contractor, the Principal or the Service Provider).^{75/}

Here, neither Ohio law^{76/} nor the PUCO agreement^{77/} require Just Energy to retain unlimited rejection authority. And Just Energy has failed to provide evidence showing that this right to reject contracts was necessary to comply with regulations or the PUCO agreement. Just Energy has not shown that it accepts agreements that comply with the applicable regulations. The contracts the Plaintiffs bring to Just Energy are merely proposals until Just Energy accepts them. Therefore, because Just Energy retains an unlimited right of rejection, the Plaintiffs are more like the student salesman in *Wirtz* and the military recruiters in *Serco* whose employers retained discretion to accept and reject their orders.

Additionally, like the magazine company in *Wirtz*, Just Energy required the Plaintiffs to submit their orders for further review before Just Energy chose to accept or reject them.^{78/} While it is true that Just Energy's evidence shows that the PUCO agreement requires Just Energy to conduct third-party verification,^{79/} Just Energy has failed to show that the regulations require a credit check and approval of the customer^{80/} by the local distributor. Thus, the Plaintiffs' evidence raises a genuine issue of material fact about whether the Plaintiffs were "making sales," and thus, qualified for the outside salesman exemption.

B. External Indicta

^{75/}Doc. 82-15 at 5 (emphasis added).

^{76/}Ohio Admin. Code 4901:1-29-06.

^{77/}Doc. 80-12.

^{78/}See, e.g., *supra* notes 50, 51. See also Doc. 82-10 at 9.

^{79/}In light of *Christopher*, the Court finds that Just Energy's third-party verification system does not prevent Plaintiffs from making sales within FLSA. See 132 S. Ct. at 2171-2.

^{80/}See, e.g., *Fields v. AOL Time Warner, Inc.*, 261 F. Supp. 2d 971, 974 (W.D. Tenn. 2003).

Case No. 1:12-CV-00758
Gwin, J.

The Court's conclusion that Just Energy is not entitled to summary judgment is further supported by the Plaintiffs' evidence that shows a genuine issue of material fact exists about whether the Plaintiffs bear the "external indicia" of outside salesman.^{81/} Courts have articulated "external indicia" that are probative of an employee's status as an outside salesman. Among these factors, courts may consider whether the employees: (1) receive commission compensation;^{82/} (2) receive specialized sales training;^{83/} (3) must solicit new business;^{84/} (4) were hired for their sales experience;^{85/} and (5) were directly supervised.^{86/} None of the indicia of sales-relatedness can be considered in isolation.^{87/} Instead, courts consider the totality of the circumstances in a task-related context.^{88/}

i. Indicative of outside sales

First, the Plaintiffs received commission compensation. While Plaintiffs Black and Fitzpatrick say that they believed Just Energy would pay them if they did not obtain signatures,^{89/} Hurt, Hill, White, and Scott all say that Just Energy told them they were going to be paid on a commission basis^{90/}. Further, the Plaintiffs signed agreements that read, "The Contractor will be compensated for Effective Contracts according to the commission schedule in place at the time of

^{81/} See *Christopher*, 132 S. Ct. at 2172.

^{82/} See, e.g., *Christopher*, 132 S. Ct. at 2173 (discussing "incentive compensation"); *Wirtz*, 356 F.2d at 430 (finding the plaintiffs' "commission was relatively insignificant").

^{83/} See, e.g., *Nielsen v. DeVry, Inc.*, 302 F. Supp. 2d 747, 757 (W.D. Mich. 2003) (collecting cases).

^{84/} See, e.g., *id.*

^{85/} See, e.g., *Christopher*, 132 S. Ct. at 2176 ("Petitioners were hired for their sales experience.").

^{86/} See, e.g., *Nielsen*, 302 F. Supp. 2d at 756.

^{87/} See *Hodgson v. Krispy Kreme Doughnut Co.*, 346 F. Supp. 1102, 1103 (M.D.N.C.1972).

^{88/} See *id.*

^{89/} Docs. 80-8 at 5; 82-4 at 7.

^{90/} See Docs. 80-4 at 14; 80-6 at 6; 80-7 at 10; 80-9 at 7.

Case No. 1:12-CV-00758
Gwin, J.

submission of the contracts.”^{91/} The Plaintiffs have failed to provide evidence to the contrary. Thus, the Court finds that Just Energy paid the Plaintiffs on a commission basis.

Second, the Court finds that the Plaintiffs received sales training. After Just Energy hired the Plaintiffs, it required them to attend an orientation session where the regional distributors discussed company history, industry background, and sales techniques.^{92/} For example, White says that his the orientation leader described “how to approach someone or how to approach different people . . . Basically how to talk to people.”^{93/} Moreover, the Plaintiffs say that Just Energy required them to role play and practice sales techniques before they left the Just Energy office in the mornings.^{94/} Thus, the Court finds that the Plaintiffs received specialized sales training.

Third, the Court finds that the Plaintiffs were responsible for soliciting new business for Just Energy. Just Energy hired the Plaintiffs to go door-to-door and solicit new customers for its gas and electricity services.^{95/} For example, Hurt confirmed that her role “in marketing on behalf of Just Energy Marketing Corporation was really to obtain new customers for Just Energy’s gas and electric services.”^{96/} The Plaintiffs also signed contracts that read, “The Contractor is engaged in the business of selling (or soliciting the safe of) consumer products (natural gas and electricity).”^{97/} Because the Plaintiffs have failed to show evidence to the contrary, the Court finds that the Plaintiffs were responsible for soliciting new business for Just Energy.

ii. Not indicative of outside sales

^{91/}Doc. 80-13 at 3.

^{92/}Docs. 80-4 at 8-9; 80-5 at 5.

^{93/}Doc. 80-7 at 9.

^{94/}Docs. 80-4 at 30; 80-6 at 23.

^{95/}Doc. 80-4 at 28.

^{96/}Doc. 80-4 at 28.

^{97/}Doc. 80-13 at 9.

Case No. 1:12-CV-00758
Gwin, J.

Fourth, the Court finds that Just Energy did not hire the Plaintiffs for their prior sales experience. To the contrary, the Plaintiffs' evidence shows that Just Energy routinely hired workers with *no* prior sales experience. For example, Black said he had "never sold nothing" before Just Energy hired him.^{98/} Fitzpatrick, Hurt, Black, Scott, and White also say that they had no prior sales experience before Just Energy hired them.^{99/} Just Energy itself confirms that its door-to-door workers "are hired off the street and there's no requirement whatsoever of any prior skill to get this job."^{100/} Thus, Just Energy did not hire the Plaintiffs for their prior sales experience.

Fifth, Plaintiff's evidence shows a genuine issue of material fact about the level of supervision Just Energy exerted on the Plaintiffs. On this point, the parties respective positions are quite different. Generally, Just Energy says that the Plaintiffs enjoyed significant freedom from supervision.^{101/} But the Plaintiffs say that Just Energy exerted significant control over all aspects of the Plaintiffs' work. The Court examines this issue in detail.

The Plaintiffs' evidence shows that Just Energy controlled their work schedules. While Just Energy says that the Plaintiffs' employment agreement provided that they were free to work whatever days and hours they choose,^{102/} the Plaintiffs evidence shows that Just Energy dictated the days and times they could work. For example, Hurt says that Piazza told her that she could not work for Just Energy unless she worked from 9 a.m. till 9 p.m.^{103/} Hill says that he wanted to work five days per week, but Piazza told him that he had to work six.^{104/} Fitzpatrick says that Piazza told her that she

^{98/}Doc. 80-8 at 17.

^{99/}Docs. 80-5 at 3-4; 80-9 at 3; 82-6 at 3; 82-11 at 3.

^{100/}Doc. 82-3 at 11.

^{101/}Doc. 80-13 at 3.

^{102/}Doc. 80-13 at 3.

^{103/}Doc. 82-6 at 10.

^{104/}Doc. 80-6 at 3.

Case No. 1:12-CV-00758

Gwin, J.

had to work seven days a week from 9 a.m. till 9 p.m.^{105/} Black says, “If you didn’t work all day—you couldn’t leave If you didn’t do that, you tended to get fired for not following their rules.”^{106/} White says that Piazza told her the workers “weren’t allowed to come back to the office before 9:00 [p.m.].”^{107/} The Plaintiffs’ evidence also shows that the supervisors required the Plaintiffs to knock on a specific number of doors and obtain a certain number of orders each day.^{108/} Thus, the Plaintiffs’ evidence shows a genuine issue of material fact exists about the extent that Just Energy controlled the Plaintiffs’ work schedule.

Additionally, the Plaintiffs’ evidence shows that Just Energy required them to report to the office every morning and prevented them from working independently. While Just Energy says that the Plaintiffs “were absolutely allowed to travel and work independently,”^{109/} the Plaintiffs’ evidence shows that Just Energy required them to report to the office each morning at a specific time. Fitzpatrick, Hill, White, Black, Scott, and Hurt all say that Just Energy required them to report to the office in the morning and sign-in.^{110/} Hurt says that Pizazza became upset with her when she did not report to the office by 9 a.m.^{111/}

Moreover, Hurt and Hill both say they could not work independently without a supervisor’s permission. Specifically, Hurt says that Piazza became upset with her, and they had a “heated conversation” after she worked alone without his permission.^{112/} Hill says that he asked Piazza if he

^{105/}Doc. 82-4 at 5.

^{106/}Doc. 82-2 at 5.

^{107/}Doc. 80-7 at 22.

^{108/}*See, e.g.*, Docs. 80-5 at 15; 80-6 at 10; 80-6 at 14; 80-7 at 23; 80-9 at 21.

^{109/}Doc. 80-1 at 16.

^{110/}Docs. 80-5 at 12; 80-6 at 22-23; 80-7 at 24, 29; 80-8 at 12; 80-9 at 30; 82-2 at 8; 82-5 at 6; 82-6 at 5, 13.

^{111/}Doc. 82-6 at 13.

^{112/}*Id.* at 12.

Case No. 1:12-CV-00758
Gwin, J.

could go out on his own, but Piazza refused his request and required him to report to the office because he was not “marketing enough.”^{113/} Thus, the Plaintiffs’ evidence shows a genuine issue of material fact exists about the extent that Just Energy required the Plaintiffs to report to the office every morning and prevented the Plaintiffs from working independently.

The Plaintiffs’ evidence also shows that Just Energy assigned them to sales routes each day and controlled the Plaintiffs’ break time. Richard Early, Just Energy’s Vice President of Human Resources, says, “So my understanding is they’re not directed to any location. They can go wherever they wish to market.”^{114/} But, Hurt, Fitzpatrick, Hill, White, and Black all say that Just Energy supervisors assigned them to a specific van, crew, and route each morning.^{115/} For example, Black says that “They made a list where we go. Wait for them to tell us where we go and . . . what van you’re riding in.”^{116/}

Moreover, the Plaintiffs evidence shows that Just Energy supervisors controlled the Plaintiffs’ break time.^{117/} For example, Fitzpatrick says “I asked [Piazza] like what time could we take breaks, or is there a time we take breaks? He said no.”^{118/} Hill says Piazza told him “I told you not to take any breaks. You know, you got to keep knocking on doors.”^{119/} Thus, the Plaintiffs’ evidence shows a genuine issue of material fact exists about whether Just Energy assigned the Plaintiffs to sales routes each day and controlled the Plaintiffs’ break time.

The Plaintiffs evidence also shows that Just Energy required them to purchase and wear Just

^{113/}Doc. 80-6 at 35.

^{114/}Doc. 82-3 at 9.

^{115/}Docs. 80-4 at 40; 80-5 at 16, 17; 80-6 at 24; 80-7 at 36; 80-8 at 25; 80-8 at 39.

^{116/}Doc. 80-8 at 25.

^{117/}Docs. 80-5 at 19; 80-4 at 4; Doc. 80-6 at 45.

^{118/}Dos. 80-5 at 19.

^{119/}Doc. 80-6 at 45.

Case No. 1:12-CV-00758

Gwin, J.

Energy branded clothing even though the regulations did not require Just Energy to do so. Richard Teixeira, a Just Energy 30(b)(6) representative, says, “There’s no requirement that says an independent contractor has to purchase clothing.”^{120/} And neither Ohio law^{121/} nor the PUCO agreement^{122/} say that Just Energy must require its workers to wear Just Energy branded clothing. Yet, Hurt, Fitzpatrick, Hill, White, Black, and Scott all say that a Just Energy supervisor required them to purchase and wear Just Energy branded clothing.^{123/} For example, Hill says if “you didn’t wear [Just Energy branded clothing], then . . . They would give it to you and take it out of your check.”^{124/} He also says that Piazza told him “you’ll be fired” for not wearing a Just Energy branded shirt and hat.^{125/} Thus, the Plaintiffs evidence shows a genuine issue of material fact exists about whether Just Energy required the Plaintiffs to purchase and wear Just Energy branded clothing.

Considering all the external indicia together, and reviewing the evidence in a light most favorable to the Plaintiffs, the Court finds that the Plaintiffs’ evidence shows a genuine issue of material fact exists whether the Plaintiffs bear the external indicia of outside salesman. While the Court has found that the Plaintiffs exhibit certain indicia of outside salesman, the Plaintiffs’ evidence shows that Just Energy did not hire the Plaintiffs for their sales experience—and most importantly—Just Energy exhibited *extraordinary* supervision and control over the Plaintiffs.

Unlike the pharmaceutical representatives in *Christopher* that “were subject to subject to only minimal supervision,”^{126/} the Plaintiffs evidence shows that Just Energy supervisors:

^{120/}Doc. 82-10 at 4.

^{121/}Ohio Admin. Code 4901:1-29-06 says “(d) Uniform . . . Each door-to-door solicitor must display a valid photo identification of the approved retail natural gas supplier or governmental aggregator he/she represents.”

^{122/}Doc. 80-12.

^{123/}Docs. 80-4 at 38-39; 80-5 at 7-9; 80-6 at 22; 80-7 at 32; 80-8 at 33; 80-9 at 31; 82-5 at 6.

^{124/}Doc. 82-5 at 6.

^{125/}*Id.*

^{126/}*Christopher*, 132 S. Ct. at 2164.

Case No. 1:12-CV-00758
Gwin, J.

(1) controlled the length of the Plaintiffs' work week and work day; (2) required the Plaintiffs to knock on a specific number of doors and obtain a certain number of orders; (3) required the Plaintiffs to report to the office every morning; (4) prevented the Plaintiffs from working independently; (5) determined the Plaintiffs sales routes; (6) controlled the Plaintiffs' break time; and (7) required the Plaintiffs to purchase and wear Just Energy branded clothing.^{127/} Because "how an employee spends his time is a question of fact,"^{128/} the Court finds that a genuine issue of material fact exists about whether the Plaintiffs bear the external indicia of outside salesman.

C. FLSA's Purpose

The purpose of FLSA's outside salesman exemption further supports the Court's conclusion that Just Energy should not receive summary judgement. According to the Sixth Circuit, "[a]pplication of the exemption is limited to those circumstances plainly and unmistakably within the exemption's terms *and spirit*."^{129/} The Supreme Court has said that the outside sales exemption "is premised on the belief that exempt employees 'typically earned salaries well above the minimum wage' and enjoyed other benefits that "se[t] them apart from the nonexempt workers entitled to overtime pay."^{130/} "It was also thought that exempt employees performed a kind of work that 'was difficult to standardize to any time frame and could not be easily spread to other workers after 40 hours in a week, making compliance with the overtime provisions difficult and generally precluding the potential job expansion intended by the FLSA's time-and-a-half overtime premium."^{131/}

^{127/} See *supra* notes 102-125.

^{128/} See *supra* note 31.

^{129/} See *Douglas v. Argo-Tech Corp.*, 113 F.3d 67, 70 (6th Cir. 1997) (citing *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960) (emphasis added).

^{130/} *Christopher*, 132 S. Ct. at 2173 (citing Preamble 22124).

^{131/} *Id.*

Case No. 1:12-CV-00758
Gwin, J.

In *Christopher*, the Supreme Court held that pharmaceutical sales representatives fell within the purpose of FLSA's outside salesman exemption.^{132/} There, the Court found that the representatives earned "an average of more than \$70,000 per year and spent between 10 and 20 hours outside normal business hours each week performing work related" sales tasks.^{133/} Thus, it concluded that the representatives were "hardly the kind of employees that the FLSA was intended to protect."^{134/} The Court also determined that compensating the representatives for overtime would be difficult because their jobs were structured in a manner fundamentally incompatible with hourly pay.^{135/} Because the representatives were highly compensated, and because their jobs were incompatible with hourly pay, the Court held that the representatives fell within the purpose of FLSA's outside salesman exemption.^{136/}

Here, the Plaintiffs' evidence shows that a genuine issue of material fact exists about whether the Plaintiffs fit within the purpose of FLSA's outside sales exemption. First, unlike the pharmaceutical representatives in *Christopher*, the Plaintiffs' evidence shows that they failed to earn salaries averaging \$70,000 per year.^{137/} Just Energy says that the Plaintiffs had the "capacity and ability to earn far in excess of the minimum wage."^{138/} But the Plaintiffs' evidence shows that in certain weeks, they failed to earn *any* money.^{139/} For example, White says he "worked over 150 hours for [Just Energy] during the two weeks" he was there, yet Just Energy paid him "Nothing."^{140/}

^{132/}*Id.*

^{133/}*Id.*

^{134/}*Id.*

^{135/}*Id.*

^{136/}*Id.*

^{137/}See Doc. 82 at 27.

^{138/}Doc. 83 at 18.

^{139/}*Id.*

^{140/}Doc. 82-11 at 11.

Case No. 1:12-CV-00758
Gwin, J.

Moreover, the pay records of Hurt and Hill show that they regularly made below minimum wage.^{141/}

Thus, a genuine issue of material fact exists about the Plaintiffs' compensation.

Second, the Court finds that a genuine issue of material fact exists about whether Plaintiffs' jobs are conducive to hourly pay. According to Just Energy, the Plaintiffs are like the sales representatives in *Christopher*—free from supervision, able to work independently, and not required to punch a clock—which makes their job fundamentally incompatible with hourly pay.^{142/} Yet according to the Plaintiffs, Just Energy supervisors required them to report to the Just Energy office each morning and sign-in, controlled the length of their work week and work day, determined when they took breaks, and decided where they worked.^{143/} Unlike the pharmaceutical representatives in *Christopher*, here there is no evidence that the Plaintiffs must complete significant administrative work in addition to their door-to-door duties. The Plaintiffs' evidence shows that their jobs are compatible with hourly pay.

Just Energy has also failed to show that it gave the Plaintiffs benefits that would differentiate them from nonexempt workers entitled to overtime pay. Thus, the Plaintiffs' evidence shows that a genuine issue of material fact exists about whether they fit within the purpose of FLSA's outside sales exemption. Consequently, the Court denies Just Energy's motion for summary judgement because the Court finds that the Plaintiffs are not exempt outside salesman as a matter of law.

D. Statute of Limitations

Just Energy says that Plaintiff Black's Ohio overtime and FLSA claims are untimely.^{144/}

^{141/} Docs. 82-13; 82-14 (assuming Hurt and Hill worked six days a week for twelve hours a day).

^{142/} See *supra* note 87.

^{143/} See *supra* notes 81-103.

^{144/} Doc. 80-1 at 32.

Case No. 1:12-CV-00758
Gwin, J.

Generally, FLSA claims are governed by a two-year statute of limitations.^{145/} But such claims may be governed by a three-year statute of limitations where the statutory violation was “willful.”^{146/} In contrast, Ohio law provides for a two-year statute of limitations for claims based upon unpaid overtime compensation, but does not provide for an extension in the case of a willful violation by the employer. Accordingly, a plaintiff’s state law claims may be barred even though his federal claims are not.^{147/}

Under federal law, to establish willfulness, the Plaintiffs must demonstrate that Just Energy either *knew* or showed *reckless disregard* for whether its conduct violated the FLSA.^{148/} Department of Labor regulations say, “an employer’s conduct shall be deemed *knowing* . . . if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful.”^{149/} An “employer’s conduct shall be deemed to be in *reckless disregard* of the requirements of the Act . . . if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.”^{150/}

For example, in *Herman v. Palo Group Foster Home, Inc.*, the Sixth Circuit found that an employer’s violation was willful where the employer ““had actual notice of the requirements of the FLSA by virtue of earlier violations, his agreement to pay unpaid overtime wages, and his assurance of future compliance with the FLSA.””^{151/}

^{145/} See 29 U.S.C. § 255(a).

^{146/} *Id.*

^{147/} *Claeys v. Gandalf, Ltd.*, 303 F. Supp. 2d 890, 892-93 (S.D. Ohio 2004).

^{148/} See *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988) (citing *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 105 (1985)) (emphasis added).

^{149/} 29 C.F.R. § 578.3(c)(2) (emphasis added).

^{150/} 29 C.F.R. § 578.3(c)(3) (emphasis added).

^{151/} 183 F.3d 468, 474 (6th Cir. 1999) (quoting *Dole v. Elliott Travel & Tours, Inc.*, 942 F.2d 962, 967 (6th Cir. 1991)) (citing *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1062 (2d Cir. 1988)).

Case No. 1:12-CV-00758

Gwin, J.

First, Black has failed to raise a genuine issue of material fact showing that his Ohio overtime claim falls within the applicable two-year statute of limitations. Just Energy says that Just Energy Marketing employed Black for one month, from December 2009 until January 2010.^{152/} But, Black did not opt-in to this action until June 11, 2012, more than two years later.^{153/} And Black fails to offer evidence to the contrary. Thus, the Court grants summary judgement to Just Energy and finds that Black's overtime claim under the Ohio Wage Act is barred by its statute of limitations.

Second, Black's evidence sufficiently supports a finding that Just Energy made a willful or reckless violation of FLSA because Just Energy had notice that it had improperly classified its workers as independent contractors. The Sixth Circuit has instructed courts to distinguish between independent contractors and employees by focusing on "whether, as a matter of economic reality, the worker is economically dependent upon the alleged employer or is instead in business for himself."^{154/} Among other factors, this economic reality test often turns on the "degree of control exercised by the alleged employer."^{155/} Similarly, whether an employee is exempt as an outside salesman can turn on the degree of control exercised by the employer.^{156/}

Here, Black's evidence shows that Just Energy should have inquired further about whether it was in compliance with FLSA because it was on notice that it had improperly classified workers as independent contractors. On September 21, 2007, the Unemployment Division of the New York Department of Labor told Just Energy that certain of its door-to-door solicitors were "employees,"

^{152/}Doc. 80-1 at 33.

^{153/}*Id.*

^{154/}*Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 523 (6th Cir. 2011) (quotations marks omitted).

^{155/}*Id.*

^{156/}*See, e.g., Christopher*, 132 S. Ct. at 2159 ("Petitioners were not required to punch a clock or report their hours, and they were subject to only minimal supervision.").

Case No. 1:12-CV-00758
Gwin, J.

not “independent contractors.”^{157/} Thus, like the employer in *Herman*, as early as September 2007, Just Energy was on notice that it was improperly classifying Black and his coworkers as independent contractors.

Moreover, because Just Energy had actual notice that it had improperly classified its door-to-door workers as independent contractors, it should have inquired further about whether its workers were also exempt as outside salesman. The legal test that controls these determinations largely turns on the same factors: the extent of control exercised by the employer. Because Just Energy has not shown that it made further inquiry, Black’s evidence shows that Just Energy recklessly disregarded FLSA’s requirements. Therefore, the Court denies summary judgement to Just Energy on Black’s FLSA claim.

IV. Conclusion

For the reasons above, the Court **GRANTS IN PART** and **DENIES IN PART** Just Energy’s motion for summary judgement.


IT IS SO ORDERED.

Dated: August 15, 2013

s/ _____ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{157/}Doc. 82 at 29.

This is Exhibit "G" referred to in the
Affidavit of Haidar Omarali
sworn before me, this . day of August, 2015.



Commissioner for Taking Affidavits



Sales Presentation Script

JUST ENERGY – Ohio Columbin RateFlex Sales Script	
Action taking place	Script
<i>The Introduction</i>	
<ul style="list-style-type: none"> <input type="checkbox"/> Knock on door and step back from the door. <input type="checkbox"/> Keep eyes down so as not to pressure potential customer. <input type="checkbox"/> Agreement is held out in plain view, use open body language. <input type="checkbox"/> Look confident upon first meeting with the customer. Your demeanor is casual, professional not intimidating. <input type="checkbox"/> Acknowledge the customer with a friendly wave and do not make eye contact. <input type="checkbox"/> Continue to look at the Agreement. Walk forward slowly to the customer. <input type="checkbox"/> Point to Just Energy badge and give customer the Just Energy Brochure. <input type="checkbox"/> Once you begin to speak, make consistent eye contact and be pleasant with the customer. <input type="checkbox"/> Stand a bit sideways to the customer. This opens the space and is non-threatening body language. <input type="checkbox"/> Breaks eye contact after asking for the bill and step back a little bit. 	<p>Contractor: Hi sir/ma'am I'm (show badge) _____ with Just Energy. Just Energy is a retail natural gas supplier licensed in the state of Ohio. I've been assigned to your neighborhood today to see if you qualify for the RateFlex Program for your natural gas. I just need you to get your gas bill so I can make sure you qualify. You are between the ages of 18-70 correct?</p> <p>Customer: Why are you asking?</p> <p>Contractor: If you're over 70 it's a slightly different process that's all. Are you between the ages of 18-70?</p> <p>Customer: No.</p> <p>Contractor: You may qualify for a special senior discount! (Provide copy of brochure, refer to customer service phone number and leave premises) OR...</p> <p>Customer: Yes.</p> <p>Contractor: Great! In order for me to explain the program properly, I'll need to show you a few things on your gas bill. I'll wait right here so you can get your bill.</p> <p>If the customer asks a question: In order for me to explain the program properly, I'll need you to get your gas bill. It's a lot easier to explain that way. I'll wait right here, while you get your bill so we can make sure you qualify.</p>
<i>B. Qualifying & Explaining the Program</i>	



Sales Presentation Script

<ul style="list-style-type: none"> <input type="checkbox"/> Motion your hand for the bill (without making eye contact) while customer hands it over. <input type="checkbox"/> Take the bill to involve customer in the process and keep the bill in plain view by placing it at the top of the binder. <input type="checkbox"/> During the explanation, continue to stand a little sideways and keep the Agreement in plain view. <input type="checkbox"/> While explaining program, try to maintain eye contact 70% of the time. <input type="checkbox"/> Turn slightly, holding Agreement square to the customer. Break eye contact, pen to paper and ask for last name. <input type="checkbox"/> Point to the customer's bill where the name and price will appear once on the program. <input type="checkbox"/> Circle the rate and term to emphasize those to the customer. <input type="checkbox"/> Ensure the person you speak with is the Account Holder or authorized to sign the agreement. <input type="checkbox"/> After you asked for the last name, commence writing and answering questions. <input type="checkbox"/> After customer says yes, fill in the agreement. This is the time to build rapport. 	<p>The bill is needed at this point to be sure of the following:</p> <ul style="list-style-type: none"> • The bill is from COH • The account is in good standings with the utility (no shut-off notices) • The bill is recent (90 days or newer) • The person you are speaking with is the account holder or spouse • The customer is not on the P.I.P.P. (Percentage of Income Price Program). <p>If the customer qualifies continue with the following: Contractor: Congratulations sir/ma'am you do qualify for the program! I'll take care of that in a minute, but first I need to show you some things on your bill. You see here, you're with the right utility, this is a recent bill, and you're in good standing with the utility. So congratulations, you qualify for the RateFlex program for your gas bill. You know how your gas rates change every month? The RateFlex program will give you a discounted rate of up to 5% off your utility's rate for your first 3 months. Then you would go back to a variable rate. This program does not promise financial savings, but at the end of the 5 years, if you pay more for your gas through Just Energy than you would have with your utility, we'll give you a rebate of \$125!</p> <p>Also, the RateFlex program allows you to lock in your rate at any time. Just call our customer service center if you want to lock into a rate and they'll let you know what your options are.</p> <p>Of course your utility stays the same. They still deliver the gas, read the meter, service the account, send the bill, and you pay them just like before. The only change you will see on the bill is that our rate will replace your utility's rate for gas.</p> <p>Your utility will send you a notice confirming your choice to enroll in the program. You have 30 days after we show up on your first gas bill to cancel without penalty. After the 30 days, there is a \$50 exit fee, but that only applies if you cancel. Your first bill with Just Energy on it is still about 2 months away anyway. So again congratulations! Your name is...? And you ARE the account holder correct? What's your phone number here?</p>
---	---



Sales Presentation Script

	<p>(After you have completed the agreement)</p> <p>In order to complete your enrollment we will need to make a quality control call to the verification department. It's a toll free number. I'll wait here while you get your phone.</p> <p>(Customer brings phone.)</p>
<i>C. Essential Agreement Information & Signatures</i>	
<p><input type="checkbox"/> Hold the binder and turn it to face customer and point to the Essential Agreement Information on the agreement.</p> <p><input type="checkbox"/> Break eye contact when asking the customer to make a decision so as not to exert pressure.</p> <p><input type="checkbox"/> Hand over your pen. The customer takes the agreement and reads over the Essential Agreement Information.</p>	<p>Sir/ma'am, the details of your program are in the Agreement and Acknowledgment Form. The verifier is going to ask you some questions on the phone so I'm going to go over them with you first. They will want to make sure:</p> <ul style="list-style-type: none"> • That I had my badge and uniform and that I was polite and professional • That you are between 18-70. You're not over 70 right? • That you understand that I'm with Just Energy NOT the utility, government or consumer group. • That you understand that even though Just Energy will supply the gas, your utility still bills and services you • That I explained that while Just Energy will control your variable gas rate per Mcf, any delivery charges, taxes or administrative charges from the utility STILL do apply. • That you understand that even though this is not a savings plan, you will receive a discounted rate for the first three months and get a \$125 rebate if you paid more for your natural gas with Just Energy than you would have with your utility at the end of five years. • That you will receive a letter from your utility in about a week and will have seven business days to exit without any exit fees.



Sales Presentation Script

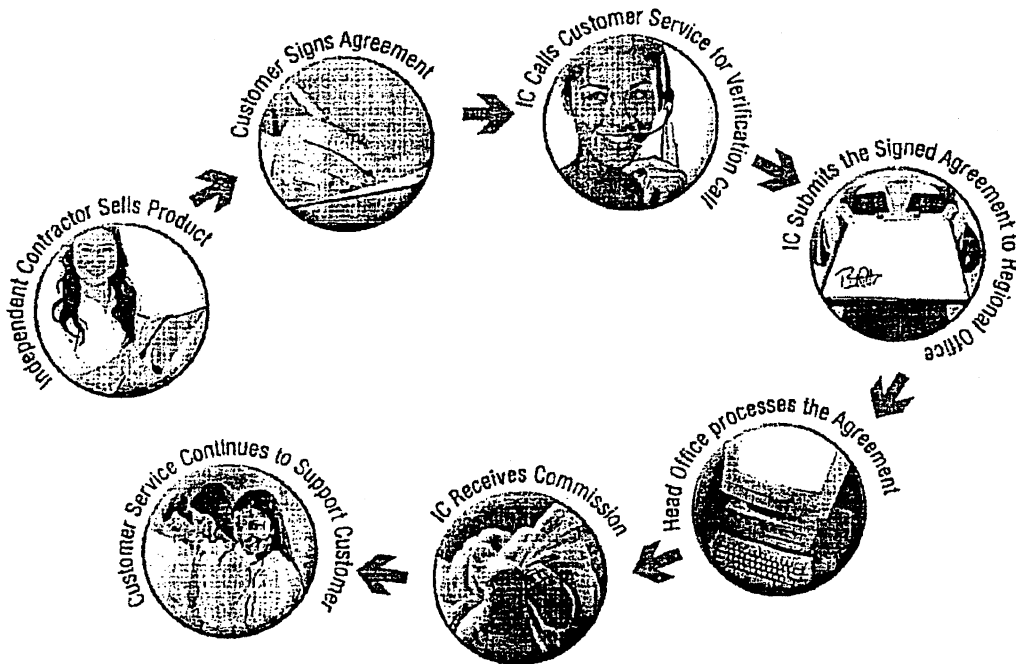
<p><input type="checkbox"/> Customer takes the pen and you point to where the customer's signature is needed on both the agreement and acknowledgment form.</p>	<ul style="list-style-type: none"> • However Just Energy will go one step further and will give you another 30 days after we show up on your first bill to cancel without penalty. After that there is the \$50 exit fee I mentioned before because we already made the arrangements to buy your gas. • That you are not a P.I.P.P. customer. <p>I'll leave you copies of everything in a minute, but first I need your signature right here (on the agreement and acknowledgment form). Customer signs the agreement.</p>
<p><i>D. Reaffirmation, Verification Code, and Wrap up</i></p>	
<p><input type="checkbox"/> Ask the customer if they have any final questions, as you cannot answer during the call.</p> <p><input type="checkbox"/> Call Customer Service for Verification code.</p> <p><input type="checkbox"/> Provide all necessary customer information.</p> <p><input type="checkbox"/> Write the Verification Rep's name and identification number.</p> <p><input type="checkbox"/> Take down the verification code.</p> <p><input type="checkbox"/> Provide customer with:</p> <ul style="list-style-type: none"> - The agreement, - The acknowledgment form, and - Brochure, <p><input type="checkbox"/> Customer takes all the paperwork. Keep the white copy of the agreement for you.</p> <p><input type="checkbox"/> Transfer the phone to the customer when prompted by the Verification Representative.</p> <p><input type="checkbox"/> Leave the premise immediately.</p>	<p>I'm going to call the verification department to finish your enrollment. If you think of any questions after I'm gone (green sheet) call this 1-800 # for customer service and they will be happy to help you. Once we start the call, I'm not allowed to answer any questions, as I'll have to leave the premise once I pass the phone to you. Do you have any questions, or are you ready to start the call? One last thing, they will ask you to rate me from 1-10; I hope I did a good job! (Answer any questions and dial TPV).</p> <p>Call TPV to verify the agreement:</p> <p>Hi, I'm _____. My Badge number is xxxxxxx.</p> <p>"Please wait until I'm gone before continuing the call. Have a nice day!"</p> <p>[Contractor leaves immediately.]</p>

This is Exhibit "H" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 15th day of August, 2015.

Commissioner for Taking Affidavits

The Customer Interaction

The Sales Presentation is the beginning and a very critical part of the customer interaction. As the customers' first point of contact, you are building lasting relationships with them as we continue to serve them in the many years to come. The Customer Lifecycle begins with you knocking on their door and ends with Customer Service continuing to support the customer. We will go through all the steps but focus our attention on the first three steps, as this is when you are building the relationship with the customer.



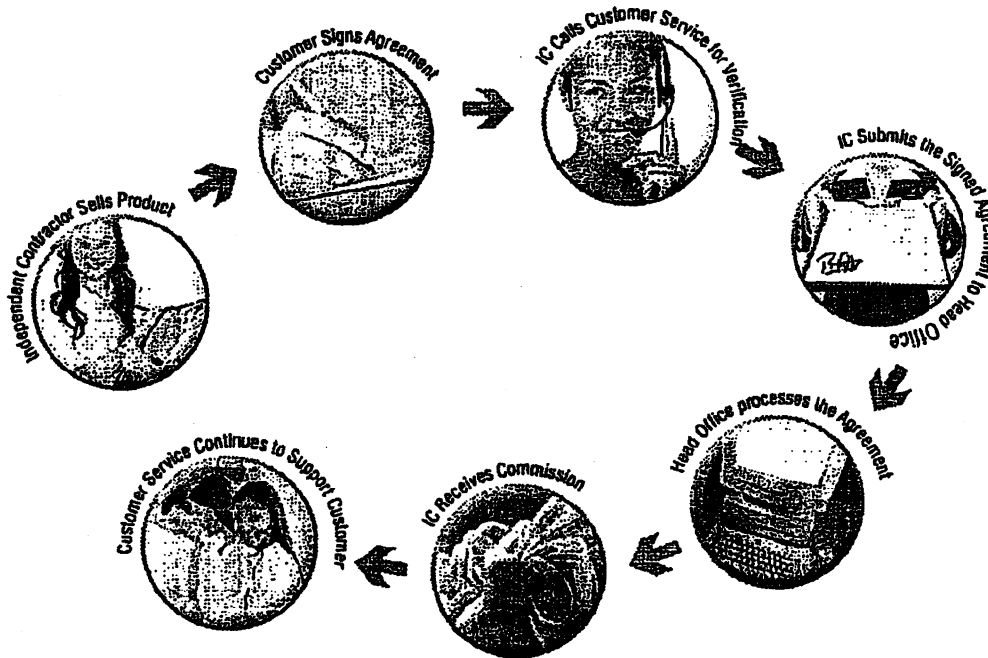
A Day in the Life of an Independent Contractor

Let's look at the components of a typical day as an independent contractor. An Independent contractor typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork. We will focus on the customer interaction part of your day. While the process may vary in different offices, for the most part the steps in the process are the same.



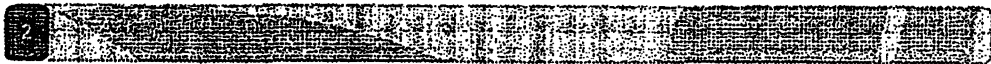
The Customer Interaction

The Sales Presentation is the beginning and a very critical part of the customer interaction. As the customers' first point of contact, you are building lasting relationships with them as we continue to serve them in the many years to come. The Customer Lifecycle begins with you knocking on their door and ends with Customer Service continuing to support the customer. We will go through all the steps but focus our attention on the first three steps, as this is when you are building the relationship with the customer.



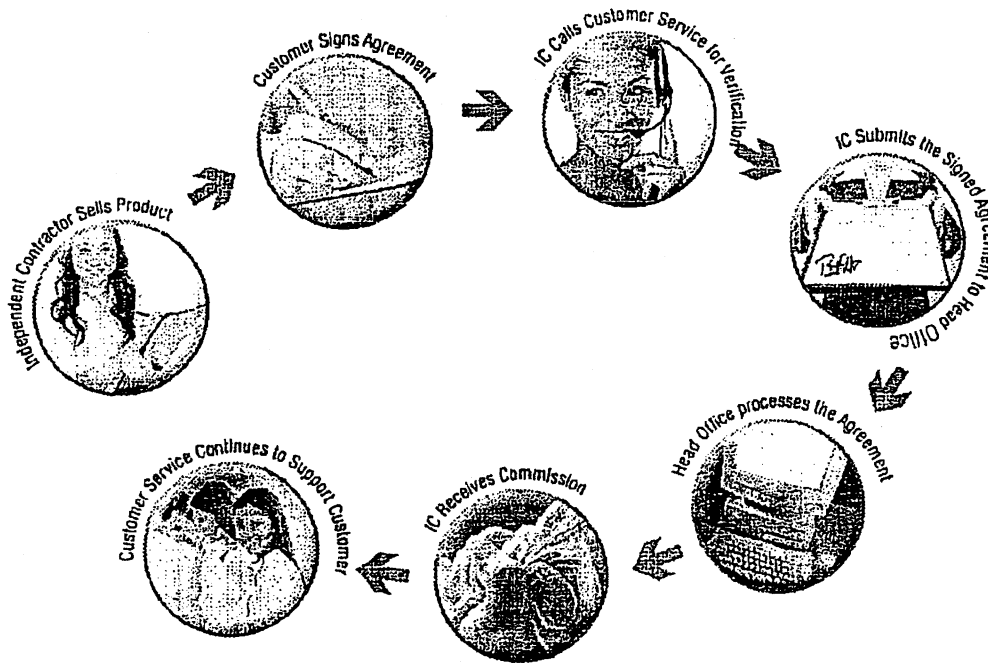
A Day in the Life of an Independent Contractor

Let's look at the components of a typical day as an Independent Contractor. An Independent Contractor typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork. We will focus on the customer interaction part of your day. While the process may vary in different offices, for the most part the steps in the process are the same.



The Customer Interaction

The Sales Presentation is the beginning and a very critical part of the customer interaction. As the customers' first point of contact, you are building lasting relationships with them as we continue to serve them in the many years to come. The Customer Lifecycle begins with you knocking on their door and ends with Customer Service continuing to support the customer. We will go through all the steps but focus our attention on the first three steps, as this is when you are building the relationship with the customer.



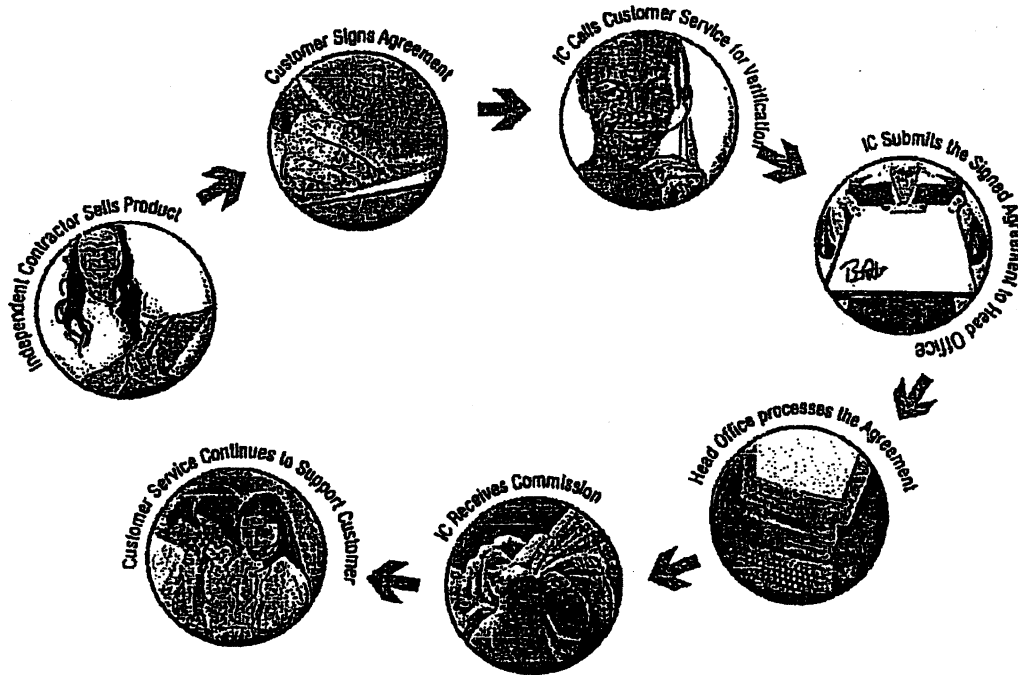
A Day in the Life of an Independent Contractor

Let's look at the components of a typical day as an Independent Contractor. An Independent Contractor typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork. We will focus on the customer interaction part of your day. While the process may vary in different offices, for the most part the steps in the process are the same.



The Customer Interaction

The Sales Presentation is the beginning and a very critical part of the customer interaction. As the customers' first point of contact, you are building lasting relationships with them as we continue to serve them in the many years to come. The Customer Lifecycle begins with you knocking on their door and ends with Customer Service continuing to support the customer. We will go through all the steps but focus our attention on the first three steps, as this is when you are building the relationship with the customer.



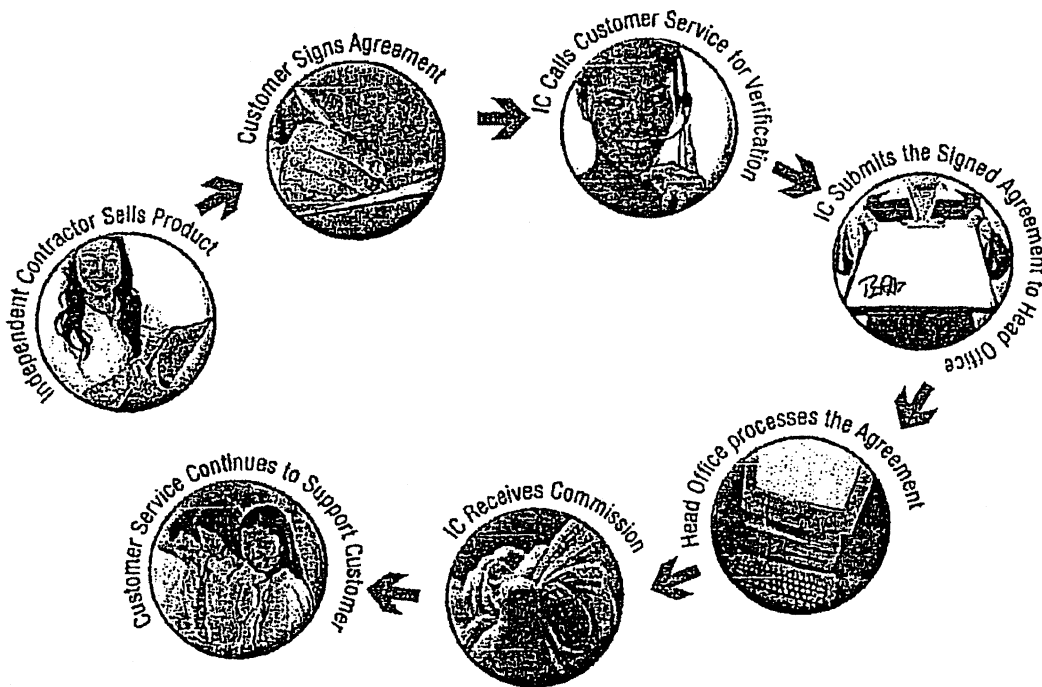
A Day in the Life of an Independent Contractor

Let's look at the components of a typical day as an independent contractor. An independent contractor typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork. We will focus on the customer interaction part of your day. While the process may vary in different offices, for the most part the steps in the process are the same.



The Customer Interaction

The Sales Presentation is the beginning and a very critical part of the customer interaction. As the customers' first point of contact, you are building lasting relationships with them as we continue to serve them in the many years to come. The Customer Lifecycle begins with you knocking on their door and ends with Customer Service continuing to support the customer. We will go through all the steps but focus our attention on the first three steps, as this is when you are building the relationship with the customer.



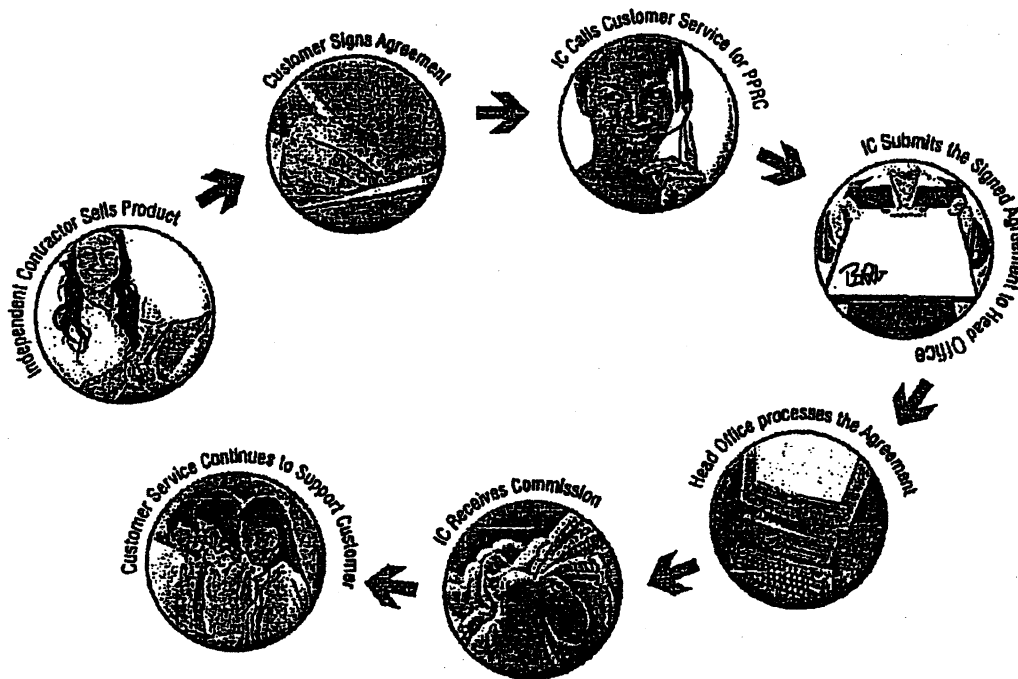
A Day in the Life of an Independent Contractor

Let's look at the components of a typical day as an independent contractor. An independent contractor typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork. We will focus on the customer interaction part of your day. While the process may vary in different offices, for the most part the steps in the process are the same.



The Customer Interaction

The Sales Presentation is the beginning and a very critical part of the customer interaction. As the customers' first point of contact, you are building lasting relationships with them as we continue to serve them in the many years to come. The Customer Lifecycle begins with you knocking on their door and ends with Customer Service continuing to support the customer. We will go through all the steps but focus our attention on the first three steps, as this is when you are building the relationship with the customer.

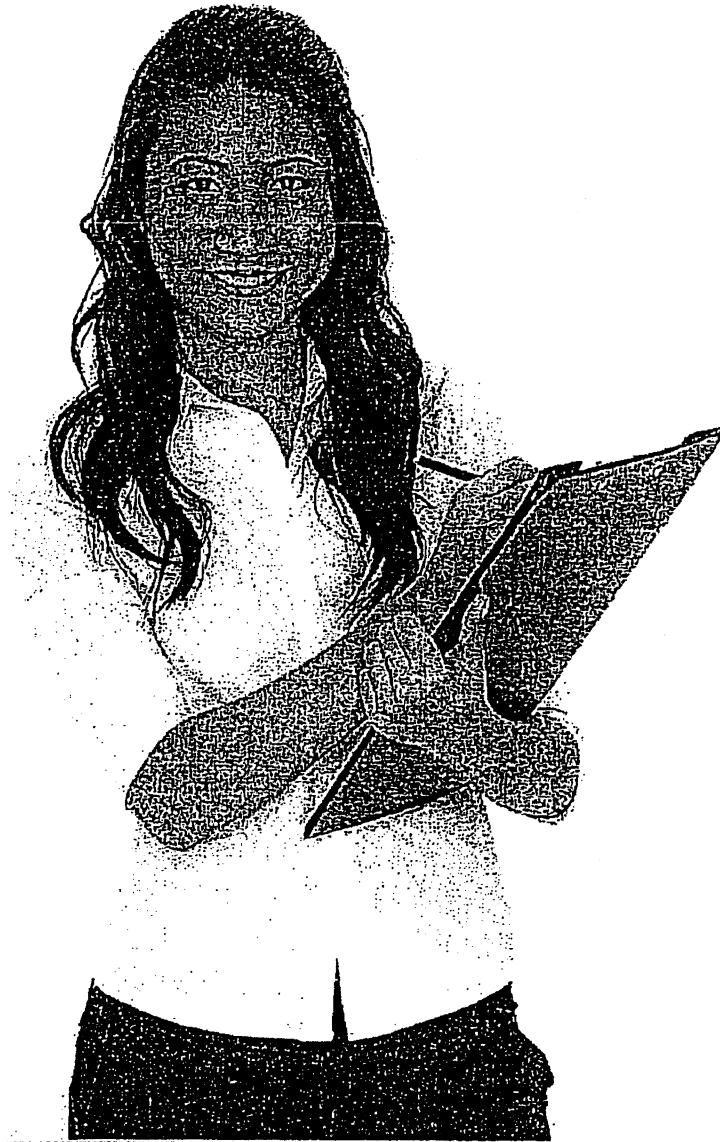


A Day in the Life of an Independent Contractor

Let's look at the components of a typical day as an independent contractor. An independent contractor typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork. We will focus on the customer interaction part of your day. While the process may vary in different offices, for the most part the steps in the process are the same.

A Day in the Life of a Sales Representative

Let's look at the components of a typical day as a Sales Representative. A Sales Representative typically begins their day in the late morning with a meeting at the office before going on the road. These meetings include updates on regulatory or market information, awards, incentives, products and practicing sales techniques. You also have time to prepare for the on-road part of the day, ensuring you have all the paperwork. We will focus on the customer interaction part of your day. While the process may vary in different offices, for the most part the steps in the process are the same.





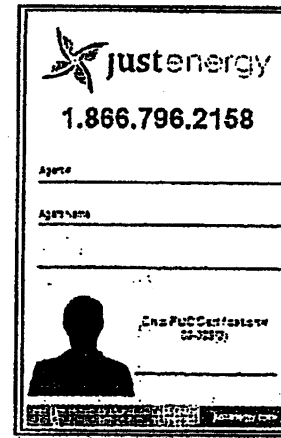
The Introduction and Obtaining the Bill

A customer buys you first, then your product.
~Todd Duncan

As independent contractors, you will market to consumers at their homes. You will be dropped off by the Crew Coordinator at the location you will be working in for the day. You will work from early afternoon to early evening in one area, contacting customers.

Always remember that 80% of communication is non-verbal. Body language and expressions say as much, if not more, than the words you use. By using body language that is confident, casual and professional, the customer feels welcomed and open to what you have to say. This is the first impression which is critical in building a trusting and lasting relationship. The following is a summary of what you observed in the video that you need to do to proceed with the sales presentation:

1. Use a friendly knock on the customer's door and step away from the door. When the customer comes to the door, introduce yourself and show your badge to the customer. ALL Just Energy independent contractors **MUST** wear a badge when speaking to customers. Here is an example of a badge you will be wearing.
2. As you introduce yourself, state that you are with Just Energy, a gas/electricity supplier, and are not from the utility, with the government, or with any consumer group.
3. You must clearly and precisely state the reason for the visit (assume the customer has no or limited knowledge of energy programs and take the appropriate time to explain the reason for the visit).
4. Inform the customer you are here to see whether or not they had the opportunity to sign up for Just Energy's Energy Program. During this time you will maintain little eye contact to avoid intimidating the customer.
5. Provide the customer with the Marketing Brochure. ALL customers **MUST** receive the Marketing Brochure with your name and ID Number included whether they sign-up or not. Customers are encouraged to contact our Customer Service department if they have any concerns.
6. Have the agreement in plain view on the binder or clipboard. The customer must be able to see it during the presentation. Turn slightly to hold the agreement square with the customer, ensuring they can clearly see it at all times.
7. Ask the customer to provide a copy of their current utility bill. The bill contains the information you need to determine if the customer qualifies. You also need the bill to complete information on the agreement. The utility requires that the customer information provided for enrolment is **EXACTLY** as it appears on the bill or the enrolment will be rejected.





The Introduction and Obtaining The Bill

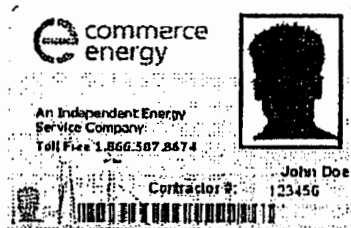
A customer *buys you first*, then your product.

-Todd Duncan

As Independent Contractors, you will market to consumers at their homes. You will be dropped off by the Crew Coordinator at the location you will be working in for the day. You will work from early afternoon to early evening in one area, contacting customers.

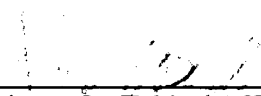
Always remember that 80% of communication is non-verbal. Body language and expressions say as much, if not more, than the words you use. By using body language that is confident, casual and professional, the customer feels welcomed and open to what you have to say. This is the first impression which is critical in building a trusting and lasting relationship. The following is a summary of what you observed in the video that you need to do to proceed with the sales presentation:

1. Use a friendly knock on the customer's door and step away from the door. When the customer comes to the door, introduce yourself and show your badge to the customer. **ALL** Commerce Energy Independent Contractors **MUST** wear a badge when speaking to customers. Here is an example of a badge you will be wearing.



2. As you introduce yourself, state your name, company name and show ID badge.
3. You must clearly and precisely state the reason for the visit (assume the customer has no or limited knowledge of Energy Retailers and take the appropriate time to explain the reason for the visit).
4. Inform customer that you are representative of Commerce Energy, an Independent energy services company- not affiliated with their local utility.
5. Inform the customer you are here to see whether or not they had the opportunity to register for our Flex and Cap Program for their natural gas account. During this time you will maintain little eye contact to avoid intimidating the customer.
6. Provide the customer with the Customer Service Contact Form. **ALL** customers **MUST** receive this form whether they sign-up or not.
7. Have the agreement in plain view on the binder or clipboard. The customer must be able to see it during the presentation. Turn slightly to hold the agreement square with the customer, ensuring they can clearly see it at all times.
8. Ask the customer to provide a copy of their current natural gas bill. The bill contains the information you need to determine if the customer qualifies. You also need the bill to complete information on the agreement. The utility requires that the customer information provided for enrollment is **EXACTLY** as it appears on the bill or the enrollment will be rejected.

This is Exhibit "I" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 10 day of August, 2015.



Commissioner for Taking Affidavits



The Introduction and Obtaining The Bill

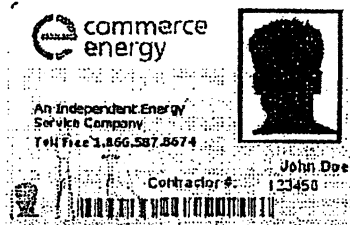
A customer buys you first, then your product.

~Todd Duncan

As Independent Contractors, you will market to consumers at their homes. You will be dropped off by the Crew Coordinator at the location you will be working in for the day. You will work from early afternoon to early evening in one area, contacting customers.

Always remember that 80% of communication is non-verbal. Body language and expressions say as much, if not more, than the words you use. By using body language that is confident, casual and professional, the customer feels welcomed and open to what you have to say. This is the first impression which is critical in building a trusting and lasting relationship. The following is a summary of what you observed in the video that you need to do to proceed with the sales presentation:

1. Use a friendly knock on the customer's door and step away from the door. When the customer comes to the door, introduce yourself and show your badge to the customer. **ALL** Commerce Energy Independent Contractors **MUST** wear a badge when speaking to customers. Here is an example of a badge you will be wearing.



2. As you introduce yourself, state your name, company name and show ID badge.
3. You must clearly and precisely state the reason for the visit (assume the customer has no or limited knowledge of Energy Providers or Gas Marketers and take the appropriate time to explain the reason for the visit).
4. Inform customer that you are a representative of Commerce Energy, an independent energy services company-not affiliated with AGLC or the regulated provider, SCANA Energy..
5. Inform the customer you are here to see whether or not they had the opportunity to register for our Price Protection Plus Program for their natural gas account. During this time you will maintain little eye contact to avoid intimidating the customer.
6. Provide the customer with the Customer Service Contact Form. **ALL** customers **MUST** receive this form whether they sign-up or not.
7. Have the agreement in plain view on the binder or clipboard. The customer must be able to see it during the presentation. Turn slightly to hold the agreement square with the customer, ensuring they can clearly see it at all times.
8. Ask the customer to provide a copy of their current natural gas bill. The bill contains the information you need to determine if the customer qualifies. You also need the bill to complete information on the agreement. AGLC requires that the customer information provided for enrollment is **EXACTLY** as it appears on the bill or the enrollment will be rejected.



The Introduction and Obtaining The Bill

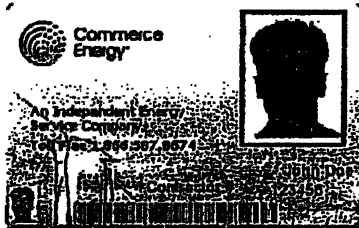
A customer buys you first, then your product.

~Todd Duncan

As independent contractors, you will market to consumers at their homes. You will be dropped off by the Crew Coordinator at the location you will be working in for the day. You will work from early afternoon to early evening in one area, contacting customers.

Always remember that 80% of communication is non-verbal. Body language and expressions say as much, if not more, than the words you use. By using body language that is confident, casual and professional, the customer feels welcomed and open to what you have to say. This is the first impression which is critical in building a trusting and lasting relationship. The following is a summary of what you observed in the video that you need to do to proceed with the sales presentation:

1. Use a friendly knock on the customer's door and step away from the door. When the customer comes to the door, introduce yourself and show your badge to the customer. ALL Commerce Energy independent contractors MUST wear a badge when speaking to customers. Here is an example of a badge you will be wearing.



2. As you introduce yourself, state your name, company name and show ID badge.
3. You must clearly and precisely state the reason for the visit (assume the customer has no or limited knowledge of Energy Retailers and take the appropriate time to explain the reason for the visit).
4. Inform customer that you are representative of Commerce Energy, an independent energy services company-not affiliated with their local utility.
5. Inform the customer you are here to see whether or not they had the opportunity to register for our RateFlex Pro Program for their electricity/natural gas account. During this time you will maintain little eye contact to avoid intimidating the customer.
6. Provide the customer with the Customer Service Contact Form. ALL customers MUST receive this form whether they sign-up or not.
7. Have the agreement in plain view on the binder or clipboard. The customer must be able to see it during the presentation. Turn slightly to hold the agreement square with the customer, ensuring they can clearly see it at all times.
8. Ask the customer to provide a copy of their current electricity/natural gas bill. The bill contains the information you need to determine if the customer qualifies. You also need the bill to complete information on the agreement. The utility requires that the customer information provided for enrollment is EXACTLY as it appears on the bill or the enrollment will be rejected.



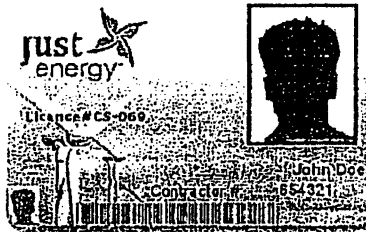
The Introduction and Obtaining the Bill

**A customer *buys you first*, then your product.
-Todd Duncan**

As Independent contractors, you will market to consumers at their homes. You will be dropped off by the Crew Coordinator at the location you will be working in for the day. You will work from early afternoon to early evening in one area, contacting customers.

Always remember that 80% of communication is non-verbal. Body language and expressions say as much, if not more, than the words you use. By using body language that is confident, casual and professional, the customer feels welcomed and open to what you have to say. This is the first impression which is critical in building a trusting and lasting relationship. The following is a summary of what you need to do to proceed with the sales presentation:

1. Use a friendly knock on the customer's door and step away from the door. When the customer comes to the door, introduce yourself and show your badge to the customer. ALL Just Energy independent contractors MUST wear a badge when speaking to customers. Here is an example of a badge you will be wearing.
2. As you introduce yourself, state that you are with Just Energy, a electricity supplier, and are not from the utility,



with the government, or with any consumer group.

3. You must clearly and precisely state the reason for the visit (assume the customer has no or limited knowledge of energy retailer programs and take the appropriate time to explain the reason for the visit).
4. Inform the customer you are here to see whether or not they had the opportunity to sign up for Just Energy's Electricity RateFlex Pro program. Explain that customers receive a discounted price off their utility supply rate for 1 year, then transfer to a monthly variable rate. They have the ability to lock in at any time. We will give you a \$100 rebate if you paid more with Just Energy than your utility for your electricity supply at the end of 5 years.
5. During this time you will maintain little eye contact to avoid intimidating the customer.
6. Provide the customer with the Marketing Brochure. ALL customers MUST receive the Marketing Brochure with your name included whether they sign-up or not.
7. Have the agreement in plain view on the binder or clipboard. The customer must be able to see it during the presentation. Turn slightly to hold the agreement square with the customer, ensuring they can clearly see it at all times.
8. Ask the customer to provide a copy of their current electricity utility bill. The bill contains the information you need to determine if the customer qualifies. You also need the bill to complete information on the agreement. The utility requires that the customer information provided for enrolment is EXACTLY as it appears on the bill or the enrolment will be rejected.





The Introduction and Obtaining The Bill

A customer *buys you first*, then your product.
~Todd Duncan

As Independent contractors, you will market to consumers at their homes. You will be dropped off by the Crew Coordinator at the location you will be working in for the day. You will work from early afternoon to early evening in one area, contacting customers.

Always remember that 80% of communication is non-verbal. Body language and expressions say as much, if not more, than the words you use. By using body language that is confident, casual and professional, the customer feels welcomed and open to what you have to say. This is the first impression which is critical in building a trusting and lasting relationship. The following is a summary of what you observed in the video that you need to do to proceed with the sales presentation:

1. Use a friendly knock on the customer's door and step away from the door. When the customer comes to the door, introduce yourself and show your badge to the customer. ALL Just Energy Independent contractors MUST wear a badge when speaking to customers. Here is an example of a badge you will be wearing.



2. As you introduce yourself, state your name, company name and show ID badge.
3. You must clearly and precisely state the reason for the visit (assume the customer has no or limited knowledge of TPSs and take the appropriate time to explain the reason for the visit).
4. Inform customer that you are representative of Commerce Energy, an Independent energy services company- not affiliated with their local utility.
5. Inform the customer you are here to see whether or not they had the opportunity to register for our price protection program for their electricity account. During this time you will maintain little eye contact to avoid intimidating the customer.
6. Provide the customer with the Customer Service Contact Form. ALL customers MUST receive this form whether they sign-up or not.
7. Have the agreement in plain view on the binder or clipboard. The customer must be able to see it during the presentation. Turn slightly to hold the agreement square with the customer, ensuring they can clearly see it at all times.
8. Ask the customer to provide a copy of their current electricity bill. The bill contains the information you need to determine if the customer qualifies. You also need the bill to complete information on the agreement. The utility requires that the customer information provided for enrollment is EXACTLY as it appears on the bill or the enrollment will be rejected.



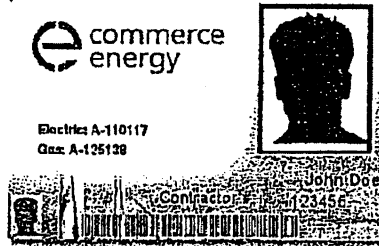
The Introduction and Obtaining the Bill

A customer buys you first, then your product.
~Todd Duncan

As Sales Representatives, you will market to consumers at their homes. You will be dropped off by the Team Manager at the location you will be working in for the day.

Always remember that 80% of communication is non-verbal. Body language and expressions say as much, if not more, than the words you use. By using body language that is confident, casual and professional, the customer feels welcomed and open to what you have to say. This is the first impression which is critical in building a trusting and lasting relationship. The following is a summary of what you observed in the video that you need to do to proceed with the sales presentation:

1. Use a friendly knock on the customer's door and step away from the door. When the customer comes to the door, introduce yourself and show your badge to the customer. ALL Commerce Energy sales representatives MUST wear a badge when speaking to customers. Here is an example of a badge you will be wearing.
2. As you introduce yourself, state that you are with Commerce Energy, a competitive energy supplier, and are not




from the utility, with the government, or with any consumer group.

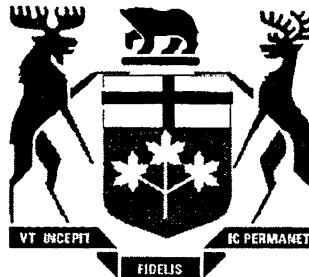
3. You must clearly and precisely state the reason for the visit (assume the customer has no or limited knowledge of energy programs and take the appropriate time to explain the reason for the visit).
4. Inform the customer you are here to see whether or not they had the opportunity to sign up for Commerce Energy's RateFlex Pro Program for natural gas and electricity. During this time you will maintain little eye contact to avoid intimidating the customer.
5. Provide the customer with the contact sheet. ALL customers MUST receive the contact sheet with your name included whether they sign-up or not.
6. Have the agreement in plain view on the binder or clipboard. The customer must be able to see it during the presentation. Turn slightly to hold the agreement square with the customer, ensuring they can clearly see it at all times.
7. Ask the customer to provide a copy of their current gas and electricity utility bill. The bill contains the information you need to determine if the customer qualifies.



This is Exhibit "J" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 17th day of August, 2015.



Commissioner for Taking Affidavits



Ontario

ONTARIO ENERGY BOARD

Electricity Retailer Code of Conduct

**Restated
November 17, 2010**

TABLE OF CONTENTS**PART A****1 GENERAL PROVISIONS****PART B****1 FAIR MARKETING PRACTICES****2 BUSINESS CARDS AND IDENTIFICATION BADGES****3 CONTRACTS AND TRANSFER REQUESTS****4 DISCLOSURE STATEMENTS, PRICE COMPARISONS, VERIFICATION AND RENEWALS OR EXTENSIONS****5 TRAINING****6 CERTIFICATION****7 CONSUMER COMPLAINTS AND COMPLIANCE MONITORING****8 SERVICES TO BE MAINTAINED BY A RETAILER****9 CONFIDENTIALITY OF CONSUMER INFORMATION****10 TRANSFER AND ASSIGNMENT OF CONTRACTS****PART C****1 TRANSITIONAL PROVISIONS**

PART A

1 GENERAL PROVISIONS

1.1 The Purpose of this Code

The purpose of this Electricity Retailer Code of Conduct (the "Code") is to set out the minimum standards that a licensed retailer must meet when retailing electricity to consumers.

1.2 Definitions

In this Code:

"account holder" has the meaning given to it in the ECPA;

"account holder's agent" has the meaning given to it in the ECPA Regulation;

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

"Board" means the Ontario Energy Board;

"consumer" means a person who uses, for the person's own consumption, electricity that the person did not generate;

"consumer information" means information relating to a specific consumer obtained by a retailer, its salesperson or its verification representative, and includes information obtained without the consent of the consumer;

"contract" has the meaning given to it in section 2 of the ECPA;

Restated Electricity Retailer Code of Conduct
November 17, 2010

"contract price" has the meaning given to it in section 2 of the ECPA Regulation;

"customer" means a consumer with whom a retailer has a contract for the supply of electricity;

"disclosure statement" has the meaning given to it in the ECPA Regulation;

"ECPA" means the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8;

"ECPA Regulation" means Ontario Regulation 389/10 made under the ECPA;

"Effective ECPA Date" means January 1, 2011;

"low volume consumer" means a consumer who annually uses less than 150,000 kilowatt hours of electricity or such other amount as may be prescribed for the purposes of section 2 of the ECPA;

"regulation" means a regulation made under the Act or the ECPA;

"retailing" includes door-to-door selling, internet selling, direct mail selling, and any other means by which a retailer or a salesperson or verification representative of a retailer interacts directly with a consumer;

"salesperson" has the meaning given to it in section 2 of the ECPA, and for greater certainty includes any person that offers or negotiates the renewal or extension of a contract on behalf of a retailer but excludes a verification representative when acting solely in that capacity;

"text-based" has the meaning given to it in section 2 of the ECPA; and

"verification representative" means a person that conducts the verification of a contract on behalf of a retailer.

1.3 Application

This Code applies to all retailers licensed under section 57(d) of the Act.

1.4 Interpretation

Unless otherwise defined in this Code, words and phrases shall have the meanings ascribed to them in the Act, the ECPA or the regulations, as the case may be. Where a word or phrase is defined in this Code, the Act, or the ECPA, other parts of speech and grammatical forms of the word or phrase have a corresponding meaning. Headings are for convenience only and shall not affect the interpretation of this Code. Words importing the singular include the plural and vice versa. Words importing a gender include any gender. Words importing a person include: (i) an individual; (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) any government, government agency or body, regulatory agency or body or other body politic or collegiate. A reference to a person includes that person's successors and permitted assigns. A reference to a body, whether statutory or not, that ceases to exist or whose functions are transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions. A reference to a document (including a statutory instrument) or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision. The expression "including" means including without limitation.

1.5 Low volume consumer contracts only with account holder

A retailer shall not enter into, verify, renew or extend a contract with any low volume consumer for the supply of electricity to premises other than:

- (a) the account holder for the premises; or
- (b) an account holder's agent for the premises,

Restated Electricity Retailer Code of Conduct
November 17, 2010

and references in Parts A and B of this Code to "consumer" or "low volume consumer" shall be interpreted accordingly.

1.6 Obligation to comply with the law

1.6.1 A retailer shall comply with all applicable provisions of the Act, the ECPA and the regulations. Nothing in this Code affects the obligation of a retailer, its salespersons or its verification representatives to comply with all applicable provincial and federal law.

1.6.2 The requirements set out in this Code apply in addition to any other requirements imposed by law, whether dealing with the same subject-matter or not.

1.7 Obligation to ensure persons comply

1.7.1 A retailer shall ensure that its salespersons and verification representatives adhere to the same standards required of the retailer as set out in this Code.

1.7.2 Any acts or omissions of a salesperson or a verification representative acting on behalf of a retailer shall be deemed to be the acts or omissions of the retailer.

1.8 Determinations by the Board

1.8.1 Any matter under this Code requiring a determination of the Board may be determined by the Board without a hearing or through an oral, written or electronic hearing, at the Board's discretion.

1.9 Breach of this Code

A breach of this Code may occur in the course of retailing even if no contract is entered into, amended, renewed or extended.

1.10 Coming into Force

1.10.1 This Code shall come into force on the Effective ECPA Date.

Restated Electricity Retailer Code of Conduct
November 17, 2010

1.10.2 This Code replaces the Electricity Retailer Code of Conduct dated December 20, 2004 as of the Effective ECPA Date, and the Electricity Retailer Code of Conduct dated December 20, 2004 is revoked as of the Effective ECPA Date.

1.10.3 Except where expressly stated otherwise, any amendment to this Code shall come into force on the date that the Board publishes the amendment by placing it on the Board's website after it has been made by the Board.

PART B

1 FAIR MARKETING PRACTICES

- 1.1 A retailer or salesperson of a retailer, when retailing to a consumer, shall:
- (a) immediately and truthfully give the name of the salesperson and the retailer to the consumer, and state that the retailer is not the consumer's electricity distributor and is not associated with the Ontario Energy Board or the Government of Ontario;
 - (b) if retailing to a low volume consumer in person at a place other than the retailer's place of business, provide the low volume consumer with a business card that meets the requirements of this Code;
 - (c) if retailing to a low volume consumer in person at a place other than the retailer's place of business, display an identification badge that meets the requirements of this Code;
 - (d) state the price to be paid under the contract for the supply of electricity, and state the term of the contract;
 - (e) not exert undue pressure on a consumer;
 - (f) allow a consumer sufficient opportunity to read all documents provided;
 - (g) not make any offer or provide any promotional material to a consumer that is inconsistent with the contract being offered to or entered into with the consumer; and
 - (h) not make any representation or statement or give any answer or take any measure that is false or is likely to mislead a consumer.

2 BUSINESS CARDS AND IDENTIFICATION BADGES

Business cards

2.1 A retailer shall ensure that every salesperson that is acting on its behalf and that is retailing to a low volume consumer in person at a place other than the retailer's place of business provides the low volume consumer with a business card that meets the requirements set out in section 2.2 before making any representation to the low volume consumer about the retailer's products, services or business and before requesting any information about the low volume consumer, including asking that the low volume consumer locate any utility bills.

2.2 The business card referred to in section 2.1 shall be clear and legible and include the following information:

- (a) the licence number issued to the retailer under the Act;
- (b) the name and address of the retailer;
- (c) the name of the salesperson acting on behalf of the retailer;
- (d) the toll-free telephone number of the retailer; and
- (e) the website address of the retailer.

Identification badges

2.3 A retailer shall ensure that every salesperson that is acting on its behalf and that is retailing to a low volume consumer in person at a place other than the retailer's place of business at all times wears, on the front of the salesperson's outer clothing, an identification badge that meets the requirements set out in section 2.4.

2.4 The identification badge referred to in section 2.3 shall be clear and legible and:

Restated Electricity Retailer Code of Conduct
November 17, 2010

- (a) clearly identify that the salesperson is acting on behalf of the retailer, is not a representative of the low volume consumer's electricity distributor and is not associated with the Ontario Energy Board or the Government of Ontario;
- (b) include a photograph of the salesperson's face that is not more than 2 years old at any time;
- (c) identify the retailer;
- (d) identify the name of the salesperson acting on behalf of the retailer;
- (e) identify the title or position of the salesperson;
- (f) include an identification number for the salesperson that has been issued by the retailer for that purpose; and
- (g) include an expiry date that is not more than 2 years after the date on which the identification badge was issued to the salesperson.

2.5 The salesperson's photograph and all of the information required by section 2.4 to appear on an identification badge must be shown on the same side of the identification badge, and must at all times be facing the low volume consumer.

3 CONTRACTS AND TRANSFER REQUESTS

Contracts with low volume consumers

3.1 A contract between a retailer and a low volume consumer shall clearly state:

- (a) the time period for which the contract is in effect;
- (b) the type and frequency of bills the low volume consumer will receive; and
- (c) any terms and conditions for renewal, extension or amendment.

3.2 A retailer shall not enter into any contract with a low volume consumer that has a term of more than five years.

Transfer requests and supply (low volume consumers - where verification is required)

3.3 A retailer shall not submit a request to an electricity distributor for a change of electricity supply for a low volume consumer to that retailer or supply electricity to a low volume consumer under a contract to which verification applies unless:

- (a) the retailer has given a text-based copy of the contract to the low volume consumer;
- (b) the retailer has given the applicable Board-approved disclosure statement to the low volume consumer;
- (c) the retailer has given to the low volume consumer the applicable price comparison that complies with this Code;
- (d) the low volume consumer has acknowledged receipt of the text-based contract, the disclosure statement and the price comparison; and
- (e) the contract has been validly verified.

Transfer requests and supply (low volume consumers - where verification is not required)

3.4 A retailer shall not submit a request to an electricity distributor for a change of electricity supply for a low volume consumer to that retailer or supply electricity to a low volume consumer under a contract to which verification does not apply unless:

- (a) the retailer has given a text-based copy of the contract to the low volume consumer;
- (b) the retailer has given the applicable Board-approved disclosure statement to the low volume consumer;
- (c) the retailer has given to the low volume consumer the applicable price comparison that complies with this Code;
- (d) the low volume consumer has acknowledged receipt of the text-based contract, the disclosure statement and the price comparison; and

Restated Electricity Retailer Code of Conduct
November 17, 2010

- (e) the low volume consumer has not given notice of cancellation of the contract under section 19(1) of the ECPA and the time for doing so has expired.

Transfer requests and supply (other consumers)

3.5 A retailer shall not submit a request to an electricity distributor for a change of electricity supply for a consumer who is not a low volume consumer to that retailer or supply electricity to a consumer that is not a low volume consumer unless the retailer has the permission of the consumer in writing to do so.

3.6 If a retailer discovers that a transfer request that it has submitted to an electricity distributor for a consumer who is not a low volume consumer is supported by a contract that does not comply with the Act, the regulations made under the Act, the retailer's licence or this Code, or does not contain the signature of the consumer, the retailer shall contact the affected consumer, clearly explain the non-compliance, and offer that consumer a compliant contract; and

- (a) if the consumer accepts the compliant contract, provide a copy of the compliant contract to the consumer within 14 days of acceptance by that consumer; or
- (b) if the consumer does not accept the compliant contract, immediately reverse the transfer request.

Transfer requests where contract with low volume consumer is cancelled

3.7 Where a retailer receives notice of cancellation of a contract from a low volume consumer, the retailer shall submit a request to the applicable electricity distributor for a change of electricity supply for that low volume consumer to the electricity distributor, within 10 days of receipt of the notice of cancellation.

Transfer requests where low volume consumer enters into contract with another retailer

3.8 A retailer that is notified of a pending transfer request by an electricity distributor under section 10.5.4 of the Retail Settlement Code that pertains to a contract with a low volume customer shall, within 5 business days of the date of receipt of that notification, notify the low volume consumer to whom the transfer request relates of the pending transfer request and of the consequences to the low volume consumer if processing of the transfer request is completed. The notification to the low volume consumer shall, at a minimum, identify any cancellation fee or other financial amounts that may be payable to the retailer if the processing of the transfer request is completed. The notification to the low volume consumer may be:

- (a) text-based; or
- (b) by telephone, provided that the retailer makes a voice recording of the telephone call and the recording of the call has associated with it a verifiable date and time stamp.

Subject to section 28 of the ECPA Regulation, where a retailer makes a recording of a telephone call under this section, the retailer shall provide a copy of the recording to the low volume consumer within 10 days after the low volume consumer requests it.

3.9 Section 3.8 only applies where the low volume consumer's contract with the retailer will expire after the proposed transfer date.

4 DISCLOSURE STATEMENTS, PRICE COMPARISONS, VERIFICATION AND RENEWALS OR EXTENSIONS

Disclosure statements for low volume consumers

- 4.1 A retailer shall not offer a contract to a low volume consumer unless the contract is accompanied by a disclosure statement in the applicable form approved by the Board.
- 4.2 A retailer shall not renew or extend a contract with a low volume consumer unless the retailer has given the low volume consumer a disclosure statement in the applicable form approved by the Board.
- 4.3 If a low volume consumer asks whether a Board-approved disclosure statement is available in a language other than English or requests one, the retailer shall inform the low volume consumer that the Board-approved disclosure statement is available from the Board in the languages listed on the disclosure statement.
- 4.4 If a retailer wishes to provide a low volume consumer with a Board-approved disclosure statement in a language other than English:
- (a) if the disclosure statement is available from the Board in that language, the retailer may only provide the low volume consumer with the disclosure statement that is available from the Board in that language; or
 - (b) if the disclosure statement is not available from the Board in that language, the retailer may provide the low volume consumer with a translation of the Board-approved disclosure statement provided that the translation is true, accurate and complete.
- 4.5 A retailer shall not alter or redact a Board-approved disclosure statement except where expressly contemplated by the disclosure statement and then only in

respect of the information specifically called for by the disclosure statement. Where a retailer that prepares a translation of a Board-approved disclosure statement as permitted by section 4.4(b), the retailer shall not include any information in the translated disclosure statement other than the information set out in or specifically called for by the Board-approved disclosure statement.

Price comparisons

- 4.6 A retailer shall ensure that a disclosure statement provided to a low volume consumer is accompanied by a price comparison. For that purpose, the retailer shall:
- (a) use the applicable price comparison template approved by the Board, in the form and with the content that is made available by the Board at the relevant time and without alteration or redaction other than to include details of the retailer's contract price offer and such other information as is required by the instructions contained in the template; and
 - (b) complete the Board-approved price comparison template by including details of the retailer's contract price offer and such other information as is required by the instructions contained in the template, and shall do so in accordance with the instructions contained in the template.
- 4.7 A retailer shall ensure that the information regarding the contract price being offered to a low volume consumer that is included by the retailer in the price comparison is an accurate reflection of the contract price over the term of the contract and is not presented in a manner that is misleading in any way.
- 4.8 A retailer shall not include in the price comparison any statements of a promotional nature about the products, services or business of the retailer.
- 4.9 If a retailer wishes to provide a low volume consumer with a price comparison in a language other than English, the retailer may provide the low volume consumer

Restated Electricity Retailer Code of Conduct
November 17, 2010

with a translation of the price comparison provided that the translation includes a true, accurate and complete translation of the content that is made available by the Board referred to in section 4.6(a), and the translated price comparison otherwise complies with sections 4.6 to 4.8.

Verification of contracts with low volume consumers

- 4.10 A retailer shall ensure that the verification of a contract with a low volume consumer complies with section 4.11.
- 4.11 The verification of a contract with a low volume consumer shall be effected within the period and in the manner prescribed by the ECPA Regulation, and shall comply with the following requirements:
- (a) the verification representative shall use the applicable script approved for that purpose by the Board;
 - (b) the verification representative shall not deviate from the applicable Board-approved script except to comply with paragraph (e), to provide a factual answer to a question from the low volume consumer or to provide a factual clarification where the low volume consumer has indicated that he or she does not understand a statement made by the verification representative;
 - (c) except where expressly permitted by the terms of the applicable Board-approved script, where the script calls for a "yes" or "no" answer from the low volume consumer, the verification representative shall terminate the verification call if the low volume consumer does not provide a clear affirmative response;
 - (d) the verification representative shall not at any time during the verification call make any statements of a promotional nature about the products, services or business of the retailer;
 - (e) the verification representative shall terminate the verification call where the ECPA Regulation or the applicable Board-approved script so requires, and

shall do so in accordance with the requirements of the ECPA Regulation or the applicable Board-approved script, as applicable; and

- (f) the recording of the verification call has associated with it a verifiable date and time stamp.

4.12 Where a low volume consumer notifies a retailer that the consumer does not wish to verify a contract, whether as part of a verification call or by separate notice, the retailer shall not thereafter contact the low volume consumer for the purposes of obtaining verification of that contract.

Renewal or extension of contracts with low volume consumers

4.13 A retailer shall ensure that the renewal or extension of a contract with a low volume consumer complies with section 4.14.

4.14 The renewal or extension of a contract with a low volume consumer shall be effected within the period and in the manner prescribed by the ECPA Regulation and shall, where effected by telephone, comply with the following requirements:

- (a) the salesperson shall ensure that the call includes all of the statements and questions set out in the applicable script approved for that purpose by the Board;
- (b) the salesperson shall not make any representation that is inconsistent with or contrary to any of the statements or questions set out in the applicable Board-approved script;
- (c) except where expressly permitted by the terms of the applicable Board-approved script, where the script calls for a "yes" or "no" answer from the low volume consumer, the salesperson shall terminate the renewal or extension call if the low volume consumer does not provide a clear affirmative response;

Restated Electricity Retailer Code of Conduct
November 17, 2010

- (d) the salesperson shall terminate the renewal or extension call where the applicable Board-approved script so requires, and shall do so in accordance with the requirements of the applicable Board-approved script; and
- (e) the recording of the renewal or extension call has associated with it a verifiable date and time stamp.

- 4.15 Where, following receipt of the material referred to in section 15 of the ECPA Regulation, a low volume consumer notifies a retailer that the consumer does not wish to renew or extend a contract, whether as part of a renewal or extension call or by separate notice, the retailer shall not thereafter contact the low volume consumer for the purposes of obtaining the renewal or extension of that contract.
- 4.16 If, within the last year of a contract but prior to receipt of the material referred to in section 15 of the ECPA Regulation, a customer that is a low volume consumer notifies a retailer that the customer does not wish to renew or extend the contract, the retailer shall not renew or extend the contract unless the retailer reminds the customer of the notice of non-renewal or non-extension as part of the contract renewal or extension process referred to in section 15 of the ECPA Regulation and obtains positive acceptance of the renewed or extended contract from the customer.

5 TRAINING

- 5.1 A retailer shall ensure that no salesperson or verification representative that acts on its behalf retails to a low volume consumer or negotiates, enters into, verifies, renews or extends a contract with a low volume consumer unless the salesperson or verification representative has successfully completed training as set out in this Code.

- 5.2 A retailer shall ensure that the training referred to in section 5.1 includes the following for a salesperson other than a person involved solely in the renewal or extension of contracts:
- (a) training in relation to all of the legal and regulatory requirements applicable to the sales process, contract verification, consumer cancellation rights and the renewal or extension process, in each case as they pertain to low volume consumers; and
 - (b) adequate and accurate material covering the following areas as they pertain to low volume consumers:
 - (i) electricity market structure;
 - (ii) how to complete a contract application;
 - (iii) behaviour that constitutes an unfair practice;
 - (iv) use of business cards;
 - (v) use of identification badges;
 - (vi) disclosure statements;
 - (vii) price comparisons;
 - (viii) verification;
 - (ix) consumer cancellation rights;
 - (x) renewals and extensions;
 - (xi) how electricity pricing works, including the pricing of electricity supplied by electricity distributors;
 - (xii) persons with whom a retailer may enter into, verify, renew or extend a contract; and
 - (xiii) all relevant Board regulatory requirements not already covered above, including those set out in this Code.
- 5.3 A retailer shall ensure that the training referred to in section 5.1 includes the following for a verification representative:

Restated Electricity Retailer Code of Conduct
November 17, 2010

- (a) training in relation to all of the legal and regulatory requirements applicable to the verification process, including the use of the Board-approved script referred to in section 4.11; and
- (b) adequate and accurate material covering the following areas as they pertain to low volume consumers:
 - (i) electricity market structure;
 - (ii) behaviour that constitutes an unfair practice;
 - (iii) disclosure statements;
 - (iv) price comparisons;
 - (v) verification;
 - (vi) consumer cancellation rights;
 - (vii) how electricity pricing works, including the pricing of electricity supplied by electricity distributors;
 - (viii) persons with whom a retailer may enter into and verify a contract; and
 - (ix) all other relevant Board regulatory requirements not already covered above, including those set out in this Code.

5.4 A retailer shall ensure that the training referred to in section 5.1 includes the following for a salesperson involved solely in the renewal or extension of contracts:

- (a) training in relation to all of the legal and regulatory requirements applicable to the renewal or extension process applicable to low volume consumers, including the use of the Board-approved script referred to in section 4.14; and
- (b) adequate and accurate material covering the following areas as they pertain to low volume consumers:
 - (i) electricity market structure;

Restated Electricity Retailer Code of Conduct
November 17, 2010

- (ii) behaviour that constitutes an unfair practice;
- (iii) use of business cards, unless renewals and extensions are conducted solely by telephone;
- (iv) use of identification badges, unless renewals and extensions are conducted solely by telephone;
- (v) disclosure statements;
- (vi) price comparisons;
- (vii) consumer cancellation rights;
- (viii) renewals and extensions;
- (ix) how electricity pricing works, including the pricing of electricity supplied by electricity distributors;
- (x) persons with whom a retailer may renew or extend a contract; and
- (xi) all relevant Board regulatory requirements not already covered above, including those set out in this Code.

5.5 A retailer shall ensure that the training referred to in section 5.1 is conducted or, in the case of internet-based training (or "e-training"), developed only by an employee of the retailer or by a person under contract, provided that such person is not also under contract to the retailer for the purpose of providing salespersons or verification representatives or of otherwise carrying out retailing or verification activities. A retailer shall also ensure that training is conducted or, in the case of internet-based training (or "e-training"), developed only by persons with detailed knowledge of all of the elements listed in section 5.2, 5.3 or 5.4, as applicable, of this Code.

5.6 For the purposes of section 5.1:

- (a) a retailer shall determine the successful completion of training by means of a training test that is designed to assess the state of the salesperson's or verification representative's knowledge of the elements listed in section 5.2, 5.3 or 5.4, as applicable;

Restated Electricity Retailer Code of Conduct
November 17, 2010

- (b) the training test questions may be fixed or taken randomly from a test question repository;
 - (c) in order to be considered to have successfully complete training, the salesperson or verification representative must achieve a minimum 80% pass mark on the training test;
 - (d) if a salesperson or verification representative fails a training test, the salesperson or verification representative may be permitted to re-take the training test once, provided that before re-taking the training test the salesperson or verification representative must also re-take the full training described in section 5.2, 5.3 or 5.4, as applicable; and
 - (e) the retailer shall ensure that the training test is not conducted in a manner that would permit the persons taking the training test to share questions and answers with one another while taking the training test.
- 5.7 In sections 5.1 to 5.6, a reference to a salesperson or a verification representative includes a reference to a prospective salesperson or a prospective verification representative.
- 5.8 A retailer shall ensure that each salesperson and verification representative that acts on its behalf in relation to low volume consumers re-takes the training referred to in section 5.2, 5.3 or 5.4, as applicable, and re-takes and passes a training test in accordance with section 5.6 once every 12 months as a condition of continuing to act on behalf of the retailer.
- 5.9 A retailer shall ensure that any salesperson or verification representative that has not acted in that capacity on behalf of the retailer in relation to low volume consumers for a continuous period of 60 days or more re-takes the training referred to in section 5.2, 5.3 or 5.4, as applicable, and re-takes and passes a training test in accordance with section 5.6 prior to resuming activities as a salesperson or verification representative on behalf of the retailer in relation to low volume consumers.

- 5.10 A retailer shall maintain, for each salesperson and verification representative that acts on its behalf in relation to low volume consumers, complete records of the following:
- (a) the training material used (updated for each time the person undergoes training);
 - (b) the name and title or position of the person(s) who conducted the training (updated for each time the person undergoes training);
 - (c) proof of identity of the person;
 - (d) the date(s) any training of the person was conducted;
 - (e) the date(s) any testing of the person was conducted;
 - (f) the training test questions, answers and score (for each time the person undergoes testing);
 - (g) a signed statement from the person that he or she will comply with all applicable legal and regulatory requirements in relation to the activities the person will conduct on behalf of the retailer in relation to low volume consumers; and
 - (h) a copy of all business cards and identification badges issued to the person.

The records referred to above shall be retained for a period of not less than two years from the date on which the salesperson or verification representative ceases to act on behalf of the retailer in relation to low volume consumers, and shall be provided to the Board on request.

6 CERTIFICATION

- 6.1 A retailer shall not enter into, renew, extend or amend a contract with a low volume consumer on and after the Effective ECPA Date unless the retailer has filed with the Board a certificate of compliance in the form set out in Appendix A

Restated Electricity Retailer Code of Conduct
November 17, 2010

and received from the Board the written acknowledgement referred to in section 3 of Ontario Regulation 90/99.

- 6.2 Where a retailer indicates "N/A" on the certificate of compliance referred to in section 6.1 in relation to a given statement, the retailer shall not conduct the activity to which that statement relates unless the retailer has filed with the Board a further certificate of compliance in respect of that activity in the form set out in Appendix B and has received from the Board written acknowledgement of that certification.
- 6.3 A certificate of compliance referred to in section 6.1 or section 6.2 shall be signed by the retailer's Chief Executive Officer, Chief Operating Officer, President or person of equivalent position.
- 6.4 Commencing in 2012, a retailer shall provide in the form and manner required by the Board, annually by April 30, a self-certification statement on compliance with the Act, the ECPA, the regulations and this Code in relation to retailing to low volume consumers.

7 CONSUMER COMPLAINTS AND COMPLIANCE MONITORING

Consumer complaints

- 7.1 A retailer shall provide to its low volume consumer customers and prospective customers in all written offers, contracts, contract amendment forms and contract renewal or extension forms, the retailer's toll-free telephone number and the telephone number of the Board's Consumer Relations Centre.
- 7.2 If any low volume consumer makes a complaint to a retailer regarding retailing or verification by or on behalf of the retailer, the conduct of the retailer's salespersons or verification representatives, the contract the low volume consumer has with the retailer, or any other matter related to the retailer, the retailer shall expeditiously investigate the complaint and take all appropriate and necessary steps to resolve the complaint. If the complaint is not resolved to the satisfaction of the low volume consumer, the retailer shall provide to the low volume consumer the telephone number of the Board's Consumer Relations Centre.
- 7.3 In cases where a consumer complaint has been referred to the retailer from the Board and resolution of that complaint is reached, the retailer shall implement the resolution immediately and shall confirm this, in writing, with the Board.

Compliance monitoring

- 7.4 A retailer shall maintain a compliance monitoring and quality assurance program that enables the retailer to monitor compliance with the Act, the ECPA, the regulations and all applicable Board regulatory requirements in relation to retailing to low volume consumers and to identify any need for remedial action.

Restated Electricity Retailer Code of Conduct
November 17, 2010

7.5 The program referred to in section 7.4 shall:

- (a) include regular quality assurance assessments of the performance of all salespersons and verification representatives acting on behalf of the retailer in relation to compliance with the Act, the ECPA, the regulations and all applicable Board regulatory requirements;
- (b) make provision for appropriate support to salespersons and verification representatives acting on behalf of the retailer; and
- (c) facilitate the identification of any need for specific training and/or coaching that a salesperson or verification representative may require.

7.6 Where a retailer receives a bona fide complaint that alleges that a salesperson or verification representative has failed to comply with a material requirement of the Act, the ECPA, the regulations or an applicable Board regulatory requirement in relation to retailing to low volume consumers, the retailer shall ensure that the salesperson or verification representative successfully undergoes remedial training on the subject-matter of the complaint (i.e., re-training on the applicable legal or regulatory requirement that the person is alleged to have violated) as a condition of continuing to act on behalf of the retailer in relation to low volume consumers.

8 SERVICES TO BE MAINTAINED BY A RETAILER

8.1 A retailer shall have a current mailing address in Ontario and a current telephone number listed in Ontario, , and shall provide them to every customer. If the retailer retails electricity to low volume consumers, the retailer shall have a telephone number which may be reached by the general public without charge, and shall provide the telephone number to every low volume consumer.

9 CONFIDENTIALITY OF CONSUMER INFORMATION

9.1 A retailer shall not disclose consumer information as defined in this Code to any person other than the consumer or the Board without the consent of the consumer in writing, except when the information has been sufficiently aggregated such that an individual consumer's information cannot be identified, or where consumer information is required to be disclosed:

- (a) for billing or market operation purposes;
- (b) for law enforcement purposes;
- (c) to comply with a statute or an order of a court or tribunal;
- (d) when past due accounts of the consumer have been passed to a debt collection agency; or
- (e) for the purpose of complying with the Market Rules.

9.2 A retailer shall inform consumers regarding the conditions described in section 9.1 under which consumer information may be released to a third party without the consumer's consent.

9.3 A retailer shall not use consumer information obtained for one purpose from a consumer for any other purpose without the consent of the consumer in writing.

10 TRANSFER AND ASSIGNMENT OF CONTRACTS

10.1 A retailer shall not sell, transfer or assign the administration of a contract with a customer to another person who is not a licensed retailer.

10.2 A retailer must notify the Board of any sale, transfer or assignment of contracts within 10 days of the sale, transfer or assignment.

**Restated Electricity Retailer Code of Conduct
November 17, 2010**

- 10.3 Within 60 days of any sale, transfer or assignment of a contract to another retailer, the new retailer must notify the affected customers of the new retailer's address for service and toll-free telephone number.**

PART C

1 TRANSITIONAL PROVISIONS

Application

- 1.1 This Part only applies to a contract with a low volume consumer that was signed by the consumer on or after November 22, 2010 and before the Effective ECPA Date.
- 1.2 Except as otherwise provided in sections 1.4 and 1.5 of this Part, Parts A and B of this Code apply to a contract referred to in section 1.1.

Definitions

- 1.3 In this Part, "notice of reaffirmation" means the written notice to the retailer that indicates an intention of the consumer to reaffirm the contract, as set out in section 30 of the ECPA Regulation.

Transfer requests

- 1.4 A retailer shall not:
 - (a) submit a request to an electricity distributor for a change of electricity supply for a low volume consumer to that retailer unless the retailer has the permission of the low volume consumer in writing to do so; or
 - (b) supply electricity to a low volume consumer unless the retailer has the permission of the low volume consumer in writing to do so, and has received the notice of reaffirmation from the low volume consumer, where reaffirmation is required.
- 1.5 If a retailer discovers that a transfer request that it has submitted to an electricity distributor for a low volume consumer is supported by a contract that does not

Restated Electricity Retailer Code of Conduct
November 17, 2010

comply with the Act, the regulations made under the Act, the retailer's licence or the Electricity Retailer Code of Conduct as it read immediately prior to the Effective ECPA Date, or does not contain the signature of the low volume consumer, the retailer shall contact the affected low volume consumer, clearly explain the non-compliance, and offer that low volume consumer a contract that complies with the Act, the ECPA, the regulations, the retailer's licence and Parts A and B of this Code. If the low volume consumer does not enter into and validly verify the compliant contract, the retailer shall immediately reverse the transfer request.

APPENDIX A

Form of Certificate of Compliance under Section 6.1 of the Code

Electricity Retailer Certificate of Compliance Under Section 6.1 of the Electricity Retailer Code of Conduct

Part I: Definitions and Interpretation

1.1 In this Certificate:

"applicable legal and regulatory requirements" means all applicable requirements under the *Energy Consumer Protection Act, 2010*, the *Ontario Energy Board Act, 1998*, regulations made under those Acts, a licence issued under section 57(d) of the *Ontario Energy Board Act, 1998* and any code issued by the Board under section 70.1 of the *Ontario Energy Board Act, 1998* that are in force on the Effective ECPA Date;

"Effective Certification Date" means the later of the Effective ECPA Date and the date on which this Certificate is signed by the Retailer and filed with the Board;

"Effective ECPA Date" means January 1, 2011;

"low volume consumer" has the meaning given to it in the Board's Electricity Retailer Code of Conduct;

"Retailer" means the licensed retailer identified in the opening paragraph of section II;

"salesperson" has the meaning given to it in the Board's Electricity Retailer Code of Conduct;

"text-based" has the meaning given to it in the *Energy Consumer Protection Act, 2010*; and

"verification representative" has the meaning given to it in the Board's Electricity Retailer Code of Conduct.

1.2 Unless otherwise defined in this Certificate, words and phrases shall have the meanings given to them in the *Ontario Energy Board Act, 1998*, the *Energy Consumer Protection Act, 2010* or the regulations made under those Acts.

Restated Electricity Retailer Code of Conduct
November 17, 2010

- 1.3 In this Certificate, "N/A" in relation to a given statement means that the Retailer will not, as of the Effective Certification Date and for a period of not less than 1 month thereafter, carry on the activity to which the statement relates.
- 1.4 All statements in this Certificate pertain to retailing to low volume consumers.

Part II: Certification

I, <identify (i) the certifying officer; (ii) his/her position with the Retailer; and (iii) the name of the Retailer>, having made all necessary enquiries, certify on behalf of the Retailer that:

Confirmation of Retailing Activities		
The channels that the Retailer intends to use for the purpose of retailing electricity as of the Effective Certification Date are the following:	Yes	No
(A) Door-to-Door		
(B) Exhibitions		
(C) Trade shows		
(D) Direct Mail		
(E) Retailer's place of business		
(F) Internet		
(G) Telephone Renewals		
(H) Other (please specify below)		

Certificate of Compliance		
	Yes	N/A
1. Salespersons		
(A) All salespersons acting on behalf of the Retailer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(B) Each salesperson acting on behalf of the Retailer has been provided with business cards that meet all applicable legal and regulatory requirements		
(C) Each salesperson acting on behalf of the Retailer has been provided with an identification badge that meets all applicable legal and regulatory requirements		
(D) The Retailer's practices for hiring or contracting for salespersons are such that on and after the Effective Certification Date, those persons can be expected to conduct their activities in compliance with all applicable legal and regulatory requirements and with integrity and honesty.		
(E) Adequate processes and controls, designed to ensure that the conduct of salespersons on and after the Effective Certification Date is in accordance with all applicable legal and regulatory requirements, are in place		
2. Sales using a text-based contract		
(A) All contract offers, contracts and promotional material pertaining to the sale of electricity to consumers have been prepared or revised as required to comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will be used on and after the Effective Certification Date		
(B) The required disclosure statement and price comparison will be used on and after the Effective Certification Date in accordance with all applicable legal and regulatory requirements		
(C) Adequate processes and controls, designed to ensure that the text-based contracting process on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
3. Sales using the Internet		
(A) The Retailer's internet website and internet contracting process have been prepared or revised to comply with all applicable legal and regulatory requirements		
(B) All contract offers, contracts and promotional material pertaining to the sale of electricity to consumers have been prepared or revised as required to comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will		

Restated Electricity Retailer Code of Conduct
November 17, 2010

Certificate of Compliance		
	Yes	N/A
be used on and after the Effective Certification Date		
(C) The required disclosure statement and price comparison will be used on and after the Effective Certification Date in accordance with all applicable legal and regulatory requirements		
(D) Adequate processes and controls, designed to ensure that the internet contracting process on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
4. Verification		
(A) No verification representative acting on behalf of the Retailer will be remunerated on and after the Effective Certification Date in a manner contrary to any applicable legal and regulatory requirements		
(B) All verification representatives acting on behalf of the Retailer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(C) All verification representatives acting on behalf of the Retailer have been instructed to do so using the verification call script approved by the Board		
(D) Adequate processes and controls, designed to ensure that each verification call made or received by the Retailer on and after the Effective Certification Date (including a call from a consumer for the purpose of giving notice not to verify) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(E) Adequate processes and controls, designed to ensure that the verification of electricity contracts with consumers on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
5. Contract Renewals and Extensions		
(A) All contract renewal/extension offers, contract renewal/extension forms and promotional material pertaining to the renewal/extension of electricity contracts with consumers have been prepared or revised in accordance with all applicable legal and regulatory requirements and only contract renewal/extension offers, renewal/extension forms and promotional material that so comply will be used		
(B) The required disclosure statement and price comparison will be used on and after the Effective Certification Date in accordance with all applicable legal and regulatory requirements		
(C) All salespersons conducting telephone renewals on behalf of the Retailer have undergone training and testing in accordance with all applicable legal and regulatory requirements		

Restated Electricity Retailer Code of Conduct
November 17, 2010

Certificate of Compliance		
	Yes	N/A
(D) All salespersons conducting renewal calls on behalf of the Retailer have been instructed to do so using the renewal call script approved by the Board		
(E) Adequate processes and controls, designed to ensure that each renewal/extension call made or received by the Retailer on and after the Effective Certification Date (including a call from a consumer for the purpose of giving notice not to renew/extend) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(F) Adequate processes and controls, designed to ensure that the renewal/extension of electricity contracts with consumers on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
6. Contract Amendments		
(A) Adequate processes and controls, designed to ensure that the amendment of any electricity contract with a consumer on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
7. Cancellations and Retractions		
(A) Adequate processes and controls, designed to ensure that the cancellation of any contract with a consumer on and after the Effective Certification Date is processed in accordance with all applicable legal and regulatory requirements, including as to the payment of any refund to which the consumer may by law be entitled and to the switching of the consumer back to the consumer's utility, are in place		
(B) Adequate processes and controls, designed to ensure that the retraction of the renewal/extension of any electricity contract by a consumer on and after the Effective Certification Date is processed in accordance with all applicable legal and regulatory requirements, including as to the switching of the consumer back to the consumer's utility, are in place		
(C) Adequate processes and controls, designed to ensure that each cancellation call and each retraction call received by the Retailer on and after the Effective Certification Date is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
8. Complaint Handling		
(A) Adequate processes and controls are in place to ensure that consumer complaints on and after the Effective Certification Date alleging non-compliance with any applicable legal or regulatory requirement can be		

Restated Electricity Retailer Code of Conduct
November 17, 2010

Certificate of Compliance		
	Yes	N/A
received and are reviewed by the Retailer in a timely manner		
(B) Adequate processes and controls are in place to ensure that remedial action is taken in a timely manner to address consumer complaints referred to in (A) above, with the consumer and/or with any person that is the subject of the complaint		

Date: <insert date of filing>

[Signature]

[Title]

Notes:

1. In accordance with section 6.3 of the Board's Electricity Retailer Code of Conduct, this Certificate must be signed by the Retailer's Chief Executive Officer, Chief Operating Officer, President or other person of equivalent position.
2. It is an offence under section 126(1)(b) of the *Ontario Energy Board Act, 1998* to knowingly furnish false or misleading information in any application, statement or return made under that Act or in any circumstances where information is required or authorized to be provided under that Act.

APPENDIX B

Form of Certificate of Compliance under Section 6.2 of the Code

Electricity Retailer Certificate of Compliance Under Section 6.2 of the Electricity Retailer Code of Conduct

Part I: Definitions and Interpretation

1.2 In this Certificate:

"applicable legal and regulatory requirements" means all applicable requirements under the *Energy Consumer Protection Act, 2010*, the *Ontario Energy Board Act, 1998*, regulations made under those Acts, a licence issued under section 57(d) of the *Ontario Energy Board Act, 1998* and any code issued by the Board under section 70.1 of the *Ontario Energy Board Act, 1998* that are in force on the Effective Date;

"Effective Date" means the date this Certificate is signed by the Retailer and filed with the Board;

"low volume consumer" has the meaning given to it in the Board's Electricity Retailer Code of Conduct;

"Retailer" means the licensed retailer identified in the opening paragraph of section II;

"salesperson" has the meaning given to it in the Board's Electricity Retailer Code of Conduct;

"text-based" has the meaning given to it in the *Energy Consumer Protection Act, 2010*; and

"verification representative" has the meaning given to it in the Board's Electricity Retailer Code of Conduct.

1.2 Unless otherwise defined in this Certificate, words and phrases shall have the meanings given to them in the *Ontario Energy Board Act, 1998*, the *Energy Consumer Protection Act, 2010* or the regulations made under those Acts.

1.3 All statements in this Certificate pertain to retailing to low volume consumers.

Restated Electricity Retailer Code of Conduct
November 17, 2010

Part II: Certification

Whereas on <insert date> the Retailer filed with the Board a Certificate of Compliance under section 6.1 of the Electricity Retailer Code of Conduct in which the Retailer indicated "no" or "N/A" in relation to one or more statements.

And whereas the Retailer now intends to conduct the activities to which those statements relate.

I, <identify (i) the certifying officer, (ii) his/her position with the Retailer, and (iii) the name of the Retailer>, having made all necessary enquiries, certify on behalf of the Retailer that:

Note: Indicate "yes" for any statement for which "no" or "N/A" was indicated in the certificate filed under section 6.1 of the Electricity Retailer Code of Conduct and in relation to which the Retailer now intends to conduct the relevant activities.

Confirmation of Retailing Activities		
The channels that the Retailer intends to use for the purpose of retailing electricity as of the Effective Date are the following:	Yes	No
(A) Door-to-Door		
(B) Exhibitions		
(C) Trade shows		
(D) Direct Mail		
(E) Retailer's place of business		
(F) Internet		
(G) Telephone Renewals		
(H) Other (please specify below)		

Restated Electricity Retailer Code of Conduct
November 17, 2010

Certificate of Compliance		
	Yes	N/A
9. Salespersons		
(A) All salespersons acting on behalf of the Retailer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(B) Each salesperson acting on behalf of the Retailer has been provided with business cards that meet all applicable legal and regulatory requirements		
(C) Each salesperson acting on behalf of the Retailer has been provided with an identification badge that meets all applicable legal and regulatory requirements		
(D) The Retailer's practices for hiring or contracting for salespersons are such that those persons can be expected to conduct their activities in compliance with all applicable legal and regulatory requirements and with integrity and honesty.		
(E) Adequate processes and controls, designed to ensure that the conduct of salespersons is in accordance with all applicable legal and regulatory requirements, are in place		
10. Sales using a text-based contract		
(A) All contract offers, contracts and promotional material pertaining to the sale of electricity to consumers have been prepared or revised as required to comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will be used		
(B) The required disclosure statement and price comparison will be used in accordance with all applicable legal and regulatory requirements		
(C) Adequate processes and controls, designed to ensure that the text-based contracting process is conducted in accordance with all applicable legal and regulatory requirements, are in place		
11. Sales using the Internet		
(A) The Retailer's internet website and internet contracting process have been prepared or revised to comply with all applicable legal and regulatory requirements		
(B) All contract offers, contracts and promotional material pertaining to the sale of electricity to consumers have been prepared or revised as required to comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will be used		
(C) The required disclosure statement and price comparison will be used in accordance with all applicable legal and regulatory requirements		
(D) Adequate processes and controls, designed to ensure that the internet contracting process is conducted in accordance with all applicable legal and regulatory requirements, are in place		

Restated Electricity Retailer Code of Conduct
November 17, 2010

12. Verification		
(A) No verification representative acting on behalf of the Retailer will be remunerated in a manner contrary to any applicable legal and regulatory requirements		
(B) All verification representatives acting on behalf of the Retailer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(C) All verification representatives acting on behalf of the Retailer have been instructed to do so using the verification call script approved by the Board		
(D) Adequate processes and controls, designed to ensure that each verification call made or received by the Retailer (including a call from a consumer for the purpose of giving notice not to verify) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(E) Adequate processes and controls, designed to ensure that the verification of electricity contracts with consumers is conducted in accordance with all applicable legal and regulatory requirements, are in place		
13. Contract Renewals and Extensions		
(A) All contract renewal/extension offers, contract renewal/extension forms and promotional material pertaining to the renewal/extension of electricity contracts with consumers have been prepared or revised in accordance with all applicable legal and regulatory requirements and only contract renewal/extension offers, renewal/extension forms and promotional material that so comply will be used		
(B) The required disclosure statement and price comparison will be used in accordance with all applicable legal and regulatory requirements		
(C) All salespersons conducting telephone renewals on behalf of the Retailer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(D) All salespersons conducting renewal calls on behalf of the Retailer have been instructed to do so using the renewal call script approved by the Board		
(E) Adequate processes and controls, designed to ensure that each renewal/extension call made or received by the Retailer (including a call from a consumer for the purpose of giving notice not to renew/extend) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(F) Adequate processes and controls, designed to ensure that the renewal/extension of electricity contracts with consumers is conducted in accordance with all applicable legal and regulatory requirements, are in place		

Restated Electricity Retailer Code of Conduct
November 17, 2010

14. Contract Amendments		
(A) Adequate processes and controls, designed to ensure that the amendment of any electricity contract with a consumer is conducted in accordance with all applicable legal and regulatory requirements, are in place		
15. Cancellations and Retractions		
(A) Adequate processes and controls, designed to ensure that the cancellation of any contract with a consumer is processed in accordance with all applicable legal and regulatory requirements, including as to the payment of any refund to which the consumer may be entitled and to the switching of the consumer back to the consumer's utility, are in place		
(B) Adequate processes and controls, designed to ensure that the retraction of the renewal/extension of any electricity contract by a consumer is processed in accordance with all applicable legal and regulatory requirements, including as to the switching of the consumer back to the consumer's utility, are in place		
(C) Adequate processes and controls, designed to ensure that each cancellation call and each retraction call received by the Retailer is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
16. Complaint Handling		
(A) Adequate processes and controls are in place to ensure that consumer complaints alleging non-compliance with any applicable legal or regulatory requirement can be received and are reviewed by the Retailer in a timely manner		
(B) Adequate processes and controls are in place to ensure that remedial action is taken in a timely manner to address consumer complaints referred to in (A) above, with the consumer and/or with any person that is the subject of the complaint		

Date: <insert date of filing>

[Signature]


[Title]

Restated Electricity Retailer Code of Conduct
November 17, 2010

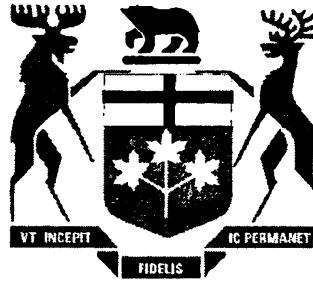
Notes:

1. In accordance with section 6.3 of the Board's Electricity Retailer Code of Conduct, this Certificate must be signed by the Retailer's Chief Executive Officer, Chief Operating Officer, President or other person of equivalent position.
2. It is an offence under section 126(1)(b) of the *Ontario Energy Board Act, 1998* to knowingly furnish false or misleading information in any application, statement or return made under that Act or in any circumstances where information is required or authorized to be provided under that Act.

This is Exhibit "K" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 14 day of August, 2015.



Commissioner for Taking Affidavits



Ontario

ONTARIO ENERGY BOARD

Code of Conduct for Gas Marketers

**Restated
November 17, 2010**

TABLE OF CONTENTS

PART A

- 1 GENERAL PROVISIONS**

PART B

- 1 FAIR MARKETING PRACTICES**
- 2 BUSINESS CARDS AND IDENTIFICATION BADGES**
- 3 CONTRACTS AND TRANSFER REQUESTS**
- 4 DISCLOSURE STATEMENTS, PRICE COMPARISONS, VERIFICATION AND RENEWALS OR EXTENSIONS**
- 5 TRAINING**
- 6 CERTIFICATION**
- 7 CONSUMER COMPLAINTS AND COMPLIANCE MONITORING**
- 8 SERVICES TO BE MAINTAINED BY A GAS MARKETER**
- 9 CONFIDENTIALITY OF CONSUMER INFORMATION**
- 10 TRANSFER AND ASSIGNMENT OF CONTRACTS**

PART C

- 1 TRANSITIONAL PROVISIONS**

PART A

1 GENERAL PROVISIONS

1.1 The Purpose of this Code

The purpose of this Code of Conduct for Gas Marketers (the "Code") is to set out the minimum standards that a licensed gas marketer must meet when marketing gas to consumers.

1.2 Definitions

In this Code:

"account holder" has the meaning given to it in the ECPA;

"account holder's agent" has the meaning given to it in the ECPA Regulation;

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

"Board" means the Ontario Energy Board;

"consumer" means a person who annually uses less than 50,000 cubic metres of gas or such other amount as may be prescribed for the purposes of section 2 of the ECPA;

"consumer information" means information relating to a specific consumer obtained by a gas marketer, its salesperson or its verification representative, and includes information obtained without the consent of the consumer;

"contract" has the meaning given to it in section 2 of the ECPA;

Restated Code of Conduct for Gas Marketers
November 17, 2010

"contract price" has the meaning given to it in section 2 of the ECPA Regulation;

"customer" means a consumer with whom a gas marketer has a contract for the supply of gas;

"disclosure statement" has the meaning given to it in the ECPA Regulation;

"ECPA" means the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8;

"ECPA Regulation" means Ontario Regulation 389/10 made under the ECPA;

"Effective ECPA Date" means January 1, 2011;

"marketing" includes door-to-door selling, internet selling, direct mail selling, and any other means by which a gas marketer or a salesperson or verification representative of a gas marketer interacts directly with a consumer;

"regulation" means a regulation made under the Act or the ECPA;

"salesperson" has the meaning given to it in section 2 of the ECPA, and for greater certainty includes any person that offers or negotiates the renewal or extension of a contract on behalf of a gas marketer but excludes a verification representative when acting solely in that capacity;

"text-based" has the meaning given to it in section 2 of the ECPA; and

"verification representative" means a person that conducts the verification of a contract on behalf of a gas marketer.

1.3 Application

This Code applies to all gas marketers licensed under section 48 of the Act.

1.4 Interpretation

Unless otherwise defined in this Code, words and phrases shall have the meanings ascribed to them in the Act, the ECPA or the regulations, as the case may be. Where a word or phrase is defined in this Code, the Act, or the ECPA, other parts of speech and grammatical forms of the word or phrase have a corresponding meaning. Headings are for convenience only and shall not affect the interpretation of this Code. Words importing the singular include the plural and vice versa. Words importing a gender include any gender. Words importing a person include: (i) an individual; (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) any government, government agency or body, regulatory agency or body or other body politic or collegiate. A reference to a person includes that person's successors and permitted assigns. A reference to a body, whether statutory or not, that ceases to exist or whose functions are transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions. A reference to a document (including a statutory instrument) or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision. The expression "including" means including without limitation.

1.5 Contracts only with account holder

A gas marketer shall not enter into, verify, renew or extend a contract with any person for the supply of gas to premises other than:

- (a) the account holder for the premises; or
- (b) an account holder's agent for the premises,

and references in Parts A and B of this Code to "consumer" shall be interpreted accordingly.

1.6 Obligation to comply with the law

1.6.1 A gas marketer shall comply with all applicable provisions of the Act, the ECPA and the regulations. Nothing in this Code affects the obligation of a gas marketer, its salespersons or its verification representatives to comply with all applicable provincial and federal law.

1.6.2 The requirements set out in this Code apply in addition to any other requirements imposed by law, whether dealing with the same subject-matter or not.

1.7 Obligation to ensure persons comply

1.7.1 A gas marketer shall ensure that its salespersons and verification representatives adhere to the same standards required of the gas marketer as set out in this Code.

1.7.2 Any acts or omissions of a salesperson or a verification representative acting on behalf of a gas marketer shall be deemed to be the acts or omissions of the gas marketer.

1.8 Determinations by the Board and Exemptions

1.8.1 Any matter under this Code requiring a determination of the Board may be determined by the Board without a hearing or through an oral, written or electronic hearing, at the Board's discretion.

1.8.2 The Board may grant an exemption to any provision of this Code. An exemption may be made in whole or in part, and may be subject to conditions or restrictions.

1.9 Breach of this Code

A breach of this Code may occur in the course of marketing even if no contract is entered into, amended, renewed or extended.

Restated Code of Conduct for Gas Marketers
November 17, 2010

1.10 Coming into Force

1.10.1 This Code shall come into force on the Effective ECPA Date.

1.10.2 This Code replaces the Code of Conduct for Gas Marketers dated December 20, 2004 as of the Effective ECPA Date, and the Code of Conduct for Gas Marketers dated December 20, 2004 is revoked as of the Effective ECPA Date.

1.10.3 Except where expressly stated otherwise, any amendment to this Code shall come into force on the date that the Board publishes the amendment by placing it on the Board's website after it has been made by the Board.

PART B

1 FAIR MARKETING PRACTICES

1.1 A gas marketer or salesperson of a gas marketer, when marketing to a consumer, shall:

- (a) immediately and truthfully give the name of the salesperson and the gas marketer to the consumer, and state that the gas marketer is not the consumer's gas distributor and is not associated with the Ontario Energy Board or the Government of Ontario;**
- (b) if marketing to a consumer in person at a place other than the gas marketer's place of business, provide the consumer with a business card that meets the requirements of this Code;**
- (c) if marketing to a consumer in person at a place other than the gas marketer's place of business, display an identification badge that meets the requirements of this Code;**
- (d) state the price to be paid under the contract for the supply of gas, and state the term of the contract;**
- (e) not exert undue pressure on a consumer;**
- (f) allow a consumer sufficient opportunity to read all documents provided;**
- (g) not make any offer or provide any promotional material to a consumer that is inconsistent with the contract being offered to or entered into with the consumer; and**
- (h) not make any representation or statement or give any answer or take any measure that is false or is likely to mislead a consumer.**

2 BUSINESS CARDS AND IDENTIFICATION BADGES

Business cards

- 2.1 A gas marketer shall ensure that every salesperson that is acting on its behalf and that is marketing to a consumer in person at a place other than the gas marketer's place of business provides the consumer with a business card that meets the requirements set out in section 2.2 before making any representation to the consumer about the gas marketer's products, services or business and before requesting any information about the consumer, including asking that the consumer locate any utility bills.
- 2.2 The business card referred to in section 2.1 shall be clear and legible and include the following information:
- (a) the licence number issued to the gas marketer under the Act;
 - (b) the name and address of the gas marketer;
 - (c) the name of the salesperson acting on behalf of the gas marketer;
 - (d) the toll-free telephone number of the gas marketer; and
 - (e) the website address of the gas marketer.

Identification badges

- 2.3 A gas marketer shall ensure that every salesperson that is acting on its behalf and that is marketing to a consumer in person at a place other than the gas marketer's place of business at all times wears, on the front of the salesperson's outer clothing, an identification badge that meets the requirements set out in section 2.4.
- 2.4 The identification badge referred to in section 2.3 shall be clear and legible and:

Restated Code of Conduct for Gas Marketers
November 17, 2010

- (a) clearly identify that the salesperson is acting on behalf of the gas marketer, is not a representative of the consumer's gas distributor and is not associated with the Ontario Energy Board or the Government of Ontario;
- (b) include a photograph of the salesperson's face that is not more than 2 years old at any time;
- (c) identify the gas marketer;
- (d) identify the name of the salesperson acting on behalf of the gas marketer;
- (e) identify the title or position of the salesperson;
- (f) include an identification number for the salesperson that has been issued by the gas marketer for that purpose; and
- (g) include an expiry date that is not more than 2 years after the date on which the identification badge was issued to the salesperson.

2.5 The salesperson's photograph and all of the information required by section 2.4 to appear on an identification badge must be shown on the same side of the identification badge, and must at all times be facing the consumer.

3 CONTRACTS AND TRANSFER REQUESTS

Contracts

3.1 A contract between a gas marketer and a consumer shall clearly state:

- (a) the time period for which the contract is in effect;
- (b) the type and frequency of bills the consumer will receive; and
- (c) any terms and conditions for renewal, extension or amendment.

3.2 A gas marketer shall not enter into any contract with a consumer that has a term of more than five years.

Restated Code of Conduct for Gas Marketers
November 17, 2010

Transfer requests and supply (where verification is required)

3.3 A gas marketer shall not submit a request to a gas distributor for a change of gas supply for a consumer to that gas marketer or supply gas to a consumer under a contract to which verification applies unless:

- (a) the gas marketer has given a text-based copy of the contract to the consumer;
- (b) the gas marketer has given the applicable Board-approved disclosure statement to the consumer;
- (c) the gas marketer has given to the consumer the applicable price comparison that complies with this Code;
- (d) the consumer has acknowledged receipt of the text-based contract, the disclosure statement and the price comparison; and
- (e) the contract has been validly verified.

Transfer requests and supply (where verification is not required)

3.4 A gas marketer shall not submit a request to a gas distributor for a change of gas supply for a consumer to that gas marketer or supply gas to a consumer under a contract to which verification does not apply unless:

- (a) the gas marketer has given a text-based copy of the contract to the consumer;
- (b) the gas marketer has given the applicable Board-approved disclosure statement to the consumer;
- (c) the gas marketer has given to the consumer the applicable price comparison that complies with this Code
- (d) the consumer has acknowledged receipt of the text-based contract, the disclosure statement and the price comparison; and
- (e) the consumer has not given notice of cancellation of the contract under section 19(1) of the ECPA and the time for doing so has expired.

Transfer requests where contract is cancelled

- 3.5 Where a gas marketer receives notice of cancellation of a contract from a consumer, the gas marketer shall submit a request to the applicable gas distributor for a change of gas supply for that consumer to the gas distributor within 10 days of receipt of the notice of cancellation.

Transfer requests where consumer enters into contract with another gas marketer

- 3.6 A gas marketer that is notified of a pending transfer request by a gas distributor under section 4.3.6.5 of the Gas Distribution Access Rule shall, within 5 business days of the date of receipt of that notification, notify the consumer to whom the transfer request relates of the pending transfer request and of the consequences to the consumer if processing of the transfer request is completed. The notification to the consumer shall, at a minimum, identify any cancellation fee or other financial amounts that may be payable to the gas marketer if the processing of the transfer request is completed. The notification to the consumer may be:
- (a) text-based; or
 - (b) by telephone, provided that the gas marketer makes a voice recording of the telephone call and the recording of the call has associated with it a verifiable date and time stamp.

Subject to section 28 of the ECPA, where a gas marketer makes a recording of a telephone call under this section, the gas marketer shall provide a copy of the recording to the consumer within 10 days after the consumer requests it.

- 3.7 Section 3.6 only applies where the consumer's contract with the gas marketer will expire after the proposed transfer date.

4 DISCLOSURE STATEMENTS, PRICE COMPARISONS, VERIFICATION AND RENEWALS OR EXTENSIONS

Disclosure statements

- 4.1 A gas marketer shall not offer a contract to a consumer unless the contract is accompanied by a disclosure statement in the applicable form approved by the Board.
- 4.2 A gas marketer shall not renew or extend a contract with a consumer unless the gas marketer has given the consumer a disclosure statement in the applicable form approved by the Board.
- 4.3 If a consumer asks whether a Board-approved disclosure statement is available in a language other than English or requests one, the gas marketer shall inform the consumer that the Board-approved disclosure statement is available from the Board in the languages listed on the disclosure statement.
- 4.4 If a gas marketer wishes to provide a consumer with a Board-approved disclosure statement in a language other than English:
 - (a) if the disclosure statement is available from the Board in that language, the gas marketer may only provide the consumer with the disclosure statement that is available from the Board in that language; or
 - (b) if the disclosure statement is not available from the Board in that language, the gas marketer may provide the consumer with a translation of the Board-approved disclosure statement provided that the translation is true, accurate and complete.
- 4.5 A gas marketer shall not alter or redact a Board-approved disclosure statement except where expressly contemplated by the disclosure statement and then only

Restated Code of Conduct for Gas Marketers
November 17, 2010

in respect of the information specifically called for by the disclosure statement. Where a gas marketer that prepares a translation of a Board-approved disclosure statement as permitted by section 4.4(b), the gas marketer shall not include any information in the translated disclosure statement other than the information set out in or specifically called for by the Board-approved disclosure statement.

Price comparisons

- 4.6 A gas marketer shall ensure that a disclosure statement provided to a consumer is accompanied by a price comparison. For that purpose, the gas marketer shall:
- (a) use the applicable price comparison template approved by the Board, in the form and with the content that is made available by the Board at the relevant time and without alteration or redaction other than to include details of the gas marketer's contract price offer and such other information as is required by the instructions contained in the template; and
 - (b) complete the Board-approved price comparison template by including details of the gas marketer's contract price offer and such other information as is required by the instructions contained in the template, and shall do so in accordance with the instructions contained in the template.
- 4.7 A gas marketer shall ensure that the information regarding the contract price being offered to a consumer that is included by the gas marketer in the price comparison is an accurate reflection of the contract price over the term of the contract and is not presented in a manner that is misleading in any way.
- 4.8 A gas marketer shall not include in the price comparison any statements of a promotional nature about the products, services or business of the gas marketer.
- 4.9 If a gas marketer wishes to provide a consumer with a price comparison in a language other than English, the gas marketer may provide the consumer with a

Restated Code of Conduct for Gas Marketers
November 17, 2010

translation of the price comparison provided that the translation includes a true, accurate and complete translation of the content that is made available by the Board referred to in section 4.6(a), and the translated price comparison otherwise complies with sections 4.6 to 4.8.

Contract verification

- 4.10 A gas marketer shall ensure that the verification of a contract with a consumer complies with section 4.11.
- 4.11 The verification of a contract with a consumer shall be effected within the period and in the manner prescribed by the ECPA Regulation, and shall comply with the following requirements:
- (a) the verification representative shall use the applicable script approved for that purpose by the Board;
 - (b) the verification representative shall not deviate from the applicable Board-approved script except to comply with paragraph (e), to provide a factual answer to a question from the consumer or to provide a factual clarification where the consumer has indicated that he or she does not understand a statement made by the verification representative;
 - (c) except where expressly permitted by the terms of the applicable Board-approved script, where the script calls for a "yes" or "no" answer from the consumer, the verification representative shall terminate the verification call if the consumer does not provide a clear affirmative response;
 - (d) the verification representative shall not at any time during the verification call make any statements of a promotional nature about the products, services or business of the gas marketer;
 - (e) the verification representative shall terminate the verification call where the ECPA Regulation or the applicable Board-approved script so requires, and shall do so in accordance with the requirements of the ECPA Regulation or the applicable Board-approved script, as applicable; and

Restated Code of Conduct for Gas Marketers
November 17, 2010

- (f) the recording of the verification call has associated with it a verifiable date and time stamp.

4.12 Where a consumer notifies a gas marketer that the consumer does not wish to verify a contract, whether as part of a verification call or by separate notice, the gas marketer shall not thereafter contact the consumer for the purposes of obtaining verification of that contract.

Contract renewal or extension

4.13 A gas marketer shall ensure that the renewal or extension of a contract with a consumer complies with section 4.14.

4.14 The renewal or extension of a contract with a consumer shall be effected within the period and in the manner prescribed by the ECPA Regulation and shall, where effected by telephone, comply with the following requirements:

- (a) the salesperson shall ensure that the call includes all of the statements and questions set out in the applicable script approved for that purpose by the Board;
 - (b) the salesperson shall not make any representation that is inconsistent with or contrary to any of the statements or questions set out in the applicable Board-approved script;
 - (c) except where expressly permitted by the terms of the applicable Board-approved script, where the script calls for a "yes" or "no" answer from the consumer, the salesperson shall terminate the renewal or extension call if the consumer does not provide a clear affirmative response;
 - (d) the salesperson shall terminate the renewal or extension call where the applicable Board-approved script so requires, and shall do so in accordance with the requirements of the applicable Board-approved script;
- and

Restated Code of Conduct for Gas Marketers
November 17, 2010

- (e) the recording of the renewal or extension call has associated with it a verifiable date and time stamp.

- 4.15 Where, following receipt of the material referred to in section 15 of the ECPA Regulation, a consumer notifies a gas marketer that the consumer does not wish to renew or extend a contract, whether as part of a renewal or extension call or by separate notice, the gas marketer shall not thereafter contact the consumer for the purposes of obtaining the renewal or extension of that contract.
- 4.16 If, within the last year of a contract but prior to receipt of the material referred to in section 15 of the ECPA Regulation, a customer notifies a gas marketer that the customer does not wish to renew or extend the contract, the gas marketer shall not renew or extend the contract unless the gas marketer reminds the customer of the notice of non-renewal or non-extension as part of the contract renewal or extension process referred to in section 15 of the ECPA Regulation and obtains positive acceptance of the renewed or extended contract from the customer.

5 TRAINING

- 5.1 A gas marketer shall ensure that no salesperson or verification representative that acts on its behalf markets to a consumer or negotiates, enters into, verifies, renews or extends a contract with a consumer unless the salesperson or verification representative has successfully completed training as set out in this Code.
- 5.2 A gas marketer shall ensure that the training referred to in section 5.1 includes the following for a salesperson other than a person involved solely in the renewal or extension of contracts:

Restated Code of Conduct for Gas Marketers
November 17, 2010

- (a) training in relation to all of the legal and regulatory requirements applicable to the sales process, contract verification, consumer cancellation rights and the renewal or extension process; and
- (b) adequate and accurate material covering the following areas:
 - (i) gas market structure;
 - (ii) how to complete a contract application;
 - (iii) behaviour that constitutes an unfair practice;
 - (iv) use of business cards;
 - (v) use of identification badges;
 - (vi) disclosure statements;
 - (vii) price comparisons;
 - (viii) verification;
 - (ix) consumer cancellation rights;
 - (x) renewals and extensions;
 - (xi) how gas pricing works, including the pricing of gas supplied by gas distributors;
 - (xii) persons with whom a gas marketer may enter into, verify, renew or extend a contract; and
 - (xiii) all relevant Board regulatory requirements not already covered above, including those set out in this Code.

5.3 A gas marketer shall ensure that the training referred to in section 5.1 includes the following for a verification representative:

- (a) training in relation to all of the legal and regulatory requirements applicable to the verification process, including the use of the Board-approved script referred to in section 4.11; and
- (b) adequate and accurate material covering the following areas:
 - (i) gas market structure;

Restated Code of Conduct for Gas Marketers
November 17, 2010

- (ii) behaviour that constitutes an unfair practice;
- (iii) disclosure statements;
- (iv) price comparisons;
- (v) verification;
- (vi) consumer cancellation rights;
- (vii) how gas pricing works, including the pricing of gas supplied by gas distributors;
- (viii) persons with whom a gas marketer may enter into and verify a contract; and
- (ix) all other relevant Board regulatory requirements not already covered above, including those set out in this Code.

5.4 A gas marketer shall ensure that the training referred to in section 5.1 includes the following for a salesperson involved solely in the renewal or extension of contracts:

- (a) training in relation to all of the legal and regulatory requirements applicable to the renewal or extension process, including the use of the Board-approved script referred to in section 4.14; and
- (b) adequate and accurate material covering the following areas:
 - (i) gas market structure;
 - (ii) behaviour that constitutes an unfair practice;
 - (iii) use of business cards, unless renewals and extensions are conducted solely by telephone;
 - (iv) use of identification badges, unless renewals and extensions are conducted solely by telephone;
 - (v) disclosure statements;
 - (vi) price comparisons;
 - (vii) consumer cancellation rights;
 - (viii) renewals and extensions;

Restated Code of Conduct for Gas Marketers
November 17, 2010

- (ix) how gas pricing works, including the pricing of gas supplied by gas distributors;
- (x) persons with whom a gas marketer may renew or extend a contract; and
- (xi) all relevant Board regulatory requirements not already covered above, including those set out in this Code.

5.5 A gas marketer shall ensure that the training referred to in section 5.1 is conducted or, in the case of internet-based training (or "e-training"), developed only by an employee of the gas marketer or by a person under contract, provided that such person is not also under contract to the gas marketer for the purpose of providing salespersons or verification representatives or of otherwise carrying out marketing or verification activities. A gas marketer shall also ensure that training is conducted or, in the case of internet-based training (or "e-training"), developed only by persons with detailed knowledge of all of the elements listed in section 5.2, 5.3 or 5.4, as applicable, of this Code.

5.6 For the purposes of section 5.1:

- (a) a gas marketer shall determine the successful completion of training by means of a training test that is designed to assess the state of the salesperson's or verification representative's knowledge of the elements listed in section 5.2, 5.3 or 5.4, as applicable;
- (b) the training test questions may be fixed or taken randomly from a test question repository;
- (c) in order to be considered to have successfully complete training, the salesperson or verification representative must achieve a minimum 80% pass mark on the training test;
- (d) if a salesperson or verification representative fails a training test, the salesperson or verification representative may be permitted to re-take the training test once, provided that before re-taking the training test the

Restated Code of Conduct for Gas Marketers
November 17, 2010

- salesperson or verification representative must also re-take the full training described in section 5.2, 5.3 or 5.4, as applicable; and
- (e) the gas marketer shall ensure that the training test is not conducted in a manner that would permit the persons taking the training test to share questions and answers with one another while taking the training test.
- 5.7 In sections 5.1 to 5.6, a reference to a salesperson or a verification representative includes a reference to a prospective salesperson or a prospective verification representative.
- 5.8 A gas marketer shall ensure that each salesperson and verification representative that acts on its behalf re-takes the training referred to in section 5.2, 5.3 or 5.4, as applicable, and re-takes and passes a training test in accordance with section 5.6 once every 12 months as a condition of continuing to act on behalf of the gas marketer.
- 5.9 A gas marketer shall ensure that any salesperson or verification representative that has not acted in that capacity on behalf of the gas marketer for a continuous period of 60 days or more re-takes the training referred to in section 5.2, 5.3 or 5.4, as applicable, and re-takes and passes a training test in accordance with section 5.6 prior to resuming activities as a salesperson or verification representative on behalf of the gas marketer.
- 5.10 A gas marketer shall maintain, for each salesperson and verification representative that acts on its behalf, complete records of the following:
- (a) the training material used (updated for each time the person undergoes training);
 - (b) the name and title or position of the person(s) who conducted the training (updated for each time the person undergoes training);
 - (c) proof of identity of the person;

Restated Code of Conduct for Gas Marketers
November 17, 2010

- (d) the date(s) any training of the person was conducted;
- (e) the date(s) any testing of the person was conducted;
- (f) the training test questions, answers and score (for each time the person undergoes testing)
- (g) a signed statement from the person that he or she will comply with all applicable legal and regulatory requirements in relation to the activities the person will conduct on behalf of the gas marketer; and
- (h) a copy of all business cards and identification badges issued to the person.

The records referred to above shall be retained for a period of not less than two years from the date on which the salesperson or verification representative ceases to act on behalf of the gas marketer, and shall be provided to the Board on request.

6 CERTIFICATION

- 6.1 A gas marketer shall not enter into, renew, extend or amend a contract with a consumer on and after the Effective ECPA Date unless the gas marketer has filed with the Board a certificate of compliance in the form set out in Appendix A and received from the Board the written acknowledgement referred to in section 3 of Ontario Regulation 90/99.
- 6.2 Where a gas marketer indicates "N/A" on the certificate of compliance referred to in section 6.1 in relation to a given statement, the gas marketer shall not conduct the activity to which that statement relates unless the gas marketer has filed with the Board a further certificate of compliance in respect of that activity in the form set out in Appendix B and has received from the Board written acknowledgement of that certification.

Restated Code of Conduct for Gas Marketers
November 17, 2010

- 6.3 A certificate of compliance referred to in section 6.1 or section 6.2 shall be signed by the gas marketer's Chief Executive Officer, Chief Operating Officer, President or person of equivalent position.
- 6.4 Commencing in 2012, a gas marketer shall provide in the form and manner required by the Board, annually by April 30, a self-certification statement on compliance with the Act, the ECPA, the regulations and this Code.

7 CONSUMER COMPLAINTS AND COMPLIANCE MONITORING

Consumer complaints

- 7.1 A gas marketer shall provide to its customers and prospective customers in all written offers, contracts, contract amendment forms and contract renewal or extension forms, the gas marketer's toll-free telephone number and the telephone number of the Board's Consumer Relations Centre.
- 7.2 If any consumer makes a complaint to a gas marketer regarding marketing or verification by or on behalf of the gas marketer, the conduct of the gas marketer's salespersons or verification representatives, the contract the consumer has with the gas marketer, or any other matter related to the gas marketer, the gas marketer shall expeditiously investigate the complaint and take all appropriate and necessary steps to resolve the complaint. If the complaint is not resolved to the satisfaction of the consumer, the gas marketer shall provide to the consumer the telephone number of the Board's Consumer Relations Centre.
- 7.3 In cases where a consumer complaint has been referred to the gas marketer from the Board and resolution of that complaint is reached, the gas marketer shall implement the resolution immediately and shall confirm this, in writing, with the Board.

Compliance monitoring

- 7.4** A gas marketer shall maintain a compliance monitoring and quality assurance program that enables the gas marketer to monitor compliance with the Act, the ECPA, the regulations and all applicable Board regulatory requirements and to identify any need for remedial action.
- 7.5** The program referred to in section 7.4 shall:
- (a) include regular quality assurance assessments of the performance of all salespersons and verification representatives acting on behalf of the gas marketer in relation to compliance with the Act, the ECPA, the regulations and all applicable Board regulatory requirements;
 - (b) make provision for appropriate support to salespersons and verification representatives acting on behalf of the gas marketer; and
 - (c) facilitate the identification of any need for specific training and/or coaching that a salesperson or verification representative may require.
- 7.6** Where a gas marketer receives a bona fide complaint that alleges that a salesperson or verification representative has failed to comply with a material requirement of the Act, the ECPA, the regulations or an applicable Board regulatory requirement, the gas marketer shall ensure that the salesperson or verification representative successfully undergoes remedial training on the subject-matter of the complaint (i.e., re-training on the applicable legal or regulatory requirement that the person is alleged to have violated) as a condition of continuing to act on behalf of the gas marketer.

8 SERVICES TO BE MAINTAINED BY A GAS MARKETER

- 8.1 A gas marketer shall have a current mailing address in Ontario and a current telephone number which may be reached by the general public without charge, and shall provide them to every customer.

9 CONFIDENTIALITY OF CONSUMER INFORMATION

- 9.1 A gas marketer shall not disclose consumer information as defined in this Code to any person other than the consumer or the Board without the consent of the consumer in writing, except when the information has been sufficiently aggregated such that an individual consumer's information cannot be identified, or where consumer information is required to be disclosed:

- (a) for billing or market operation purposes;
- (b) for law enforcement purposes;
- (c) to comply with a statute or an order of a court or tribunal;
- (d) when past due accounts of the consumer have been passed to a debt collection agency; or
- (e) for the purpose of complying with the Market Rules.

- 9.2 A gas marketer shall inform consumers regarding the conditions described in section 9.1 under which consumer information may be released to a third party without the consumer's consent.

- 9.3 A gas marketer shall not use consumer information obtained for one purpose from a consumer for any other purpose without the consent of the consumer in writing.

10 TRANSFER AND ASSIGNMENT OF CONTRACTS

- 10.1 A gas marketer shall not sell, transfer or assign the administration of a contract with a customer to another person who is not a licensed gas marketer.

Restated Code of Conduct for Gas Marketers
November 17, 2010

- 10.2 A gas marketer must notify the Board of any sale, transfer or assignment of contracts within 10 days of the sale, transfer or assignment.

- 10.3 Within 60 days of any sale, transfer or assignment or a contract to another gas marketer, the new gas marketer must notify the affected customers of the new gas marketer's address for service and toll-free telephone number.

PART C

1 TRANSITIONAL PROVISIONS

Application

- 1.1 This Part only applies to a contract that was signed by the consumer on or after November 22, 2010 and before the Effective ECPA Date.
- 1.2 Except as otherwise provided in sections 1.4 and 1.5 of this Part, Parts A and B of this Code apply to a contract referred to in section 1.1.

Definitions

- 1.3 In this Part, "notice of reaffirmation" means the written notice to the gas marketer that indicates an intention of the consumer to reaffirm the contract, as set out in section 30 of the ECPA Regulation.

Transfer requests

- 1.4 A gas marketer shall not:
 - (a) submit a request to a gas distributor for a change of gas supply for a consumer to that gas marketer unless the gas marketer has the permission of the consumer in writing to do so; or
 - (b) supply gas to a consumer unless the gas marketer has the permission of the consumer in writing to do so, and has received the notice of reaffirmation from the consumer, where reaffirmation is required.
- 1.5 If a gas marketer discovers that a transfer request that it has submitted to a gas distributor for a consumer is supported by a contract that does not comply with the Act, the regulations made under the Act, the gas marketer's licence or the Code of Conduct for Gas Marketers as it read immediately prior to the Effective

Restated Code of Conduct for Gas Marketers
November 17, 2010

ECPA Date, or does not contain the signature of the consumer, the gas marketer shall contact the affected consumer, clearly explain the non-compliance, and offer that consumer a contract that complies with the Act, the ECPA, the regulations, the gas marketer's licence and Parts A and B of this Code. If the consumer does not enter into and validly verify the compliant contract, the gas marketer shall immediately reverse the transfer request.

APPENDIX A

Form of Certificate of Compliance under Section 6.1 of the Code

Gas Marketer Certificate of Compliance Under Section 6.1 of the Code of Conduct for Gas Marketers

Part I: Definitions and Interpretation

1.1 In this Certificate:

"applicable legal and regulatory requirements" means all applicable requirements under the *Energy Consumer Protection Act, 2010*, the *Ontario Energy Board Act, 1998*, regulations made under those Acts, a licence issued under section 48 of the *Ontario Energy Board Act, 1998* and any rule made by the Board under section 44 of the *Ontario Energy Board Act, 1998* that are in force on the Effective ECPA Date;

"Effective Certification Date" means the later of the Effective ECPA Date and the date on which this Certificate is signed by the Gas Marketer and filed with the Board;

"Effective ECPA Date" January 1, 2011;

"Gas Marketer" means the licensed gas marketer identified in the opening paragraph of section II;

"salesperson" has the meaning given to it in the Board's Code of Conduct for Gas Marketers;

"text-based" has the meaning given to it in the *Energy Consumer Protection Act, 2010*; and

"verification representative" has the meaning given to it in the Board's Code of Conduct for Gas Marketers.

1.2 Unless otherwise defined in this Certificate, words and phrases shall have the meanings given to them in the *Ontario Energy Board Act, 1998*, the *Energy Consumer Protection Act, 2010* or the regulations made under those Acts.

Restated Code of Conduct for Gas Marketers
November 17, 2010

- 1.3 In this Certificate, "N/A" in relation to a given statement means that the Gas Marketer will not, as of the Effective Certification Date and for a period of not less than 1 month thereafter, carry on the activity to which the statement relates.

Part II: Certification

I, <identify (i) the certifying officer, (ii) his/her position with the Gas Marketer, and (iii) the name of the Gas Marketer>, having made all necessary enquiries, certify on behalf of the Gas Marketer that:

Confirmation of Marketing Activities		
The channels that the Gas Marketer intends to use for the purpose of marketing gas as of the Effective Certification Date are the following:	Yes	No
(A) Door-to-Door		
(B) Exhibitions		
(C) Trade shows		
(D) Direct Mail		
(E) Gas Marketer's place of business		
(F) Internet		
(G) Telephone Renewals		
(H) Other (please specify below)		

Restated Code of Conduct for Gas Marketers
November 17, 2010

Certificate of Compliance		
	Yes	N/A
1. Salespersons		
(A) All salespersons acting on behalf of the Gas Marketer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(B) Each salesperson acting on behalf of the Gas Marketer has been provided with business cards that meet all applicable legal and regulatory requirements		
(C) Each salesperson acting on behalf of the Gas Marketer has been provided with an identification badge that meets all applicable legal and regulatory requirements		
(D) The Gas Marketer's practices for hiring or contracting for salespersons are such that on and after the Effective Certification Date, those persons can be expected to conduct their activities in compliance with all applicable legal and regulatory requirements and with integrity and honesty.		
(E) Adequate processes and controls, designed to ensure that the conduct of salespersons on and after the Effective Certification Date is in accordance with all applicable legal and regulatory requirements, are in place		
2. Sales using a text-based contract		
(A) All contract offers, contracts and promotional material pertaining to the sale of gas to consumers have been prepared or revised as required to comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will be used on and after the Effective Certification Date		
(B) The required disclosure statement and price comparison will be used on and after the Effective Certification Date in accordance with all applicable legal and regulatory requirements		
(C) Adequate processes and controls, designed to ensure that the text-based contracting process on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
3. Sales using the Internet		
(A) The Gas Marketer's internet website and internet contracting process have been prepared or revised to comply with all applicable legal and regulatory requirements		
(B) All contract offers, contracts and promotional material pertaining to the sale of gas to consumers have been prepared or revised as required to		

Restated Code of Conduct for Gas Marketers
November 17, 2010

Certificate of Compliance		
	Yes	N/A
comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will be used on and after the Effective Certification Date		
(C) The required disclosure statement will be used on and after the Effective Certification Date in accordance with all applicable legal and regulatory requirements		
(D) Adequate processes and controls, designed to ensure that the internet contracting process on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
4. Verification		
(A) No verification representative acting on behalf of the Gas Marketer will be remunerated on and after the Effective Certification Date in a manner contrary to any applicable legal and regulatory requirements		
(B) All verification representatives acting on behalf of the Gas Marketer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(C) All verification representatives acting on behalf of the Gas Marketer have been instructed to do so using the verification call script approved by the Board		
(D) Adequate processes and controls, designed to ensure that each verification call made or received by the Gas Marketer on and after the Effective Certification Date (including a call from a consumer for the purpose of giving notice not to verify) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(E) Adequate processes and controls, designed to ensure that the verification of gas contracts with consumers on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
5. Contract Renewals and Extensions		
(A) All contract renewal/extension offers, contract renewal/extension forms and promotional material pertaining to the renewal/extension of gas contracts with consumers have been prepared or revised in accordance with all applicable legal and regulatory requirements and only contract renewal/extension offers, renewal/extension forms and promotional material that so comply will be used		
(B) The required disclosure statement and price comparison will be used on and after the Effective Certification Date in accordance with all applicable legal and regulatory requirements		
(C) All salespersons conducting telephone renewals on behalf of the Gas Marketer have undergone training and testing in accordance with all		

Restated Code of Conduct for Gas Marketers
November 17, 2010

Certificate of Compliance		
	Yes	N/A
applicable legal and regulatory requirements		
(D) All salespersons conducting renewal calls on behalf of the Gas Marketer have been instructed to do so using the renewal call script approved by the Board		
(E) Adequate processes and controls, designed to ensure that each renewal/extension call made or received by the Gas Marketer on and after the Effective Certification Date (including a call from a consumer for the purpose of giving notice not to renew/extend) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(F) Adequate processes and controls, designed to ensure that the renewal/extension of gas contracts with consumers on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
6. Contract Amendments		
(A) Adequate processes and controls, designed to ensure that the amendment of any gas contract with a consumer on and after the Effective Certification Date is conducted in accordance with all applicable legal and regulatory requirements, are in place		
7. Cancellations and Retractions		
(A) Adequate processes and controls, designed to ensure that the cancellation of any contract with a consumer on and after the Effective Certification Date is processed in accordance with all applicable legal and regulatory requirements, including as to the payment of any refund to which the consumer may by law be entitled and to the switching of the consumer back to the consumer's utility, are in place		
(B) Adequate processes and controls, designed to ensure that the retraction of the renewal/extension of any gas contract by a consumer on and after the Effective Certification Date is processed in accordance with all applicable legal and regulatory requirements, including as to the switching of the consumer back to the consumer's utility, are in place		
(C) Adequate processes and controls, designed to ensure that each cancellation call and each retraction call received by the Gas Marketer on and after the Effective Certification Date is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
8. Complaint Handling		
(A) Adequate processes and controls are in place to ensure that consumer complaints on and after the Effective Certification Date alleging non-		

Restated Code of Conduct for Gas Marketers
November 17, 2010

Certificate of Compliance		
	Yes	N/A
compliance with any applicable legal or regulatory requirement can be received and are reviewed by the Gas Marketer in a timely manner		
(B) Adequate processes and controls are in place to ensure that remedial action is taken in a timely manner to address consumer complaints referred to in (A) above, with the consumer and/or with any person that is the subject of the complaint		

Date: <insert date of filing>

[Signature]

[Title]

Notes:

1. In accordance with section 6.3 of the Board's Code of Conduct for Gas Marketers, this Certificate must be signed by the Gas Marketer's Chief Executive Officer, Chief Operating Officer, President or other person of equivalent position.
2. It is an offence under section 126(1)(b) of the *Ontario Energy Board Act, 1998* to knowingly furnish false or misleading information in any application, statement or return made under that Act or in any circumstances where information is required or authorized to be provided under that Act.

APPENDIX B

Form of Certificate of Compliance under Section 6.2 of the Code

Gas Marketer Certificate of Compliance Under Section 6.2 of the Code of Conduct for Gas Marketers

Part I: Definitions and Interpretation

1.2 In this Certificate:

"applicable legal and regulatory requirements" means all applicable requirements under the *Energy Consumer Protection Act, 2010*, the *Ontario Energy Board Act, 1998*, regulations made under those Acts, a licence issued under section 48 of the *Ontario Energy Board Act, 1998* and any rule made by the Board under section 44 of the *Ontario Energy Board Act, 1998* that are in force on the Effective Date;

"Effective Date" means the date this Certificate is signed by the Gas Marketer and filed with the Board;

"Gas Marketer" means the licensed gas marketer identified in the opening paragraph of section II;

"salesperson" has the meaning given to it in the Board's Code of Conduct for Gas Marketers;

"text-based" has the meaning given to it in the *Energy Consumer Protection Act, 2010*; and

"verification representative" has the meaning given to it in the Board's Code of Conduct for Gas Marketers.

- 1.2 Unless otherwise defined in this Certificate, words and phrases shall have the meanings given to them in the *Ontario Energy Board Act, 1998*, the *Energy Consumer Protection Act, 2010* or the regulations made under those Acts.

Part II: Certification

Whereas on <insert date> the Gas Marketer filed with the Board a Certificate of Compliance under section 6.1 of the Code of Conduct for Gas Marketers in which the Gas Marketer indicated "no" or "N/A" in relation to one or more statements.

Restated Code of Conduct for Gas Marketers
November 17, 2010

And whereas the Gas Marketer now intends to conduct the activities to which those statements relate.

I, <identify (i) the certifying officer; (ii) his/her position with the Gas Marketer; and (iii) the name of the Gas Marketer>, having made all necessary enquiries, certify on behalf of the Gas Marketer that:

Note: Indicate "yes" for any statement for which "no" or "N/A" was indicated in the certificate filed under section 6.1 of the Code of Conduct for Gas Marketers and in relation to which the Gas Marketer now intends to conduct the relevant activities.

Confirmation of Marketing Activities		
The channels that the Gas Marketer intends to use for the purpose of marketing gas as of the Effective Date are the following:	Yes	No
(A) Door-to-Door		
(B) Exhibitions		
(C) Trade shows		
(D) Direct Mail		
(E) Gas Marketer's place of business		
(F) Internet		
(G) Telephone Renewals		
(H) Other (please specify below)		

Restated Code of Conduct for Gas Marketers
November 17, 2010

Certificate of Compliance		
	Yes	N/A
9. Salespersons		
(A) All salespersons acting on behalf of the Gas Marketer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(B) Each salesperson acting on behalf of the Gas Marketer has been provided with business cards that meet all applicable legal and regulatory requirements		
(C) Each salesperson acting on behalf of the Gas Marketer has been provided with an identification badge that meets all applicable legal and regulatory requirements		
(D) The Gas Marketer's practices for hiring or contracting for salespersons are such that those persons can be expected to conduct their activities in compliance with all applicable legal and regulatory requirements and with integrity and honesty.		
(E) Adequate processes and controls, designed to ensure that the conduct of salespersons is in accordance with all applicable legal and regulatory requirements, are in place		
10. Sales using a text-based contract		
(A) All contract offers, contracts and promotional material pertaining to the sale of gas to consumers have been prepared or revised as required to comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will be used		
(B) The required disclosure statement and price comparison will be used in accordance with all applicable legal and regulatory requirements		
(C) Adequate processes and controls, designed to ensure that the text-based contracting process is conducted in accordance with all applicable legal and regulatory requirements, are in place		
11. Sales using the Internet		
(A) The Gas Marketer's internet website and internet contracting process have been prepared or revised to comply with all applicable legal and regulatory requirements		
(B) All contract offers, contracts and promotional material pertaining to the sale of gas to consumers have been prepared or revised as required to comply with all applicable legal and regulatory requirements and only offers, contracts and promotional material that so comply will be used		
(C) The required disclosure statement and price comparison will be used in accordance with all applicable legal and regulatory requirements		
(D) Adequate processes and controls, designed to ensure that the internet contracting process is conducted in accordance with all applicable legal and regulatory requirements, are in place		

Restated Code of Conduct for Gas Marketers
November 17, 2010

Certificate of Compliance		
	Yes	N/A
12. Verification		
(A) No verification representative acting on behalf of the Gas Marketer will be remunerated in a manner contrary to any applicable legal and regulatory requirements		
(B) All verification representatives acting on behalf of the Gas Marketer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(C) All verification representatives acting on behalf of the Gas Marketer have been instructed to do so using the verification call script approved by the Board		
(D) Adequate processes and controls, designed to ensure that each verification call made or received by the Gas Marketer (including a call from a consumer for the purpose of giving notice not to verify) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(E) Adequate processes and controls, designed to ensure that the verification of gas contracts with consumers is conducted in accordance with all applicable legal and regulatory requirements, are in place		
13. Contract Renewals and Extensions		
(A) All contract renewal/extension offers, contract renewal/extension forms and promotional material pertaining to the renewal/extension of gas contracts with consumers have been prepared or revised in accordance with all applicable legal and regulatory requirements and only contract renewal/extension offers, renewal/extension forms and promotional material that so comply will be used		
(B) The required disclosure statement and price comparison will be used in accordance with all applicable legal and regulatory requirements		
(C) All salespersons conducting telephone renewals on behalf of the Gas Marketer have undergone training and testing in accordance with all applicable legal and regulatory requirements		
(D) All salespersons conducting renewal calls on behalf of the Gas Marketer have been instructed to do so using the renewal call script approved by the Board		
(E) Adequate processes and controls, designed to ensure that each renewal/extension call made or received by the Gas Marketer (including a call from a consumer for the purpose of giving notice not to renew/extend) is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
(F) Adequate processes and controls, designed to ensure that the renewal/extension of gas contracts with consumers is conducted in accordance with all applicable legal and regulatory requirements, are in		

Restated Code of Conduct for Gas Marketers
November 17, 2010

Certificate of Compliance		
	Yes	N/A
place		
14. Contract Amendments		
(A) Adequate processes and controls, designed to ensure that the amendment of any gas contract with a consumer is conducted in accordance with all applicable legal and regulatory requirements, are in place		
15. Cancellations and Retractions		
(A) Adequate processes and controls, designed to ensure that the cancellation of any contract with a consumer is processed in accordance with all applicable legal and regulatory requirements, including as to the payment of any refund to which the consumer may by law be entitled and to the switching of the consumer back to the consumer's utility, are in place		
(B) Adequate processes and controls, designed to ensure that the retraction of the renewal/extension of any gas contract by a consumer is processed in accordance with all applicable legal and regulatory requirements, including as to the switching of the consumer back to the consumer's utility, are in place		
(C) Adequate processes and controls, designed to ensure that each cancellation call and each retraction call received by the Gas Marketer is recorded and that a copy of the call recording can be retrieved and provided to the consumer upon request in accordance with all applicable legal and regulatory requirements, are in place		
16. Complaint Handling		
(A) Adequate processes and controls are in place to ensure that consumer complaints alleging non-compliance with any applicable legal or regulatory requirement can be received and are reviewed by the Gas Marketer in a timely manner		
(B) Adequate processes and controls are in place to ensure that remedial action is taken in a timely manner to address consumer complaints referred to in (A) above, with the consumer and/or with any person that is the subject of the complaint		

Date: <insert date of filing>

[Signature]
[Title]

Restated Code of Conduct for Gas Marketers
November 17, 2010

Notes:

1. In accordance with section 6.3 of the Board's Code of Conduct for Gas Marketers, this Certificate must be signed by the Gas Marketer's Chief Executive Officer, Chief Operating Officer, President or other person of equivalent position.
2. It is an offence under section 126(1)(b) of the *Ontario Energy Board Act, 1998* to knowingly furnish false or misleading information in any application, statement or return made under that Act or in any circumstances where information is required or authorized to be provided under that Act.

This is Exhibit "L" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 4 day of August, 2015.

Commissioner for Taking Affidavits

Ontario Energy
Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie
de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



ELECTRICITY REPORTING & RECORD KEEPING REQUIREMENTS
Version dated May 13, 2015

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

1	GENERAL AND ADMINISTRATIVE PROVISIONS.....	3
1.1	THE PURPOSE OF THESE REPORTING AND RECORD KEEPING REQUIREMENTS	3
1.2	DEFINITIONS.....	3
1.3	INTERPRETATION AND COMPUTATION OF TIME.....	4
1.4	TO WHOM THESE REPORTING AND RECORD KEEPING REQUIREMENTS APPLY	4
1.5	MANNER AND FORMAT OF REPORTING AND RECORD KEEPING	4
1.6	PERIODS FOR WHICH INFORMATION IS REPORTED.....	4
1.7	CONFIDENTIALITY OF INFORMATION	4
2	DISTRIBUTORS.....	5
2.1	REPORTING.....	5
2.2	CERTIFICATION	25
2.3	RECORD KEEPING.....	25
3	TRANSMITTERS.....	27
3.1	REPORTING.....	27
3.2	CERTIFICATION	28
4	RETAILERS.....	30
4.1	REPORTING.....	30
5	WHOLESALEERS (DISCONTINUED APR 4/08)	33
6	GENERATORS (NONE AT THIS TIME)	33
7	INDEPENDENT ELECTRICITY SYSTEM OPERATOR	33
7.1	REPORTING.....	33

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

1 GENERAL AND ADMINISTRATIVE PROVISIONS

1.1 The purpose of these reporting and record keeping requirements

These reporting and record keeping requirements set the minimum reporting and record keeping requirements with which a licensee must comply. Other reporting and record keeping requirements specific to a licensee may also be contained in codes, individual licences or regulatory instruments specific to a licensee (for example, in a rate order).

1.2 Definitions

“Act” means the Ontario Energy Board Act, 1998, c. 15, Schedule B;

“affiliate” has the meaning given to it under the Business Corporations Act (Ontario);

“Board” means the Ontario Energy Board;

“conditions of service” means the document developed by a distributor in accordance with section 2.4 of the Distribution System Code that describes the operating practices and connection policies of the distributor;

“consumer” means a person who uses, for the person’s own consumption, electricity that the person did not generate;

“distributor” means a person who owns or operates a distribution system and is licensed as a distributor by the Board;

“IESO” means the Independent Electricity System Operator;

“information services” means computer systems, services, databases and persons knowledgeable about the utility’s information technology systems;

“retailer” means a person who retails electricity and is licensed as a retailer by the Board;

“RPP” means the “Regulated Price Plan”, being the rates for commodity set by the Board from time to time under section 79.16 of the Act in accordance with the Standard Supply Service Code;

“SSS” means “standard supply service”, being the manner in which a distributor must fulfill its obligation to sell electricity under section 29 of the Electricity Act, 1998, including by giving or to give effect to RPP rates determined by the Board;

“transmitter” means a person who owns or operates a transmission system and is licensed as a transmitter by the Board;

“electricity transmission line” means a line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts; (“ligne de transport d’électricité”) (section 89, OEB Act)

“uniform system of accounts” means the system of accounts prescribed in the Board’s Accounting Procedures Handbook for Electric Distribution Utilities; and

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

1.3 Interpretation and Computation of Time

Unless otherwise defined in these Electricity Reporting and Record Keeping Requirements, words and phrases shall have the meaning ascribed to them in the licences issued by the Board, the Act or the Electricity Act, 1998 as the case may be. Words importing the singular include the plural and vice versa. A reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document.

If the time for doing an act under these Electricity Reporting and Record Keeping Requirements expires on a day that is not a business day, the act may be done on the next day that is a business day. For this purpose, a "business day" means any day that is not a Saturday, a Sunday or a legal holiday in the Province of Ontario.

1.4 To whom these reporting and record keeping requirements apply

These Electricity Reporting and Record Keeping Requirements apply to all electricity distributors, transmitters and retailers licensed by the Board under Part V of the Act and to the IESO. All licensed distributors, transmitters and retailers and the IESO are obligated to comply with these Reporting and Record Keeping Requirements as a condition of their licence. However, the retailer provisions do not apply to distributors who are also licensed as retailers for the purpose of providing standard supply service.

1.5 Manner and format of reporting and record keeping

Licensed transmitters, distributors and retailers and the IESO shall report and record information under these Electricity Reporting and Record Keeping requirements in the manner and form prescribed by the Board.

1.6 Periods for which information is reported

Annual reporting covers information for the entire calendar year, from January 1 to December 31. Quarterly reporting covers information for each quarter of the calendar year - from January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31. Monthly reporting covers information for each entire month of the calendar year, from January to and including December.

1.7 Confidentiality of information

The Board intends to treat information filed under the specific sections of these Electricity Reporting and Record Keeping Requirements listed below in confidence. All other information filed will be publicly available.

Distributor: 2.1.2 (b); 2.1.2 (c) and 2.1.2(d) to the extent that the information pertains to retailer customers; 2.3.1; 2.3.3; 2.3.5 (c), 2.3.5 (d); 2.3.6; 2.3.7; and

2.3.8

Transmitter: 3.3.2; 3.3.4 (c and d); 3.3.5; and 3.3.6

Retailer: 4.1.1; 4.1.2; 4.2.1; 4.2.2; 4.2.3; and 4.2.4

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

The Board reserves the right to disclose aggregated information as well as information in a form such that the identity of any individual cannot be determined. The Board cautions that information treated as confidential may still be disclosed in a proceeding before the Board. However, a party to that proceeding would be able to request the Board to hold the document in confidence in that proceeding. The Board further cautions that it is subject to the Freedom of Information and Protection of Privacy Act (Ontario).

2 DISTRIBUTORS

2.1 Reporting

- 2.1.1** A distributor shall provide in the form and manner required by the Board, quarterly, on the last day of the second month following the quarter end, balances of all deferral/ variance accounts referred to in the Accounting Procedures Handbook for Electric Distribution Utilities, their related sub- accounts and associated information required by the Accounting Procedures Handbook for Electric Distribution Utilities.
- 2.1.2** A distributor shall provide in the form and manner required by the Board, quarterly, by the end of the second month following the quarter end, a summary of the following market monitoring information:
- a) Total number of customers on SSS for each rate class sub-divided by (i) customers on the RPP, broken down as required by (g) below if applicable; and (ii) customers not on the RPP, at the end of the preceding quarter;
 - b) The number of wholesale market participants connected to the distributor's distribution system, at the end of the preceding quarter;
 - c) For each of the first three quarters of the year, total number of customers successfully enrolled with retailers (completed enrollments accepted by the distributor for flow only) at the end of each quarter, broken down by rate class;
 - d) For the last quarter of the year, total number of customers successfully enrolled with retailers (completed enrollments accepted by the distributor for flow only) at the end of that quarter, broken down by individual retailer and by rate class;
 - e) For (a) above, by rate class, the total number of properties or complexes for which a declaration has been filed with the distributor under section 3.3.4 of the Standard Supply Service Code;
 - f) For each property or complex referred to in (e) above, the total number of units identified in the declaration; and
 - g) Where, at the end of a given quarter, less than 98% of customers on the RPP were paying the time-of-use price referred to in section 3.4 of the Standard Supply Service Code, the information referred to in item (i) of (a) above that is reported for that quarter shall be broken down to show the number

Distributors whose rates are not set by the Board are exempt from this reporting requirement.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

2.1.3 Intentionally left blank.

2.1.4 A distributor shall provide, in the form and manner required by the Board, annually, by April 30, the information set out in sections 2.1.4.1 and 2.1.4.2 measuring its performance for the preceding calendar year for each of the service quality requirements set out in the Distribution System Code and for each of the system reliability indicators listed below.

2.1.4.1 Reporting on Service Quality Requirements

2.1.4.1.1 In respect of the service quality requirement for the "Connection of New Services" referred to in section 7.2 of the Distribution System Code:

- a) Total number of new low voltage services connected in each month;
- b) Number of new low voltage services connected in each month for which the service quality requirement set out in section 7.2 of the Distribution System Code was met;
- c) Percentage of (b) with respect to (a);
- d) Total number of new high voltage services connected in each month;
- e) Number of new high voltage services connected in each month for which the service quality requirement set out in section 7.2 of the Distribution System Code was met; and
- f) Percentage of (e) with respect to (d).

2.1.4.1.2 In respect of the service quality requirement for "Appointment Scheduling" as set out in section 7.3 of the Distribution System Code:

- a) Total number of appointments described in section 7.3 of the Distribution System Code requested in each month;
- b) Number of appointments in each month for which the service quality requirement set out in section 7.3 of the Distribution System Code was met; and
- c) Percentage of (b) with respect to (a).

2.1.4.1.3 In respect of the service quality requirement for "Appointments Met" as set out in section 7.4 of the Distribution System Code:

- a) Total number of appointments described in section 7.4 of the Distribution System Code requested or required in each month;
- b) Number of appointments in each month for which the service quality requirement set out in section 7.4 of the Distribution System Code was met; and
- c) Percentage of (b) with respect to (a).

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- 2.1.4.1.4 In respect of the service quality requirement for "Rescheduling a Missed Appointment" as set out in section 7.4 of the Distribution System Code:
- a) Total number of missed appointments described in section 7.5 of the Distribution System Code in each month;
 - b) Number of missed appointments in each month for which the service quality requirement set out in section 7.5 of the Distribution System Code was met; and
 - c) Percentage of (b) with respect to (a).
- 2.1.4.1.5 In respect of the service quality requirement for "Telephone Accessibility" as set out in section 7.6 of the Distribution System Code:
- a) Total number of qualified incoming calls in each month;
 - b) Number of qualified incoming calls in each month for which the service quality requirement set out in section 7.6 of the Distribution System Code was met; and
 - c) Percentage of (b) with respect to (a).
- 2.1.4.1.6 In respect of the service quality requirement for "Telephone Call Abandon Rate" set out in section 7.7 of the Distribution System Code:
- a) Total number of qualified incoming calls in each month;
 - b) Number of qualified incoming calls in each month that were abandoned before they were answered as described in section 7.7.2 of the Distribution System Code; and
 - c) Percentage of (b) with respect to (a).
- 2.1.4.1.7 In respect of the service quality requirement for "Written Responses to Enquiries" as set out in section 7.8 of the Distribution System Code:
- a) Total number of qualified enquiries received in each month;
 - b) Number of qualified enquiries in each month for which the service quality requirement set out in section 7.8 of the Distribution System Code was met; and
 - c) Percentage of (b) with respect to (a).
- 2.1.4.1.8 In respect of the service quality requirement for "Emergency Response" as set out in section 7.9 of the Distribution System Code:
- a) Total number of emergency calls received in each month;
 - b) Number of emergency calls in each month for which the service quality requirement set out in section 7.9 of the Distribution System Code was met; and
 - c) Percentage of (b) with respect to (a).

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

- 2.1.4.1.9 In respect of the service quality requirement for "Reconnection Performance Standards" as set out in section 7.10 of the Distribution System Code;
 - a) Total number of reconnections in each month;
 - b) Number of reconnections in each month for which the service quality requirement as set out in section 7.10 of the Distribution System Code was met; and
 - c) Percentage of (b) with respect to (a)

- 2.1.4.1.10 In respect of the service quality requirement for new micro-embedded generation facility connections on time as set out in section 6.2.7 of the Distribution System Code:
 - a) Total number of new micro-embedded generation facilities connected in each month;
 - b) Number of new micro-embedded generation facilities connected in each month for which the service quality requirement as set out in section 6.2.7 of the Distribution System Code was met; and
 - c) Percentage of (b) with respect to (a)

2.1.4.2 Reporting on System Reliability Indicators

1. Filings due on April 30, 2014 for the reporting period January – December 2013, shall be in accordance with section 2.1.4.2 as it reads in the January 1, 2013 version of this document.
2. For filings due after April 30, 2014:

The following definitions apply for the purposes of monitoring and reporting on each of the system reliability indicators set out below:

Definitions:

- 1) The "Average Number of Customers Served" by a distributor is the average number of customers served in the distributor's licensed service area during the month, calculated by adding the total number of customers served on the first day of the month and the total number of customers served on the last day of the month and dividing by two.

Bulk metered buildings with individual smart sub-metering installations shall be counted as a single customer, provided that any suite metering system is not operated by the distributor and that such customers are not billed by the distributor.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

Unmetered load customers should not be included in the customer count.

- 2) A "Customer" means a metered service for which an active account is established at a specific premise.
- 3) An "Interruption" means the loss of electrical power, being a complete loss of voltage, of a duration of one minute or more, to one or more customers, including planned interruptions scheduled by the distributor but excluding part power situations, outages scheduled by a customer, interruptions by order of emergency services, disconnections for non-payment or power quality issues such as sags, swells, impulses or harmonics.
- 4) In calculating the duration of an interruption the start of the interruption shall be considered to have occurred on the earlier of:
 - a) The time at which the distributor received a communication from a customer reporting the interruption; or
 - b) The time at which the distributor otherwise determined that the interruption began.
- 5) In calculating the duration of an interruption, the end of the interruption shall be considered to have occurred when service has been restored to the customer demarcation point. This time may be determined by either the time the restoring crew reports the restoration was complete or the time at which the distributor otherwise determined the restoration was complete.

The process of restoration may require restoring service in stages to small sections of the system until service has been restored to all customers. Each of these individual stages should be tracked, collecting the start time, end time and number of customers interrupted and restored for each stage. Any temporary restoration of supply which does not exceed 3 minutes shall be ignored and the interruption must be treated as continuous.

- 6) "Loss of Supply" means an interruption due to problems associated with assets owned and/or operated by another party, and/or the bulk electricity supply system.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

2.1.4.2.1 System Average Interruption Duration Index (SAIDI)

SAIDI is an index of system reliability that expresses the average amount of time, per reporting period, supply to a customer is interrupted. It is determined by dividing the total monthly duration of all interruptions experienced by all customers, in hours, by the average number of customers served. SAIDI is expressed as follows:

SAIDI = Total customer hours of interruptions

Average number of customers served

A distributor is required to monitor this index monthly and to report to the Board the following information for each month of the year:

- a) Total number of customer-hours of interruptions in each month;
- b) Average number of customers served in each month; and
- c) SAIDI, being (a)/ (b).

2.1.4.2.2 SAIDI (Loss of Supply)

This index adjusts SAIDI for the effects of interruptions caused by Loss of Supply, and is calculated in the same way as described in section 2.1.4.2.1, except that the total customer-hours of interruptions caused by Loss of Supply events is deducted from the total customer-hours of interruptions.

A distributor is required to monitor this index monthly and to report to the Board the following information for each month of the year:

- a) Total customer-hours of interruptions in each month;
- b) Total customer-hours of interruptions in each month caused by a Loss of Supply;
- c) Average number of customers served in each month; and
- d) Adjusted SAIDI, being ((a) - (b))/(c).

2.1.4.2.3 System Average Interruption Frequency Index (SAIFI)

SAIFI is an index of system reliability that expresses the number of times per reporting period that the supply to a customer is interrupted. It is determined by dividing the total number of interruptions experienced by all customers, by the average number of customers served.

SAIFI is expressed as follows:

SAIFI = Total customer interruptions

Average number of customers served

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

A distributor is required to monitor this index monthly and to report to the Board the following information for each month of the year:

- a) Total number of interruptions in the month;
- b) Average number of customers served in each month; and
- c) SAIFI, being (a)/ (b).

2.1.4.2.4 SAIFI (Loss of Supply)

This index adjusts SAIFI for the effects of interruptions caused by Loss of Supply, and is calculated in the same way as described in section 2.1.4.2.3, except that the total number of interruptions caused by Loss of Supply events is deducted from the total interruptions.

A distributor is required to monitor this index monthly and to report to the Board the following information for each month of the calendar year:

- a) Total number of customer interruptions in each month;
- b) Total number of customer interruptions in each month caused by Loss of Supply;
- c) Average number of customers served in each month; and
- d) Adjusted SAIFI, being $((a) - (b))/(c)$.

2.1.4.2.5 Reporting Cause Codes

For each Cause of Interruption as set out below, a distributor shall, for each month, report the following data:

- a) Name of the Cause of Interruption;
- b) Number of interruptions that occurred as a result of the Cause of Interruption;
- c) Number of customer interruptions that occurred as a result of the Cause of Interruption; and
- d) Number of customer-hours of interruptions that occurred as a result of the cause of interruption.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

Code	Cause of Interruption
0	Unknown/Other Customer interruptions with no apparent cause that contributed to the outage.
1	Scheduled Outage Customer interruptions due to the disconnection at a selected time for the purpose of construction or preventive maintenance.
2	Loss of Supply Customer interruptions due to problems associated with assets owned and/or operated by another party, and/or in the bulk electricity supply system. For this purpose, the bulk electricity supply system is distinguished from the distributor's system based on ownership demarcation.
3	Tree Contacts Customer interruptions caused by faults resulting from tree contact with energized circuits.
4	Lightning Customer interruptions due to lightning striking the distribution system, resulting in an insulation breakdown and/or flash-overs.
5	Defective Equipment Customer interruptions resulting from distributor equipment failures due to deterioration from age, incorrect maintenance, or imminent failures detected by maintenance.
6	Adverse Weather Customer interruptions resulting from rain, ice storms, snow, winds, extreme temperatures, freezing rain, frost, or other extreme weather conditions (exclusive of Code 3 and Code 4 events).
7	Adverse Environment Customer interruptions due to distributor equipment being subject to abnormal environments, such as salt spray, industrial contamination, humidity, corrosion, vibration, fire, or flowing.
8	Human Element Customer interruptions due to the interface of distributor staff with the distribution system.
9	Foreign Interference Customer interruptions beyond the control of the distributor, such as those caused by animals, vehicles, dig-ins, vandalism, sabotage, and foreign objects.

2.1.4.2.6 Measuring and Reporting Practices

A distributor shall report to the Board if it has introduced, or is in the process of introducing, any new system reliability measuring and reporting practices or any new distribution system technologies that impacted its reported performance results for the current year in comparison to previous years.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

This report shall describe the new practice or technology, the current status of the implementation of the new practice or technology, and the scope of the impact, including the percentage of change between the results reported in the previous year and the results reported in the current year.

2.1.4.2.7 Identifying Outage Start Time

A distributor shall report to the Board whether the greatest number of its outage start times were a) the time at which the distributor received a communication from a customer reporting the interruption; or b) the time at which the distributor otherwise determined that the interruption began.

2.1.5 A distributor shall provide in the form and manner required by the Board, annually, by April 30, the information set out in sections 2.1.5.1 to 2.1.5.6 related to performance based regulation for the preceding calendar year.

2.1.5.1 Labour

- a) Average Line Crew Wage Rate;
- b) New Line Crew Wage Rate;
- c) New Line Crew Wage Rate effective date;
- d) Full time equivalent number of employees;
- e) For employees whose earnings are charged to current operating expenses (Administrative, operating and maintenance):
 - i. Average number of such employees for the year; and
 - ii. Total salaries and wages for those employees;
- f) For employees whose earnings are charged to new construction:
 - i. Average number of such employees for the year; and
 - ii. Total salaries and wages for those employees

The following rules apply for the purposes of this section:

- i. *Report only in relation to employees and earnings associated with the utility (for example, excluding contractor staff and employees of affiliates);*
- ii. *Report salaries and wages on the basis of gross earnings, including income tax, health insurance or employment insurance deductions, and should include all bonuses, overtime payments and the value of room and board where provided;*
- iii. *Include salary and wages paid to part-time employees; and*
- iv. *Report the total number of employees on a full-time equivalent basis.*

The information referred to in (e) and (f) above is being collected on behalf of, and for purposes of communication to, Statistics Canada. See the 2008

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

Agreement Concerning the Disclosure of Energy Information by the Ontario Energy Board to Statistics Canada between the Board and Statistics Canada, available on the Board's website at http://www.ontarioenergyboard.ca/documents/tools/efiling/statscan_signed_agreement_2008.pdf.

2.1.5.2 Capital

In reporting on the following, only regulated amounts should be included.

a) Changes in Gross Capital Assets

A distributor shall provide annually, by April 30, for the preceding calendar year, the dollar value of changes to gross property, plant and equipment and the breakdown in each category below, for total capital additions (including high voltage assets) and high voltage (HV) capital additions reported separately:

- i. Gross capital additions for the current year
- ii. Retirements/write offs/sales/asset impairment losses
- iii. Contributed capital, and
- iv. Other – please explain

b) Capital Expenditures:

In addition to the above, a distributor shall provide annually, by April 30, for the preceding calendar year, the breakdown of capital expenditures, as follows:

- i. Direct labour (including benefits etc.)
- ii. Equipment and materials
- iii. Capitalized overhead
- iv. Contract services
- v. Other – please explain

c) Please provide an explanation if information in any of the categories is not available in the format required above.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

2.1.5.3 Supply and Delivery Information

For the purposes of this section, all kWhs other than in relation to distribution losses shall be reported based on a reading of the applicable meter, without being grossed up for loss factor.

- a) Supply:
 - i. Total kWhs of electricity that has flowed into the distributor's distribution system from the IESO-controlled grid or the distribution system of a host distributor; and
 - ii. Total kWhs of electricity that has flowed into the distributor's distribution system from all embedded generation facilities.
- b) Delivery: Total kWhs of electricity delivered to all customers in the distributor's licensed service area and to embedded distributors.
- c) Distribution losses in kWhs, calculated as the difference between the supply as reported in a(i) and a(ii) above, less delivery as reported in b) above.
- d) The dollar amount charged by any host distributor for transmission or low voltage services.

2.1.5.4 Demand and Revenue

2.1.5.4.1 Annual consumption (kWhs & kW) for customers, broken down as follows:

- a) For customers on SSS, by rate class sub-divided by (i) consumption for customers on the RPP; and (ii) consumption for customers not on the RPP;
- b) The billed kWhs for wholesale market participants connected to the distributor's distribution system;
- c) For customers successfully enrolled with a retailer (completed enrollments accepted by the distributor for flow only), consumption in kWhs, broken down by individual retailer and by rate class; and
- d) Total consumption in kWhs for each of street lighting connections and sentinel lighting connections (both as defined in the distributor's Board-approved tariff of rates and charges).

All kWhs and kW) shall be reported based on a reading of the applicable meter, without being grossed up for loss factor.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

- 2.1.5.4.2 Annual Billings (in dollars) broken down by : Rate class, embedded distributors, wholesale market participants, connections for street lighting and connections for sentinel lighting (both as defined in the distributor's Board- approved tariff of rates and charges).**

Distributors whose rates are not set by the Board are exempt from this reporting requirement.

2.1.5.5 Utility Characteristics

- a) Licensed Service Area (Sq. Kms.) in total, and broken down by rural and urban.
- b) Maximum Monthly Peak Load (kW) for each of winter and summer. This is the non-coincident peak reported both inclusive and exclusive of embedded generation.
- c) Average Peak Load (kW), reported both inclusive and exclusive of embedded generation.
- d) Average Load Factor (kW), reported both inclusive and exclusive of embedded generation.
- e) Circuit Kilometers of Line (route kms) in total, and broken down by overhead and underground.
- f) Circuit Kilometers of Line (route kms), broken down by 3 phase, 2 phase and single phase.
- g) Number of Distribution and Transmission Stations in total, broken down by greater than or equal to 50 kV and less than 50 kV, and the number of transformers at each Station, broken down by those that are greater than or equal to 50 kV and those that are less than 50 kV.

2.1.5.6 Regulated Return on Equity (ROE)

A distributor shall report, in the form and manner determined by the Board, the regulatory return on equity earned in the preceding fiscal year. The reported return is to be calculated on the same basis as was used in establishing the distributor's base rates.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- 2.1.6** A distributor shall provide the Board annually, by April 30, audited financial statements for the preceding calendar year for the corporate entity regulated by the Board. Where the financial statements of the corporate entity regulated by the Board contain material businesses not regulated by the Board, or where the regulated entity conducts more than one activity regulated by the Board, the distributor shall disclose separately information about each operating segment in accordance with the Segment Disclosure provisions corporate entities are encouraged to adopt by the Canadian Institute of Chartered Accountants Handbook.
- 2.1.7** A distributor shall provide the Board annually, by April 30, a trial balance in uniform system of accounts format supporting the audited financial statements, for the preceding calendar year. A distributor may, for reporting purposes, include data relating to employee salaries in a similar salary account in the uniform system of accounts in cases where the number of distributor employees is such that separate reporting could result in the disclosure of an individual's salary information.
- 2.1.8** Commencing on April 30, 2014, a distributor shall provide in the form and manner required by the Board, annually, by April 30, the following information for the preceding calendar year with respect to residential customers and eligible low-income customers:
- a) Number of Eligible Low-Income Customer Accounts
 - i Number of eligible low-income customer accounts at year end.
 - b) Disconnections for Non-Payment
 - i Number of residential customer accounts disconnected for non-payment during the course of the year; and
 - ii Number of eligible low-income customer accounts disconnected for non-payment during the course of the year.
 - c) Arrears and Arrears Payment Agreements under the Distribution System Code
 - i Number of residential customer accounts in arrears at year end;
 - ii Number of eligible low-income customer accounts in arrears at year end;
 - iii Total dollar amount of arrears for residential customer accounts in arrears at year end;
 - iv Total dollar amount of arrears for eligible low-income customer accounts in arrears at year end;
 - v Number of arrears payment agreements entered into during the course of the year with residential customers;
 - vi Number of arrears payment agreements entered into during the course of the year with eligible low-income customers;
 - vii Total amount of monies owing under arrears payment agreements entered into during the course of the year with residential customers;

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- viii Total amount of monies owing under arrears payment agreements entered into during the course of the year with eligible low-income customers;
 - ix Number of arrears payment agreements with residential customers that were cancelled during the course of the year due to non-payment; and
 - x Number of arrears payment agreements with eligible low-income customers that were cancelled during the course of the year due to non-payment.
- d) Write-offs
- i Number of residential customer accounts written-off in whole or in part during the course of the year;
 - ii Number of eligible low-income customer accounts written-off in whole or in part during the course of the year;
 - iii Total dollar amount of write-offs for residential customer accounts during the course of the year; and
 - iv Total dollar amount of write-offs for eligible low-income customer accounts during the course of the year.
- e) Equal Billing and Equal Monthly Payment Plans under the Standard Supply Service Code
- i Number of residential customer accounts enrolled in equal billing plans at year end;
 - ii Number of eligible low-income customer accounts enrolled in equal billing plans at year end;
 - iii Number of residential customer accounts enrolled in equal monthly payment plans at year end; and
 - iv Number of eligible low-income customer accounts enrolled in equal monthly payment plans at year end.
- f) Security Deposits
- i Number of residential customer accounts with security deposits held at year end;
 - ii Total dollar amount of security deposits held in respect of residential customers at year end;
 - iii Number of eligible low-income customer accounts with security deposits held at year end; and
 - iv Total dollar amount of security deposits held in respect of eligible low-income customers at year end.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- g) Load Control Devices
 - i Number of residential customer accounts where load limiter devices were installed during the course of the year;
 - ii Number of eligible low-income customer accounts where load limiter devices were installed during the course of the year;
 - iii Number of residential customer accounts where timed load interrupter devices were installed during the course of the year; and
 - iv Number of eligible low-income customer accounts where timed load interrupter devices were installed during the course of the year.

For the purposes of this section:

1. Reporting on information regarding residential customers shall cover all residential customers, including eligible low-income customers; and
2. The following definitions apply:

"Arrears" means an account that is 30 or more days past the minimum payment period as determined according to section 2.6.3 of the Distribution System Code;

"Eligible low-income customer" means an eligible low-income electricity customer, as defined in sections 1.2, 1.3.2 and 1.3.3 of the Distribution System Code, Retail Settlement Code or Standard Supply Service Code;

"Equal billing plan" means a billing plan where the amount due in each bill is equalized over the course of the billing periods in the year, which may occur on a monthly, bi-monthly or quarterly basis;

"Equal monthly payment plan" means a payment plan where an equalized amount is automatically withdrawn from a customer's account at a financial institution on a monthly basis, followed by a bill on a monthly, bi-monthly or quarterly basis;

"Load control device" has the same meaning as set out in the definition section of the Distribution System Code;

"Load limiter device" has the same meaning as set out in the definition section of the Distribution System Code;

"Timed load interrupter device" has the same meaning as set out in the definition section of the Distribution System Code.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

2.1.9 Intentionally left blank.

2.1.10 A distributor shall provide in the form and manner required by the Board, annually, by April 30, information on affiliate arrangements and transactions for the preceding calendar year, as follows:

- a) For each affiliate with which the distributor has or had an Affiliate Contract for the provision of a service, resource, product or use of asset from the distributor to the affiliate: (i) the name of the affiliate; (ii) the number of Affiliate Contracts with the affiliate; and (iii) the total annual dollar value of all transactions under each such Affiliate Contract;
- b) For each affiliate with which the distributor has or had an Affiliate Contract for the provision of a service, resource, product or use of asset to the distributor from the affiliate: (i) the name of the affiliate; (ii) the number of Affiliate Contracts with the affiliate; and (iii) the total annual dollar value of all transactions under each such Affiliate Contract; and
- c) The highest total dollar value of all financial support to all affiliates outstanding at any time during the reporting period.

For the purposes of this section:

"Affiliate Contract" means a contract between a distributor and an affiliate, and includes a Services Agreement;

"financial support" means any form of financial support to an affiliate, including a loan to, a guarantee of indebtedness of and an investment in the securities of the affiliate; and;

"Services Agreement" means an agreement between a distributor and its affiliate for the purposes of section 2.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters.

2.1.11 A distributor shall provide in the form and manner required by the Board, annually, by April 30, a list of retailers who have service agreements with the distributor at the end of the preceding calendar year. The list shall indicate retailers for whom the distributor provides billing other than in the form of distributor-consolidated billing.

2.1.12 Intentionally left blank.

2.1.13 A distributor shall provide in the form and manner required by the Board, annually, by April 30, the uniform system of account balances mapped and reconciled to the audited financial statements.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

2.1.14 A distributor shall provide in the form and manner required by the Board, annually, by April 30, the following net metering and embedded generation information for the preceding calendar year:

- a) Number of Net Metered generators (as defined in the Distribution System Code), broken down by renewable energy source.
- b) Total Installed Capacity (kW) of all net metered generators.
- c) Number of Embedded Generation facilities connected to the distributor's distribution system, excluding those counted in (a) above.
- d) Total Installed Capacity (kW) of the embedded generators referred to in (c) above.

2.1.15 A distributor shall provide in the form and manner required by the Board, quarterly, on the last day of the second month following the quarter end, for each month in the quarter, the following information:

- a) For renewable energy generation facilities that have a name-plate rated capacity of greater than 10 kW:
 - i The number of Connection Impact Assessments ("CIA") completed in the quarter;
 - ii The total name-plate rated capacity (in kW) of the renewable energy generation facilities for which CIAs were completed as reported under (i) above;
 - iii Of the CIAs completed as reported under (i) above, the number that were completed within the applicable timeline prescribed by Ontario Regulation 326/09 made under the Electricity Act, 1998; and
 - iv 326/09 made under the Electricity Act, 1998; and
 - v Of the number of CIAs completed as reported under (i) above, the number that were not completed within the applicable timeline prescribed by Ontario Regulation 326/09 made under the Electricity Act, 1998.
- b) For renewable energy generation facilities that have a name-plate rated capacity of less than or equal to 10kW:
 - i The number of Offers to Connect made; and
 - ii The total name-plate rated capacity (in kW) of the renewable energy generation facilities for which Offers to Connect were made as reported under (i) above.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

2.1.16 A distributor shall provide in the form and manner required by the Board, annually, by April 30, the following information related to the provision of Low-income Energy Assistance program (LEAP) emergency financial assistance in the preceding calendar year:

- a) LEAP funds, in total and broken down as follows:
 - i Funds provided by the distributor to social agencies for: LEAP emergency financial assistance;
 - ii Unused funds carried forward from the previous year(s); and
 - iii Funds received by the distributor's social agency partner(s) from non-distributor sources (i.e. donations) that were earmarked for, and used to top up, the LEAP emergency financial assistance funds.

Funds received by the distributor from a third party or from the distributor's shareholder(s) (i.e., not funded from distribution revenues) as a donation and then provided by the distributor to its social agency partner(s) shall be reported under item (iii)

Funds received under the terms of the settlement of the class action proceeding regarding late payment penalties should not be included in any of the above.

- b) LEAP funds disbursed, in total and broken down as follows:
 - i Money allocated for agency administration and program delivery;
 - ii Grants provided to the distributor's customers; and
 - iii Grants provided to customers of licensed unit sub-metering providers operating in the distributor's service area, including the distributor if licensed as such.
- c) The month in which LEAP funds were depleted.
- d) Number of applicants for LEAP emergency financial assistance, in total and broken down as follows:
 - i Applicants that were the distributor's customers; and
 - ii Applicants that were customers of licensed unit sub-metering providers operating in the distributor's service area, including the distributor if licensed as such.
- e) Number of LEAP emergency financial assistance applicants assisted, in total and broken down as follows:
 - i Applicants who were approved for and received assistance that were customers of the distributor; and
 - ii Applicants who were approved for and received assistance that were customers of unit sub-metering providers operating in the distributor's service area, including the distributor if licensed as such.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- f) Number of LEAP emergency financial assistance applicants denied, in total and broken down as follows:
 - i Applicants that were customers of the distributor and that applied for assistance but were not approved; and
 - ii Applicants that were customers of unit sub-metering providers operating in the distributor's service area, including the distributor if licensed as such, and that applied for assistance but were not approved.
 - g) Average grant per accepted applicant assisted, as follows:
 - i Average grant amount allocated per applicant, for applicants that were customers of the distributor;
 - ii Average grant amount allocated per applicant, for applicants that were customers of unit sub-metering providers operating in the distributor's service area; including the distributor if licensed as such; and
 - iii Average grant amount allocated per applicant, measured across customers referred to in both (i) and (ii).
 - h) Confirmation that the distributor's social agency partner(s) has/have adhered to the processes and requirements set out in the LEAP Emergency Financial Assistance Program Manual.
- 2.1.17** A distributor shall provide the Board annually, by April 30, the following information as at the end of the preceding calendar year for all customers whose annual distribution revenue exceeds five percent of the distributor's annual distribution revenues:
- a) The nature of the customer's sector (e.g. municipalities, universities, schools and hospitals ("MUSH"), the resource sector, manufacturing, agriculture, forestry, telecom, technology, etc.)
 - b) The annual distribution revenues of each customer; and
 - c) The customer's annual load (kWh and kW) in the preceding calendar year.

- 2.1.18** A distributor shall immediately report to the Board any concern for a potential loss of customer(s) or an incurred loss of customer(s) as well as any material* reduction in customer load, as reported in its last annual filing.

**Materiality for a customer load reduction is considered when there is an impact of five percent or more on the distributor's annual distribution revenues.*

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

2.1.19 A distributor shall provide in the form and manner required by the Board, annually, by April 30, the following information for the preceding calendar year:

- a) First contact resolution;
- b) Billing accuracy (as set out in section 7.11 of the Distribution System Code);
- c) Customer satisfaction survey results;
- d) Public safety; and
- e) Distribution system plan implementation progress

For the purposes of Public Safety, RRR section 2.1.19 (d), the following definitions and targets apply:

"Public Awareness of Electrical Safety" means the level of public awareness within the electricity distributor's service territory of electrical safety information and precautions related to distribution network assets.

The performance target for Public Awareness of Electrical Safety will be established once three years of data is gathered from the electricity distributors. The target for Public Awareness of Electrical Safety will be set after the information for years 2015 to 2017 is collected from electricity distributors. The target will be shown on the scorecard for the 2018 performance data.

"Compliance with Ontario Regulation 22/04; Electrical Distribution Safety" means the level of the electricity distributor's compliance with Ontario Regulation 22/04- Electrical Distribution Safety as measured by:

- *Evaluation of annual audit of compliance submitted by electricity distributor (section 4-8) and declaration of compliance (sections 3,9-12)*
- *Evaluation of Due Diligence Inspection (DDIs) and Reports of Public Safety Concerns*

The performance target for level of compliance with Ontario Regulation 22/04 is for the distributor to be fully compliant with Ontario Regulation 22/04.

"Serious Electrical Incident Index" means the number of non-occupational (general public) serious electrical incidents involving electricity distributor owned assets as defined by Ontario Regulation 22/04 - Electrical Distribution Safety, as measured by the number of and rate of serious electrical incidents occurring on an electricity distributor's assets per 10,100 or 1000 km of line.

The performance target for Serious Electrical Incident Index will be set based on distributor's specific performance target using the distributor's historical data and prior performance.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

2.2 Certification

2.2.1 A distributor shall provide in the form and manner required by the Board, annually, by April 30, a self-certification statement signed by the chief executive officer of the utility confirming that the chief executive officer is satisfied that the utility has complied with the Affiliate Relationships Code for Electricity Distributors and Transmitters.

2.3 Record Keeping

2.3.1 A distributor shall maintain records of all complaints by consumers and market participants regarding services provided under the terms of the distributor's licence and responses for a period of two years and provide the following information, in a form and manner and at such times as may be requested by the Board:

- a) The name and address of the complainant;
- b) A description of the nature of the complaint including a copy of the written complaint;
- c) A description of the remedial action taken; and
- d) A copy of any correspondence received and/or sent with respect to each specific complaint.

2.3.2 Intentionally left blank.

2.3.3 A distributor shall maintain and provide in a form and manner and at such times as may be requested by the Board, detailed records of all economic evaluations conducted to comply with the requirements of by the Distribution System Code. The records are to be retained for two years beyond the end of the customer connection horizon specified in Appendix B to the Distribution System Code.

2.3.4 A distributor shall maintain and provide in a form and manner and at such times as may be requested by the Board, records on corporate relationships as follows:

- a) A list of all affiliates with whom the utility transacts, including business addresses, a list of the officers and directors, and a description of the affiliate's business activity;
- b) A corporate organization chart indicating relationships and ownership percentages; and
- c) The utility's specific costing and transfer pricing guidelines, tendering procedures and all Services Agreement(s). (as defined in the Affiliate Relationships Code for Electricity Distributors and Transmitters).

2.3.5 Where the total cost of all transactions with a particular affiliate exceeds \$100,000 on an annual basis, a distributor shall maintain and provide in a form and manner and at such times as may be requested by the Board, separate records showing:

- a) The name of the affiliate;

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

- b) The product, service, resource or use of asset in question;
- c) The dollar value of each transaction and the form of price or cost determination; and
- d) The date of each transaction and/or the start and completion dates for project-type transactions.

2.3.6 Where a distributor shares information services with an affiliate the distributor shall maintain and provide in a form and manner and at such times as may be requested by the Board, separate records substantiating all review(s) complying with the provisions of section 5970 of the CICA Handbook referenced in and conducted under the Affiliate Relationships Code for Electricity Distributors and Transmitters.

2.3.7 A distributor shall maintain and provide in a form and manner and at such times as may be requested by the Board, records substantiating the self-certification statement referred to in section 2.2.1 confirming compliance with the Affiliate Relationships Code for Electricity Distributors and Transmitters, including individual files for each compliance review containing working papers substantiating the compliance review report.

2.3.8 A distributor shall file with the Board, on request, copies of service agreements with retailers.

2.3.9 A distributor shall maintain and provide in a form and manner and at such times as may be requested by the Board, records of both annual summary reports of detailed patrol inspection activities of the condition of the distribution system that have taken place during the previous year as well as an outline of inspection plans (compliance plans) for the next year, as described in Appendix C of the Distribution System Code.

2.3.10 Intentionally left blank.

2.3.11 A distributor shall maintain and provide in a form and manner and at such times as may be requested by the Board, records on applications for the connection of embedded generation facilities to the distribution system, including connections to distribution systems embedded within the distributor's system, and that information shall include the following in relation to each application:

- a) The name of the applicant and the date of the applicant's request for a preliminary meeting;
- b) The proposed generation facility's fuel type, size, and location;
- c) The dates the applicant is provided with an impact assessment, a capacity allocation, a detailed cost estimate, and an offer to connect;
- d) The impact assessment, including metering requirements, the detailed cost estimate, and the offer to connect;

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- e) The date the distributor advises any directly connected transmitter or distributor under section 6.2.14A or 6.2.17 of the Distribution System Code;
- f) The date and reasons for the removal of capacity previously allocated to an applicant; and
- g) The date the distributor connects the generation facility to its distribution system.

2.3.12 Intentionally left blank.

2.3.13 A distributor shall record, retain and provide to the Board, on request and in the form and manner required by the Board, information regarding farm stray voltage as set out in the Distribution System Code.

3 TRANSMITTERS

3.1 Reporting

- 3.1.1** A transmitter shall provide in the form and manner required by the Board, quarterly, on the last day of the month following the quarter end, balances of all deferral/variance accounts, their related sub-accounts and associated information.
- 3.1.2** A transmitter shall provide in the form and manner required by the Board, annually, by April 30, information on affiliate arrangements and transactions for the preceding calendar year, as follows:
 - a) For each affiliate with which the transmitter has or had an Affiliate Contract for the provision of a service, resource, product or use of asset from the transmitter to the affiliate; (i) the name of the affiliate; (ii) the number of Affiliate Contracts with the affiliate; and (iii) the total annual dollar value of all transactions under each such Affiliate Contract;
 - b) For each affiliate with which the transmitter has or had an Affiliate Contract for the provision of a service, resource, product or use of asset from the affiliate to the transmitter: (i) the name of the affiliate; (ii) the number of Affiliate Contracts with the affiliate; and (iii) the total annual dollar value of all transactions under each such Affiliate Contract; and
 - c) The highest total dollar value of all financial support to all affiliates outstanding at any time during the reporting period.

For the purposes of this section:

"Affiliate Contract" means a contract between a transmitter and an affiliate, and includes a Services Agreement;

"Financial support" means any form of financial support to an affiliate, including a loan to, a guarantee of indebtedness of and an investment in the securities of the affiliate; and;

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

“Services Agreement” means an agreement between a transmitter and its affiliate for the purposes of section 2.2 of the Affiliate Relationships Code for Electricity Distributors and Transmitters.

- 3.1.3** A transmitter shall provide the Board annually, by April 30, audited financial statements for the preceding calendar year for the corporate entity regulated by the Board. Where the financial statements of the corporate entity regulated by the Board contain material businesses not regulated by the Board, or where the regulated entity conducts more than one activity regulated by the Board, the transmitter shall disclose separately information about each operating segment in accordance with the Segment Disclosure provisions corporate entities are encouraged to adopt by the Canadian Institute of Chartered Accountants Handbook.
- 3.1.4** Regulated Return on Equity (ROE)
A transmitter shall report in the form and manner determined by the Board, annually by April 30, the regulatory return on equity earned in the preceding fiscal year. The reported return is to be calculated on the same basis as was used in establishing the transmitter's base rates.

3.2 Certification

- 3.2.1** A transmitter shall provide in the form and manner required by the Board, annually, by April 30, a self-certification statement signed by the chief executive officer of the utility confirming that the chief executive officer is satisfied that the utility has complied with the Affiliate Relationships Code for Electricity Distributors and Transmitters.
- 3.2.2** A transmitter shall maintain and provide in a form and manner and at such times as may be requested by the Board, detailed records of all economic evaluations conducted to comply with the requirements of the Transmission System Code, including the economic evaluations referred to in sections 6.2.24, 6.3.9 and 6.3.17 of the Transmission System Code. Each record must show the details of the economic evaluation and include, as applicable, the determination of the customer's risk classification and the resulting economic evaluation period, the load forecast, the project capital costs, the ongoing operation and maintenance costs, the project after tax incremental cost of capital, and the justification for all of the study parameters.
- 3.2.3** A transmitter shall maintain and provide in a form and manner and at such times as may be requested by the Board, records on corporate relationships as follows:
- a) A list of all affiliates with whom the utility transacts, including business addresses, a list of the officers and directors, and a description of the affiliate's business activity;
 - b) A corporate organization chart indicating relationships and ownership percentages; and

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- c) The utility's specific costing and transfer pricing guidelines, tendering procedures and all Services Agreement(s) as defined in the Affiliate Relationships Code for Electricity Distributors and Transmitters).
- 3.2.4** Where the total cost of all transactions with a particular affiliate exceeds \$100,000 on an annual basis, a transmitter shall maintain and provide in a form and manner and at such times as may be requested by the Board, separate records showing:
- a) The name of the affiliate;
 - b) The product, service, resource or use of asset in question;
 - c) The dollar value of each transaction and the form of price or cost determination; and
 - d) The date of each transaction and/or the start and completion dates for project-type transactions.
- 3.2.5** Where a transmitter shares information services with an affiliate the transmitter shall maintain and provide in a form and manner and at such times as may be requested by the Board, separate records substantiating all review(s) complying with the provisions of section 5970 of the CICA Handbook referenced in and conducted under the Affiliate Relationships Code for Electricity Distributors and Transmitters.
- 3.2.6** A transmitter shall maintain and provide in a form and manner and at such times as may be requested by the Board, records substantiating the self-certification statement referred to in section 3.2.3 confirming compliance with the Affiliate Relationships Code for Electricity Distributors and Transmitters, including individual files for each compliance review containing working papers substantiating the compliance review report.
- 3.2.7** A transmitter shall maintain and provide in a form and manner and at such times as may be requested by the Board, records of all transmission system circuit trips coincident with telecommunication failures described in section 10.1.9 of the Transmission System Code.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

4 RETAILERS

4.1 Reporting

4.1.1 A retailer shall provide in the form and manner required by the Board, quarterly, by the last day of the second month following the period end, a summary of the following market monitoring information:

- a) The total number of customers successfully enrolled (accepted by a distributor for flow), broken down as follows:
 - i Contracts with less than one year remaining in the term of the contract;
 - ii Contracts with greater than one year but less than three years remaining in the term of the contract; and
 - iii Contracts with between three and five years remaining in the term of the contract; and
- b) The number of customers reported for each grouping in section (a) above shall be further broken down as follows: low volume consumers (less than 150,000kWh annually) and high volume consumers (150,000 kWh or more annually).

Retailers licensed to act as an agent only, are exempt from this requirement.

4.1.2 A retailer shall provide in the form and manner required by the Board, quarterly, on the last day of the second month following the quarter end, a summary of the following market monitoring information for the quarter pertaining to customers who are low volume consumers (as defined in the Electricity Retailer Code of Conduct):

- a) Number of salespersons who have successfully enrolled a customer (accepted by a distributor for flow) or successfully renewed a contract;
- b) Number of new enrolments (accepted by a distributor for flow);
- c) Number of contract renewals;
- d) Marketing Approach Percentages based on new enrolments (accepted by a distributor for flow) and renewed contracts during the reported quarter, broken down by: direct mail, in person, telesales, internet sales and other;
- e) Number of consumer complaints;
- f) Retail offers accepted by customers that have been successfully enrolled (accepted by a distributor for flow) during the quarter. Details include the contract length and all pricing details.

Retailers licensed to act as an agent only are exempt from this requirement.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS**Version dated May 13, 2015**

- 4.1.3** A retailer shall maintain for a period of two years, or two years beyond the end of the contract for items c), d), e) and f), and provide in a form and manner and at such times as may be requested by the Board, records of sales personnel and customer information containing the following information:
- a) A list of its salespersons including their name and agent number where applicable;
 - b) A list of its contracted customers;
 - c) Permission from each customer, in writing, to submit a request to a distributor to allow the electricity retailer to supply electricity to the customer;
 - d) A contract with each customer, with the customer's signature, to purchase electricity from the electricity retailer;
 - e) For contracts entered on or after July 1, 2002, the notice of reaffirmation of the contract by the customer; and
 - f) For contracts renewed or extended for a period of more than one year on or after August 1, 2002, the notice of acceptance of the renewal or extension from the customer.
- 4.1.4** A retailer with customers who are low volume consumers (as defined in the Electricity Retailer Code of Conduct) shall maintain for a period of two years, and provide in a form and manner and at such times as may be requested by the Board, records of staff training material containing the following information:
- a) Training manuals and other print material;
 - b) Training videos;
 - c) Codes of conduct;
 - d) Newsletters, bulletins, updates, circulars, notices, instruction sheets and other similar materials;
 - e) Scripts used for door-to-door solicitation of existing or prospective customers; and
 - f) Certification by each sales employee and sales agent that the training has been received and that the person is familiar with, and will abide by, the Electricity Retailer Code of Conduct.

ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

- 4.1.5** A retailer with customers who are low volume consumers (as defined in the Electricity Retailer Code of Conduct) shall maintain for a period of two years, and provide in a form and manner and at such times as may be requested by the Board, marketing information containing the following:
- a) Offers (defined as a proposal to enter into a contract, agency agreement, or any other agreement or combination thereof, made to an existing or prospective customer), including hard copies of Web pages containing offers;
 - b) Promotional material including pamphlets, brochures, bill inserts, coupons and flyers;
 - c) Application/ registration forms;
 - d) Form letters sent to existing and prospective customers;
 - e) Sample identity cards (including photograph), outerwear, business cards and contact information of sales representatives; and
 - f) Reference material including utility bills, price comparisons with details of price offers and forecasts (of the retailer) and other energy suppliers quoted, shown (or carried so as to be seen) or provided to existing or prospective customers (records shall be kept for each price change in the reference material).

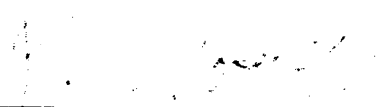
ELECTRICITY REPORTING AND RECORD KEEPING REQUIREMENTS

Version dated May 13, 2015

5 Wholesalers (Discontinued Apr 4'08)**6 Generators (none at this time)****7 Independent Electricity System Operator****7.1 Reporting**

- 7.1.1** The IESO shall provide in the form and manner required by the Board, quarterly, on the last day of the month following the quarter end, financial statements for all market accounts showing quarter end financial position and quarterly and year to date results of operations.
- 7.1.2** The IESO shall provide the Board with a copy of the results of all biennial audit reviews of settlements performed in accordance with Section 5970 of the CICA Handbook, as soon as they are available.
- 7.1.3** The IESO shall provide in the form and manner required by the Board, quarterly, on the last day of the month following the quarter end, the following information:
- a) A list of all System Impact Assessments ("SIA") completed in the quarter in respect of renewable energy generation facilities;
 - b) The total name-plate rated capacity (in MWs) of the renewable energy generation facilities for which SIAs were completed as reported under a) above; and
 - c) The time (in days) taken to issue each SIA reported under a) above.

This is Exhibit "M" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 10 day of August, 2015.



Commissioner for Taking Affidavits

433

Ontario Energy
Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie
de l'Ontario
C.P. 2319
27^e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



**NATURAL GAS REPORTING AND RECORD KEEPING REQUIREMENTS GAS
MARKETER LICENCE REQUIREMENTS**

Originally issued on December 22, 2004

Version dated January 1, 2013

434

**NATURAL GAS REPORTING AND RECORD KEEPING REQUIREMENTS (RRR)
GAS MARKETER LICENCE REQUIREMENTS
Version dated January 1, 2013**

Table of Contents

1	GENERAL AND ADMINISTRATIVE PROVISIONS	2
1.1	The purpose of these reporting and record keeping requirements.....	2
1.2	Interpretations	2
1.3	To whom these reporting and record keeping requirements apply	3
1.4	Manner and format of reporting and record keeping	3
1.5	Confidentiality of information.....	3
1.6	Exemptions	3
1.7	Coming into Force.....	3
2	MARKETER.....	4
2.1	Reporting	4
2.2	Record Keeping	5

1 GENERAL AND ADMINISTRATIVE PROVISIONS

1.1 The purpose of these reporting and record keeping requirements

These reporting and record keeping requirements set the minimum reporting and record keeping requirements, with which a natural gas marketer must comply, in accordance with section 4.1.1 of its licence. Other reporting and record keeping requirements specific to a natural gas marketer may also be contained in rules, individual licences or regulatory instruments specific to a marketer (for example, an order).

1.2 Interpretation

Unless otherwise defined in these reporting and record keeping requirements, words and phrases that have not been defined shall have the meaning ascribed to them in the Ontario Energy Board Act, 1998 (the "Act"). Headings are for convenience only and shall not affect the interpretation of these licence requirements. Words importing the singular include the plural and vice versa. A reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document.

**NATURAL GAS REPORTING AND RECORD KEEPING REQUIREMENTS (RRR)
GAS MARKETER LICENCE REQUIREMENTS
Version dated January 1, 2013**

1.3 To whom these reporting and record keeping requirements apply

These reporting and record keeping requirements apply to all licensed natural gas marketers.

1.4 Manner and format of reporting and record keeping

The reporting and record keeping requirements will be in the manner and format as prescribed by the Board.

1.5 Confidentiality of information

The Board intends to treat information filed under the Natural Gas Reporting and Record Keeping Requirements (Gas Marketer Licence Requirements) in confidence.

The Board reserves the right to disclose aggregated information as well as information in a form such that the identity of any individual person cannot be determined. The Board cautions parties that information treated as confidential may still be disclosed in a proceeding before the Board. However, a party to that proceeding would be able to request the Board to hold the document in confidence in that proceeding. The Board further cautions parties that it is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario).

1.6 Exemptions

The Board may grant an exemption to any provision of these licence requirements. An exemption may be made in whole or in part and may be subject to conditions or restrictions.

1.7 Coming into Force

These requirements shall come into force on July 1, 2005.

The amendments to sections 1.5 and 2.1.1 and the addition of section 2.1.2 come into force on May 1, 2010 and apply to any reporting required to be made on or after that date.

The amendments to sections 2.1.2, 2.2.1 and 2.2.4 come into force on January 1, 2013 and apply to any reporting required to be made on or after that date.

**NATURAL GAS REPORTING AND RECORD KEEPING REQUIREMENTS (RRR)
GAS MARKETER LICENCE REQUIREMENTS
Version dated January 1, 2013**

436

2 MARKETER

2.1 Reporting

2.1.1 A gas marketer shall provide in the form and manner required by the Board, quarterly, on the last day of the second month following the quarter end, information on the total number of customers at the end of the reporting quarter who are low volume consumers as defined in the Act, broken down by type of contract as follows:

- a) Contracts with less than one year remaining in the term of the contract;
- b) Contracts with greater than one year but less than three years remaining in the term of the contract; and
- c) Contracts with between three and five years remaining in the term of the contract.

Only contracts with consumers that have been successfully enrolled (accepted by a gas distributor for flow) or that have been renewed are required to be reported.

Marketers licensed to act as an agent only, are exempt from this requirement.

2.1.2 A gas marketer shall provide in the form and manner required by the Board, quarterly, on the last day of the second month following the quarter end, a summary of the following market monitoring information for the quarter pertaining to low volume consumers:

- a) Number of salespersons who have successfully enrolled a consumer (accepted by a gas distributor for flow) or successfully renewed a contract;
- b) Number of new enrolments (accepted by a gas distributor for flow);
- c) Number of contract renewals;
- d) Marketing approach percentages based on new enrolments (accepted by a gas distributor for flow) and renewed contracts during the reported quarter, broken down by: direct mail, in-person, telesales, internet sales, automatic renewals, and other;
- e) Number of consumer complaints; and
- f) Retail offers accepted by customers that have been successfully enrolled (accepted by a gas distributor for flow) during the quarter. Details include the contract length, and pricing details.

Marketers licensed to act as an agent only, are exempt from this requirement.

**NATURAL GAS REPORTING AND RECORD KEEPING REQUIREMENTS (RRR)
GAS MARKETER LICENCE REQUIREMENTS
Version dated January 1, 2013**

2.2 Record Keeping

2.2.1 A gas marketer with customers who are low volume consumers as defined in the Act, shall maintain for a period of two years and provide in a form and manner and at such times as may be required by the Board, records of all written complaints by low volume consumers regarding services provided under the terms of the marketer's licence together with the responses to those complaints, containing the following information:

- a) The name and address of the existing or prospective customer;
- b) A description of the nature of the complaint including a copy of the written complaint;
- c) A description of the remedial action taken; and
- d) A copy of any correspondence received and/or sent with respect to each specific complaint.

2.2.2 A gas marketer with customers who are low volume consumers as defined in the Act, shall maintain on file and provide in a form and manner and at such times as may be required by the Board, records of sales personnel and customer information as referenced by the Code of Conduct for Gas Marketers and containing the following information:

- a) A current list of salespersons who act for that gas marketer;
- b) A list of the gas marketers' customers;
- c) Permission from each customer, signed by the customer, to submit a request to a gas distributor to allow the gas marketer to supply gas to the customer;
- d) The contract with each customer, with the customer's signature, to purchase gas from the gas marketer, or for the gas marketer to purchase gas as agent for the customer, for as long as the contract or any renewal of it is in effect;
- e) Where reaffirmation is required, the notice of reaffirmation of the contract by the customer, for as long as the contract or any renewal of it is in effect;
- f) The notice of acceptance of the renewal or extension from the customer, where such notice is required, for as long as the contract or any renewal of it is in effect; and
- g) Such other information as the Board may reasonably require.

**NATURAL GAS REPORTING AND RECORD KEEPING REQUIREMENTS (RRR)
GAS MARKETER LICENCE REQUIREMENTS
Version dated January 1, 2013**


2.2.3 A gas marketer with customers who are low volume consumers as defined in the Act, shall maintain for a period of two years and provide in a form and manner and at such times as may be required by the Board, records of staff training material containing the following information:

- a) Training manuals and other print material;
- b) Training videos;
- c) Codes of conduct;
- d) Newsletters, bulletins, updates, circulars, notices, instruction sheets and other similar materials;
- e) Scripts used for door-to-door solicitation of existing or prospective customers; and
- f) Certification by each sales employee and sales agent that the training has been received and that the person is familiar with, and will abide by, the Code of Conduct for Gas Marketers.

2.2.4 A gas marketer with customers, who are low volume consumers as defined in the Act, shall maintain for a period of two years and provide in a form and manner and at such times as may be required by the Board, marketing information containing the following:

- a) Offers (defined as a proposal to enter into a contract, agency agreement, or any other agreement or combination thereof, made to an existing or prospective customer), including hard copies of web pages containing offers;
- b) Promotional material including pamphlets, brochures, bill inserts, coupons, and flyers;
- c) Application/ registration forms;
- d) Form letters sent to existing and prospective customers;
- e) Sample identity cards (including photograph), outerwear, business cards and contact information of sales representatives; and
- f) Reference material including utility bills, price comparisons with details of price offers and forecasts (of the gas marketer) and other energy suppliers quoted, shown (or carried so as to be seen) or provided to existing or prospective customers (records shall be kept for each price change in the reference material).

This is Exhibit "N" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 15 day of August, 2015.



Commissioner for Taking Affidavits

Ontario Energy
Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie
de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY EMAIL AND WEB POSTING

January 2, 2013

Jonah Davids
Senior Vice President,
Legal & Regulatory & General Counsel
Just Energy Ontario L.P.
6345 Dixie Road, Suite 200
Mississauga, ON L5T 2E6

Dear Mr. Davids:

**Re: Assurance of Voluntary Compliance
Board File No. EB-2012-0443**

The Ontario Energy Board ("Board") has reviewed and accepts the Assurance of Voluntary Compliance filed with the Board on January 2, 2013 under Board File Number EB-2012- 0443 (attached).

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

c.c. Nola Ruzycki
Vice President, Regulatory Affairs Canada
nruzycki@justenergy.com

Assurance of Voluntary Compliance

**Pursuant to s. 112.7 of the
*Ontario Energy Board Act, 1998***

Just Energy Ontario L.P.

EB-2012-0443

Just Energy Ontario L.P.
EB-2012-0443
Assurance of Voluntary Compliance
Filed: January 2, 2013

I. BACKGROUND

Two independent contractors acting as sales agents for Just Energy Ontario L.P. ("Just Energy") engaged in conduct which amounted to breaches of the *Energy Consumer Protection Act* (the "ECPA"), the Regulation made thereunder (Regulation 389/10) and the Electricity Retailer Code of Conduct (the "Code"). The specifics are set out below.

Independent Contractor and Sales Agent PK

On November 22, 2012 it is alleged that a Just Energy Independent Contractor and sales agent PK attended at the residence of a consumer and provided false or misleading statements, did not immediately and truthfully state his name and the retailer that he represented, and failed to prominently display a valid identification badge. Independent Contractor and sales agent PK was suspended on November 27, 2012 during the investigation of the allegations and was subsequently terminated on December 13, 2012.

Breaches of section 10 of the ECPA, section 5 O. Reg 389/10, and sections 1.1(a) and (h) Part B of the Code

Independent contractor and sales agent PK provided false or misleading statements to a consumer regarding who he represented, thereby engaging in an unfair practice contrary to section 5(1) of the Regulation and section 1.1 (h) of the Code.

Independent contractor and sales agent PK did not immediately and truthfully state his name and the retailer he represented and did not state that the retailer is not the consumer's electricity distributor and is not associated with the Ontario Energy Board, contrary to section 1.1 (a) of the Code.

Breaches of section 10 of the ECPA and section 5 6(i) of O. Reg 389/10, and sections 1.1(c) and 2.3 Part B of the Code

Independent contractor and sales agent PK failed to prominently display a valid identification badge when calling on the consumer in person thereby engaging in an unfair practice pursuant to section 5 paragraph 6i of the Regulation and sections 1.1(c) and 2.3 of the Code.

Breaches of section 10 of the ECPA, section 5 (1) of O. Reg 389/10, and section 1.1(h) Part B of the Code

Independent contractor and sales agent PK provided false or misleading statements to a consumer regarding the purpose of his visit, thereby engaging in an unfair practice contrary to section 5 paragraph 1 of the Regulation and section 1.1(h) of the Code.

Just Energy admits to the breaches with respect to Independent Contractor and sales agent PK.

Just Energy Ontario L.P.
EB-2012-0443
Assurance of Voluntary Compliance
Filed: January 2, 2013

Independent Contractor and Sales Agent JL

On June 11, 2012 it is alleged that Just Energy Independent Contractor and sales agent JL approached a consumer and provided false or misleading statements as to the purpose of his visit and failed to offer a consumer a business card. Independent Contractor and sales agent JL was terminated on November 27, 2012.

Breaches of section 10 of the ECPA and section 5(6)(ii) of O. Reg. 389/10, and section 1.1(b) (Part B) of the Code

Independent contractor and sales agent JL failed to offer a consumer a business card when calling on the consumer thereby engaging in an unfair practice pursuant to section 5(6)(ii) of O. Reg. 389/10, and further contrary to section 1.1(b) (Part B) of the Code.

Breaches of section 10 of the ECPA, section 5(1) of O. Reg. 389/10, and section 1.1(h) (Part B) of the Code

Independent contractor and sales agent JL provided false or misleading statements to a consumer regarding the purpose of his visit, thereby engaging in an unfair practice contrary to section 5(1) of O. Reg. 389/10, and further contrary to section 1.1(h) (Part B) of the Code. The Independent Contractor was terminated on November 27, 2012.

Just Energy admits to the breaches with respect to Independent Contractor and sales agent JL.

II. COMMITMENT

Just Energy and the Ontario Energy Board are satisfied that this matter can be resolved with the filing of this Assurance of Voluntary Compliance. Just Energy commits to ensuring that as of the date of this Assurance it has taken steps to investigate and mitigate the above noted breaches of enforceable provisions since being notified of the issue on September 26, 2012. Specifically, Just Energy has terminated the contract of the above referenced independent contractors/sales agents and has undertaken the following steps to ensure compliance with the breaches identified above:

1. Just Energy has added a financial compliance penalty to Independent Contractor's/sales agents that have failed to provide a consumer with a business card.
2. Just Energy issued a Memo to all Ontario Regionals restating the requirements under the Energy Consumer Protection Act (Ontario) with respect to business cards and ID badges. The memo also reiterated that the Global Adjustment was only to be referred to under the proper context with respect to the program offering.
3. Just Energy continues to emphasize the importance of compliance with the Regulations and Codes on calls with the Regional Distributors.

Just Energy Ontario L.P.
EB-2012-0443
Assurance of Voluntary Compliance
Filed: January 2, 2013

III. ADMINISTRATIVE MONETARY PAYMENT

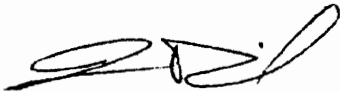
Having reviewed O. Reg. 331/03 and in particular the Schedule for Ranges of Administrative Penalties Just Energy agrees to pay an administrative monetary penalty in the amount of \$80,000 to the Board by way of certified cheque within thirty days of the date of the Board's acceptance of this Assurance.

IV. CONSUMER RIGHTS

Nothing in this Assurance affects any rights a consumer may have under his or her contract, the ECPA or any other law.

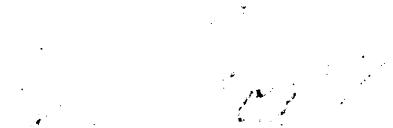
V. FAILURE TO COMPLY

This Assurance has the same force and effect as an order of the Board pursuant to section 112.7(2) of the Act and any failure to comply with its terms shall be deemed to be a breach of an order of the Board. I have authority to bind Just Energy Ontario L.P. to the terms set out in this Assurance of voluntary Compliance.



Name: Jonah Davids
Title: Senior Vice President, Legal & Regulatory and General Counsel
Date: January 2, 2013

This is Exhibit "O" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 11 day of August, 2015.



Commissioner for Taking Affidavits

Assurance of Voluntary Compliance

**Pursuant to s. 112.7 of the
*Ontario Energy Board Act, 1998***

**JUST ENERGY ONTARIO L.P.
ER-2010-0153 and GM-2010-0152**

**EB- 2013-0392 and EB-2013-0393
(April 3, 2014)**

I. BACKGROUND

In February 2013, Board staff commenced an inspection in relation to a consumer complaint made to the Board against Just Energy Ontario L.P. ("Just Energy") operating under licences ER-2010-0153 and GM-2010-0152. As a result of the complaint, Board staff conducted an inspection into Just Energy's business practices related to the cancellation of contracts following a consumer's move to a new residence. The inspection also reviewed the methodology employed by Just Energy in calculating cancellation fees. The inspection was conducted under the authority of Part VII of the *Ontario Energy Board Act, 1998* (the "Act").

In the complaint, the consumer explained that, following her move from the premises at which Just Energy was supplying electricity, she received a letter from Just Energy requesting that she provide her new address and account information. In the letter Just Energy stated:

"If you do not wish to continue receiving the benefits of the Electricity Program, you can choose to end your 5 year Agreement by paying an early termination fee of \$590.19 plus HST of \$76.72 as set out in the Terms and Conditions of your Agreement.

In another inspection, a Just Energy salesperson attended the residence of a consumer and allegedly did not introduce himself, did not indicate he was an energy salesperson or that he was employed by Just Energy. He allegedly stated that he was from the "hydro" company and that he was there on behalf of all low volume consumers to get them on the "group distribution rate". Allegedly, it was not until a later point during the conversation at the door when the consumer asked for the salesperson's business card that he understood that the salesperson was with Just Energy.

Just Energy Ontario L.P.
EB-2013-0392 / EB-2013-0393
Assurance of Voluntary Compliance
Filed: April 3, 2014

II. FINDINGS

Four issues of alleged non-compliance were identified:

1. *Incorrect Cancellation Fee Charged to Consumers*

During the period March 2011 to October 2012, Just Energy advised that due to a system calculating error, it had, in 132 cases, calculated and charged consumers incorrect cancellation fees. In each of these instances the consumers paid the incorrect fee. To address this problem, on its own initiative and prior to the Board's investigation, effective November 1, 2012, Just Energy employed a manual process to correctly calculate applicable cancellation fees for these 132 consumers. During this process a customer made a complaint to the Board resulting in the Board and Just Energy commencing discussions in order to ensure the problem was resolved. The system calculating error was corrected in June 2013. Just Energy has confirmed with Board staff that it remedied all of these cases by reimbursing consumers an amount equal to the difference between what the consumer actually paid and the corresponding appropriate cancellation fees prior to or during Board staff's inspection.

In these 132 cases, Just Energy admits that it breached section 22 (2) of the *Energy Consumer Protection Act, 2010*, (the "ECPA") by failing to apply the correct cancellation fee for consumers as prescribed under section 23(1) of Regulation 389/10 made under the ECPA (the "ECPA Regulation").

2. *False and Misleading Letter sent to Consumers who had Moved*

During the period January 2011 to January 2013, Just Energy sent 2,060 consumers a letter (the "Move Letter") incorrectly stating that cancellation fees would have to be paid by the consumer unless they were moving to an area not served by Just Energy, instead of advising the customers of their right to cancel a

contract without cost or penalty if the consumer moved permanently from the premises to which gas or electricity was supplied.

Of the 2,060 consumers that received the Move Letter:

- 1,616 contracts, were cancelled by Just Energy without cost or penalty; and
- 444 move consumers re-enrolled with Just Energy after receiving the Move Letter;
 - Of these 444 consumers, 59 contracts were subsequently cancelled with no cancellation fees; 3 consumers paid cancellation fees which were reimbursed and 382 consumers remain on contract with Just Energy at their new address. Board staff is of the view that the consumers may have remained on contract as a result of being misled with regard to their cancellation rights.

In all 2,060 cases Just Energy admits that that it misled consumers about their cancellation rights thereby breaching section 10 of the ECPA and section 5(1) (i), (xi) and (14) of the ECPA Regulation related to unfair practices and Part B, section 1.1 (h) of the Code of Conduct for Gas Marketers and/or the Electricity Retailer Code of Conduct (the "Codes").

3. *Incorrect Cancellation Fees Quoted to Consumers*

Between the period March 2011 until November 12, 2012 Just Energy received telephone inquiries from approximately 200,000 consumers about various aspects of their contract terms and conditions, including in some instances inquiries about cancellation fees. For any consumers inquiring about cancelling a contract, due to the aforementioned system calculating error, Just Energy may have misquoted the cancellation fee, which may have resulted in the consumer choosing to remain on the contract.

Just Energy Ontario L.P.
EB-2013-0392 / EB-2013-0393
Assurance of Voluntary Compliance
Filed: April 3, 2014

Where an incorrect cancellation fee was quoted, Just Energy admits that it breached section 22 (2) of the ECPA by failing to provide the correct cancellation fee for consumers as prescribed under section 23(1) of the ECPA Regulation.

4. Sales Agent Conduct

On or around June 4, 2013, a consumer contacted the Board with respect to a visit which occurred at his residence by a Just Energy salesperson. The consumer alleges the following:

The salesperson did not immediately introduce himself as being from Just Energy or provide a business card. The salesperson stated that he was there to make sure that small volume consumers were switched to a single rate. The salesperson had what appeared to be a modified utility bill. The salesperson neither discussed a contract with the consumer nor provided any pricing information.

If proven, the allegations, constitute a breach of sections 5 and 10 of the ECPA Regulation and ss. 1.1(a), 1.1(h), 2.1 and 2.2 of the Codes.

III. ASSURANCE

Just Energy hereby assures the Board that it has taken and will take the following steps with respect to each of the findings noted above:

- I. With respect to Just Energy's failure to provide 132 consumers the correct cancellation fee as prescribed under section 23(1) of the ECPA Regulation. Just Energy has confirmed with Board staff that it has reimbursed consumers

**Just Energy Ontario L.P.
EB-2013-0392 / EB-2013-0393
Assurance of Voluntary Compliance
Filed: April 3, 2014**

an amount equal to the difference between what the consumer actually paid and the corresponding appropriate cancellation fees.

- II. With respect to the 2,060 consumers who were sent a Move Letter incorrectly stating that cancellation fees that would have to be paid unless the consumer had moved to an area not served by Just Energy, Just Energy has confirmed that 1,678 contracts were cancelled and only 382 consumers are flowing at their new addresses. Just Energy commits to making its best efforts to contact each of the 382 consumers by telephone, including making two attempts to contact each of the 382 customers. If there is no answer on the initial call, Just Energy will leave a message for the consumer to contact Just Energy. Just Energy commits to making a second call if necessary approximately one week after the first call and also commits to returning any calls within one week of a receiving a message from a consumer. The calls will be made using a Board approved script attached as Appendix A to this Assurance, to inform the consumer of the incorrect information provided by Just Energy concerning their cancellation rights. Just Energy will provide each of the 382 consumers with an opportunity to cancel the contract and receive a refund for all monies paid by the consumer to Just Energy under the contract since the time that the consumer moved.

Just Energy will provide a written report of its attempts to contact the 382 consumers to the Vice President, Consumer Services at the Board within 60 days of the date of this Assurance. The report shall set out the name, address and telephone number of the consumers, the date contact with the consumer was made or where attempts to contact have been made, whether the consumer wishes to cancel the contract or not and any monies paid out to the consumer following a cancellation request. If necessary, a second report shall be filed 60 days after the first report with any outstanding information. All

Just Energy Ontario L.P.
EB-2013-0392 / EB-2013-0393
Assurance of Voluntary Compliance
Filed: April 3, 2014

telephone recordings with these 382 consumers must be retained and made available should Board staff request them.

III. With respect to the approximate 200,000 telephone inquiries made to Just Energy between March 2011 and October 2012, Just Energy confirms that it will send a letter to each of these consumers in the form attached as Appendix B to this Assurance. The letter informs the consumer that they may have been told an incorrect cancellation fee during their call if in fact, the consumer was calling to inquire about his/her cancellation fees. The letter further informs the consumer of his/her right to cancel the contract and receive a reimbursement from Just Energy for the difference in the amount that the customer paid under the contract to Just Energy and the amount that would have been paid to such customer's utility, since the date of the telephone call, in cases where such customer was provided an incorrect cancellation fee amount in excess of the correct cancellation fee amount. Just Energy has agreed that it will provide a written report to the Vice President, Consumer Services of the Board within six months of the date of this Assurance setting out the names of the consumers, the date the letter was sent, a summary of any response/telephone call made by the consumer to Just Energy and any monies paid out to the consumer.

IV. With respect to the sales agent conduct issue, Just Energy accepts responsibility for the alleged breaches set out above. Just Energy commits to retraining the salesperson noted in the allegation above with respect to conducting in-person sales if such salesperson continues to market with Just Energy. Just Energy makes no admission to the allegations made by the complainant.

Just Energy and Consumer Services Staff are satisfied that this matter is appropriately resolved by the filing of this Assurance.

IV. ADMINISTRATIVE MONETARY PENALTY

Just Energy agrees to pay an administrative monetary penalty to the Board in the amount of \$450,000. The amount of the administrative monetary penalty reflects the nature and number of alleged breaches of enforceable provisions as set out above. The Board will use the funds to support activities related to consumer education, outreach and other activities in the public interest.

The payment of the administrative monetary penalty shall be made immediately and no later than two weeks from the date of the filing of this Assurance, which has been accepted by the Board, and shall be made by cheque in certified funds or electronically with notice sent to the Board Secretary.

V. CONSUMER RIGHTS

Nothing in this Assurance affects any rights a consumer may have under his or her contract, or under any applicable laws.

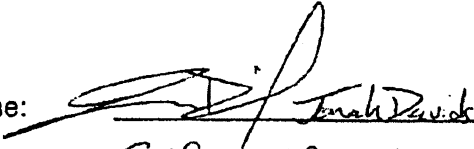
VI. FAILURE TO COMPLY

This Assurance has the same force and effect as an order of the Board pursuant to section 112.7(2) of the Act and any failure to comply with its terms shall be deemed to be a breach of an order of the Board.

VII. EXECUTION OF ASSURANCE

I have authority to bind Just Energy Ontario L.P. to the terms set out in this Assurance of Voluntary Compliance.

Just Energy Ontario L.P.
EB-2013-0392 / EB-2013-0393
Assurance of Voluntary Compliance
Filed: April 3, 2014

Name:  Sarah David
Title: SVP, Legal & Regulatory and General Counsel
Company: Just Energy Ontario L.P.

Dated this 3rd day of April, 2014.

Appendix A

**Just Energy Ontario Post Move Customers with
 incorrect Exit Fee Quotes
 January 28, 2014 v2.1**

1. Outbound Introduction:

- a. Good [morning/afternoon/evening], may I speak to [Mr. /Mrs. Customer name]? *(Only process with Account Holder/Spouse/Person Authorized by Account Holder)*
- b. My name is [CSR Name] and I'm calling on a recorded line from Just Energy your current [Natural gas/electricity] supplier at [address without postal code]. As part of an agreement reached with staff at the Ontario Energy Board we are reviewing some of our customers' accounts that previously moved and were sent a move letter. It'll only take a few moments is that okay?

2. Content:

- a. Great, in reviewing your account, we noticed that when you moved out in [month, year], we provided you with a letter that did not inform you of your cancellation rights when you moved from your permanent residence and we sincerely apologize for the error. We truly value your business and wanted to ensure you were aware of this matter. As a result of the error you are entitled to cancel your agreement with Just Energy and go back to receiving power from your local utility in which case you would receive a refund of all money paid under the contract since the date of the move without any cancellation fees. Alternatively, you can remain a customer of Just Energy. Would you like to keep things the way they are right now without any changes?
 1. If Yes: *go to Closing*
 2. If No: Not a problem [Customer Name], I'm going to cancel your account and your [natural gas/electricity] supply is going to be provided by your local utility. We are also going to process a refund for everything you paid to Just Energy under the contract since you permanently moved. We sincerely apologize for the misinformation provided and hope that this will rectify the issue?

3. Closing:

- a. Thank you for your time [Customer Name].
 - i. If the customer stays with us: Just Energy truly values your business. Do you have any other comments that you'd like to share with us at this time? *(Handle all customer concerns, if any)* Thank you, have a great day.
 - ii. If the customer leaves us: We are sorry to lose you as a valued customer, I'm just processing your cancellation request, which shall take 1-2 billing cycles, as well as your refund which will take 3-4 weeks following the effective date of your cancellation. May I just confirm your address and the spelling of your name to ensure that I'm sending the cheque to the correct location? *(Confirm customer name and address including unit number and postal code)*
 1. If you do change your mind we would love to have you back as a customer. Have a great day.

Just Energy Ontario L.P.
EB-2013-0392 / EB-2013-0393
Assurance of Voluntary Compliance
Filed: April 3, 2014

Appendix B

[DATE]

Dear <Name>,

Thank you for being a valued customer of Just Energy. Just Energy is writing you today as part of an agreement reached with the Ontario Energy Board.

Our records indicate that you may have called us requesting information about contract cancellation and/or early termination fees and may have been provided an incorrect quote of the amount of the early termination fee associated with the termination of your contract. Just Energy has informed the Ontario Energy Board of this matter and we have been requested to contact you to ensure that you are provided with accurate information with respect to early termination fees.

If you recall calling us about cancellation and/or early termination fees since March 2011 then please contact us by telephone at 1.866.XXX.XXXX or email at XXXX@justenergy.com by no later than [date that is 60 days from the date of the letter], 2014. We will then review the recorded telephone call and information provided to you when you called Just Energy.

If it turns out that you were quoted an early termination fee in excess of the permitted amount under your contract, Just Energy will provide you with the opportunity to cancel your contract with no early termination fee and you will be reimbursed any positive difference between what you paid to Just Energy for your energy supply since the time of call and what you would have paid for energy if you had cancelled your contract with Just Energy and been returned to system supply.

Yours truly,

This is Exhibit "P" referred to in the
Affidavit of Haidar Omarali
sworn before me, this 10 day of August, 2015.

Commissioner for Taking Affidavits

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIA KORDESTANI and HAIDAR OMARALI

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

LITIGATION PLAN

Pursuant to s. 5(1)(e)(ii) of the *Class Proceedings Act, 1992* (“CPA”), the Plaintiffs propose that this Litigation Plan be followed with respect to these proceedings, subject to the Court’s approval:

STAGE 1: PRE-CERTIFICATION INQUIRIES

1. The Plaintiffs propose 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.”

Communicating With the Class

2. Koskie Minsky LLP has experience communicating with class members in large scale class proceedings. In combination with the required court ordered notices, class counsel has established a website, an email address, and a toll free number to facilitate communication with class members.

3. Koskie Minsky LLP has taken the initiative of creating a website that offers details and updates on the progress of the litigation (<http://www.kmlaw.ca/justenergyclassaction>). Potential class members can locate the website through an internet search or through links established on Koskie Minsky LLP's website. Through this website, class members may become aware of this action and are kept apprised of the progress of the litigation. A toll free phone number and email contacts are also available on the website to allow interested parties to contact Koskie Minsky LLP with inquiries.

STAGE 2: NOTICE OF CERTIFICATION AND OPT OUT

4. Following certification of this action as a class proceeding, notice of the certification will be delivered pursuant to s. 17 of the *CPA*, in a form and manner approved by this Court.

Draft Notice

5. A draft of the form of Notice of Certification ("Draft Notice") is attached hereto as Schedule "A", and is subject to the Court's approval. Upon certification of this proceeding and court approval of the Draft Notice, the Notice of Certification ("Approved Notice") will be disseminated.

6. The Draft Notice provides the website address established for this class action (<http://www.kmlaw.ca/justenergyclassaction>), a contact email address, and Koskie Minsky LLP's mailing address and phone number to allow for newly identified class members to make any inquiries regarding the class action.

Notice Program

7. The Plaintiffs request that the Approved Notice be disseminated at the Defendants' expense.

8. To minimize expense to the Defendants (collectively referred to as "Just Energy" or the Defendants) and to maximize notice exposure, the Plaintiffs propose that the Approved Notice will be distributed using the internal communication channels of Just Energy as well as external communication tools. The Plaintiffs request that the Court order that the following specific

methods of distribution of the Approved Notice be implemented within 30 days of the certification order, or by a date to be determined by the Court:

- (i) Using the records of Just Energy, the Approved Notice shall be sent by regular mail to the address of all currently employed class members;
- (ii) Using the records of Just Energy, the Approved Notice shall be sent by e-mail to the last known e-mail address of all currently employed class members;
- (iii) Using the records of Just Energy, the Approved Notice shall be sent by regular mail to the last known address of formerly employed class members;
- (iv) Using the records of Just Energy, the Approved Notice shall be sent by e-mail to the last known e-mail address of formerly employed class members;
- (v) Using internal communication channels of Just Energy that are currently in use to communicate with currently employed class members, including internal e-mail lists, workplace newsletters, and workplace bulletin boards, the Approved Notice will be sent and/or posted through those internal communication channels;
- (vi) Post the Approved Notice at all of Just Energy's regional sales offices in plain sight;
- (vii) E-mail or mail the Approved Notice to any person who may request it;
- (viii) Make the Approved Notice, or a summary thereof, available orally by recorded message at a toll-free hotline;
- (ix) Post the Approved Notice on the Just Energy class action website already created by Koskie Minsky LLP (<http://www.kmlaw.ca/justenergyclassaction>);
- (x) Post the Approved Notice on Just Energy's website (<https://www.justenergy.com/>) in a conspicuous location; and

- (xi) Publish the Approved Notice in the Globe and Mail, the National Post, the Toronto Star, the Ottawa Citizen, and other Canadian national and Ontario regional newspapers, in an amount and frequency to be determined.

9. In addition to responding to individual inquiries, Koskie Minsky LLP will continue to update the Just Energy class action webpage following certification. The toll free phone number and e-mail address for inquiries provided on the webpage will continue to operate until the class action is finally resolved.

Opt-out

10. The Plaintiffs submit that the Court should agree to set an opt-out deadline of 120 days after the Approved Notice is disseminated by regular mail, electronic mail, and publication as described in paragraph 8 above.

11. The Draft Notice outlines the significance of opting out and explains that those members of the class who choose to opt out within the stipulated deadline will not recover any monies in this action. Further, the Draft Notice makes clear that affected persons who do not opt out will be considered class members and will be bound by the Court's judgment or the terms of any settlement.

12. "Opt Out" forms (a draft of which is attached as Schedule "B"), to be approved by the Court, will be made available by Koskie Minsky LLP upon request and will be posted on the Just Energy class action website (<http://www.kmlaw.ca/justenergyclassaction>).

13. Class members who wish to opt out of the class action as certified must complete and return the Opt Out form to Koskie Minsky LLP by no later than 120 days after dissemination of the Approved Notice as described in paragraph 10. The Opt Out form can be returned by mail, fax, or e-mail.

14. Koskie Minsky LLP will serve an affidavit listing the opt-outs received within 30 days of the opt-out deadline.

STAGE 3: PLEADINGS AND DOCUMENTARY DISCOVERY

15. If the action is certified as a class proceeding, the Court will be asked to order the Defendants to deliver their Statement of Defence no later than 60 days following the date on which the Court issues the certification order. The Plaintiffs will have a following 30 days following service of the Statement of Defence to serve a Reply, if any.

16. All pleadings in the action shall be served and filed within 90 days following the issuance of the certification order.

17. Within 120 days following certification, it is proposed that the parties meet and agree upon a discovery plan pursuant to Rule 29.1 of the *Rules of Civil Procedure* and agree on a method and timeline for productions of documents and for e-discovery, including the participation in any necessary “meet and confer” meetings.

18. A case conference will be sought to be heard within 30 days following certification to establish a litigation timetable for the remaining litigation steps leading to trial.

STAGE 4: EXAMINATION FOR DISCOVERY

19. Examinations for discovery will commence pursuant to the agreed upon discovery plan.

20. Subject to refusals and undertakings, the Plaintiffs anticipate that the examinations for discovery of Just Energy’s representatives will take approximately 5 to 10 days, which would occur over the course of three to four months, subject to the parties’ availability.

STAGE 5: EXCHANGE OF EXPERT OPINIONS

21. The exchange of expert reports, if necessary, shall be governed by the timetable agreed to between the parties and ordered by the Court.

STAGE 6: COMMON ISSUES TRIAL

22. The trial of the certified common issues will take place on a timeline agreed to by the parties or as ordered by the Court and shall be set after the conclusion of discoveries and all preliminary motions.

23. A full list of the witnesses the parties intend to call will be provided in accordance with a trial management timetable agreed to between the parties.

24. If the common issues pertaining to liability are resolved to the Plaintiffs' benefit, the Plaintiffs will request that the Court make an order under s. 24 of the *CPA* awarding the amount of aggregate damages determined by the Court to the class members and ask that a common determination of class members' hours per day and days per week be made.

25. Punitive damages are also sought by way of a common issue.

STAGE 7: NOTICE OF RESOLUTION AND DISTRIBUTION

26. After the common issues are determined, the process for the distribution of any aggregate or punitive award of damages is determined (see Stage 8 below), and the process for determinations of any individual issues has been approved, if necessary (see Stage 9 below), the Plaintiffs will request that the Court approve the form and content of a notice program giving class members notice of the resolution of the common issues, notice of any aggregate or punitive award of damages, and the method for distributing such damages, and/or the method for determination of any individual issues ("Notice of Resolution").

27. The Notice of Resolution will require eligible class members to file their claim on an approved claim form ("Claim Form") by a fixed date with the agreed upon Class Action Administrator. This form will allow the class members to establish their membership in the class and could be checked against the current and historical employment records of Just Energy.

28. The Notice of Resolution and Claim Form will be disseminated in the same manner as the Approved Notice set out above in paragraph 8.

STAGE 8: DISTRIBUTION OF AGGREGATE AND PUNITIVE DAMAGES**Aggregate Damages**

29. The Plaintiffs propose that an aggregate damages award shall be placed in a fund for the class members, and claims shall be administered by a mutually agreed upon administrator approved by the Court (“Class Action Administrator”).

30. The Plaintiffs understand that the total number of class members, their names and contact information, their length of active service with the Defendants and the amounts paid by the Defendants to the class members in commissions, is all information that is readily accessible and ascertainable by the Defendants.

31. Using that information, along with information from the Canada Revenue Agency (related to CPP contributions made by class members), the aggregate damages awarded (be it for all heads of damages or some – which includes minimum wage, overtime, vacation pay, public holiday and premium pay, and CPP and EI contribution reimbursement) can be distributed to the class members based on their specific entitlements based on the length of service with the Defendants and common determinations of hours worked per day and week.

32. The Plaintiffs propose that any amounts not specifically awarded to a class member through this process shall be distributed to all class members on a pro rata basis based on the class members’ length of service.

33. Alternatively, the Plaintiffs may bring a motion to the Court for directions on a formula for distributing the aggregate Award.

Punitive Damages

34. The Plaintiffs propose any punitive damages awarded shall be distributed to all class members on a pro rata basis based on the class members’ length of service with the Defendants.

STAGE 9: INDIVIDUAL ISSUES DETERMINATIONS – IF NECESSARY

35. If the Court does not order an award under s. 24 of the *CPA* and/or determines that individual issue determinations are necessary, then the Plaintiffs will attempt to come to an agreement with the Defendants to reach a mutually acceptable method for determining individual issues (which may include liability and damages).

36. Alternatively, the Plaintiffs will request that the common issues judge approve a procedure to resolve individual issues pursuant to s. 25 of the *CPA*. The approved procedure will be disseminated to the class in the Notice of Resolution.

37. Given the information the Defendants possess relating to each class member, including their names and contact information, their length of active service with the Defendants, and the amounts paid by the Defendants to the class members in commissions, there is a limited number of individual issues that might be required to be determined on an individual basis.

38. Given the nature of individual issues that may need to be addressed and the quantum of each class members' claim, a simplified process for individual issues determinations is proposed. The Plaintiffs propose the following process:

39. A Claim Form will be drafted and approved, the structure and content of which will depend upon the findings made at the common issues trial.

40. A mutually agreed administrator will be approved by the Court ("Class Action Administrator").

41. The Defendants shall be required to provide the Class Action Administrator the following information for each class member:

- (i) Name and last known contact information;
- (ii) Date of hire;
- (iii) Date of termination or date of deemed termination due to inactivity for each class member; and

- (iv) Amounts paid by the Defendants, including dates of payment.
42. Class members will be required to submit the following information in the Claim Form:
- (i) Their name and current contact information;
 - (ii) Identifying the days they worked as a Sales Agent (if the individual days worked are at issue);
 - (iii) The number of hours in each day they worked as a Sales Agent (if the individual hours worked are at issue);
 - (iv) How much they paid in CPP contributions in each year employed as a Sales Agent (including their applicable tax return); and
 - (v) How much they paid in EI contributions in each year employed as a Sales Agent.
43. The class members will be permitted to complete and submit the Claim Form by fax, email, or mail or through a secure website operated by the Class Action Administrator.
44. The class members will have to submit their Claim Forms by a fixed date (“Claim Submission Date”).
45. The Defendants will have 60 days after the Claims Submission Date to advise the Class Action Administrator of which claims it intends on disputing and the specific basis for those disputes.
46. For any claims that The Defendants does not dispute, the Class Action Administrator will assess and determine the damages owing based on a pre-determined formula.
47. For any claims the Defendants dispute, individual assessments will be conducted pursuant to the following proposed non-exhaustive principles:
- (i) The Claim Form and supporting documents will be treated as the claimant’s affidavit;

- (ii) to dispute a claim, the Defendants must file an affidavit setting out firsthand knowledge to dispute the claim for each claim disputed within 60 days of the Claims Submission Date;
- (iii) A mutually agreed upon Referee will be appointed to conduct the hearings;
- (iv) The Referee will review the Claim Form and responding affidavit, and will determine whether a decision on the issues in dispute can be made based on the evidence presented, or whether a hearing will be required;
- (v) A hearing will be held only if the Referee determines such to be necessary. The hearing shall be held in the least expensive, most efficient manner, and the Referee will be given such powers agreed upon by the parties or as directed by the Court;
- (vi) Offers to settle will be permitted until the day of the hearing;
- (vii) Each hearing will last a maximum of two (2) hours each;
- (viii) Cross-examinations will only be permitted on the Claim Form and on any defence affidavits, and no other oral testimony will be permitted without leave of the Referee;
- (ix) Each party will be provided an opportunity to make submissions orally or in writing;
- (x) Hearings can be conducted by telephone or video;
- (xi) Hearings and decisions shall not be public;
- (xii) This process is intended for the self-represented claimant, but the claimant may retain counsel if desired;
- (xiii) Decisions shall be provided in writing within 15 days of the hearing;

- (xiv) There will be no right of appeal from the Referee's decisions;
- (xv) There will be no costs liability for the claimants or for the defendants with respect to a hearing before the Referee;
- (xvi) The standard of proof shall be the standard employed in civil courts; and
- (xvii) The Defendants shall bear the cost of the Referee and the hearings.

48. Once final individual issue determinations, including liability and damages, are completed, individual damages awards would then be distributed to the class members.

FUNDING

49. The Plaintiffs' legal fees are to be paid on a contingency basis based on success on the common issues, as provided for in the *CPA*, and are subject to the Court's approval.

50. Koskie Minsky LLP will continue to provide the funding of all disbursements necessary to properly prosecute this action to successful completion.

51. The Plaintiffs have been granted funding by the Class Proceedings Fund.

SETTLEMENT

52. Koskie Minsky LLP will conduct settlement negotiations with the Defendants' counsel from time to time, as circumstances dictate. The Plaintiffs are prepared to enter into mediation processes or discussions during the litigation as the Defendants may agree or counsel recommend.

REVIEW OF THE LITIGATION PLAN

53. Notwithstanding the foregoing, this Litigation Plan will be subject to regular review by Koskie Minsky LLP, and may be revised and/or modified at any time during the litigation process as required, under the continuing case management authority of the Court.

SCHEDULE "A"

JUST ENERGY GROUP INC. CLASS ACTION

PROPOSED NOTICE OF CERTIFICATION

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

The Nature of the Lawsuit

On May 4, 2015, Koskie Minsky LLP commenced an action on behalf of the Plaintiffs, Kia Kordestani and Haidar Omarali, in the Ontario Superior Court of Justice against Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario L.P. (collectively "Just Energy").

The lawsuit claims Just Energy breached its statutory, contractual, and common law duties to the class ("Sales Agents") by failing to appropriately provide them with minimum wage, overtime pay, vacation pay and public holiday and premium pay.

The action was brought on behalf of a class consisting of the class of persons comprised of all Ontario current and former Sales Agents of Just Energy since 2012.

By order dated [INSERT DATE], The Honourable Justice [INSERT NAME] certified the action as a class proceeding and appointed Kia Kordestani and Haidar Omarali as representative plaintiffs for the class.

Participation in the Class Action

If you were an employee of Just Energy and fall within the class definition, you are automatically included as a member of the class unless you opt out. All members of the class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiff or the Class, or with respect to the merits of the claims or defenses asserted by either side.

Fees and Disbursements

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiff and Koskie Minsky LLP with respect to legal fees. The agreement provides that the law firm has been retained on a contingency fee basis, whereby it will only be paid its fees in the event of a successful result in the litigation or a Court approved settlement. The fees payable to the lawyers for the class will be paid out of any judgment and will not be paid directly by class members. Any fee paid to lawyers for the class is subject to the Court's approval.

You will not be responsible for Just Energy's legal costs if the class action is unsuccessful.

Opt Out

If you wish to exclude yourself from this class proceeding ("opt out"), you must complete and return the "Opt Out" form by no later than [INSERT DATE 120 DAYS AFTER CERTIFICATION ORDER]. The Opt Out form may be downloaded at: <http://www.kmlaw.ca/justenergyclassaction>.

If you choose to opt out within the above noted deadline you will not recover any monies in the event the representative plaintiffs are successful in this action. If you do not choose to opt out by the prescribed deadline you will be bound by any judgment ultimately obtained in these proceedings, whether favourable or not, or any settlement if approved by the court. You may wish to obtain independent legal advice with respect to this matter.

Contact Information

If you have any questions or concerns about the matters in this Notice or the status of the Just Energy Class Action, please visit <http://www.kmlaw.ca/justenergyclassaction>.

You may contact Koskie Minsky LLP in a number of ways.

By email at the following address (please indicate Just Energy Class Action in the re: line):

justenergyclassaction@kmlaw.ca

By mail at the following address:

20 Queen Street West
Suite 900, Box 52
Toronto, Ontario
M5H 3R3

Or by fax or telephone:

Toll-Free Hotline: 1-866-545-9919
Phone: (416) 977-8353
Fax: (416) 977-3316

SCHEDULE "B"

NOTICE OF OPTING OUT

**TO: Koskie Minsky LLP
Barristers and Solicitors
20 Queen Street West
Suite 900, Box 52
Toronto, Ontario
M5H 3R3**

ATTN: [ADMINISTRATOR TO BE APPOINTED]

I do not want to participate in the class action styled as **Kordestani v. Just Energy Group Inc.**, regarding the claims of wrongful denial of compensation to eligible employees by the Defendants. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action.

Dated: _____

Signature

Print Name

Address

City, Province, Postal Code

Telephone

Email

This Notice must be delivered by Registered Mail on or before _____, 201_ to be effective.

KIA KORDESTANI et al. JUST ENERGY GROUP INC. et al
Plaintiffs and Defendants

Court File No: CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF HAIDAR OMARALI
(AFFIRMED AUGUST 6, 2015)**

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#: 51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiffs

*THIS IS EXHIBIT "7" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Court File No. CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIA KORDESTANI and HAIDAR OMARALI

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF MORTUZA AWAL
(affirmed 2 Aug 2015)**

I, MORTUZA AWAL, of the City of BRAMPTON, in the Province of Ontario
AFFIRM AND SAY:

1. I worked for Just Energy as a door to door Sales Agent from approximately June 2012 to June 2013 and as such I have knowledge of the matters deposed to herein, except where I have been informed of such facts, in which case I have stated the source of such facts and I hereby state that I believe such facts to be true.
2. I affirm this affidavit in support of the motion to certify this action as a class proceeding.
3. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
4. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A Hiring and Independent Contractor Agreement

5. I was hired by Just Energy after responding to an employment advertisement I saw online. I attended a group interview, which was more like a group training session, with about 10 other people at an office of Just Energy in Ottawa. Before anyone in the group was hired, we all had to write and pass a quiz about energy sales in Ontario. After we wrote the quiz and passed, everyone had their picture taken and they were given an Just Energy I.D. badge with their picture.

6. As part of the hiring process, new Sales Agents are given the same form contract after passing the quiz mentioned above. No time is provided to review this contract prior to signing it. The contract I signed purported to be an independent contractor agreement with Just Energy. I never received a copy of the agreement I signed and I do not have a copy now. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurs over one (1) day.

7. I worked at the Ottawa office of Just Energy for approximately three (3) months and I then moved to working out of the Dundas office of Just Energy located in Toronto. I worked out of the Dundas office until approximately June 2013. I observed the hiring process described above occur each week at the Ottawa office. The same process also occurred each week at the Dundas office in Toronto.

B Just Energy Salesforce Structure

8. The Ottawa and Dundas offices operated on the same marketing model. The marketing model employed Sales Agents at the very bottom of a hierarchy of control. The structure at both the Ottawa and Dundas offices consisted of:

- (a) a Regional Distributor who was in charge of the office and whom everyone reported to;
- (b) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the

transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Distributor; and

- (c) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.

9. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Distributor.

10. Crew Coordinators receive “overrides” on the commissions of Sales Agents, meaning the Crew Coordinator gets a payment based on the performance of the Sales Agents they are responsible for. Crew Coordinators also take on the role of field training for many new Sales Agents.

C Daily Job Tasks and Daily Control

11. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day. The job performed by Sales Agents was exactly the same at the Dundas and the Ottawa offices of Just Energy.

12. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven to locations where they have to market by the Crew Coordinators.

13. There is no previous experience or specialized training required to become a Sales Agent, at most two days of training are given.

14. The standard day for me and the other Sales Agents consisted of the following:

- (a) attending the Just Energy regional sales office at 9:00 – 9:30 am to start work;
- (b) collecting blank contracts and promotional material at the regional sales office for the day’s marketing efforts;
- (c) until 12:00 pm each day, attending a meeting with other Sales Agents and the Regional Distributor 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) Sales Agents are assigned to a Crew Coordinator by the Regional Distributor;
- (e) the Crew Coordinator drives the agents assigned to a specific location to market door to door;
- (f) the door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (g) reporting all potential contracts to the regional sales office and Regional Distributor during the day;
- (h) obeying the direction of the Regional Distributor if directed to change marketing locations and report to the Regional Distributor on present locations; and
- (i) concluding the day at 9:00 p.m. by reporting to the assigned Crew Coordinator, who picks up Sales Agents from a pre-arranged pick-up location and drops them back at the regional sales office.

15. Sales Agents perform these tasks six days a week every week. The above daily structure is enforced by the Regional Distributor.

16. Sales agents are not free to market where or when they want. Sales Agents who market in areas not approved for the day would receive a warning from the Regional Distributor or threats of termination.

17. As a result of the work demands of a seventy-two (72) hour week, I would not have been able to work for any other business while also working for Just Energy.

18. Just Energy never tracked my hours or the hours of other Sales Agents. This was consistent for my entire employment with Just Energy.

D Compensation

19. As described above, along with the other Sales Agents, I worked the standard twelve (12) hour shift, six (6) days a week. I was only paid commission on contracts which were accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

20. There were many weeks when I made below minimum wage, which I understand was \$10.25 per hour. While working for Just Energy I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay ,minimum wage, or public holiday and premium pay.

21. I make this affidavit in support of the certification of this action as a class proceeding and for no other purpose.

Affirmed BEFORE ME at the City of Toronto, in the Province of Ontario on August 7, 2015.

M. Teeple Hopkins
Commissioner for Taking Affidavits

Morgan Teeple Hopkins


MORTUZA AWAL

KIA KORDESTANI et al.
Plaintiffs and JUST ENERGY GROUP INC. et al
Defendants

Court File No: CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF MORTUZA AWAL
(AFFIRMED AUGUST , 2015)**

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#: 51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiffs

*THIS IS EXHIBIT "8" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Court File No. CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIA KORDESTANI and HAIDAR OMARALI

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF PETRA FILIPOVIC
(affirmed 7 August 2015)**

I, PETRA FILIPOVIC, of the City of Toronto, in the Province of Ontario AFFIRM
AND SAY:

1. I worked for Just Energy as a door to door Sales Agent from September 2012 to April 2013 and as such I have knowledge of the matters deposed to herein, except where I have been informed of such facts, in which case I have stated the source of such facts and I hereby state that I believe such facts to be true.
2. I affirm this affidavit in support of the motion to certify this action as a class proceeding.
3. In this affidavit I refer collectively to the defendants, Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. as "Just Energy", unless I refer specifically to one of those entities.
4. In this affidavit I refer to "Sales Agents", meaning those individuals who worked for Just Energy performing door to door marketing in Ontario.

A Hiring and Independent Contractor Agreement

5. I was hired into and worked out of the Etobicoke office of Just Energy. I was recruited to work for Just Energy by the Regional Director of the Etobicoke office. At the time I was working door-to-door for "Home Services".

6. When I showed up at the Etobicoke office I didn't know what the job entailed. When I showed up I participated in a group training session about energy sales in Ontario with about 10-15 other new people. Before anyone in the group was hired, we all had to write and pass a quiz about energy sales in Ontario. After we wrote the quiz and passed, everyone had their picture taken and they were given a Just Energy I.D. badge with their picture on it.

7. As part of the hiring process, new Sales Agents are given the same contract after passing the quiz mentioned above. The contract I signed purported to be an independent contractor agreement with Just Energy. The hiring process, including the training, quiz, photo for the Just Energy I.D. badge and signing of the independent contractor agreement all occurs over one (1) day.

8. I observed the hiring process described above occur each week at the Etobicoke office of Just Energy. Each week, an additional 10 to 15 new Sales Agents would be hired.

B Just Energy Salesforce Structure

9. The marketing model at the Etobicoke office employed Sales Agents at the very bottom of a hierarchy of control. The office structure consisted of:

- (a) a Regional Distributor, who was in charge of the office and whom everyone reported to;
- (b) Crew Coordinators, who may or may not be accompanied by Assistant Crew Coordinators. Crew Coordinators are responsible for ensuring the transportation of Sales Agents to designated areas to market contracts each day and are appointed by the Regional Distributor; and

- (c) Sales Agents, who are at the bottom of the hierarchy and perform the daily door to door marketing.

10. The Regional Distributor decides who can be a Crew Coordinator. Sales Agents are assigned to Crew Coordinators by the Regional Distributor.

11. Crew Coordinators receive “overrides” on the commissions of Sales Agents, meaning the Crew Coordinator gets a payment based on the performance of the Sales Agents they are responsible for. Crew Coordinators also take on the role of field training for many new Sales Agents.

C Daily Job Tasks and Daily Control

12. The only job task of Sales Agents is to knock on doors and market Just Energy products. Sales Agents perform the same job and the same task every day.

13. Sales Agents are told how to market contracts in the form of sales scripts provided to them and role playing training at the office. Sales Agents are also told where to market for contracts and are driven by the Crew Coordinators to locations where they have to market.

14. There is no previous experience or specialized training required to become a Sales Agent.

15. The standard day for me and the other Sales Agents consisted of the following:

- (a) attending the Just Energy regional sales office at 9:00 – 9:30 am to start work;
- (b) collecting blank contracts and promotional material at the regional sales office for the day’s marketing efforts;
- (c) until approximately 12:00 pm each day, attending a meeting with other Sales Agents and the Regional Distributor 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) Sales Agents are assigned to a Crew Coordinator by the Regional Distributor;

- (e) the Crew Coordinator drives the agents assigned to a specific location to market door to door;
- (f) the door to door marketing time is between approximately 1:00 p.m. to 9:00 p.m. This consisted of knocking on doors and marketing Just Energy contracts in a designated area using materials provided and approved by Just Energy;
- (g) reporting all potential contracts to the regional sales office and Regional Distributor during the day;
- (h) obeying the direction of the Regional Distributor if directed to change marketing locations and report to the Regional Distributor on present locations; and
- (i) concluding the day at 9:00 p.m. by reporting to the assigned Crew Coordinator, who picks up Sales Agents from a pre-arranged pick-up location and drops them back at the regional sales office.

16. Sales Agents perform these tasks six days a week every week. The above daily structure is enforced by the Regional Distributor.

17. Sales agents are not free to market where or when they want. Sales Agents who market in areas not approved for the day would receive a warning from the Regional Distributor or threats of termination.

18. As a result of the work demands of a seventy-two (72) hour week, I would not have been able to work for any other business while also working for Just Energy.

19. Just Energy never tracked my hours or the hours of other Sales Agents. This was consistent for my entire employment with Just Energy.

D Compensation

20. As described above, along with the other Sales Agents, I worked the standard twelve (12) hour shift, six (6) days a week. I was only paid commission on contracts which were

accepted and finalized with the customer by Just Energy. I had no control over which contracts were accepted and finalized and which were rejected by Just Energy or failed to be finalized.

21. There were many weeks when I made below minimum wage, which I understand was \$10.25 per hour. While working for Just Energy I never received any compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay. From my discussions with other Sales Agents, I believe that Just Energy does not compensate any Sales Agents for overtime, vacation pay, minimum wage, or public holiday and premium pay.

22. I make this affidavit in support of the certification of this action as a class proceeding and for no other purpose.

*Burlington
August*

Affirmed BEFORE ME at the City of ~~Toronto~~, in the Province of Ontario on ~~July~~ ^{August} 7, 2015.

R. John S. Hicks

Commissioner for Taking Affidavits

Being a Lawyer

JOHN HICKS
Barrister and Solicitor
541 Brant Street, Suite 7
Burlington, Ontario
L7R 2G8

P. Filipovic

PETRA FILIPOVIC

KIA KORDESTANI et al.
Plaintiffs

and

JUST ENERGY GROUP INC. et al
Defendants

Court File No: CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF PETRA FILIPOVIC
(AFFIRMED JULY , 2015)**

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#: 51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiffs

*THIS IS EXHIBIT "9" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

ONTARIO
SUPERIOR COURT OF JUSTICE

MS/am

B E T W E E N:

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

- - - - -

This is the Cross-Examination of HAIDAR OMARALI on his
affidavit sworn the 6th day of August, 2015, taken at the
offices of FASKEN MARTINEAU LLP, Suite 2400, Bay Adelaide
Centre, 333 Bay Street, Toronto, Ontario, on the 18th day
of March, 2016.

- - - - -

APPEARANCES:

DAVID ROSENFELD
SCOTT ROBINSON
PAUL J. MARTIN
LAURA F. COOPER

-- for the Plaintiff

-- for the Defendants

INDEX OF PROCEEDINGS

	PAGE NUMBER
Haidar Omarali, affirmed	
Cross-Examination by MR. MARTIN	1 - 148
Index of Exhibits	149
Index of Refusals	150
Certificate	151

1 Haidar Omarali, affirmed

2 CROSS-EXAMINATION BY MR. MARTIN:

3 1. Q. Mr. Omarali, you affirmed an
4 affidavit on August 6th, 2015. Is that correct?

5 A. Yes.

6 2. Q. And you understand that you are
7 being put forward in this action as a potential
8 representative plaintiff in a class proceeding?

9 A. Yes.

10 3. Q. Can you tell me, sir, for today's
11 purposes, what have you done to prepare for today?

12 A. Not really much. Just...nothing
13 really.

14 4. Q. Nothing really?

15 A. No. Just...

16 5. Q. And in relation to the action
17 generally, what have you done besides swearing this
18 affidavit, if anything?

19 A. Well, I went online and read about
20 Just Energy, just to catch up, what is going on with
21 Just Energy. And that is it, just...

22 6. Q. There are affidavits provided by
23 representatives of Just Energy. Have you seen those
24 affidavits?

25 A. Yes, I saw them yesterday. I went

1 to the lawyer's office yesterday.

2 7. Q. What affidavits were those?

3 A. There were two affidavits, I forget
4 the people's names, countering what we are doing
5 here.

6 8. Q. Did you read them?

7 A. Yes. Yes, I looked at them. Yes, I
8 read them, yes.

9 9. Q. And there is a third affidavit of a
10 Janna Young. Did you see that?

11 A. Was that put in with another one?
12 There were three altogether?

13 10. Q. Well, there are three affidavits. I
14 don't know whether you have seen them or not.

15 A. Okay. So, I remember two of them
16 may have been together. They were clipped together,
17 and then there was one separate. So, I saw that
18 there was an affidavit, but I didn't really catch
19 the name Janna Young or anything like that.

20 11. Q. And the Janna Young affidavit
21 contained a number of documents. Have you seen
22 those?

23 A. I looked through what was given to
24 me yesterday.

25 MR. ROSENFELD: He was provided the

1 affidavit, yes.

2

3 BY MR. MARTIN:

4 12. Q. So, you saw them for the first time
5 yesterday?

6 A. Yes, I saw them, yes.

7 13. Q. How much time did you spend with
8 them?

9 A. Enough to know...to read it and not
10 really agree, like, to everything. Sort of...I
11 looked through them.

12 14. Q. Five minutes?

13 MR. ROSENFELD: What does it matter?

14 15. MR. MARTIN: It matters to me.

15 MR. ROSENFELD: Yes.

16 16. MR. MARTIN: Did you spend five minutes
17 on it?

18 THE DEPONENT: Yes.

19 MR. ROSENFELD: Is it relevant or not,
20 though?

21 17. MR. MARTIN: Sorry?

22 MR. ROSENFELD: Why is that relevant,
23 how much time he spent with this affidavit
24 that he received yesterday?

25 18. MR. MARTIN: It is to me. I am asking

1 the question.

2 MR. ROSENFELD: Okay. So, don't answer

3 the question.

/R

4

5 BY MR. MARTIN:

6 19. Q. And in addition to swearing your
7 affidavit, just yesterday, spending whatever little
8 time you may have spent reading the materials, what
9 else have you done regarding this litigation?

10 A. Well, I read my own affidavit and
11 supporting documentation from my affidavit, I have
12 done that. Anything else? That is all?

13 A. Yes.

14 20. Q. I am sorry, you are going to have to
15 speak up so the reporter can record what you are
16 saying.

17 A. Yes, yes. That is...

18 21. Q. Do you maintain a file in regard to
19 either this action or in regard to the time you
20 spent as an independent contractor with Just Energy?

21 A. Okay. So, the time I spent with
22 Just Energy?

23 22. Q. Yes.

24 A. You are asking if I kept a file?

25 23. Q. Yes.

1 A. Whatever file I had, I gave it to
 2 the lawyers. The days I worked, and when we have to
 3 record the sales for gas and hydro, the pink papers
 4 and the pay stubs, and whatever notes I did at Just
 5 Energy, I handed it in to my lawyers at the
 6 beginning, when I handed in my affidavit. I had
 7 supporting...prove to them that I was working at
 8 Just Energy.

9 24. Q. Okay. You did provide them with,
 10 then, a file of materials, then, that you kept?

11 A. Yes, I kept some materials, and then
 12 I gave it to them. I didn't keep everything. I
 13 didn't know that it was going to reach this point,
 14 but I wouldn't have needed everything. A lot of
 15 things I kept, I threw out because I didn't think I
 16 needed it.

17 25. Q. What did you throw out?

18 MR. ROSENFELD: Sorry, don't answer the
 19 question. That is not relevant. /R

20 26. MR. MARTIN: Counsel, do you have that
 21 file? Can you produce it to me, please?

22 MR. ROSENFELD: No. /R

23 27. MR. MARTIN: Let's break it down, then.
 24 Do you have the file?

25 MR. ROSENFELD: I am not going to answer

1 the question. It is not relevant. /R

2 28. MR. MARTIN: So, his record-keeping with
3 Just Energy, to the extent that he had any
4 record-keeping, you are saying is not
5 relevant?

6 MR. ROSENFELD: To certification? No.

7

8 BY MR. MARTIN:

9 29. Q. And, Mr. Omarali, can you tell me,
10 how old are you?

11 A. Right now, I am 57. I will be 58 in
12 September.

13 30. Q. Where do you live?

14 A. 19 Blue Ridge Road in Toronto.

15 31. Q. And what do you currently do?

16 A. I am working with a company called
17 Teleperformance.

18 32. Q. What do you do there?

19 A. I work for the campaign for Sling
20 TV, which is Internet TV. So...

21 33. Q. What is your job?

22 A. So, my job is to help troubleshoot
23 and explain the program to consumers who are so used
24 to using cable and satellite dish that they didn't
25 know that...it is pretty new in the market, like,

1 kind of like CraveTV, where you can watch TV using
2 the Internet. You don't need to have cable or a
3 satellite dish.

4 34. Q. So, you sell that product?

5 A. I don't really sell. I am support.
6 So, I do troubleshooting, when people says there is
7 freezing and buffering, or they can't find the
8 channels, or, "How do I download this onto my
9 iPad?", "How do I watch it on my phone?", "How do I
10 use my Xbox One to watch TV?" So, that is what I am
11 doing right now.

12 35. Q. And are you on commission at that
13 job?

14 A. No, there is no commission. It is a
15 salary job.

16 36. Q. And how long have you been with
17 Teleperformance?

18 A. A year.

19 37. Q. And what did you do before
20 Teleperformance?

21 A. I worked in collections with a
22 company called Common Collection Agency.

23 38. Q. And roughly what period of time was
24 that?

25 A. It was about three or four months.

1 Three months, I think.

2 39. Q. Was that a commission position?

3 A. Yes, if you meet all targets and
4 then kind of...

5 40. Q. You were paid a commission on
6 whatever collected?

7 A. You get salary and you get a
8 commission. It is the same thing with my current
9 job. They do quality assurance, and listening to
10 the calls. And if I save a certain amount of
11 accounts from cancelling, and I maintain...when they
12 listen to the recording, and they find that I didn't
13 make any mistakes, like I didn't verify the person
14 correctly, or gave him misinformation, if I didn't
15 do that, then I get a higher quality score. So,
16 then, I am entitled to a bonus for Teleperformance.
17 That is how they do it.

18 41. Q. I understand. And before Common
19 Collection Agency, what did you do?

20 A. Before that, I did, like, just
21 little things. Mostly...well, Just Energy, and then
22 when I finished with Just Energy, my mother wasn't
23 well. That is part of the...most of the reason I
24 stopped going to Just Energy, plus I wasn't really
25 getting any money from Just Energy. No residuals or

1 anything. So there was a gap for a couple of months
2 before I got into Teleperformance.

3 42. Q. Just so I understand...so, from Just
4 Energy, you went to Teleperformance, and from
5 Teleperformance you went to...sorry, in between
6 that, you were at Common Collection Agency?

7 A. Yes.

8 43. Q. So, you went from Common Collection
9 Agency to Teleperformance, where you are today?

10 A. Yes.

11 44. Q. And with Teleperformance or with
12 Common Collection Agency, either of those, did you
13 sign a contract with either of those?

14 A. Yes, there is paperwork to sign.
15 You always have to sign something when you are
16 getting employed. Just like Just Energy, they gave
17 you something to sign.

18 45. Q. Well, with Just Energy, we will come
19 to...you signed a contract. Did you sign a contract
20 with either Teleperformance or Common Collection
21 Agency?

22 A. I would have to say Common
23 Collections, yes, you would have to sign it, because
24 you have to get all those licences for all those
25 provinces. So, there is lots of paperwork I signed

1 for Common Collection Agency. And with
2 Teleperformance, you do have to sign, yes.

3 46. Q. Okay. Could you produce those
4 contracts to me, please?

5 MR. ROSENFELD: No. /R

6 47. MR. MARTIN: Why?

7 MR. ROSENFELD: They are not relevant to
8 certification.

9 48. MR. MARTIN: Just so you understand, Mr.
10 Omarali, we will likely be back another day
11 to talk about this information.

12

13 BY MR. MARTIN:

14 49. Q. Now, can you tell me, at the
15 time...just prior to commencing with Just Energy,
16 what were you doing?

17 A. I was working for another collection
18 agency. I think it is called Receivable Management
19 Services.

20 50. Q. Okay. And how long did you work for
21 them?

22 A. I was with them for about 25 years,
23 and they were bought out by a company called iQor,
24 and my boss would be in Montreal, and they downsized
25 and relocated the company. So, things were,

1 like...there wasn't really that much communication
 2 once we moved, and once my boss is in Montreal. So,
 3 we kind of had some issues that I just had to
 4 just...I just gave up and just couldn't work that
 5 job anymore. Really got tired of it.

6 51. Q. Did you resign?

7 A. Yes, I did.

8 52. Q. As opposed to being terminated?

9 A. No, we had a disagreement. We
 10 decided to...that was it. It is the summertime, I
 11 wanted to take some time off, and then they are
 12 telling me that you are going to have to wait later,
 13 because other people...there was no other people.
 14 So, we basically said, "Okay, that is it". We
 15 just...done.

16 53. Q. Did you have a contract with
 17 Receivables Management?

18 MR. ROSENFELD: Don't answer that, Mr.
 19 Omarali.

/R

21 BY MR. MARTIN:

22 54. Q. Were you on a commission basis with
 23 Receivables Management?

24 MR. ROSENFELD: Again, it is not
 25 relevant.

/R

1

2 BY MR. MARTIN:

3 55. Q. Can you tell me what other jobs you
4 have held in your lifetime, sir, where you were paid
5 on commission?

6 MR. ROSENFELD: Not relevant. /R

7

8 BY MR. MARTIN:

9 56. Q. And apart from what you did with
10 Just Energy as an independent contractor, have you
11 held any other sales positions in your working life?

12 A. Yes, well, I did...I started out
13 when I graduated from university, I went to
14 Lexington Andrews, I sold encyclopedias
15 door-to-door.

16 57. Q. Roughly what period of time was
17 that?

18 A. That was for almost a year.

19 58. Q. What time frame?

20 A. Well, 25 minus...so, in...the late
21 '80s.

22 59. Q. Yes.

23 A. Because I graduated in 1987. So,
24 right after 1988, 1989.

25 60. Q. And you graduated with what degree?

1 A. York University, Bachelor of Arts.

2 61. Q. And selling encyclopedias, was that
3 door-to-door sales?

4 A. Yes.

5 62. Q. On a fully commissioned basis?

6 A. No, we got paid, and we went into
7 meetings, and we had briefcases, and we...because in
8 those days, they didn't have, like, things on disc.
9 It was actually brochures, and then the delivery
10 would be the actual books.

11 63. Q. Right. But your remuneration was
12 based on how many books you sold?

13 A. No, that was the bonus, because I
14 passed...wrote that we went into training, and we
15 got paid a minimum or something that...what we ended
16 up doing is when we made sales, that is where we
17 would get the bonus, that we would get the money.

18 64. Q. And apart from selling
19 encyclopedias...this was door-to-door, I gather,
20 correct?

21 A. Yes.

22 65. Q. And did you do any other sales in
23 your work life?

24 A. Well, in Cubs and Scouts, apples and
25 things like that.

1 66. Q. Right. But nothing in terms of a
2 steady position in sales?

3 A. Not really, no.

4 67. Q. Well, I don't know. I am asking
5 you.

6 A. Well, no, I hadn't thought about it,
7 but, no, I just wanted to do sales. That is why I
8 went into...I just wanted to...I know I was good at
9 it over the phone, during the 25 years I worked for
10 the collections. I wanted just to do something
11 different.

12 68. Q. And how did you become involved in
13 this lawsuit?

14 MR. ROSENFELD: Don't answer the
15 question.

/R

16

17 BY MR. MARTIN:

18 69. Q. How did you first come in contact
19 with the lawyers here?

20 MR. ROSENFELD: Don't answer that
21 question.

/R

22

23 BY MR. MARTIN:

24 70. Q. And do you know Mr. Kordestani?

25 A. He worked with Just Energy...

1 71. Q. And how do you know him?

2 A. Because we would be on the field
3 together. They would drop us off, and many times on
4 road trips, I would be working with him.

5 72. Q. And did he advise you of this
6 lawsuit?

7 MR. ROSENFELD: Don't answer the
8 question.

/R

9

10 BY MR. MARTIN:

11 73. Q. Have you had many discussions with
12 Mr. Kordestani about this lawsuit?

13 A. Well, I talked to him about it. We
14 all...everybody is in the same situation. We were
15 working for Just Energy. So, it is like associates,
16 associates always talk to each other in almost all
17 jobs, right?

18 74. Q. But at the time that Mr. Kordestani
19 may have spoken to you about this lawsuit, neither
20 of you were working with Just Energy, correct?

21 A. Yes, it was...yes, I talked to him
22 after...like, we kept in touch, everybody. People
23 started to drop off after a while.

24 75. Q. What do you mean, people kept in
25 touch?

1 A. Well, people would...like, we were
2 friends. Some of us...like, there were a lot of us
3 that are friends, that...we worked together for so
4 long that we just know each other.

5 76. Q. How long did you work with Mr.
6 Kordestani?

7 A. Well, from when I started until when
8 I finished. I met him...he worked in a different
9 office. He worked in the Ottawa office. So,
10 whenever he came to Toronto or we went on road trips
11 to Thunder Bay or Timmins, or Sudbury or Sault Ste.
12 Marie. That is when I would be working with him.
13 Otherwise, he would be working in his Ottawa office,
14 and I would be working in the Etobicoke office.

15 77. Q. Okay. So, one of the ways you got
16 to know him was through various road trips?

17 A. Yes, that is how I got to know him,
18 yes.

19 78. Q. And at the time was Mr. Kordestani
20 crew coordinator?

21 A. No, I don't think he was ever a
22 coordinator.

23 79. Q. Now, why would the Toronto office
24 and the Ottawa office be doing road trips together?

25 A. Because of the same owners of the

1 offices. The one who owns the Ottawa office is also
2 part-owner of the Toronto office.

3 80. Q. Who is that?

4 A. One person's name is Ali. Another
5 one would be Jahan (phon.). And another one, there
6 is just...John Lavoie.

7 81. Q. They were the real distributors?

8 A. What do you mean by "distributors"?

9 82. Q. Did they have the title of regional
10 distributor, to the best of your knowledge?

11 A. To the best of my knowledge,
12 something like that. I don't really pay much
13 attention to people's titles and that. I was just
14 trying to do my job to sell door-to-door, that was
15 basically what my focus is.

16 83. Q. Okay. And going door to door, doing
17 sales, with Just Energy your remuneration was only a
18 commission-based remuneration, correct?

19 A. Turns out that way, yes. It is...

20 84. Q. Well, it doesn't turn out that way.
21 That is what it was, correct?

22 A. Well, I didn't get any bonuses
23 after. Like, you are supposed to get, after a year,
24 you are supposed to get residual payments for the
25 deals you signed, where the customers are still

1 there. And I didn't get anything like that.

2 85. Q. So, is it your position that you are
3 entitled to residuals and you didn't receive them?

4 A. Well, yes, I was told I would be
5 getting it. And then when I asked about it, they
6 always said, "There are no cheques here for you.
7 There are no cheques, just your recent"...after
8 three weeks, you get the cheque for whatever you did
9 three weeks earlier. So, there was a three-week
10 delay.

11 86. Q. That is on the very sale itself,
12 correct? You get your payment three weeks later?

13 A. Yes, that is...

14 87. Q. But you are saying that...what I
15 understand what you are saying is you believe you
16 were entitled to and haven't been paid residuals?

17 A. Yes, there are some...yes, I never
18 got any residuals since I worked there.

19 88. Q. I appreciate that, but you are
20 saying you were entitled to some? I gather you
21 still think you are entitled to some?

22 A. Well, I was told that that is what
23 will happen. After a year, you are going to get
24 residuals from the deals you signed. So, I just
25 hung in there year after year, and eventually build

1 up a bit of a fortune working for Just Energy.

2 89. Q. And is that part of your claim in
3 this lawsuit, that you want to recover residuals?

4 MR. ROSENFELD: No, it is not.

5 THE DEPONENT: No, because that wasn't
6 the focus of this claim. The focus of the
7 claim is that I was working all this time,
8 and I wasn't getting any payment for
9 anything other than the deal that was
10 signed.

11

12 BY MR. MARTIN:

13 90. Q. Which is the deal that you arranged
14 with Just Energy. That is the contract you signed.
15 That was the bargain you reached with Just Energy?

16 A. Well, whatever I signed with Just
17 Energy, they gave me the papers on the first day and
18 just signed. And I asked them for a copy of what I
19 signed, and they said, "Yes, we will get it to you",
20 but...

21 91. Q. Who said that?

22 A. The office.

23 92. Q. Who?

24 A. Paulina...

25 93. Q. Yes?

1 99. Q. Well, we are going to come to that.
2 Okay. And you have also testified, sir...remember,
3 you are under oath. You have testified...

4 A. Yes.

5 100. Q. ...that people would come in on
6 a...if not daily, almost weekly basis to be engaged
7 by Just Energy.

8 A. Yes.

9 101. Q. And every one of them would have
10 signed those contracts?

11 A. Well, I don't know about everybody
12 signing the contract. I know...you are asking me
13 about what I signed, and I know what I signed, we
14 were all in a group, and they passed out the papers,
15 and you sign it, and then they just collected it
16 back.

17 102. Q. So, every person in that group
18 signed a contract, you say?

19 A. On the particular hiring day that I
20 was there with a bunch of us, yes.

21 103. Q. Well, you have given evidence that
22 there were a number of other hiring days that you
23 have attested to. And isn't it fair that every
24 single time, if anybody wanted to be badged, they
25 had to sign that contract?

1 A. Well, one would have to assume so,
2 right?

3 104. Q. Don't assume, sir. I am telling
4 you, everyone...and you know everyone had to sign
5 that contract, or else they weren't going out in the
6 field.

7 A. Yes, well, that is...

8 105. Q. That is correct.

9 A. ...how they do it. That is how...

10 106. Q. Yes, that is how they do it.

11 A. Yes, that is...

12 107. Q. Yes. And if you choose not to sign
13 the contract, you don't sell for Just Energy.
14 Correct?

15 A. Yes, you don't have the...so, to get
16 the job, you have to sign that.

17 108. Q. You had to sign.

18 A. Yes, and then we moved to the next
19 room, and...

20 109. Q. And continued with your training and
21 orientation, correct?

22 A. Yes.

23 110. Q. But you well know why people had to
24 sign that contract, because they are engaged as
25 independent contractors on a commission basis,

1 correct?

2 A. See, we didn't really know it was a
3 commission-type job...

4 111. Q. Sir, it was explained to you fully,
5 before you signed the contract, that it was 100
6 percent commission?

7 MR. ROSENFELD: Is that a question?

8 112. MR. MARTIN: Yes.

9 MR. ROSENFELD: That he did, that it was
10 explained to him? I don't understand the
11 question. Is that a statement you are
12 posing to Mr. Omarali?

13 113. MR. MARTIN: Sir, please don't
14 interrupt. This is a cross-examination.

15 MR. ROSENFELD: That is right. And I am
16 interrupting...

17 114. MR. MARTIN: He understood the question.
18 He was about to answer. So, don't
19 interrupt.

20 MR. ROSENFELD: I don't know what he
21 understood or didn't understand. I didn't
22 understand the question.

23 115. MR. MARTIN: Well, you are not being
24 examined.

25

1 BY MR. MARTIN:

2 116. Q. Sir, you knew, before you signed
3 that contract, it was a 100 percent commission
4 opportunity. If you wanted to choose to do it, you
5 had to sign.

6 A. I was, like, 100 percent...I am not
7 too sure I understood the whole thing. Everything
8 went by so quickly. Like, we didn't know how we
9 were going to get paid, really.

10 117. Q. Sir, it was explained in the
11 orientation.

12 A. We were told after we signed all the
13 papers and went into the next room. Then, people
14 asked questions like that.

15 118. Q. Did you ask the questions?

16 A. No, there was other people who were
17 very...who were, like...

18 119. Q. So, other people asked?

19 A. ...eagerly asked, yes.

20 120. Q. And you...

21 A. I am not the person that really digs
22 into asking questions when other people are asking
23 questions.

24 121. Q. So, you heard...

25 A. The question was asked...

1 122. Q. ...other people...

2 A. ...before...

3 123. Q. Go on.

4 A. I heard from when other people asked
5 the question, what the answers were.

6 124. Q. 100 percent commission?

7 A. I didn't hear it was 100 percent
8 commission.

9 125. Q. What did you hear otherwise?

10 A. I heard that we were going to be
11 getting...going on field trips, going on road trips,
12 our gasoline would be paid, our lunch would be paid
13 for. We were told that we would be getting money
14 for the deals we signed, and then there are also
15 bonuses, but there was never any mention about
16 us...other than working to make the fortune, like,
17 you can make \$800 to \$1,000 a week. That is, like,
18 52 a year. As you increase, you can double that,
19 because they said they will train us how to do it,
20 how to get...

21 126. Q. So, you were never told that there
22 was any salary aspect to this position?

23 A. After I signed the paper, I heard
24 that that is how it works, and then they set up this
25 chart on the board, and explained to us that it was

1 \$30 per every gas and Hydro One...so, you can go to
2 one house and make \$60.

3 127. Q. So, the very day you signed the
4 contract, you were aware that there was no salary
5 component...

6 A. After I signed the contract...

7 128. Q. That very day.

8 A. We were told, yes, later in the day
9 that we would...that is what we would have to do.

10 129. Q. Right.

11 A. Go door-to-door...

12 130. Q. Right.

13 A. ...to...

14 131. Q. So, you knew that, but
15 notwithstanding that, that there was no salary
16 component, you took the position? You chose to go
17 and sell?

18 A. Because I wanted the job. I wanted
19 to try it out.

20 132. Q. You wanted to try it out?

21 A. Yes.

22 133. Q. Knowing that it was a 100 percent
23 commission opportunity?

24 A. It took me a while to realize that,
25 because it was always...it was never really

1 straightforward like that.

2 134. Q. Before you went in the field...

3 A. Yes.

4 135. Q. ...sir, there was no mistaking that
5 there was no salary component to this job.

6 A. The salary you get is what you sign,
7 the people that you sign...

8 136. Q. So, that is a commission. Sir, you
9 have a university degree. You know the difference
10 between a commission and a salary. You are not
11 telling me you don't, are you?

12 A. Did I understand the difference
13 between salary and commission?

14 137. Q. You knew, before you went in the
15 field, you knew that the opportunity with Just
16 Energy was 100 percent commission?

17 A. Yes...

18 138. Q. Of course you knew.

19 A. Yes.

20 139. Q. You are under oath, sir.

21 A. Yes, well...

22 140. Q. Okay, it is going to come out in
23 court.

24 A. I...

25 MR. ROSENFELD: He is aware he is under

1 oath. Please stop suggesting to him that
2 he is under oath. He swore an oath before
3 you started here. So...

4 141. MR. MARTIN: He is struggling with these
5 answers, which should be very simple.

6 MR. ROSENFELD: Well, he is struggling
7 with the answers, Mr. Martin, but
8 don't...enough with the "you swore an
9 oath", please. Thank you.

10 142. MR. MARTIN: No, I will come back to it
11 if he is not going to tell the truth on
12 this examination.

13 MR. ROSENFELD: Are you suggesting that
14 he is lying? I don't understand.

15 143. MR. MARTIN: He is being evasive.

16 MR. ROSENFELD: I disagree.

17 144. MR. MARTIN: What do you determine
18 lying, sir? We are going to find out about
19 that, perhaps.

20 MR. ROSENFELD: I guess so. But he is
21 under oath. He knows he is under oath.

22 THE DEPONENT: And I have to remember
23 way back when, what it is to answer your
24 question. I don't...

25

1 BY MR. MARTIN:

2 145. Q. How long were you with Just Energy?
3 How many months?

4 A. About a year and a half.

5 146. Q. About 18 months, roughly?

6 A. Yes.

7 147. Q. Never once, sir, did you receive any
8 salary, did you?

9 A. We got a paycheque for what I...the
10 deals I signed.

11 148. Q. On a commission basis?

12 A. Yes, that is...

13 149. Q. Right.

14 A. ...some of them...

15 150. Q. You knew that from day one, and you
16 knew that every day that you sold for Just Energy,
17 correct?

18 A. Okay. So, the day one...

19 151. Q. Yes, that is fine. I just need the
20 answer. Yes, that is fine. That is all the
21 question I am asking.

22 A. Okay. So...

23 152. Q. And you also knew, sir, that there
24 were no benefits to this opportunity, because it was
25 100 percent commission. You knew that.

1 A. No, we were told that there would be
2 benefits, when somebody asked that question, but
3 there were never any benefits. We were asked...

4 153. Q. What benefits, sir?

5 A. Somebody asked about insurance for
6 medical.

7 154. Q. Yes?

8 A. Yes, and they said that, yes, they
9 have it. What happened was, the person who was
10 talking came from an office, from head office,
11 like...they are actually salaried people that...they
12 were trying to explain that you can move up into the
13 company. So, the lowest...starting at the bottom,
14 and you can work your way up, where you can get the
15 benefits, and you can move up into different
16 positions. So, they say everybody starts at the
17 bottom like that, and...

18 155. Q. Without benefits?

19 A. With benefits. We thought we were
20 getting benefits. So, it was a month later, when I
21 realized, when the cheques were coming just
22 straight, one number, no deductions or anything,
23 that we figured out that...see, the office was
24 relatively new. So, all of us that were starting
25 there, we started around the same time.

1 156. Q. Do you have a claim in this lawsuit
2 for benefits that you say that were agreed to be
3 paid to you?

4 MR. ROSENFELD: No.
5

6 BY MR. MARTIN:

7 157. Q. So, your evidence, if I understand
8 it, is that only when you got your first paycheque
9 did you realize that you were not getting benefits?

10 A. Actually, it was about the second or
11 third, because I thought things take time. I kept
12 this one, because I was interested in getting
13 medical, the medical from...like, diabetes, things
14 that you would need medication for.

15 158. Q. So, you were hoping that there was
16 some sort of group insurance plan?

17 A. Yes, and I was specifically told
18 that there was...

19 159. Q. Who told you, sir?

20 A. The person that came in and gave us
21 the lecture, after we passed the test, and after we
22 wrote, we signed these employment papers, there was
23 question and answer after. It was explained what it
24 is we are doing.

25 160. Q. So, in agreeing, sir, to sell for

1 Just Energy, is it your evidence that you relied on
2 that person saying there were benefits as part of
3 the opportunity?

4 A. Yes, definitely.

5 161. Q. All right.

6 A. I definitely thought there would be
7 more to it than just commission.

8 162. Q. All right. And I gather, then, you
9 might have considered not taking up the opportunity
10 if you weren't...if it wasn't represented to you
11 that there were benefits?

12 A. It was too late. I already was
13 working in there by the time I realized it, and I
14 just kept on having that...the morning lectures we
15 would get, that as we worked the job, the better we
16 will get at it, the more deals we will get, and the
17 service we are doing for the consumer out there is
18 better than what...the rates the government is
19 giving.

20 163. Q. Well, I understand that, but what I
21 am hearing from you, tell me if I am wrong, I am
22 hearing from you that if it was made plain to you
23 that there weren't benefits, you might not have
24 taken on the opportunity?

25 A. Well, I have to put myself in that

1 position at that time. So, I don't know. I might
2 have continued for...I don't know what I would have
3 done. That is...

4 164. Q. But you might not have? You might
5 have said, "I am looking for an opportunity that has
6 benefits. You have misrepresented this to me".

7 A. Yes.

8 165. Q. "I am not going to take this
9 opportunity at Just Energy. I am going to go
10 somewhere else".

11 A. Okay. So, what happened was I did
12 talk to my doctor about that, and he referred me to
13 a low...it is called...it is like an insurance for
14 low-income earners. And it is Trillium, it is
15 called. So, I found out that I could work with Just
16 Energy and get my benefits through this Trillium
17 plan. So, I used the Trillium plan.

18 166. Q. Okay. But what you are saying to me
19 is someone...you don't know who the person...you
20 don't know their name, misrepresented to you that
21 there would be benefits?

22 A. Yes, I don't know the person's name.
23 He came from the head office.

24 167. Q. And when you got your paycheques...
25 let me try it a different way. At the time, these

1 early days, did you realize that the company wasn't
2 going to be taking deductions at source for things
3 like taxes and CPP and unemployment insurance?

4 A. No, I didn't know that until the day
5 I was getting the cheques. And the first ones, you
6 know, sometimes companies just gave you the first
7 cheques, and then later they catch up, and they do
8 that. But they never did. It was always just
9 whatever you earned on your commissions, and minus
10 whatever they minused off of the paycheque, that is
11 what you got.

12 168. Q. So, it is your evidence that only
13 upon getting one of your early paycheques did you
14 realize that there were not being deductions at
15 source by Just Energy?

16 A. Yes, and then I saw that, and then I
17 talked to the crew leader about that, and he says he
18 knows a really good tax person who could do your
19 taxes, so to make sure to keep all your receipts for
20 your food and your lodging. And then that is when I
21 asked him, "Aren't you guys covering lodging, too?"
22 And then they were saying no. But I hadn't been on
23 a road trip. So, I knew ahead of time that I would
24 have to pay my own lodging, that I would have to pay
25 reimburse them. But that is where you make all the

1 money, is going on these road trips. So, the more I
2 bought into their program, the more I kept on
3 staying, because with those working hours, you never
4 really get a chance to think of doing anything else,
5 but going out there and trying to knock on the door,
6 and let the customer know that we had a deal for you
7 because nobody likes the smart meters.

8 169. Q. The Trillium insurance you
9 mentioned, did you actually purchase that?

10 A. No. It is a government thing. My
11 doctor just said to apply, so I applied.

12 170. Q. Okay. And the advice you got to
13 keep your receipts and whatnot, did you take up that
14 advice and, in fact, keep those receipts?

15 A. Yes. Yes, definitely. And then
16 what happened was the guy who did the taxes said,
17 "You have way too many receipts. You can't declare
18 all of it". So, he gave it to the max. But he has
19 kept everything in bags of all the receipts that I
20 used.

21 171. Q. So, you did, in fact, claim all
22 those deductions on your income tax?

23 A. Yes, he said, "Based on your money
24 you made, you can't use all those receipts".

25 172. Q. You made too much money?

1 A. No, "You spent too much money on
2 food", and whatever expenses, like you need to buy
3 pencils, or you need to buy new shoes or socks,
4 because...

5 173. Q. Okay.

6 A. ...things related work.

7 174. Q. But you understood that you were
8 able, from a tax perspective, to deduct those
9 because you were self-employed?

10 A. We were told...we can...that he
11 knows...the crew leader told me that he can deduct
12 all that from your taxes. And...

13 175. Q. But you understand, you are
14 knowledgeable enough to understand that the reason
15 you can deduct those from your taxes...

16 A. Yes.

17 176. Q. ...is because you are considered to
18 be a self-employed person?

19 A. Because of what...yes, what happened
20 was they gave us a badge saying we are an
21 independent contractor.

22 177. Q. Yes.

23 A. So, that is...

24 178. Q. Well, you signed a contract that
25 says you are an independent contractor.

1 A. Yes. So, yes, we all signed this...

2 179. Q. Right. But you understood from that
3 that being independent, you could deduct your
4 expenses from your taxes?

5 A. That is what I was told we could do,
6 yes.

7 180. Q. Right. But you understand that,
8 though? I mean, you are a clever enough person to
9 understand that. Or are you not?

10 A. I understand what I was told, how
11 the system works. I never, like...I didn't... other
12 than the encyclopedia, there was...this is all new
13 to me. Like, I had...before this, I was working in
14 an office, so this is how the world is working now.
15 That is the way it is.

16 181. Q. Well, when you were selling
17 encyclopedias, did you deduct your expenses from
18 your taxes?

19 A. I didn't have expenses.

20 MR. ROSENFELD: Don't answer the
21 question.

/R

22

23 BY MR. MARTIN:

24 182. Q. Sorry, was it...what was the name of
25 the crew coordinator, you said? Was it crew chief?

1 What is the phrase you used? Crew chief?

2 A. No.

3 183. Q. Crew leader?

4 A. Yes, leader. Yes...

5 184. Q. Crew leader?

6 A. Crew coordinator. It was, kind

7 of...the name kind of flipped back and forth. His

8 name is Dominic. That is his name.

9 185. Q. Is that his first or last name?

10 A. First name.

11 186. Q. What is his last name?

12 A. I think it is Santia (phon.) or

13 Sorelli (phon.). It is an Italian name.

14 187. Q. And did you understand that the crew

15 leader, that he would be also an independent

16 contractor?

17 A. We all had this badge they gave us,

18 that said we are independent...

19 188. Q. He, too?

20 A. ...contractors.

21 189. Q. He, as well?

22 A. Yes, we all had to wear it. It is

23 part of the...

24 190. Q. And so...

25 A. You can't knock on the door without

1 showing identification.

2 191. Q. Correct.

3 A. So, we had these things printed up
4 with our name saying, "Just Energy independent
5 contractor".

6 192. Q. So, would you have understood that
7 he, too, would have signed an independent contractor
8 agreement at one point?

9 A. How would I know what he did?

10 193. Q. I am just asking. Do you know?

11 A. No, I don't know whether he signed
12 it, because he was working...he is the guy who says
13 he was motivating us, that he...some month he made
14 \$10,000 just doing this job. So, you are going to
15 follow this guy's lead and try to make money,
16 because he knows the pitch and he knows what to do,
17 and that is what we do. We rehearse the pitch, and
18 see ways that we can convince the consumer at the
19 door that they should change to the Just Energy
20 rates.

21 194. Q. So, that would be training and
22 motivation that he would provide to you and others?

23 A. Yes, because that is his...when you
24 get driven off, and he would drop us off in an area.
25 I would work with him sometimes. And he...just

1 trying to do the job, trying to get the work done.

2 195. Q. When you got your first cheques, and
3 you say you came to some realization that there
4 weren't these deductions being made...

5 A. Yes.

6 196. Q. ...did you speak to anyone at Just
7 Energy?

8 A. Oh, yes. We all talked about it,
9 and they told us that you would just...that when you
10 do your income taxes, that you have to deduct
11 things. It is all hearsay. Some people said they
12 would have to. Some people said they are not even
13 going to pay taxes. They are just going to...there
14 were all kinds of people there.

15 197. Q. And what I am getting at, sir, is
16 your evidence was that you had been advised that
17 there were insurance, medical insurance benefits as
18 part of this opportunity. You realized, then, there
19 wasn't...

20 A. Yes.

21 198. Q. ...and I am asking you, did you then
22 ask anyone at Just Energy about that?

23 A. Yes. Well, yes, I did. Paulina, I
24 asked her about it one time. And she says, "Well,
25 we are working on it, but what happens is you really

1 have to move up in the company. Right now, you are
2 in the position where everybody starts in that
3 position, and then once you prove yourself, then you
4 can move up in the company into different
5 positions". And I was thinking, like, they have so
6 many offices, the one at Yonge and Sheppard was like
7 a collections for Just Energy. And, so, I was
8 thinking maybe I would work this a couple of years
9 and then maybe get a job with Just Energy in an
10 office instead of knocking on doors all the time.

11 199. Q. But do you understand that people
12 who worked in the office, for example...

13 A. Yes.

14 200. Q. ...that they were employees and not
15 independent contractors?

16 A. Yes, that is why I was thinking that
17 I would...that is what I mean about moving up.

18 201. Q. And...

19 A. Because when I see what I got, then
20 do I stick to what I am doing. Yes, because I can
21 eventually move up into the company. They were
22 always told, "It is a growing company".

23 202. Q. No, but did you understand the
24 employees were salaried?

25 A. Where?

1 203. Q. At Just Energy.

2 A. In the office...

3 204. Q. Yes.

4 A. ...jobs?

5 205. Q. Yes.

6 A. I figured they would have to be.

7 They are, like...they are in office buildings like

8 these ones.

9 206. Q. But they wouldn't have, in a salary
10 position, the opportunity to earn almost unlimited
11 income, that the sales people had the opportunity to
12 do?

13 A. Well, the company works, where they
14 are making money off of people that purchased the
15 contracts. So, the people in the offices don't do
16 that. It is the people who go door to door, that
17 actually get the money for the company. So, we are
18 doing the hard work, and then already, they are
19 working with the customers. So, they are
20 already...they don't need to make sales. Their job
21 is...they already have other kind of jobs, just to
22 monitor things. And, so, if they are not actually
23 signing contracts, they would have to be on a
24 salary, right? That is what anybody can figure out.
25 That is why a lot of us just stayed there, hoping to

1 sign up for these positions. They always had
2 positions open, but nobody ever really gets back to
3 you.

4 207. Q. But at some point, when you
5 realized, for example, there wasn't medical
6 insurance benefits, you must have realized there
7 weren't other elements that maybe the office people
8 would have had, such as vacation pay?

9 A. No, because you know what? We know
10 that they do, because some of the people went on
11 vacation. They went on...so and so is...

12 208. Q. What type of people?

13 A. The people from their head office.
14 Like...

15 209. Q. Well...

16 A. ...there is an office in Dixie.
17 There is an office in Courtneypark, which is in
18 Mississauga, not too far from Etobicoke. Where I
19 live, at Yonge and Sheppard, there is a Just Energy
20 office. There is a Fairview, there was a similar
21 type office from the Dundas one. If I had known
22 that, I probably would have gone to the Fairview
23 office. But the one that was advertising was a new
24 office opening on Dundas. So, there wasn't a lot of
25 people there that already worked Just Energy, just

1 the ones that were there were with National Home
2 Services, doing the furnace and the water heaters,
3 type of...

4 210. Q. But those employees at the office,
5 the office personnel...

6 A. Yes.

7 211. Q. ...they may have had vacation
8 entitlements, but the independent contractors like
9 yourself did not, correct?

10 A. Yes, looking at it, that is how
11 their system works.

12 212. Q. Right. And you understood that.

13 A. Once I got to understand the system,
14 I...

15 213. Q. Within the first paycheque or two,
16 you understood that.

17 A. Yes, after...yes. I didn't know
18 that from day one, when these things sink in. You
19 have to learn how it was...

20 214. Q. But you were there for 18 months,
21 roughly, you say?

22 A. Yes.

23 215. Q. You must have taken time off from
24 time to time?

25 A. No, I never took time off until

1 after a year when my mother got sick. In September,
2 October, that is when I took time off.

3 216. Q. Okay.

4 A. Otherwise, I never really missed...I
5 did take...I think I took...yes, I did. I took one
6 week off in August or July.

7 217. Q. Right. And, so, when you took time
8 off, you just didn't come into work?

9 A. No, I let them know. I had to get
10 permission, because you just can't not show up. You
11 are...

12 218. Q. Why not?

13 A. Because they would call you and say,
14 "Where are you?"

15 219. Q. You say, "I am taking the day off".

16 A. No, it doesn't work like that. They
17 want to ask you for...like, there is no way you can
18 actually take a day off. Like, if I am walking into
19 work, and I am one minute outside the building and
20 it starts at 9:00 and it is 9:00, they will phone
21 you and say, "Where are you?" And I would say, "I
22 am just outside the building. I will be there in a
23 minute".

24 220. Q. Who is phoning you?

25 A. Well, like Cheyenne, one of the crew

1 leaders would call me, or Jen, Jennifer, she would
2 call. Or...they are trying to round up the people
3 so they would know where to go. They have got to
4 make sure of how many people are there.

5 221. Q. Only because they want to know, are
6 you coming out on today's...

7 A. Yes.

8 222. Q. ...trip?

9 A. Yes.

10 223. Q. That is all.

11 A. Yes, but you have to be there.

12 224. Q. Well, because if they are waiting
13 for you to go...

14 A. No, it is not a waiting thing.
15 Because once...they have meetings. That starts at
16 9:00. You have to be there for the 9:00 meeting,
17 and then practise your stuff from around until
18 10:00. After that then you are heading out to start
19 working at around 1:00, and with lunch, they drop
20 you for lunch, and we all still...like, a
21 camaraderie. Yes, like, the whole thing is, we
22 motivate each other. We...

23 225. Q. And were you good at that, sir?
24 Motivating your other independent contractors?

25 A. Yes. I was...I wouldn't say that I

1 was on top of the motivating person. I was, like,
2 in the middle of the pack. Like, some people, if
3 they are down or whatever, or they needed to...some
4 people always, like, needed to borrow money to get
5 by for...and then the drop-off rate was always high.
6 So, you would try to...at meetings, we would talk
7 about when new people come in, let's try to show
8 them what we are about. And they had a few talks
9 with me, telling me that, "You are a senior person
10 almost, now, you have got to show some sort of
11 leadership in this. You just can't be...you have
12 got to show some more leadership skills".

13 226. Q. And did you ever become an assistant
14 crew coordinator or a crew coordinator?

15 A. No, I just was door-to-door. They
16 just dropped me off. And, see, the thing is, a lot
17 of times, I would drive my car there, and they would
18 have three vans all ready. And if the overflow,
19 they would ask me to use my car.

20 227. Q. Right.

21 A. And then they never even paid me
22 back for...I would voluntarily say, "Okay". And
23 then we will go up to, like, Canada's Wonderland and
24 then eat lunch in the mall or the McDonald's,
25 whatever, and then we would work the Maple area, to

1 give you an example.

2 228. Q. Right.

3 A. So, I wasn't the leader or anything.

4 I was always, just, like, following the thing and...

5 229. Q. Did you ask to be a leader?

6 A. Not really, no. Not directly asked.

7 230. Q. Did you understand that the leaders

8 got overrides on the independent contractors'

9 commissions?

10 A. Yes, at this point...sometimes, I

11 don't believe a lot of these things, whether they

12 did get an override or not. They say they did, but

13 like I told you right from the start, you never

14 really know anything until you find out, as time

15 went on, how the whole thing worked.

16 231. Q. When you learned very early in the

17 piece that there wasn't, you said, medical

18 insurance...

19 A. M'hmm.

20 232. Q. ...and you spoke to someone at Just

21 Energy about that...

22 A. Yes, Paulina.

23 233. Q. Paulina?

24 A. Yes, that is the human

25 resources-type person that was there, and then...

1 234. Q. No, wait for the question. I
2 haven't asked a question yet.

3 A. And...

4 235. Q. When you spoke to Paulina, was it
5 confrontational?

6 A. No.

7 236. Q. Did you say...

8 A. I am not a confrontational type of
9 person...

10 237. Q. So, what I am getting at, though,
11 sir, the way I hear your evidence, and help me if I
12 am wrong, you are suggesting that it was somehow
13 misrepresented to you that there would be medical
14 insurance, and then you discovered there wasn't.

15 A. Yes, because...yes, that is right.

16 238. Q. So, to me, if it was misrepresented
17 to you, it would strike me that you might then
18 become confrontational, as in, you know, "You told
19 me that this was going to happen, and now it hasn't.
20 I am upset". Was it that kind of a conversation?

21 A. No, because like I said, I am not a
22 confrontational type of person. I take my lumps and
23 make do with what best the situation is.

24 239. Q. Did Paulina admit that she
25 misrepresented the situation?

1 A. No, because she wasn't the one that
2 told us. It was the head office person that was
3 there, that told us that we had the benefits and
4 that kind of thing.

5 240. Q. Okay. Just so I understand it, in
6 addition to medical insurance benefit, was there
7 some other benefit you thought you were to receive?

8 A. Well, I can't think of it...there is
9 no other benefit. Like, what other...

10 241. Q. Dental plan?

11 A. Well, that falls under medical,
12 doesn't it?

13 242. Q. Okay. Vacation pay.

14 A. No, there was no vacation pay.

15 243. Q. That wasn't represented to you that
16 there would be, was it?

17 A. No, because, well, how would you get
18 a job, and then the first thing, ask about vacation
19 for?

20 244. Q. I am trying to get a sense of what
21 you say was misrepresented to you, that you relied
22 upon in taking the opportunity?

23 A. What was misrepresented...

24 245. Q. One was medical insurance, okay,
25 what else? I want to hear the story.

1 A. Okay, well, the real
2 misrepresentation is that they would have given me a
3 copy of the contract that I signed, all those papers
4 that were similar to what he has here, which is what
5 I signed. I never got a copy of it.

6 246. Q. How many times did you ask for it?

7 A. A few, and then a lot of us asked
8 for it, too. And then they said...oh, at one point,
9 "It has all gone to head office. It is there".

10 247. Q. So...

11 A. And, so, we never got it. I mean,
12 you can ask any of these people that I worked with.
13 I still keep in touch with some of them, and they
14 would tell you the same thing, that they never give
15 you the contracts that we signed, and the papers
16 that we sign. And they said they would.

17 248. Q. Who did you ask?

18 A. Paulina again. Paulina was...and,
19 also, they had...she had assistants in those days.
20 And then eventually Jackie came in, and then Paulina
21 left and Jackie took over Paulina's place, and then
22 they got another HR person. So, they flipped around
23 the persons, and then they moved from the fifth
24 floor to the ground floor. So, they kept
25 on...because it was expanding, they needed more room

1 for training and all that. So, they made a bigger
2 office downstairs, and they paid over \$100,000 right
3 here to do that.

4 249. Q. But you were there for 18 months.
5 How many times did you ask for a copy of your
6 contract?

7 A. Oh, I gave up after a while, because
8 then you kind of know that they are not giving it to
9 you. We go on road trips, and we compare with other
10 people and we talk, and they go, "Yes, same thing,
11 dude. I was asking for mine, too, and they never
12 gave it to me".

13 250. Q. And why did you want it?

14 A. Just so I could see what I signed,
15 just to know what the rules and the things are. But
16 then you are working, so if you are already
17 involved, you are already so far deep in, whatever
18 happens, happens. As long as you try to become a
19 good salesperson and make money on the door when you
20 are there. And they would teach you how to do that.

21 251. Q. The other people who have sworn
22 affidavits in this litigation, sir, do you know any
23 of them?

24 A. Just by name. I can't remember what
25 they look like, or anything like that.

1 261. Q. Okay. Sorry, you met him yesterday,
2 but did you know him prior to yesterday?

3 A. Yes, I worked with him in, like,
4 Thunder Bay. I remember him and I worked a whole
5 day together in Thunder Bay. Because he is from the
6 other office, the Ottawa office...

7 262. Q. Right.

8 A. He was in our office when we go on
9 road trips.

10 263. Q. Have you discussed this litigation
11 with Kian?

12 A. Just yesterday.

13 264. Q. What did you talk about yesterday?

14 A. Just, "Hi, how are you?"
15 Like...and, yes, he says that we should have gotten
16 paid for all this time that we were there.
17 Just...and then he is in Scarborough now, and he has
18 just moved to Toronto three weeks ago, and he gave
19 me his number, and then...that was about it. Just,
20 basically, exchanged pleasantries and he read my
21 affidavit while I was just reading through my
22 things. I didn't read his affidavit.

23 265. Q. But as of the very first day you
24 engaged with Just Energy, you knew there was no
25 salary component to the opportunity, correct?

1 A. On the very first day, when I got in
2 there, I didn't know that. But by the time...the
3 end of the day, when I left, I kind of figured that
4 this whole thing could be just all commission.

5 266. Q. Well, you wouldn't have signed the
6 contract, sir, would you have, not knowing what the
7 pay was?

8 A. I would have thought it over. Like,
9 I would have figured, like...I might have approached
10 it differently. The people that were working, that
11 came in with me, and did the test, and later on
12 seemed to be nice people to work with. So, it is
13 not like...I didn't feel like an outsider so much,
14 because we are all looking for a job.

15 267. Q. But you knew then there wasn't a
16 salary component to the job, or the opportunity?

17 A. At the end of the day, when I
18 talked, yes, it kind of sunk in, that this is
19 probably just all salary. And then they said to get
20 the \$800, some of us thought it was going to be just
21 three sales in a week. Turns out to be three sales
22 a day. So, we weren't too sure...we were all
23 scratching our heads. Like, "How did this thing you
24 put on the board...is it really that easy" sort of
25 thing we were thinking. So, when you new to

1 something, you kind of have to rely on what you
2 heard and what you talked to other people about.

3 268. Q. And you weren't obliged by Just
4 Energy to keep any records on a daily basis, in
5 terms of...

6 A. Yes, every time you sign a deal, you
7 have to put in the address, the person's name,
8 whether it was gas or hydro. You tear off the top
9 portion, you hand that in, and you keep the pink
10 copy.

11 269. Q. Right. But how many doors you knock
12 on, you don't keep track of that?

13 A. No, because later on, when we had an
14 iPad and we go out with the SmartStat thermostat,
15 they would put us on an iPad where they can track
16 our movements, and then we can tap on it that we
17 went to that house, we went to that house, and
18 then...so, that was the one that they would know or
19 we would know that we did those. Other than that,
20 we just...like, if I worked with Petra, you start on
21 this side of the street, I start on this side. It
22 ends there, and then rolls around. Whenever we
23 meet, that is where we meet. So, when we went into
24 a house that somebody is in, then we would know
25 that...where that person is. So...

1 270. Q. I meant to ask this earlier, sir. I
2 am talking about you taking time off for vacation,
3 whatnot. I mean, did you ever take a sick day?

4 A. No, I never really got sick, no.

5 271. Q. Okay.

6 A. Only when my mom got sick did I have
7 to let them know. They were accommodating. They
8 said, "Yes, okay".

9 272. Q. And were there times where you
10 worked half-days because there was some family
11 obligation you had to go to?

12 A. No. For some reason, I was always
13 there. I always showed up. I didn't have a family
14 obligation. Like, what kind of obligation?

15 273. Q. Birthday party? I don't know. Any
16 kind of obligation that other families tend to have.
17 You had to take a family member to the hospital or
18 to the doctor or there was some event that you had
19 to get to?

20 A. No, knock on wood. I was always
21 there. I didn't miss any days.

22 274. Q. Who provided the training for you at
23 the outset of the opportunity as an independent
24 contractor?

25 A. The people in the office. We really

1 watched them...it is a movie. When they show you
2 how to...how your contract...you would go
3 door-to-door, and then how you can move up to the
4 different things in the sales scripts, and circle
5 round and round.

6 275. Q. And then...

7 A. And the people from the head office
8 come in and give us...Jahan, the regional manager,
9 would give us lectures. Crew leaders would take
10 turns in giving us lectures, because they would plan
11 ahead. They were told that they have to give the
12 lecture the next day. So, they would make notes,
13 and then we would do role plays and share the
14 experiences from other people.

15 276. Q. And what about in the field? Who
16 provided any training in the field?

17 A. You are on your own, mostly. I used
18 to have to have new people come with me to see how
19 it is done. And that is how I did it when I first
20 started. Everybody does that. They shadow, they
21 call it. They shadow the person who is knocking on
22 the doors, until you get a feel for it. And then
23 the next day you work with someone experienced in
24 case you need help. But you would be able to call
25 that next person to help you out.

1 277. Q. And you agree with me that some
2 people are better sales people than others?

3 A. Nobody is the same.

4 278. Q. But some are better than others?
5 Some have a knack for sales?

6 A. Yes. There is...well, may I
7 just...some people are...yes. Some people have
8 a...like Dominic, for example. He is Italian, so he
9 would knock on the door, and if it is an Italian
10 customer, right away he would start speaking
11 Italian, and they would get the trust, or they would
12 know what they are signing. They can sign that
13 deal; whereas I am not Italian, so I wouldn't be
14 able to sell it as quickly, or as well as he would
15 have. Because right away, sales is a lot of times
16 about trust.

17 279. Q. Right. It is not necessarily how
18 many doors you knock on. It is how you can interact
19 and gain the trust of the customer at the door, to
20 effect a sale?

21 A. Yes, because that is why you are
22 knocking on the door.

23 280. Q. Right. But you mentioned about a
24 high turnover. I gather there was and is a high
25 turnover, because many people...and I think you also

1 said...give it a try?

2 A. Yes.

3 281. Q. And they realized they are not good
4 at sales, or they don't enjoy sales.

5 A. Well, yes, it was that or they would
6 find out...so, you would be in an area where there
7 are no stores, nothing to eat, or you didn't bring
8 fruit or something with you, and these people
9 couldn't handle that. So, they go, "That is the
10 last day I am doing this. I missed my dinner. I
11 don't want to work...be knocking...it is pitch dark
12 at 8:30", and people don't like doing it. So,
13 mostly...once you clear the first month or so, then
14 you would stay, but a lot of times people would be
15 there for a week, or a bit more or a little less,
16 and they would quit, or they would be told not to
17 come back, if they become confrontational with the
18 pitch, or asked too many questions. They just
19 don't...if you don't get it, then they will tell you
20 not to come back. Like...

21 282. Q. Because there are compliance
22 issues...Ontario Energy Board and regulatory
23 obligations...as a salesperson, you have to fulfill
24 at the door?

25 A. Like what do you have to fulfill?

1 283. Q. Well, are there not, and are you not
2 trained in the skill of selling at the door, from a
3 compliance perspective?

4 A. So, what do you mean by
5 "compliance"?

6 284. Q. You had to obey certain rules and
7 regulations and the law about selling at the door.

8 A. Yes, we had to have a business card.

9 285. Q. Yes.

10 A. And it was a big piece of paper that
11 actually said, "Business card".

12 286. Q. Anything else that you recall?

13 A. Yes, you have to have the badge...

14 287. Q. Right.

15 A. ...and the clothes that make
16 you...they make you buy the shirt for \$35. So, they
17 are all...everybody is in uniform.

18 288. Q. And what about the script? Is there
19 a script that you have to go over, at least in part?

20 A. Yes. It is more...you have to catch
21 the person's attention within ten seconds is how it
22 works. So, "Hi there, I am coming by in regards to
23 the meter inside your house. It is called a
24 SmartMeter that nobody likes. My name is Haidar
25 from Just Energy Ontario. We are just making sure

1 you have received the adjustments on your gas and
2 hydro bills so you wouldn't have those SmartMeter
3 rates. Could you get me a copy of the gas and hydro
4 bill, I will wait right here". That is a very
5 summrizing way of saying it, but what you have done
6 is actually...I don't know if it is in compliance,
7 would be you would alarm the people that their rates
8 might be too much, that you have to trigger some
9 sort of thinking. So, I don't know if that is
10 compliance.

11 289. Q. Well, you are aware that...

12 A. There wasn't anybody from the energy
13 board hanging around with me.

14 290. Q. No, but you are aware that there is
15 a code of conduct that the energy board oversees,
16 that you needed to be following.

17 A. Yes, when you sign a contract, there
18 are disclosure agreements with the Ontario Energy
19 Board...clearly says, "The rights of the consumer".
20 They have to sign that, and it is written on the
21 back. We need seven signatures before the iPad came
22 out, and you would have to sign here. There are
23 seven different signatures, and two of them was for
24 gas and hydro, Ontario Energy Board.

25 291. Q. Well, you mentioned about someone

1 being confrontational. Obviously, that I gather
2 would be a bad thing to do at the door?

3 A. Yes, if you get confrontational at
4 the door...yes, why would you do that?

5 292. Q. Right. What I gather you are
6 telling me is that some people who maybe are overly
7 confrontational aren't going to make good
8 salespeople?

9 A. Well, people handle frustration
10 differently, right? So, if somebody knocks on a
11 door and they do it all day, and they see I got four
12 sales and they didn't get anything, then they are
13 going to start to maybe cross the line, and maybe
14 say some things or do some things to try to get a
15 sale. And that just leads to cancelling the
16 agreement. So...

17 293. Q. You mentioned someone had advised
18 you to deduct your expenses, and that they could put
19 you in touch with a tax person who could help in
20 that regard. Did you ever reach out to a tax person
21 in that regard?

22 A. Yes, he gave it to me. Right near
23 his house, Dominic lives on Steeles and Islington.
24 So, you know, he showed me the guy...he did it for
25 the two years, that I had to do the taxes.

1 294. Q. So, you had a...is it a bookkeeper
2 or an accountant? What kind of title did this
3 person have?

4 MR. ROSENFELD: I am sorry, let's stop
5 here. I don't know why this is relevant to
6 certification.

7 295. MR. MARTIN: I am going to get there.

8 MR. ROSENFELD: Okay. Is it something
9 about commonality that we are talking
10 about?

11 296. MR. MARTIN: Because I have asked you to
12 produce his income tax returns. Do you
13 have them here today?

14 MR. ROSENFELD: No, and we are not going
15 to be producing them.

16 297. MR. MARTIN: Because?

17 MR. ROSENFELD: They are not relevant to
18 certification.

19

20 BY MR. MARTIN:

21 298. Q. But you did take those deductions
22 off your income tax, did you?

23 A. Whatever the accountant did, he did.

24 299. Q. Did you review your income tax
25 returns for the purpose of today?

1 MR. ROSENFELD: Stop there.

2

3 BY MR. MARTIN:

4 300. Q. Have you produced your income tax
5 returns to your counsel?

6 MR. ROSENFELD: Stop there. Don't
7 answer the question. /R

8

9 BY MR. MARTIN:

10 301. Q. In the 18-month period that you
11 worked for...as an independent contractor, did you
12 have any other income?

13 A. No. Well, I cashed in my
14 Canada...my insurance from London Life, because I
15 wasn't making enough money. So, I had, like,
16 \$20,000, and what I did was I took out, like, \$3,000
17 when I needed money, and then still the job wasn't
18 getting me enough money. So, then I took out more.
19 So, I eventually took out money. Does that count as
20 income? Is that what you mean?

21 302. Q. Yes.

22 A. Okay. So, I did cash my London Life
23 to get income because I wasn't making enough like
24 that.

25 303. Q. Just as we are here today, could you

1 give me a ballpark figure of the amount of the
2 deductions you took off taxes for your expenses in
3 your role as an independent contractor?

4 MR. ROSENFELD: Don't answer the
5 question.

/R

6

7 BY MR. MARTIN:

8 304. Q. You did file tax returns, though, in
9 those years, did you?

10 A. Yes, I have always paid my...

11 305. Q. You always...

12 A. I have always paid taxes. I mean,
13 everybody is supposed to...the CRA would have been
14 knocking on the door, right, if I didn't pay taxes.

15 306. Q. I am showing you a document, sir, if
16 you can identify that? I believe this is your T4A
17 from Just Energy for the year 2012. Does that meet
18 with your recollection or understanding?

19 MR. ROSENFELD: Don't answer the
20 question. You need to produce it. I don't
21 know what this is.

22 307. MR. MARTIN: Well, I would like him to
23 identify it, right?

24 MR. ROSENFELD: For what purpose?

25 308. MR. MARTIN: To show what he received by

1 way of self-employed commissions?

2 MR. ROSENFELD: And what does that have
3 to do with certification?

4 309. MR. MARTIN: Everything.

5 MR. ROSENFELD: Okay, well, I refuse. /R

6 310. MR. MARTIN: I am going to mark this for
7 identification, then, as Exhibit A on this
8 examination. This is a T4A Statement of
9 Pension, Retirement, Annuity, and Other
10 Income, recipient named Haidar Omarali.
11

12 --- EXHIBIT A: T4A Statement of Pension,
13 Retirement, Annuity and Other Income
14 of Haidar Omarali for the year 2012
15

16 BY MR. MARTIN:

17 311. Q. Sir, I gather at some point you
18 lived at 19 Blue Ridge Road in Willowdale?

19 A. Still do.

20 312. Q. And it shows self-employed
21 commissions of \$8,851.40. Sir, does that number
22 seem accurate, in terms of the commission income you
23 received from Just Energy for the tax year 2012?

24 MR. ROSENFELD: Don't answer the
25 question. We won't be answering any

1 questions about this document. /R

2

3 BY MR. MARTIN:

4 313. Q. And, similarly, sir, I am showing
5 you a T4A for the tax year 2013, in the name of
6 Haidar Omarali which shows self-employed commission
7 income of \$23,515.03. Can you identify that
8 document, sir?

9 MR. ROSENFELD: We are not answering
10 questions about this, and we don't agree
11 that it is going to be an exhibit to this
12 examination. /R

13

14 BY MR. MARTIN:

15 314. Q. Sir, does that strike you as an
16 accurate amount for what your self-employed
17 commissions from Just Energy were for the tax year
18 2013, being roughly \$23,500?

19 MR. ROSENFELD: Don't answer the
20 question. Again, like I suggested, we are
21 not answering questions about this
22 document. /R

23 315. MR. MARTIN: So, we will mark that as
24 Exhibit B for identification on this
25 examination.

1 --- EXHIBIT B: T4A Statement of Pension,
2 Retirement, Annuity and Other Income
3 of Haidar Omarali for the year 2013
4

5 MR. ROSENFELD: How much further do you
6 think you are going to be? We have gone
7 for about an hour and a quarter, give or
8 take.

9 316. MR. MARTIN: Do you want a break? I can
10 break now, if you want.

11 MR. ROSENFELD: Sure.

12 317. MR. MARTIN: Well, let's take five
13 minutes.
14

15 --- A BRIEF RECESS
16

17 HAIDAR OMARALI, resumed

18 CONTINUED CROSS-EXAMINATION BY MR. MARTIN:

19 318. MR. MARTIN: So, Counsel, if you just
20 turn up Mr. Omarali's independent
21 contractor agreement, which is Exhibit D to
22 the affidavit of Richard Teixeira.
23

24 BY MR. MARTIN:

25 319. Q. Have you, in preparation for today,

1 have you seen this recently, this document?

2 A. No, I really...done much
3 preparation. There is nothing for me to prepare.

4 320. Q. In the last couple of days, have you
5 seen this document?

6 A. Yes, I saw...yes, I looked at it,
7 like, yesterday.

8 321. Q. Okay. And is there any dispute that
9 you...that the signature on this document is yours?

10 A. Okay, well, where is the signature?

11 322. Q. So, I take you to what is page 53 of
12 the record.

13 A. Oh, yes.

14 323. Q. And you see "Candidate's signature".
15 Is that your signature?

16 A. Yes, that is my signature.

17 324. Q. Okay. And if I go over to the page,
18 to page 54, this is on the Privacy Notice and
19 Consent.

20 A. M'hmm.

21 325. Q. There is a contractor's signature.
22 Again, is that your signature?

23 A. Yes, that looks like my signature.

24 326. Q. And if I could take you to, again,
25 page 57...

1 A. Yes, the same, July the 23rd.

2 327. Q. And it says under the heading:

3 "...Be sure that you have read and

4 understood this agreement before

5 signing..."

6 And then in printing, it says:

7 "...Haidar Omarali..."

8 And then there is a contractor's signature. Again,

9 is that your signature, sir?

10 A. Yes. That is my signature.

11 328. Q. And just pausing there. This was

12 witnessed by a David Meghan. Who is that?

13 A. This would be the...I would think

14 that is the head office person that was there.

15 329. Q. Do you remember him?

16 A. No, because...what do you mean,

17 "Remember"? You mean what he looks like?

18 330. Q. I mean, is that somebody known to

19 you?

20 A. No, that is...no, I wouldn't

21 remember.

22 331. Q. Did you have discussions with him at

23 any point in time?

24 A. No, because he was leading the talk.

25 Just, we fill this out, and then he talked. I don't

1 even remember that his name was David Meghan.

2 332. Q. Okay. Then I go over to the next
3 page, which is page 58, a document titled
4 "Contractor certification"? Could you just look at
5 that for a moment?

6 A. Yes.

7 333. Q. And, again, is that your signature
8 under "Contractor signature"?

9 A. Yes.

10 334. Q. And this says that you were swearing
11 that you received and read the OEB Code of Conduct
12 for Gas Marketers, and that:

13 "...Just Energy has provided training in
14 and I agree to abide by the Code of Conduct
15 for Gas Marketers and the Electricity
16 Retailer Code of Conduct..."

17 A. Yes.

18 335. Q. Is it fair to say you agreed to
19 that?

20 A. It was part of the movie we saw.
21 So, we were told, yes, that is all we needed to
22 know. You watched the movie, so you can sign that.

23 336. Q. And then at the back of this
24 document, sir, starting at page 61 of the record, if
25 you want to flip through that, do you recall that

1 there was a test you were obliged to take, and that
2 you did take?

3 A. Yes, we all had to do that test.

4 337. Q. And is it your understanding that
5 this is the test that you took?

6 A. Yes, we took this after we
7 watched...and then we were able to do the test.

8 338. Q. Okay.

9 A. It is basically questions that were
10 answered on the movie.

11 339. Q. And you scored 44 out of 50, it says
12 here?

13 A. Yes.

14 340. Q. And you may not recall that or maybe
15 you do.

16 A. Yes, okay, well...yes, because I
17 know I didn't fail it, so...

18 341. Q. That was my next question. That was
19 a pass, I gather?

20 A. Yes, that was a pass, yes.

21 342. Q. And did you take the test on just
22 one occasion? Did you need to take it multiple
23 times?

24 A. This test?

25 343. Q. Yes.

1 A. No.

2 344. Q. Okay. Now, I understand your
3 evidence that you didn't get a copy of this, but you
4 talked about all of the independent contractors
5 having to sign this agreement. It is fair to say
6 that there would have been copies of this agreement,
7 then, in the office at all times, in blank?

8 A. How would I know that, if they
9 had...it is fair to say that?

10 345. Q. Yes. Well, you were at the office
11 for 18 months...

12 A. Yes, but I don't go opening their
13 drawers and checking things out, what they got.

14 346. Q. Well, you have also told me that
15 there was a flow, and you have given evidence that
16 there was a flow of candidates through...for the
17 independent contractor position on a weekly basis.
18 All of them would have been asked to sign this,
19 correct?

20 A. I would have to assume that they
21 would have to sign it. I know from when I went in
22 there, we had to sign it. And the other people,
23 like, I am not in their class to know everything
24 they did. When you talk to them, they all said that
25 they signed...

1 347. Q. Right. So, what I am saying is,
2 certainly, there would be multiple blank copies of
3 this available in the office if you had chosen to
4 ask somebody to see one?

5 A. They wouldn't...like, how would I
6 know that there are multiple agreements? Like, the
7 way they did it, they didn't want you to see this,
8 it seems like, because other people asked for it,
9 too, and other people I talked to, they wanted to
10 know what it was they signed, and, "Did you ever get
11 a copy of your thing?" Like, even months and months
12 later, when you talked to other people, "Did you
13 ever get a copy?" "No, I never got a copy, never
14 gave it back to me".

15 348. Q. Well, that is not Mr. Kordestani's
16 evidence.

17 A. I don't have anything to do with
18 that, what he says. I am saying...

19 349. Q. Well, you do, because you have a
20 copy of Mr. Kordestani's agreement. How did you get
21 that in your affidavit?

22 A. We gave it to the lawyers. It is
23 very similar to what I signed. I can tell by the
24 look of it.

25 350. Q. So, if I asked you to go to the

1 first page of the agreement, which is at page 52, if
2 you see under paragraph 1, marketing activity?

3 A. Yes, I never read that. Like, they
4 just gave it to us to sign.

5 351. Q. Is it your habit not to read
6 contracts that you sign?

7 A. Well, we are all there together, and
8 it was, like, "Everybody just sign this, and then we
9 will explain it to you in detail more", and then
10 once you sign it, you go on a break.

11 352. Q. Is it your evidence they told you
12 not to read it? They just said, "Sign this. Don't
13 read it"?

14 A. They didn't...

15 353. Q. That is not your evidence, surely.

16 A. No, nobody ever said what you just
17 said.

18 354. Q. Right. But you are a man with a
19 university education. You are not prone to signing
20 contracts that you don't read, are you?

21 A. Well, when I bought a car, for
22 example, I didn't read the whole contract. Some
23 things are a lot of words. You just don't...you
24 just take the word of the salesperson, or in this
25 case the employer, that "Go ahead. Just sign this,

1 and then we will..." so that is what I did. I
2 signed it.

3 355. Q. I am trying to get a sense, sir,
4 what your evidence is. You just signed without
5 reading it. That is your evidence. Yes or no?

6 A. That I...which signature are you
7 referring to?

8 356. Q. Any of them.

9 A. This one, I remember looking it
10 over.

11 357. Q. What page?

12 A. Page 53.

13 358. Q. Okay. That is for the criminal
14 record check?

15 A. And the health card and the whole
16 thing here...

17 359. Q. Yes?

18 A. ...and driver's licence.

19 360. Q. What about page 54, the Privacy
20 Notice and Consent?

21 A. Yes, that was just one page. Just
22 sign that page.

23 361. Q. Is it likely that you read that?

24 A. Well, we were told as we were
25 signing what it was for. So, we were told that we

1 are working with Just Energy, and that everybody is
2 a member of Ontario Energy Association, all the Just
3 Energy companies. And then they introduced us to
4 the idea that there is competition with companies
5 like Summittt and Universal. So, we kind of got an
6 idea, and we are with Just Energy, and not with
7 these other things, companies.

8 362. Q. Let me just take you back to the
9 first page, sir, paragraph 1, under "Marketing
10 Activity". Fifth line down, the sentence starts:

11 "...In no event shall a contractor
12 represent that he or she is an employee of
13 or connected with JEC or JE OLP in any way
14 other than as provided herein..."

15 So, were you aware, sir, that you had agreed not to
16 represent that you were an employee?

17 A. No, I only read this yesterday,
18 like, when I was in the lawyer's office, I was
19 reading it over. I read that for the first time.

20 363. Q. Is your evidence that when you
21 signed this, in...whenever the date was, 2012...

22 A. Because I wouldn't know what JEC is,
23 or J...I don't even know right now what JE...

24 364. Q. Well, they are defined in the first
25 line. This is an agreement between Just Energy

1 Corp., JEC.

2 A. Okay. Well, I didn't read that. It
3 was just words.

4 365. Q. Could I just take you to page 55 of
5 the record? And you see the heading, point 5:

6 "...Independent status..."

7 Now, again, the second paragraph on point 5:

8 "...The contractor is not and shall make no
9 claim the contractor is an employee of
10 JEC..."

11 A. This is the first time reading this.
12 Like, I haven't really read all this.

13 366. Q. So, you are saying at the time you
14 signed this, you weren't aware of that?

15 A. No, I didn't read it. I didn't read
16 it...any of this. I haven't read any of this still,
17 to date.

18 367. Q. So, even the bold in paragraph 5. it
19 is in capitals, it is bold and it is underlined.

20 A. Okay.

21 368. Q. And it says:

22 "...This independent contractor
23 relationship does not qualify the
24 contractor for minimum wage, Workers'
25 Compensation or other employment benefits.

1 Contractors who must collect GST much have
2 their own GST number..."

3 You don't recall reading that?

4 A. I never read it. This is the first
5 time I am reading this.

6 369. Q. Did you have your own GST number?

7 A. No.

8 370. Q. At any point?

9 A. No.

10 MR. ROSENFELD: Don't answer the
11 question.

12

13 BY MR. MARTIN:

14 371. Q. Were you aware of other independent
15 contractors having a GST number?

16 A. I never talked to anybody about a
17 GST number.

18 372. Q. Do you know why you might require a
19 GST number?

20 A. No. Why would you need it?

21 373. Q. For tax purposes.

22 A. Like I said, the guy told me that he
23 knows an accountant who does the taxes.

24 374. MR. MARTIN: Just a second.

25

1 --- DISCUSSION OFF THE RECORD

2

3 BY MR. MARTIN:

4 375. Q. Can I take you to paragraph 7 there
5 for a moment, sir? Paragraph 7 says that:

6 "...The contractor and JEC agree that the
7 contractor's services are not and are not
8 intended to be exclusive to JEC..."

9 I take it that you didn't carry on any other
10 business or employment while you were engaged as an
11 independent contractor with Just Energy, correct?

12 A. That is...yes, this is around the
13 time.

14 376. Q. Were you aware of others, though,
15 who did do other jobs or sell other products while
16 they were also independent contractors of Just
17 Energy?

18 A. No, I can't think of anybody who
19 would be doing that.

20 377. Q. One of the examples in our materials
21 is given as to a contractor who also sold lights
22 while he was selling energy contracts, as well. Had
23 you ever heard of that?

24 A. Yes, well, I heard about people
25 doing things like...for that. That is when Flora

1 MacDonald was starting out and Rebecca MacDonald.
2 Like, we were all talking about how she was
3 successful, and went door-to-door selling
4 lightbulbs, and selling toiletry things for...and
5 then she got into gas and hydro. So, you know,
6 Rebecca MacDonald did it.

7 378. Q. Did you ever meet Rebecca MacDonald?

8 A. No, but we always had this... if you
9 do, well, you go on a trip to some Caribbean island
10 or Hawaii or something, and you will meet Rebecca
11 MacDonald there.

12 379. Q. Did you ever qualify for a trip?

13 A. No.

14 380. Q. Did you...are you aware of other
15 independent contractors who did?

16 A. Yes, the crew...yes, Dominic, like
17 the crew leader, Cheyenne, and some other people.
18 They went.

19 381. Q. What about any people at your level?

20 A. No, we always seemed to miss it.
21 Like, it was...the closest I got, like, some time I
22 was off by about 18 or something like 20 sales or
23 something. I didn't make it on the top of the
24 lists.

25 382. Q. So, just going over the page to...go

1 back to page 56. That is a provision respecting
2 term and termination. I appreciate you didn't...you
3 say you haven't read this.

4 A. Right.

5 383. Q. How did your relationship with Just
6 Energy come to an end?

7 A. Well, I wasn't making much money.
8 My mom wasn't feeling well or whatever, and I just
9 told them I wasn't coming back anymore. I told
10 Dominic, "That is it. It is winter now". It was
11 January, and I was just not going to be doing it
12 anymore.

13 384. Q. So, just one day, you just up and
14 stopped working?

15 A. Yes. And then Dominic told me that
16 he was...he called me up, he told me that he is
17 quitting, too. And he went to work for a water
18 filtration system. You go door-to-door and you sell
19 water filters.

20 385. Q. And did you look into doing that
21 business?

22 A. Yes, I went over to his place there
23 for, like, three days to see what it is about.

24 386. Q. Yes?

25 A. And then I left, because it was

1 confusion. It is, like...you would actually tell
2 the guy that this water in your house isn't safe to
3 drink. You would put drops in it and show him it is
4 not good. Your skin is bad because it is the
5 chlorine in it, and you are buying all this extra
6 stuff. So, what you need, it goes down to the
7 basement, and you would see that the water main, the
8 water that comes from your water main and goes
9 straight to all the things. There are some
10 attachments, pipes you can put in there. And then
11 when the customer agrees right away, I see these
12 guys are waiting out in the van around the corner,
13 and right away they are installing it, and they have
14 no chance of...

15 387. Q. Cancelling.

16 A. Yes. It didn't feel right, because
17 I didn't really want to do something like that.

18 388. Q. But that business, again, same as
19 Just Energy for the sales people, 100 percent
20 commission.

21 A. Yes, well, I didn't want to do that.

22 389. Q. You didn't want to do that?

23 A. No.

24 390. Q. You were done with 100 percent
25 commission business?

1 A. No, it wasn't that. It was the
2 nature of the job, like, going to people's houses
3 and checking their water, and then telling them they
4 needed a new filter, "Sign a contract here for five
5 years, and then every year you will be getting some
6 new pieces of equipment to put in, and you can take
7 out all the...see the brown in the thing. That is
8 the stuff you are drinking, or you are having a bath
9 with, or cooking with. And we will put in...install
10 this thing here, and then right away, then this van
11 is around the corner, and we are in the area today
12 only. So, that is what...what he was doing wasn't
13 something that...like, "Thanks, Dominic, but this
14 isn't for me".

15 391. Q. You were aware of other door-to-door
16 sales for energy and electricity being done by
17 competitors to Just Energy, correct?

18 A. Yes, the people, because you see
19 their bill, and you could see, like, the electricity
20 was already with Summitt.

21 392. Q. Summitt. That is a good example.
22 They are a competitor...

23 A. Yes.

24 393. Q. ...of Just Energy?

25 A. Right.

- 1 394. Q. And you are aware that their
2 salespeople were independent contractors, as well?
- 3 A. Yes, they did the same job as us.
- 4 395. Q. Yes.
- 5 A. They go door-to-door.
- 6 396. Q. Right. And on the same basis of,
7 like, 100 percent commission?
- 8 A. Well, I never asked anybody how they
9 got their money.
- 10 397. Q. You never encountered anybody from
11 Summitt?
- 12 A. To talk to?
- 13 398. Q. Yes.
- 14 A. No, not...there was...Petra worked
15 at Summitt.
- 16 399. Q. Right.
- 17 A. And Jen, the other crew leader,
18 worked in Summitt.
- 19 400. Q. On the same basis?
- 20 A. Well, no, Jen was a crew leader in
21 Summitt...
- 22 401. Q. No, on a commission basis, what I am
23 getting at. That is the nature of sales in this
24 business?
- 25 A. Yes, well, I figured that out. They

1 are the same as us, Just Energy is the same kind of
2 business.

3 402. Q. And I was going to ask you. You
4 have told me that people came from Summitt, but
5 also...were you ever aware of Just Energy people,
6 like yourself, going over to the competition, like
7 going to work for Summitt, from time to time?

8 A. No.

9 403. Q. No? You are not aware of people
10 moving, sort of, back and forth between competitors?
11 I mean, you mentioned Petra and Jan, but others, as
12 well?

13 A. I can't think of anybody else.

14 404. Q. Okay. Pull up your own affidavit
15 for a moment, sir, which is in volume 2, I believe.
16 Sorry, 1 of your record. So, just go to paragraph 7
17 on page 2 for a moment, sir. You are referencing,
18 sorry, the submissions that Just Energy made to the
19 Ontario Energy Board.

20 A. Yes.

21 405. Q. And you attached those to your
22 affidavit. I presume you have read them?

23 A. Yes, yes, of course.

24 406. Q. And in paragraph 7, you note that
25 Just Energy suggests, or puts into submission that

1 it employs over 700 people in addition to the
2 roughly 130 independent sales agents. Do you see
3 that?

4 A. Yes. That is what I wanted to do.
5 Move out of sales, and get into...

6 407. Q. Employment jobs?

7 A. Yes, the Just Energy...

8 408. Q. Right, so it is fair to say that to
9 the best of your knowledge, the vast majority of
10 people with Just Energy are employees, and the ones
11 who aren't are the outdoor salespeople, correct?

12 A. Yes, well, we are technically
13 employees, because we are doing the work for Just
14 Energy.

15 409. Q. Well, that remains to be seen in
16 this litigation about what the status may be, but
17 the distinction is, the independent sales agents,
18 those are the people who knock on the doors,
19 correct?

20 A. Yes, because that is what they gave
21 us on our badge. It says, "Independent contractor".
22 They just print it up in there.

23 410. Q. Just look at paragraph 14 of your
24 affidavit for one moment, sir. You say:

25 "...Sales agents have no control over the

1 setting of commissions or prices..."

2 What I am curious about, sir, is why would you think
3 they should?

4 A. Well, if you sign up somebody who
5 uses a lot of electricity, or a lot of gas, more
6 than the normal, like, more than 2,400 cubic metres
7 of gas in their house, then you would get more
8 money, because they are using more than the average.
9 And the same thing with the electricity, with the
10 kilowatts of electricity.

11 411. Q. So, you thought you should get more
12 commission if you sold to a higher user?

13 A. Yes, you do get higher commission.

14 412. Q. Okay. But what you say in your
15 affidavit here, sir, is that,

16 "...agents have no control over the setting
17 of commissions..."

18 And what I am asking you is, why would you suggest
19 they should have any control over that at all?

20 A. Well, it is a way of...it would have
21 been nice to be able to do that. It is just wishful
22 thinking. I would think that...like, I always like
23 to be part of the...trying to get in the company,
24 trying to put my two cents in, to be noticeable.
25 Like, you know, the thing is they would be way more

1 productive if they actually did give us a salary,
2 because then people would actually...I think we
3 would work harder, that other people would work
4 harder, because I seen some people slacking off and
5 that kind of thing, and I figure if there is some
6 way that they can motivate us with...other than the
7 sales, like, to get money.

8 413. Q. When you say slacking off, you mean
9 people who wouldn't come into work, or would take
10 days off?

11 A. No, no, no. People who actually
12 come into work, but then they don't really...they
13 skip a house here or there, or they take longer
14 breaks than normal, that kind of thing. So, if
15 you...

16 414. Q. Take vacation?

17 A. This vacation thing keeps coming up.

18 415. Q. No, I only asked it once about
19 yourself. I am just saying others took vacation.

20 A. I don't know. When people weren't
21 there, I don't know what they were doing.

22 416. Q. Right.

23 A. But then I know people, like, you
24 can hear them on the phone begging to come back in
25 because they were told not to come back if they

1 missed some days like that. If..."Why weren't you
2 here?" And they would embarrass you in front of
3 everybody, you know?

4 417. Q. Because there is a motivational
5 aspect to the job?

6 A. Is that what you think? It was
7 motivational?

8 418. Q. I am asking you. I mean, wasn't
9 there sort of a team component involved in what you
10 were doing?

11 A. Yes, but then there is also a
12 strategy on their side to make sure that we are
13 there, whether...the motivational might be
14 secondary. Primarily, they just want bodies. The
15 more bodies they have, the more houses that can get
16 knocked.

17 419. Q. Well, no, there is a sales
18 component, right? They want people who are good at
19 the job, good at sales.

20 A. So many people, you knock on their
21 door, and they will sign anything. Like, they
22 would, "Hi, how are you today? It is regarding the
23 meter at the side of your house". "Yes, what about
24 it?" "Well, we need to check your gas and hydro to
25 make sure you receive the discount". "Oh, okay, I

1 will get it for you". There are some people that
2 don't even really need any prodding, like, in...so,
3 there is all kinds of scenarios. You don't have to
4 be really good at this. I have seen some people
5 come in and...some girls came in, and they were
6 really dressed up, really nice, and they seemed to
7 sign up deals just because they looked really nice
8 and that. But then...

9 420. Q. Well, they teach you and train you,
10 and motivate you in respect of professional
11 appearance as part of sales, don't they?

12 A. Not really. There are people there
13 that came in wearing these pants that drag down to
14 their knees. Like, how do they do it? They are
15 actually making deals. They are...

16 421. Q. But that is not something that you
17 would recommend. You would think, I gather, from
18 what I am hearing from you, that that wouldn't be an
19 ideal way to do sales.

20 A. You have to be in the comfort zone.
21 So, these people are comfortable wearing those kind
22 of clothes. Like, I mean, there are days where it
23 is raining and that, and they were wearing different
24 kinds of...like, a windbreaker type of thing that,
25 the hideous-type collars, and they are still

1 knocking, because they just put the badge out on the
2 thing there, "I am not with the utility", because
3 later Just Energy kept on having to do little
4 changes, like make the business card bigger, like
5 put the badge, "I am not from the utility" because
6 people were going in there, saying...misleading
7 people. I read these stories on the Internet that
8 they got fined, and these kind of things, because
9 misrepresentation. That is the people I am talking
10 about.

11 422. Q. But you wouldn't engage in that
12 activity, sir?

13 A. I didn't what?

14 423. Q. Engage in that kind of activity?

15 A. Like what kind of activity?

16 424. Q. You weren't misrepresenting anything
17 at the door?

18 A. No, because I expected to move into
19 a company in a higher position. Like, I wanted
20 to...

21 425. Q. But also you wanted to comply with
22 the law, did you not?

23 A. I wanted to what?

24 426. Q. Be compliant with the law.

25 A. Yes.

1 427. Q. And not misrepresent things to
2 people.

3 A. Yes, that is right. That is why I
4 probably didn't...yes, that is true.

5 428. Q. Right, and you were...

6 A. I wouldn't argue that.

7 429. Q. And oftentimes, I think you
8 described it, as you were longer in the business,
9 people would shadow you. And, so, you would be
10 demonstrating to younger, newer, independent
11 contractors, I gather, how to do the job properly.

12 A. Yes, well, they were told not to say
13 or do anything, just watch. So, when I knock on the
14 door, "Hi, my name is Haidar from Just Energy
15 Ontario. This is an associate of mine. He is just
16 on his first day or second day here, he is following
17 us. We are coming by regarding the meter at the
18 side of the house, the SmartMeter. The gas and
19 hydro. Can I get a copy of those bills? I would
20 like to take a look at them with you".

21 430. Q. Can you look at paragraph 19, there,
22 sir? This advertisement that you saw, do you recall
23 where you saw the advertisement?

24 A. Yes, it was...you know those boxes,
25 those metal boxes where it says, "Jobs"?

1 431. Q. Okay.

2 A. And I was taking a few different
3 ones up, and I noticed in the front page, \$800 a
4 week, right?

5 432. Q. Okay.

6 A. And it made some comment about easy
7 hours, or something flexible, flexible rates or
8 something...something that doesn't seem too hard.
9 And you can get \$800 minimum, that is the word
10 minimum, \$800 a week.

11 433. Q. Did you discuss that with Just
12 Energy when you first met with them?

13 A. Yes, we all did, because some of
14 them went through Kijiji, but the other ones wanted
15 to know...and then we wanted to know how we can only
16 get three sales in a week and we can get \$800. That
17 doesn't sound so bad. And then the next day
18 afterwards, we found out it was three sales a day to
19 make it \$800.

20 434. Q. But no one at Just Energy said to
21 you that three sales a week would be \$800.

22 A. No, we had that assumption because
23 they said, "All you need to do to have this job is
24 be able to do at least three sales a week".

25 435. Q. Who said that to you?

1 A. Both Jahan and the representative.
2 There was also somebody else there. There was
3 somebody along those lines..we were told that \$800
4 was with three sales.

5 436. Q. Sorry, someone at Just Energy
6 represented to you that three sales would be \$800 a
7 week?

8 A. Yes. That is...

9 437. Q. And they represented that to you on
10 one of the first days you were there?

11 A. Yes, verbally. Yes, they told us,
12 yes.

13 438. Q. And then that turned out not to be
14 the case?

15 A. Yes, but that was what was written
16 in the ad. The ad also said \$800 a week minimum.
17 It said "minimum \$800 a week".

18 439. Q. You don't have that ad, though, do
19 you, sir?

20 A. No, I don't have the ad.

21 440. Q. And the ad may very well have said,
22 "Many successful independent contractors can make a
23 minimum of \$800 a week"?

24 A. It didn't say anything about
25 contracting, because I always thought a contractor

1 was somebody who fixes the gas, like, the guy who
2 drives in the truck, contracted by Enbridge, let's
3 say, to fix...to do things. Like, when you are
4 building a house, those are contractors.

5 441. Q. So, then, when you first saw the
6 independent contractor agreement that they asked you
7 to sign...

8 A. Yes.

9 442. Q. ...wouldn't you have then
10 immediately said to someone, "Wait a minute. I
11 don't understand what a contractor is"?

12 A. No, I never really did. Like I
13 said, after the first week, after the first cheque
14 came in, and whatever, I started to get wind of how
15 this job works. And then I just stayed, hoping to
16 get better.

17 443. Q. The materials...if you go back to
18 our record, and the materials at the back of the
19 Young affidavit. I want to take you to there for a
20 moment. There was, and is, a training program...if
21 I could ask you to go to tab A, this material...have
22 you had a chance yesterday to go through this
23 material?

24 A. No.

25 444. Q. Maybe not in great...

1 A. No.

2 445. Q. ...depth, but I mean, have you at
3 least glanced at it?

4 A. No, but I used to sit down and read
5 it, and when we are waiting in our room, we used to
6 have lots of these kind of books like this.

7 446. Q. Okay. And are these the kind of
8 books that you would have had at your training...in
9 the first few days, you were applying to Just
10 Energy?

11 A. Yes, these books were always around.

12 447. Q. Okay.

13 A. Yes, those were the kinds they would
14 leave out, but they wouldn't leave a copy of the
15 contract out.

16 448. Q. So, these books, though, it is Just
17 Energy's evidence that this is part of the training
18 that takes place in the first few days, that someone
19 is trying to engage as an independent contractor.
20 So, these would have been available to you in those
21 first few days you were applying to Just Energy?

22 A. Yes, they are...they were in the
23 back of the room. You can do it, but when you first
24 start off they are trying to train you the pitch.
25 You are focusing on your pitch. You can learn

1 everything else later. Your pitch is your bread and
2 butter. You can't go to the door and go, "Uh, uh,
3 uh, can I...I am with Just Energy. Can I take a
4 look at your bill? I want to see if you got a
5 discount". You have to learn the thing. So, these
6 things, may be back in the room, and lots of them,
7 like, hundreds are there. But you are not really
8 sitting there to learn this. You are sitting there
9 to learn the pitch. You are learning...

10 449. Q. But they go through this at those
11 first few days, they go through these materials,
12 whether it is by PowerPoint, and you said there was
13 a video.

14 A. Yes, right at the beginning on the
15 first day.

16 450. Q. Right.

17 A. Once you are in the first day, then
18 the second day, it is the pitch, what you are
19 learning, and everybody is practising with each
20 other, and these books are there. Anybody can look
21 at them, but who has got time to read a book when
22 you are supposed to memorize something? It is not
23 so easy to memorize something that...you know,
24 memorized from scratch. I never really heard of
25 Just Energy. The ad didn't even say it was Just

1 Energy.

2 451. Q. I am going to ask you to go to page
3 325 of that record.

4 A. Exhibit B?

5 452. Q. Exhibit B to the affidavit of Janna
6 Young, the record at page 325. And this isn't some
7 document labelled, "The independent contractor
8 orientation manual".

9 A. M'hmm.

10 453. Q. And I don't know whether you would
11 have seen this in the first few days, but I gather
12 it was of the type of materials that you say were
13 around the office at all times?

14 A. Yes. And this came in a binder,
15 this first page...

16 454. Q. A binder, yes, okay.

17 A. This first page was slipped into the
18 front of the binder...

19 455. Q. M'hmm.

20 A. And then the rest of it was inside.
21 And we were told to ignore some of the material in
22 there that is out of date.

23 456. Q. Okay.

24 A. So, this stuff was...we were
25 told...when I first saw it, it was green, and we

1 were told..."It is out of date. Just ignore it.
2 You can take a look at it, yes, but just leave it
3 here because we are not using that anymore". And
4 everybody will tell you the same thing.

5 457. Q. But...

6 A. ...they had all these binders, and
7 then eventually they took these things and blue
8 boxed it, and you were able to put in your own
9 materials, and walk with a binder out the door. It
10 was the binder that came from this...yes, so we
11 never used this. We were told that that is...

12 458. Q. Okay.

13 A. But there were tons of them.

14 459. Q. But...

15 A. What a waste of money, I was
16 thinking.

17 460. Q. But there were updated versions of
18 this, is that right? I gather you are saying this
19 was...

20 A. No.

21 461. Q. ...outdated?

22 A. No, this was there, but we were
23 told, "We are not using this. It is out of date".
24 This was outdated. Because I remember looking at
25 it. A lot of it didn't make sense. I didn't pay

1 attention to it because it was out of date. The
2 basis...I remember, just, like, maybe one, two days,
3 I took a look at it and put it back. The next thing
4 I knew, we were all throwing out the contents here,
5 to put our own stuff and keep our own empty
6 contracts and Ontario Energy Board paperwork and
7 brochures and business cards in the same binder that
8 this stuff was in. So, none of this even makes any
9 sense. Like, I wouldn't know...this stuff is out of
10 date.

11 462. Q. Could I ask you to go to paragraph
12 24 of your affidavit? You make reference to people
13 who were fired. Do you see that? Are you aware of
14 anyone who was ever fired in the 18 months you were
15 an independent contractor?

16 A. Yes, there was people who just
17 didn't show up. They were told not to...and then
18 they showed back up. They would call them in the
19 office, and you can hear them yelling at him or
20 whatever, and some people left, and some people came
21 back in the room pretty quiet. They hired people
22 that worked for like a month, even went on a road
23 trip, and then they were told that they do
24 have...their criminal record come back. They do
25 have a criminal record, and, "We can't have you

1 here, but you can go for your pardon. As soon as
2 you get your pardon come back to us".

3 463. Q. Right.

4 A. Yes. So, they were fired, because
5 they were told to...and they didn't want to leave.

6 464. Q. Were they...they weren't...

7 A. This was all because...

8 465. Q. But a criminal record check that was
9 an obligation that you had to satisfy to be an
10 independent contractor, right?

11 A. Yes. I...

12 466. Q. Did you understand why the criminal
13 record check was done?

14 A. Because there want people that don't
15 have a record.

16 467. Q. Right. Why, though? It is because
17 they were going door-to-door, outdoor sales. That
18 was the reason why. It was a government regulation
19 requiring that. Did you understand that?

20 A. Well, now that you tell me. Now I
21 know.

22 468. Q. But you didn't know that otherwise?
23 When you agreed to have a criminal record check done
24 on yourself...

25 A. Yes.

1 469. Q. ...did you ask why?

2 A. No, because I have got nothing to
3 hide. I don't have any criminal...like why would I
4 even ask why?

5 470. Q. Okay. Did you ever do commercial
6 sales?

7 A. Commercial sales? Like, what is...

8 471. Q. Sell not to residential but to
9 commercial businesses?

10 A. Oh, commercial businesses. No, I
11 asked him about that, and Jahan told me that it is
12 harder to do than it is residential because Just
13 Energy doesn't even really do that. You would have
14 to go to Hudson, another affiliate of Just Energy,
15 or there is somebody in...no, so to answer your
16 question, no, I never did commercial sales. I did
17 ask about it, because I was thinking of moving up,
18 right?

19 472. Q. Did you...then, I gather you are not
20 aware that they had separate commercial offices from
21 time to time?

22 A. Yes, as Jahan said, it was called
23 Hudson. That is another commercial office. It is
24 another thing, but they have Just Energy...I walked
25 into...I know that Just Energy...I seen the Just

1 Energy cars. They must have been doing commercial
2 things, too. This place keeps really secretive
3 about a lot of things. You never really know...it
4 is a lot of hearsay, a lot of things, but when you
5 ask a question, you are kind of, like, "Okay, that
6 kind of answers". I don't...there is not really any
7 follow-up. Like, so I never got in...I never did
8 the commercial thing with Just Energy.

9 473. Q. You never made any commercial sales
10 at all?

11 A. No, never.

12 474. Q. Did you ever do any renewal sales?

13 A. No, I...no. It is a renewal. Why
14 would you...if the person is already on Just Energy,
15 they would mail them the thing to renew. Repeat
16 customers would show us at the door, "Oh, yes, I
17 already have you guys. You are on my bill". In
18 fact, I got this big package here. I got to send it
19 in to renew". And I said, "Yes, you have got to do
20 that". So, make sure...

21 475. Q. So, you weren't aware that
22 independent contractors were going to doors to do
23 renewals?

24 A. No. I just did...the contractors
25 are going to the door?

1 476. Q. People like yourself...

2 A. Yes.

3 477. Q. ...at Just Energy...

4 A. Yes.

5 478. Q. ...in addition to or independent of
6 going to new customers would go to renewal customers
7 to try and engage them to renew their contracts.
8 But you never did any of that work?

9 A. Well, you know, it is very
10 disorganized, because...

11 479. Q. No, sorry, my simple question is you
12 never did any of that work?

13 A. Knocking on the door?

14 480. Q. No one said to you, "Here is Mr.
15 Rosenfeld. He is a customer whose contract is up
16 for renewal. Would you contact him, go to his home
17 and try and renew his contract?"

18 A. No, absolutely not. No, everybody
19 is brand new. You knock on doors, and people are
20 asking...telling you, "I am already at Just Energy".
21 They are not telling you...you don't know who has
22 got it and who does not. You are just knocking on
23 the doors they tell you to knock.

24 481. Q. Well, I am simply asking whether you
25 personally ever did any renewal sales. Others did.

1 That is what I am telling you. Maybe you did or
2 didn't. I don't know.

3 A. Well, I feel ripped off, then,
4 because...

5 482. Q. Okay.

6 A. Because I never had a renewal, like,
7 knock on the door and there is a renewal.

8 483. Q. You don't know that they had, for
9 example, an office in Cambridge that largely did
10 renewals?

11 A. No.

12 484. Q. People would go out into the field
13 to do renewals?

14 A. No, never...

15 485. Q. You didn't know that?

16 A. Yes, how do you...no, that would
17 have been nice. That sounds like easy money,
18 because they are already a customer and they want to
19 renew them and...

20 486. Q. Yes.

21 A. Yes, that would be great. I would
22 like to do that. No, I never did that. I would
23 have liked to.

24 487. Q. And you weren't aware of that?

25 A. No. Like, no. Nobody ever told me.

1 You know more than I do, about these things,
2 obviously. Because that would be easy, like, just
3 to knock on the door and tell them, "I am here to
4 renew your contract". It was never like that.

5 488. Q. Now, were you aware, sir, of
6 independent contractors of Just Energy who didn't
7 work in teams, who would go out on their own and,
8 you know, set their own schedules?

9 A. Yes. Sometimes people would say,
10 "Look, I am going to work from my own neighbourhood
11 today".

12 489. Q. Right.

13 A. Yes, and...

14 490. Q. Did you ever do that?

15 A. Yes, and then I come back, and the
16 next day, "Don't do that again, okay?" That was a
17 one-time exception, because it is a team thing. You
18 don't really work on your own. You are
19 always...your crew leader. We have got areas and
20 territories to cover, and you can work on your own
21 time, like, on your day off, which puts you in a
22 Sunday to knock in your neighbourhood.

23 491. Q. But were you aware...so, you did it.
24 Were you aware of others who did do that, though,
25 who did operate, sort of, on their own, and didn't

1 need the team structure?

2 A. No, because I only did it, like, one
3 day or two days, and that was the end of that
4 because I came home.

5 492. Q. Did you know any others who did it,
6 though? I am asking you.

7 A. Yes, one other person. She did her
8 apartment. Yes, she phoned in and she did her,
9 like, condo, that she lived in.

10 493. Q. Anyone else?

11 A. I did it then Sue was the other
12 person. She did it. They don't encourage...they
13 don't tell you to do that. They want you in the
14 office.

15 494. Q. But they don't prevent you from
16 doing that?

17 A. Yes, they do. You are not supposed
18 to have done that, "We made you an exception to the
19 rule because you just called in or you weren't
20 feeling well, and you can say you did it. So, that
21 is fine, but make sure you are back in the office".
22 They don't...

23 495. Q. But there is no consequence for you
24 doing that?

25 A. You get reprimanded. You get

1 answer?

2 503. MR. MARTIN: I am telling him that. He
3 is telling me he doesn't know that.

4 THE DEPONENT: I didn't know that.
5

6 BY MR. MARTIN:

7 504. Q. Yes. He is the regional
8 distributor. He is independent. Your contract...

9 A. He gets all his orders from head
10 office. Head office...

11 505. Q. He doesn't get orders at all.

12 A. He told us he gets orders from head
13 office. He tells us head office wants to know why
14 our numbers are down. He tells us head office wants
15 us to wear the uniforms and to make sure you are
16 handing out the right materials.

17 506. Q. Well, even uniforms, sir, you...

18 A. All the contracts, come in. They
19 are from head office, and Jahan is telling us
20 that...he is the regional...of the office, and the
21 people that own the offices, like Johnny Lavoie,
22 they say they own offices with an RPM Group. They
23 got these other guys...

24 507. Q. You didn't know they were
25 independent?

- 1 A. That Jahan is acting all by himself?
- 2 508. Q. He is independent of Just Energy.
- 3 He has his own independent contract with Just
- 4 Energy. Yes.
- 5 A. No, as far as I know, he is Just
- 6 Energy. It is his office.
- 7 509. Q. And he is...
- 8 A. He even tells you, "This is my
- 9 office".
- 10 510. Q. And he is strictly commission?
- 11 A. He takes \$2,000 out of his pocket,
- 12 and said, "This is what you guys should be making",
- 13 and he throws it at the board. And he says, "Walk
- 14 around with \$2,000 in your pocket, and you will see
- 15 how you feel. Now go out there and knock on some
- 16 doors and bring in...and make yourself a better
- 17 person". But he is the Just Energy person, because
- 18 he goes to Just Energy, and comes up with stuff all
- 19 the time, and information, and they compare
- 20 everything with the other offices.
- 21 511. Q. Well, he wants to drive sales,
- 22 because he is on a commission basis.
- 23 A. So, he is getting a commission on
- 24 what we are getting, right?
- 25 512. Q. Yes.

1 A. Is that...

2 513. Q. Did you not understand that?

3 A. No, but isn't he also getting money
4 for being the office...I think he is.

5 514. Q. No, he is not. He gets an override
6 on what people like yourself sell. You didn't know
7 that?

8 A. Well, but Johnny Lavoie gets money
9 from the head office.

10 515. Q. He is a regional distributor.

11 A. Johnny Lavoie, too? The...

12 516. Q. No, but you don't know. You didn't
13 know what his relationship was, right? Is that what
14 you are telling me? You didn't know that?

15 A. I didn't know that he was getting
16 money from just us. But whenever the head office
17 people come, that is who they go to, and that is how
18 he goes to their office all the time. They must
19 be...

20 517. Q. Just wait for the question. Just
21 wait for the question.

22 A. What is that?

23 518. Q. Just wait for the question. Wait
24 for me to ask a question.

25 A. Okay.

1 519. Q. Exhibit P to your affidavit, sir, is
2 something called a living income plan. Have you
3 reviewed that?

4 A. Yes.

5 520. Q. Now, this was prepared before you
6 were involved in the lawsuit. Do you recall that?

7 MR. ROSENFELD: I don't know the answer
8 to that question, to be honest. I don't
9 know. Do you need to know?

10 521. MR. MARTIN: No, I don't really need to
11 know.
12

13 BY MR. MARTIN:

14 522. Q. My real question is, you talk about
15 a class that says any person since 2012. So, I
16 would think, then, what you are saying is it was
17 since 2012. So, anyone as of January 1, 2013, who
18 worked or continues to work as a sales agent. Am I
19 right?

20 MR. ROSENFELD: No, I would say it would
21 be January 1st, 2012.

22 523. MR. MARTIN: It says since 2012.

23 MR. ROSENFELD: Like I said. To me,
24 that would include 2012.

25 524. MR. MARTIN: Is that the intention, or

1 do you need to think about that?

2 MR. ROSENFELD: That is the intention.

3 525. MR. MARTIN: Okay, well, that is beyond
4 two years from when Mr. Kordestani issued
5 his claim.

6 MR. ROSENFELD: Mr. Omarali?

7 526. MR. MARTIN: Mr. Kordestani.

8 MR. ROSENFELD: Either way. It is a
9 statement. So, is there a question from
10 that?

11 527. MR. MARTIN: Well, no, I just wanted you
12 to clarify. I understood, since 2012...

13 MR. ROSENFELD: Yes, no...

14 528. MR. MARTIN: ...to mean post-2012, which
15 would have been as of January 1, 2013, but
16 you are now telling me you intended it to
17 be something different?

18 MR. ROSENFELD: Yes, January 1st, 2012.
19 If that is not accurate, I will let you
20 know.

U/T

21 529. MR. MARTIN: Thank you. Go to your
22 Statement of Claim...sorry, it is an
23 Amended Statement of Claim...for a moment.
24 Paragraph 19...you suggest in paragraph 19,
25 Mr. Omarali, that you were misled by the

1 Defendants that you were not an employee.

2 MR. ROSENFELD: Sorry, did you say
3 paragraph 19?

4 530. MR. MARTIN: Paragraph 19, page 12.

5 MR. ROSENFELD: No, I might be...

6 531. MR. MARTIN: I have something called an
7 Amended Statement of Claim.

8 MR. ROSENFELD: I have that.

9 532. MR. MARTIN: Paragraph 19 on page 12.

10 MR. ROSENFELD: Paragraph 19 says,
11 "...The Defendants required Kordestani and
12 Omarali to work between 60 and 72 hours per
13 week without receiving the minimum wage..."

14 533. MR. MARTIN: Sorry, go off the record
15 for a second.

16

17 --- DISCUSSION OFF THE RECORD

18

19 BY MR. MARTIN:

20 534. Q. So, in...I appreciate Counsel has a
21 different version, that wasn't issued, but in the
22 issued one in paragraph 19, and I will read the
23 allegation, you say:

24 "...Omarali relied on the defendants to
25 properly classify him regarding his status

1 as an employee and his entitlement to
2 minimum wage, overtime pay, vacation pay,
3 public holiday and premium pay, and was
4 misled by the defendants that he was not an
5 employee of the defendants..."

6 Can you tell me, sir, is there anyone who
7 specifically misled you in that regard, that you
8 were not an employee?

9 A. Yes, that I am not an employee, is
10 that the question?

11 535. Q. Yes. Your allegation, your claim,
12 is that the defendants, Just Energy is the
13 defendants, misled you that you were not an
14 employee.

15 MR. ROSENFELD: May I see the
16 paragraph...

17 THE DEPONENT: Not an employee? Is that
18 what you are saying? I am...

19

20 BY MR. MARTIN:

21 536. Q. Yes.

22 A. ...not an employee? Yes.

23 MR. ROSENFELD: Okay. I just want to
24 see the paragraph, that is all.

25 537. MR. MARTIN: It starts out:

1 "...Omarali relied on the defendants in
2 good faith, and was unaware while
3 working..."

4 That is how it starts.

5 MR. ROSENFELD: Yes, I have got it.

6 538. MR. MARTIN: Okay. What paragraph do
7 you have in that one?

8 MR. ROSENFELD: This will be paragraph
9 20 of the claim that is at tab 3 of the
10 plaintiff's motion record.

11 539. MR. MARTIN: Yes, okay. There we go.

12

13 BY MR. MARTIN:

14 540. Q. So, my question was, are there...I
15 want to know who, like what people misled you?

16 A. Everybody thinks that they are an
17 employee...

18 541. Q. No, no...

19 A. ...but we just don't get...

20 542. Q. No, no, wait, sir. Sir, sir, wait,
21 wait. Wait. I am asking you...

22 A. Yes.

23 543. Q. ...you, who do you say, at Just
24 Energy...so, I want names of people...misled you
25 that you were an employee, that you were not an

1 employee?

2 A. That I was not an employee?

3 544. Q. That you were not an employee.

4 A. Nobody thinks that they are not an
5 employee. Everybody thinks they are employees.

6 545. Q. Okay, stop, okay? Just slow down,
7 okay?

8 MR. ROSENFELD: I don't think this is
9 relevant one way or the other.

10

11 BY MR. MARTIN:

12 546. Q. You are not speaking for 7,000
13 people, sir, okay?

14 MR. ROSENFELD: Sorry...

15 THE DEPONENT: But I was answering your
16 question.

17

18 BY MR. MARTIN:

19 547. Q. No, no, I am asking who you, Haidar
20 Omarali, say misled Haidar Omarali that he was not
21 an employee. Did someone say something to you? Did
22 someone say, "Oh, of course you are an employee.
23 Don't worry about what that independent contractor
24 agreement says"?

25 MR. ROSENFELD: Is it not the opposite?

1 THE DEPONENT: Yes.

2 MR. ROSENFELD: That paragraph is not
3 the opposite? That they would have told
4 him he was an independent contractor?

5 548. MR. MARTIN: He said he was misled. He
6 said he was misled.

7 MR. ROSENFELD: Right, and the
8 allegation is that he is an employee. So,
9 he is being told he is an independent
10 contractor, but the allegation is that he
11 is an employee.

12 THE DEPONENT: Yes, the cheque I get.
13 says "Just Energy". That is an employee
14 cheque.

15

16 BY MR. MARTIN:

17 549. Q. No, it is not.

18 A. That is the proof we have.

19 MR. ROSENFELD: We don't need to argue
20 about it. It is the allegation. So, I
21 don't know what...the question is not
22 relevant.

23 550. MR. MARTIN: So I can understand your
24 claim.

25 MR. ROSENFELD: Okay. So, great. So,

1 why don't you understand the claim?

2 551. MR. MARTIN: I am trying to understand
3 it. I am trying to understand what it was
4 he relied upon to suggest that he was an
5 employee?

6 MR. ROSENFELD: Are you asking for
7 particulars at this point?

8 552. MR. MARTIN: Yes, absolutely, from
9 him...

10 MR. ROSENFELD: ...thank you.

11

12 BY MR. MARTIN:

13 553. Q. So, we have, in our material,
14 suggested that there could be some 7,000 people who
15 would fit within the category of the claim. And you
16 don't know, sir, how many of those 7,000 intended to
17 become independent contractors and not employees, do
18 you?

19 A. I wouldn't know the numbers. Only
20 what was on the websites.

21 554. Q. I am not asking you to verify the
22 7,000. You don't know how many, if not...everyone
23 besides yourself actually wanted to be independent
24 contractors?

25 A. It is the starting job for Just

1 Energy.

2 555. Q. Yes, but they actually wanted to be
3 independent contractors, or they didn't want to be
4 employees.

5 A. You have to do that to move up in
6 the company.

7 556. Q. Right, but I am suggesting to you
8 that there may be thousands of people who actually
9 wanted to be independent contractors. They agreed
10 and intended to be independent contractors. They
11 didn't want to be employees working for, say,
12 minimum wage. They wanted the opportunity to make
13 thousands of dollars as an independent contractor.

14 A. I wouldn't know those people.

15 557. Q. Right. But there could be thousands
16 of people who fit into that category. You haven't
17 polled 7,000 people, have you, sir?

18 A. No, I haven't told polled people. I
19 haven't polled anybody.

20 558. Q. And if I was one of those 7,000, and
21 I am sitting here having a discussion with you...

22 A. Yes.

23 559. Q. ...and I said to you, "Mr. Omarali,
24 no one misrepresented anything to me. I wanted to
25 be an independent contractor", well, you wouldn't

1 know how many of those 7,000 people would fit into
2 that category, would you?

3 A. I am an independent contractor. You
4 all have to be at one point to work in that company.

5 560. Q. But some people, I am saying many of
6 them, may have actually wanted that status.

7 A. Well, I don't know any of those
8 people. All I know is the people that I work with.
9 That is how it works.

10 561. Q. Right, no, but I am talking about
11 people who wanted it, who intended that to be the
12 outcome.

13 A. But how do I know? I don't know any
14 of those people.

15 562. Q. Of course not. And to know, you
16 would have to ask every one of them. Is that...you
17 would have to ask all 7,000, "Isn't that what you
18 wanted? You actually wanted to be independent
19 contractor with the opportunity to make thousands of
20 dollars, well above minimum wage"?

21 MR. ROSENFELD: In this scenario, they
22 could just opt out, couldn't they, Mr.
23 Martin?

24 563. MR. MARTIN: Absolutely not.

25 MR. ROSENFELD: They could not just opt

1 out?

2 564. MR. MARTIN: Absolutely not.

3 MR. ROSENFELD: Why not?

4 565. MR. MARTIN: You would opt out the
5 entire class. You would have no class.

6 MR. ROSENFELD: Well, that posits that
7 everybody in the class wants to be an
8 independent contractor. Isn't that what we
9 are arguing about?

10 566. MR. MARTIN: No, what we are arguing
11 about is that you won't know unless you ask
12 every person.

13 MR. ROSENFELD: I think he has answered
14 the question.

15 567. MR. MARTIN: There is no commonality.

16 MR. ROSENFELD: He doesn't know the
17 scenario that you are suggesting.

18 568. MR. MARTIN: Well, what I am
19 suggesting...actually, I am answering my
20 question. You have to ask every one of the
21 7,000.

22

23 BY MR. MARTIN:

24 569. Q. Did you intend to be an independent
25 contractor or not?

1 MR. ROSENFELD: And you are asking
2 whether Mr. Omarali thinks that is an
3 appropriate question one way or the other
4 for this case?

5 570. MR. MARTIN: I am asking him whether he
6 agrees with me. You would have to ask
7 every one of the 7,000.

8 THE DEPONENT: Why would I ask anybody
9 that question?

10 571. MR. MARTIN: Because...

11 MR. ROSENFELD: That is a good point,
12 Mr. Omarali.
13

14 BY MR. MARTIN:

15 572. Q. ...because you don't know whether we
16 didn't themselves intend to be an independent
17 contractor, and chose not to be an employee?

18 A. Well, it seems like...it sounds like
19 they are going through this misery thing, where we
20 have to get sales, and knock on the doors, and that
21 is the job.

22 573. Q. So, they agreed to it. They
23 understood it, they intended it, and they agreed to
24 it, because they knew they had a chance to make
25 many, many more dollars if they were successful than

1 they ever would if they were an employee on a salary
2 basis?

3 A. Yes, but don't you...

4 574. Q. Yes, I agree.

5 A. It leads to both, right? Eventually
6 you would get a base salary if you end up in those
7 office jobs. If you get promoted, that is with a
8 promotion thing I am saying.

9 575. Q. No, the promotions, sir, only go to
10 the regional distributor bases, and they are all
11 independent. The Johnny Lavoies are independent.
12 They are on commission.

13 MR. ROSENFELD: Is that a question
14 again?

15 576. MR. MARTIN: I am telling him.

16 MR. ROSENFELD: You are telling him...

17 577. MR. MARTIN: He is suggesting...

18 THE DEPONENT: No, but you are telling
19 me things I didn't know about.

20

21 BY MR. MARTIN:

22 578. Q. Right, so that is what I said. Your
23 whole assumption is wrong, sir, that these people
24 would move into a salaried position. They don't.

25 A. Yes, but you are creating a scenario

1 for me that I never even thought of. Like, how
2 would I even be in that position to answer
3 something...

4 579. Q. You are right. I have given you a
5 scenario that you never thought of, and that is of
6 the potential 7,000 people, that many if not most of
7 them actually intended to be an independent
8 contractor, and not to be an employee.

9 MR. ROSENFELD: Is that a statement,
10 or...

11

12 BY MR. MARTIN:

13 580. Q. I am saying, you don't know that to
14 be the case one way or the other, do you?

15 A. An independent contractor is an
16 employee, as far as I am...

17 581. Q. Sorry?

18 A. An independent contractor is an
19 employee.

20 582. Q. No, sir, it is not.

21 A. Well, that is what I am working
22 under. So is everybody else. Everybody else who is
23 there, wearing a JE shirt and a JE hat, we think we
24 are the employees.

25 583. Q. No, they don't, sir. You have asked

1 all 7,000?

2 A. No, the people I work with. We are
3 all employed...

4 584. Q. Yes, the four or five people.

5 A. We knock on the door and we tell the
6 people we are employed by Just Energy...

7 585. Q. No, you don't, sir.

8 A. Yes.

9 586. Q. No, with the greatest of respect,
10 sir, you do not say that.

11 A. We said...

12 587. Q. You do not say that, sir.

13 MR. ROSENFELD: Is that a question or
14 are you telling him that he is not saying
15 it? Please, just ask a question,
16 questions.

17 THE DEPONENT: Because we are not...we
18 don't work for the Ontario Energy Board.
19 That is what we are told to say.

20

21 BY MR. MARTIN:

22 588. Q. You do not say you are an employee
23 of Just Energy, because if you were to say that,
24 that is wrong, because you are not.

25 MR. ROSENFELD: And is that a question,

1 Mr. Martin?

2

3 BY MR. MARTIN:

4 589. Q. And you did not ever say that, sir,
5 did you? You never said that, sir, at the door?

6 A. You have made it sound like I was
7 going to get fired now.

8 590. Q. You would, because you would be
9 non-compliant. You did not say that you were an
10 employee of Just Energy, did you?

11 A. I don't know how to answer that.

12 591. Q. You got a badge that says,
13 "Independent contractor".

14 A. Yes.

15 592. Q. You never said you were an employee,
16 sir, and you well knew you were not an employee?

17 A. Okay. So, I know we did say we were
18 employed by Just Energy, "Who is your employer, who
19 pays your..." I have had people nail me down, like,
20 "Who sends you here?"

21 593. Q. You would be wrong to say that in my
22 respectful view, sir, because you weren't. You were
23 an independent contractor, and that is what you were
24 obliged to say, and you didn't say that.

25 MR. ROSENFELD: And that is what this

1 case is about, Mr. Martin. So, I don't
2 know how many more questions you are going
3 to ask Mr. Omarali about this. But it is
4 enough already.

5 594. MR. MARTIN: It is not enough already.

6

7 BY MR. MARTIN:

8 595. Q. So, you haven't...

9 A. You can ask other people the same
10 question. They are going to be very surprised that
11 that is...

12 596. Q. I have to ask all 7,000, sir. I
13 have to ask every one of them, because you want them
14 to be in this class. And I am saying to you, and
15 don't you agree, I have to ask every 7,000, because
16 you don't know the answer, do you?

17 MR. ROSENFELD: Don't know the answer to
18 what question?

19 597. MR. MARTIN: Don't get in here, please.

20 MR. ROSENFELD: I am sorry, you pointed
21 at me again, but clarify the question,
22 please. And don't point at me.

23

24 BY MR. MARTIN:

25 598. Q. That you have to ask every one of

1 them whether they intended to be an independent
2 contractor, and not an employee?

3 A. There is no difference between the
4 two. As far as we know...

5 599. Q. No, don't keep saying "we", sir,
6 because you are not giving evidence for 7,000
7 people.

8 A. No, but "we" as the...

9 600. Q. "We", who, sir? Who? Who?

10 A. In our office.

11 601. Q. Who?

12 A. In our office at...

13 602. Q. When did you last speak to any of
14 those people, sir? And did you ask them that
15 question?

16 A. You know, when we...

17 603. Q. "We", who, sir? Stop saying "we".

18 A. Well...

19 MR. ROSENFELD: Why don't you let him
20 answer the question?

21 THE DEPONENT: ...the fellow employees
22 that I work with.

23

24 BY MR. MARTIN:

25 604. Q. You don't work with any employees,

1 sir. They are all independent contractors. They
2 all signed contracts, and you admitted to that.
3 Everyone who signs a contract says they are an
4 independent contractor.

5 A. We had to sign it to get the job.

6 605. Q. Yes. And if you didn't sign it, get
7 another job, sir. Because that is the rule.

8 A. Well, no...

9 MR. ROSENFELD: Is that a question, Mr.
10 Martin?

11 606. MR. MARTIN: I am telling him that.

12 MR. ROSENFELD: Again, please stop
13 telling evidence...

14 607. MR. MARTIN: And, again, I am asking him
15 to agree with that.

16 MR. ROSENFELD: Ask him questions. Now,
17 you are asking him to agree with that.

18 THE DEPONENT: We all signed it. Nobody
19 is just going through all this and not even
20 trying it. They were signing the papers so
21 we...

22

23 BY MR. MARTIN:

24 608. Q. So, you are saying to me, sir, you
25 are not aware of anyone determining that they went

1 through the interview process and simply said, "I
2 don't agree. This isn't for me", and they left?

3 A. No, everybody...

4 609. Q. Every single person who comes in the
5 door, you are telling me, signs the independent
6 contractor agreement?

7 A. In my group that I was there that
8 day, we all did.

9 610. Q. That day.

10 A. Yes. And then I am not there the
11 other days to know if anybody walked out.

12 611. Q. Didn't know.

13 A. Well, how would I know?

14 612. Q. I agree, sir. How would you know?
15 The same way, with the other 7,000 people, you do
16 not know whether they intended to be an independent
17 contractor or not, do you, sir? You...Haidar
18 Omarali does not know?

19 A. Just like I wouldn't know, like,
20 whether they can all swim.

21 613. Q. Right.

22 A. I don't know these people.

23 614. Q. Exactly, because you have to ask
24 them the question, sir, correct? You have to ask
25 them.

1 A. So, why would I have to ask them
2 that question? It never occurred to me to ask them
3 that question.

4 615. Q. Because now you are trying to
5 include them all in the same lawsuit, right? Just
6 like...your swimming analogy is a good one. Unless
7 you ask somebody, "Can you swim?" you can't make an
8 assumption about them, can you, sir?

9 A. No, that is...yes, that is why I
10 said that.

11 616. Q. Right. Right. And, so...

12 A. You are asking me that...

13 617. Q. ...unless you ask somebody, "Did you
14 intend...when you signed the independent contractor
15 agreement to actually be an independent contractor",
16 you don't know the answer unless you ask them, do
17 you, sir?

18 MR. ROSENFELD: I don't agree with the
19 question. I don't agree the question is
20 even relevant.

21 618. MR. MARTIN: I am asking him to answer,
22 please.

23 MR. ROSENFELD: And I am refusing. /R

24 619. MR. MARTIN: Okay.

25

1 BY MR. MARTIN:

2 620. Q. Paragraph 20, which I guess is 21,
3 the line starts:

4 "...Omarali did not become aware that he
5 was eligible as an employee..."

6 Do you have that one? Is it 21?

7 A. Yes.

8 621. Q. Yes. Again, this says here:

9 "...The Defendants have continually
10 misrepresented to him his actual
11 eligibility and entitlement to such pay..."

12 Sir, who at Just Energy continually misrepresented
13 to Haidar Omarali that he was not eligible for
14 minimum wage, overtime pay, vacation pay and public
15 holiday and premium pay?

16 MR. ROSENFELD: It specifically says
17 that in the independent contractor
18 agreement. It specifically says that.

19 622. MR. MARTIN: This paragraph, sir,
20 says...

21 MR. ROSENFELD: It says...

22 623. MR. MARTIN: "...The Defendants have
23 continually misrepresented to him..."

24 MR. ROSENFELD: Let's go to the
25 document.

1 entitled to it, and our allegation is that
2 they are employees, and they are entitled
3 to it.

4 629. MR. MARTIN: Okay.

5

6 BY MR. MARTIN:

7 630. Q. That is one reference point for you.
8 Do you have any others?

9 MR. ROSENFELD: I am not answering the
10 question.

/R

11

12 BY MR. MARTIN:

13 631. Q. Just so I understand it, sir, if
14 something was misrepresented to you, you would have
15 had to have relied on it to your detriment to have a
16 claim. You have told me you didn't read your
17 independent contractor agreement. So, how, sir,
18 tell me, has Just Energy ever misrepresented this
19 issue of being an employee and an entitlement to
20 these benefits...was ever misrepresented to you?

21 MR. ROSENFELD: One place is in the
22 independent contractor agreement.

23 632. MR. MARTIN: He didn't read it.

24 MR. ROSENFELD: Well, you say that it is
25 effective and he signed it. I assume that

1 validate...

2 MR. ROSENFELD: We are done.

3 638. MR. MARTIN: ...that as a rep plaintiff.

4 MR. ROSENFELD: There are no more
5 questions...

6 639. MR. MARTIN: Right?

7 MR. ROSENFELD: ...about this paragraph.

8

9 BY MR. MARTIN:

10 640. Q. So, you have no claim, sir, because
11 you didn't read the contract. Is that what you are
12 telling me?

13 MR. ROSENFELD: Don't answer the
14 question.

/R

15

16 BY MR. MARTIN:

17 641. Q. So, just go to paragraph 38 for a
18 moment of the statement...sorry, it is 38 of the
19 Statement of Claim. It will be the document you
20 have, 39.

21 MR. ROSENFELD: "...There was no
22 legitimate basis for the Defendants'
23 arbitrary designation..."

24 642. MR. MARTIN: Yes.

25 MR. ROSENFELD: So, yes, paragraph 39.

1 643. MR. MARTIN: The last sentence of that
2 paragraph says:
3 "...Such classification and exclusion is
4 contrary to the terms of the ESA..."
5 Sorry, I missed a bit. The sentence before
6 that says:
7 "...no legitimate basis for the Defendants'
8 arbitrary designation of the class members
9 as independent contractors, and
10 ineligibility from minimum wage, overtime
11 pay, vacation pay and public holiday and
12 premium pay, which was contrary to the
13 employees' express or implied terms of
14 contract with the Defendants..."
15 Can you tell me what express term or terms
16 are there to suggest Mr. Omarali was not an
17 independent contractor?
18 MR. ROSENFELD: The Employment Standards
19 Act applies. So, those terms and
20 provisions of the Employment Standards Act
21 are either express or implied terms of the
22 contract of employment. That is the
23 allegation.
24 644. MR. MARTIN: Anything else?
25 MR. ROSENFELD: That is the allegation.

1 645. MR. MARTIN: Okay. Let's take a break,
2 take five minutes. I am almost done,
3 because I want to clean up, and then we can
4 move on.

5
6 --- A BRIEF RECESS

7
8 HAIDAR OMARALI, resumed

9 CONTINUED CROSS-EXAMINATION BY MR. MARTIN:

10 646. Q. You were never given a performance
11 review at any time while you were an independent
12 contractor?

13 A. Not a written one, no.

14 647. Q. There was no formal review on any
15 timely basis, like every six months or every year,
16 of you as an independent contractor?

17 A. It wasn't discretionary.

18 648. Q. You mentioned road trips. My
19 understanding is that those road trips are financed
20 by the regional distributor or by an assistant
21 regional distributor. Is that fair?

22 A. I thought so at the beginning, but
23 then we had to pay our own hotel bill.

24 649. Q. And...

25 A. And our own food. The only thing

1 they paid for was the vehicle to drive us there.

2 650. Q. And it is fair to say that not
3 everybody would go on every particular road trip,
4 correct?

5 A. It was mandatory. You really had to
6 have a good excuse why you wouldn't go on a road
7 trip.

8 651. Q. And...

9 A. And they would wait for you for
10 hours until everybody showed up.

11 652. Q. But you told me that you would go on
12 road trips with people from other offices, correct?

13 A. Sometimes it was the Ottawa office.

14 653. Q. And would everyone from the Ottawa
15 office go on a road trip?

16 A. I wouldn't...I was in the Dundas
17 Street office. So, I don't know every single
18 employee in the Ottawa office. So, if any employee
19 in the Ottawa office couldn't make it, I wouldn't
20 know. Because there is a lot of changes, different
21 faces all the time. Half the people might be the
22 same, but the other half might be different again,
23 because the dropout rate is high.

24 654. Q. But the people who had family
25 commitments and the like, they wouldn't go on the

1 road trips?

2 A. How do you know that?

3 655. Q. I am asking you. Were you aware of
4 that?

5 A. No, because that is the kind of job
6 that it is. You have to be there every day, almost,
7 except for Sundays. So...

8 656. Q. But you wouldn't know for example,
9 that people could choose to stay, let's say, in the
10 Ottawa region, and continue to do sales in Ottawa,
11 the Ottawa region, while other members of the Ottawa
12 team went on road trips?

13 A. No, the whole...we were told
14 everybody from the team was there, from Ottawa, and
15 when we have morning meetings in the hotels, they
16 would make sure that we are all there.

17 657. Q. Who told you that everyone from
18 Ottawa was there?

19 A. When you go on a road trip, you
20 would think that everybody from Ottawa...everybody
21 in Ottawa is there, because the same rules would
22 apply, the same owner. The same people own the two
23 offices.

24 658. Q. But you didn't know that everyone
25 from the Ottawa office was there. You didn't know

1 people in the office?

2 A. How would I know if somebody got
3 hired one day and didn't show up, and then they are
4 still employed a week later? Like...

5 659. Q. Okay, what I am talking about,
6 though, is those people who choose, for whatever
7 reasons, family or otherwise, other commitments, or
8 they are just not interested in road trips, they
9 just don't go on the road trips.

10 A. I wouldn't...I didn't know anybody
11 that wasn't interested in the road trips.

12 660. Q. And the road trips, I gather, would
13 be to new territories, perhaps, where doors hadn't
14 been knocked on before?

15 A. You would think so.

16 661. Q. So, the prospects for sales would be
17 higher?

18 A. Yes, but, like, for example, they
19 took us to Thunder Bay and told us, "Nobody has ever
20 worked Thunder Bay before. It is all fresh meat".
21 You are just going to be able to knock and to have
22 sign these people. And then when we get there, we
23 find out another Just Energy office was there two
24 weeks prior, and when you knock further, other
25 people already had Just Energy on their bills for

1 about two years already, they said. So, we were
2 misled, but we were all jumping at the idea of going
3 to an area that Just Energy has never been before.

4 662. Q. Misled by who?

5 A. Well, Jahan and the people who drive
6 us up there, telling us this road trip is going to
7 be the best because we are going to an area that
8 nobody has ever worked before.

9 663. Q. The crew coordinators or the
10 regional distributors told you that?

11 A. Yes, both, yes.

12 664. Q. Sir, can I assume that you have not
13 made a complaint to the Employment Standards branch
14 in respect of the allegations in this litigation?

15 A. Do you know of the Employment...

16 665. Q. Standards branch of the Ministry of
17 Labour. You have not made a complaint to them?

18 A. About Just Energy?

19 666. Q. About the allegations you have in
20 this litigation.

21 A. No, I haven't personally.

22 667. Q. Were you aware of your ability to do
23 so?

24 A. Not until you just mentioned it, no.

25 668. Q. So, your lawyers haven't mentioned

INDEX OF EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
A	T4A Statement of Pension, Retirement, Annuity and Other Income of Haidar Omarali for the year 2012	69
B	T4A Statement of Pension, Retirement, Annuity and Other Income of Haidar Omarali for the year 2013	71

INDEX OF REFUSALS

	REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1			
2			
3			
4			
5			
6			
7	1	6	18
8	2	7	25
9	3	7	26
10	4	8	27
11	5	12	46
12	6	13	53
13	7	13	54
14	8	14	55
15	9	16	68
16	10	16	69
17	11	17	72
18	12	39	181
19	13	67	300
20	14	68	303
21	15	69	309
22	16	69	312
23	17	70	313
24	18	70	314
25	19	136	618
26	20	139	630
27	21	141	640
28	22	148	668



H. Omarali - 151

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

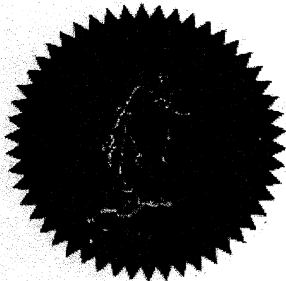
REPORTER'S NOTE:

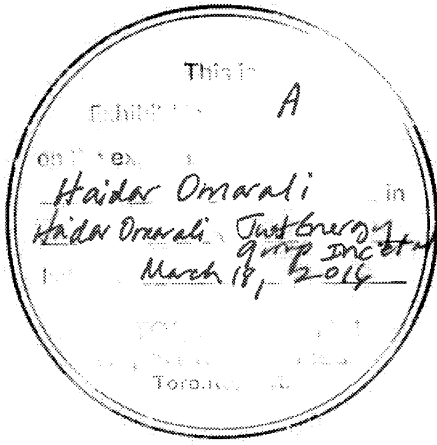
Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above-noted proceedings held before me on the **18th DAY OF MARCH, 2016**, and taken to the best of my skill, ability and understanding.

Certified Correct:

Michael Schintz
Verbatim Reporter





642

Payer's name - Nom du payeur

Just Energy Corp.



Canada Revenue Agency / Agence du revenu du Canada

T4A

STATEMENT OF PENSION, RETIREMENT, ANNUITY, AND OTHER INCOME / ÉTAT DU REVENU DE PENSION, DE RETRAITE, DE RENTE OU D'AUTRES SOURCES

Year / Année 2012

140241

061 Payer's account number / Numéro de compte du payeur 886495258RP0001

016 Pension or superannuation - line 115 / Prestations de retraite ou autres pensions - ligne 115

022 Income tax deducted - line 437 / Impôt sur le revenu retenu - ligne 437

012 Social insurance number / Numéro d'assurance sociale 462 286 105

013 Recipient's account number / Numéro de compte du bénéficiaire

018 Lump-sum payments - line 130 / Paiements forfaitaires - ligne 130

020 Self-employed commissions / Commissions d'un travail indépendant 8,851.40

Recipient's name and address - Nom et adresse du bénéficiaire

Last name (in capital letters) - Nom de famille (en lettres moulées) First name - Prénom Initials - Initiales

Omarali Haidar

19 Blue Ridge Rd.

Willowdale ON M2K 1R6

024 Annuities / Rentes

048 Fees for services / Honoraires ou autres sommes pour services rendus

Other information (see over) / Autres renseignements (voir au verso)

Box - Case Amount - Montant Box - Case Amount - Montant 014 340107

Box - Case Amount - Montant Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

T4A (11)

1459

Payer's name - Nom du payeur

Just Energy Corp.



Canada Revenue Agency / Agence du revenu du Canada

T4A

STATEMENT OF PENSION, RETIREMENT, ANNUITY, AND OTHER INCOME / ÉTAT DU REVENU DE PENSION, DE RETRAITE, DE RENTE OU D'AUTRES SOURCES

Year / Année 2012

061 Payer's account number / Numéro de compte du payeur 886495258RP0001

016 Pension or superannuation - line 115 / Prestations de retraite ou autres pensions - ligne 115

022 Income tax deducted - line 437 / Impôt sur le revenu retenu - ligne 437

012 Social insurance number / Numéro d'assurance sociale 462 286 105

013 Recipient's account number / Numéro de compte du bénéficiaire

018 Lump-sum payments - line 130 / Paiements forfaitaires - ligne 130

020 Self-employed commissions / Commissions d'un travail indépendant 8,851.40

Recipient's name and address - Nom et adresse du bénéficiaire

Last name (in capital letters) - Nom de famille (en lettres moulées) First name - Prénom Initials - Initiales

Omarali Haidar

19 Blue Ridge Rd.

Willowdale ON M2K 1R6

024 Annuities / Rentes

048 Fees for services / Honoraires ou autres sommes pour services rendus

Other information (see over) / Autres renseignements (voir au verso)

Box - Case Amount - Montant Box - Case Amount - Montant 014 340107

Box - Case Amount - Montant Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

Box - Case Amount - Montant

T4A (11)

1459

This is
Exhibit No. B
on the examination of:
Haider Omarali in
Haider Omarali v. Ind Energy Group
Inc. et al.
held on March 18, 2016
VICTORY VERBATIM
Reporting Services
Toronto, Ont.



Payer's name - Nom du payeur
Just Energy Corp.

061 Payer's account number / Numéro de compte du payeur
886495258RP0001

Canada Revenue Agency / Agence du revenu du Canada

Year / Année **2013**

T4A
Statement of Pension, Retirement, Annuity, and Other Income
État du revenu de pension, de retraite, de rente ou d'autres sources

Pension or superannuation - line 115 / Prestations de retraite ou autres pensions - ligne 115

Income tax deducted - line 437 / Impôt sur le revenu retenu - ligne 437

016 [] [] 022 [] []

Lump-sum payments - line 130 / Paiements forfaitaires - ligne 130

Self-employed commissions / Commissions d'un travail indépendant

018 [] [] 020 **23,515** 03

Social insurance number / Numéro d'assurance sociale

012 **462 286 105**

Recipient's account number / Numéro de compte du bénéficiaire

013 [] []

140241

T4A (13) Protected B when completed / Protégé B une fois rempli

Recipient's name and address - Nom et adresse du bénéficiaire

Last name (in capital letters) - Nom de famille (en lettres moulées) First name - Prénom Initials - Initiales

Omarali **Haidar**

19 Blue Ridge Rd.
Willowdale ON M2K 1R6

Annuities / Rentes

Fees for services / Honoraires ou autres sommes pour services rendus

024 [] [] 048 [] []

Other information (see over) / Autres renseignements (voir au verso)

Box - Case	Amount - Montant	Box - Case	Amount - Montant
014	340107	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]

1418

Payer's name - Nom du payeur
Just Energy Corp.

061 Payer's account number / Numéro de compte du payeur
886495258RP0001

Canada Revenue Agency / Agence du revenu du Canada

Year / Année **2013**

T4A
Statement of Pension, Retirement, Annuity, and Other Income
État du revenu de pension, de retraite, de rente ou d'autres sources

Pension or superannuation - line 115 / Prestations de retraite ou autres pensions - ligne 115

Income tax deducted - line 437 / Impôt sur le revenu retenu - ligne 437

016 [] [] 022 [] []

Lump-sum payments - line 130 / Paiements forfaitaires - ligne 130

Self-employed commissions / Commissions d'un travail indépendant

018 [] [] 020 **23,515** 03

Social insurance number / Numéro d'assurance sociale

012 **462 286 105**

Recipient's account number / Numéro de compte du bénéficiaire

013 [] []

T4A (13) Protected B when completed / Protégé B une fois rempli

Recipient's name and address - Nom et adresse du bénéficiaire

Last name (in capital letters) - Nom de famille (en lettres moulées) First name - Prénom Initials - Initiales

Omarali **Haidar**

19 Blue Ridge Rd.
Willowdale ON M2K 1R6

Annuities / Rentes

Fees for services / Honoraires ou autres sommes pour services rendus

024 [] [] 048 [] []

Other information (see over) / Autres renseignements (voir au verso)

Box - Case	Amount - Montant	Box - Case	Amount - Montant
014	340107	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]

1418

*THIS IS EXHIBIT "10" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

ONTARIO
SUPERIOR COURT OF JUSTICE

GV/sp

B E T W E E N:

KIA KORDESTANI HAIDAR OMARALI

Plaintiff

- and -

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

Defendants

This is the Cross-Examination of PETRA FILIPOVIC on her Affidavit affirmed the 7th day of August, 2015, held at the Offices of Fasken Martineau DuMoulin LLP, Bay Adelaide Centre, 333 Bay Street, Suite 2400, Toronto, Ontario, on the 31st day of March, 2016.

Proceeding under the Class Proceedings Act, 1992

A P P E A R A N C E S:

DAVID ROSENFELD }
JODY BROWN }
LAURA F. COOPER }
PAUL MARTIN }

--- for the Plaintiff

--- for the Defendants

INDEX OF PROCEEDINGS

PAGE NUMBER

PETRA FILIPOVIC, sworn	
Cross-Examination by:	
Ms. Cooper	3 - 35
INDEX OF REFUSALS	36 - 37
CERTIFICATION	38

1 PETRA FILIPOVIC, sworn

2 CROSS-EXAMINATION BY MS. COOPER:

3

4 1. Q. Good morning, Ms. Filipovic. You
5 affirmed an affidavit in this proceeding on August
6 7, 2015. That's correct?

7 A. Yes.

8 2. Q. Was the affidavit true when you
9 affirmed it in August?

10 A. Absolutely, yes.

11 3. Q. Is it still true today?

12 A. Yes.

13 4. Q. There is nothing in there you want
14 to change?

15 A. No.

16 5. Q. What did you do to prepare to come
17 here today?

18 A. My affidavit is here. This is my
19 preparation for today.

20 6. Q. Right, but before you came here
21 today, so between the time in August when you
22 affirmed this and now, what did you do to prepare to
23 come here today?

24 A. I have went over what happened, and
25 looked over any type of material I might have had

1 from the time when I was working for the company.

2 7. Q. Okay.

3 A. That would be about it, yes.

4 8. Q. And what type of material would you
5 have had from when you were with the company?

6 A. Anything that would have been left
7 over, if I had any marketing material or any type of
8 pay stub.

9 9. Q. Okay. So what was it that you did
10 have? What do you have?

11 MR. ROSENFELD: Don't answer the
12 question.

13 10. MS. COOPER: Sorry, just let me get the
14 question out.

15 MR. ROSENFELD: Fair enough.

16

17 BY MS. COOPER:

18 11. Q. What do you have in your possession
19 currently, not today, but at home or elsewhere?

20 MR. ROSENFELD: Don't answer the
21 question.

/R

22

23 BY MS. COOPER:

24 12. Q. So you are saying that you reviewed
25 this material before you came here today, yes?

1 MR. ROSENFELD: Don't answer the
2 question.

/R

3 13. MS. COOPER: You're not going to answer
4 what she did to prepare for today?

5 MR. ROSENFELD: No, it's not relevant.
6

7 BY MS. COOPER:

8 14. Q. Okay. So you do have some material
9 left from when you were at Just Energy, yes?

10 MR. ROSENFELD: Don't answer the
11 question.

/R

12

13 BY MS. COOPER:

14 15. Q. Have you produced any such material
15 to Mr. Rosenfeld?

16 MR. ROSENFELD: Don't answer the
17 question.

/R

18

19 BY MS. COOPER:

20 16. Q. What precisely is in this material
21 that you have from the time you were at Just Energy?

22 MR. ROSENFELD: Don't answer the
23 question.

/R

24

25 BY MS. COOPER:

1 17. Q. How did you first become involved
2 with this lawsuit?

3 MR. ROSENFELD: Don't answer the
4 question. /R

5
6 BY MS. COOPER:

7 18. Q. Who first contacted you about this
8 lawsuit?

9 MR. ROSENFELD: Don't answer the
10 question. /R

11
12 BY MS. COOPER:

13 19. Q. Do you know the plaintiff in this
14 action, Mr. Omarali?

15 A. Yes.

16 20. Q. How do you know Mr. Omarali?

17 A. We were working together at the
18 time.

19 21. Q. At what time?

20 A. From the period when I was working
21 for the company, he was there as well.

22 22. Q. I see. Do you know Kian Nazerally?

23 MR. ROSENFELD: Don't answer the
24 question. /R

25

1 BY MS. COOPER:

2 23. Q. Do you know Mortuza Awal?

3 MR. ROSENFELD: Don't answer the
4 question.

/R

5

6 BY MS. COOPER:

7 24. Q. So I have a series of questions that
8 arise from those questions. I'm not going to put
9 them all on the record right now, although I can if
10 you like, but I take it you are going to refuse
11 anything related to this.

12 MR. ROSENFELD: What do they relate to?

13 25. MS. COOPER: Well, I want to know what
14 discussions Ms. Filipovic had with each of
15 those individuals. I want to know they had
16 a discussion.

17 MR. ROSENFELD: About what?

18 26. MS. COOPER: About this case.

19 MR. ROSENFELD: Okay, then no.

/R

20 27. MS. COOPER: I want to know when those
21 discussions took place.

22 MR. ROSENFELD: No.

/R

23 28. MS. COOPER: Okay.

24

25 BY MS. COOPER:

1 29. Q. So at some point in some way we
2 aren't going to know about, you became aware of this
3 lawsuit, yes?

4 A. Yes.

5 30. Q. And you were asked to provide an
6 affidavit, yes?

7 A. I offered.

8 31. Q. You offered to provide an affidavit?

9 A. Yes.

10 32. Q. Okay. So did you contact Mr.
11 Rosenfeld's firm, then, and offer to provide an
12 affidavit?

13 MR. ROSENFELD: Don't answer the
14 question.

/R

15 33. MS. COOPER: Well, she has told me she
16 has offered. I can ask who she offered.

17 MR. ROSENFELD: I'm not letting her
18 answer the question. I don't know how it's
19 relevant to subrogation.

20 34. MS. COOPER: Well, it's her evidence.
21 I'm clarifying what her evidence is.

22 MR. ROSENFELD: That's fine. She
23 doesn't need to answer the question.
24

25 BY MS. COOPER:

1 35. Q. Did someone ask you to provide an
2 affidavit?

3 MR. ROSENFELD: Don't answer the
4 question. /R

5

6 BY MS. COOPER:

7 36. Q. Do you know Kia Kordestani?

8 MR. ROSENFELD: Don't answer the
9 question. /R

10 37. MS. COOPER: You're not going to answer
11 whether she even knows him?

12 MR. ROSENFELD: No.

13

14 BY MS. COOPER:

15 38. Q. Okay. So in providing this
16 affidavit you spoke with counsel from Mr.
17 Rosenfeld's firm, correct?

18 MR. ROSENFELD: Don't answer the
19 question. I don't know why this is all
20 relevant. /R

21

22 BY MS. COOPER:

23 39. Q. And how many times did you speak
24 with counsel prior to affirming your affidavit?

25 MR. ROSENFELD: Don't answer the

1 question. /R

2

3 BY MS. COOPER:

4 40. Q. Did you provide the information in
5 this affidavit to Mr. Rosenfeld?

6 MR. ROSENFELD: To me or to the firm?

7 41. MS. COOPER: Or your firm.

8 MR. ROSENFELD: That's fine. Go ahead.

9 THE DEPONENT: Yes.

10

11 BY MS. COOPER:

12 42. Q. How did you provide that
13 information?

14 MR. ROSENFELD: Like, what does it
15 matter how she provided the information?

16 43. MS. COOPER: Well, I'm entitled to
17 understand how the affidavit came into
18 being. You have put it forward, and I want
19 to understand how the affidavit arose.

20 MR. ROSENFELD: That's fine. Go ahead.

21 THE DEPONENT: I provided the
22 information over a phone call.

23

24 BY MS. COOPER:

25 44. Q. Okay, and at some point this

1 affidavit was provided to you. Is that correct?

2 A. Yes.

3 45. Q. And did you make any changes to the
4 affidavit before you swore it?

5 A. No.

6 46. Q. Did it contain all the information
7 that you provided to Mr. Rosenfeld's firm?

8 MR. ROSENFELD: Don't answer the
9 question.

/R

10

11 BY MS. COOPER:

12 47. Q. Did you receive a draft of this
13 affidavit before your telephone call with Mr.
14 Rosenfeld's firm?

15 MR. ROSENFELD: Don't answer the
16 question.

/R

17

18 BY MS. COOPER:

19 48. Q. Are you aware that others have
20 provided affidavits in this lawsuit?

21 A. No.

22 49. Q. No. So you are not aware that Mr.
23 Omarali has affirmed an affidavit as well?

24 A. I'm not aware of what he is doing.

25 50. Q. Okay, and you are not aware of Mr.

- 1 Nazerally having affirmed an affidavit?
- 2 A. No.
- 3 51. Q. Or Mr. Awal?
- 4 A. No.
- 5 52. Q. So you were an independent
6 contractor/sales agent for Just Energy from
7 September, 2012 to April, 2013, correct?
- 8 A. Correct.
- 9 53. Q. And in your affidavit you say you
10 knew someone at Just Energy before you joined. Who
11 was that?
- 12 A. That was the regional.
- 13 54. Q. Regional?
- 14 A. Regional manager.
- 15 55. Q. Regional distributor?
- 16 A. Sorry, distributor, yes.
- 17 56. Q. What is that person's name?
- 18 A. Jahan Saffari.
- 19 57. Q. And how did you know him?
- 20 A. Through previous employment through
21 National Home Services.
- 22 58. Q. Okay, and what was National Home
23 Services?
- 24 A. It is Just Energy's sister company.
- 25 59. Q. And so you were selling something

1 else there, water tanks?

2 A. Yes, initially, yes.

3 60. Q. Initially, you were selling water
4 tanks at Home Services?

5 A. Correct.

6 61. Q. Did you sell something else at Home
7 Services?

8 A. No, it was just water tanks, yes.

9 62. Q. And did you know anyone else at Just
10 Energy before you joined?

11 A. No.

12 63. Q. And where were you physically
13 located in the Home Services world?

14 A. Can you explain?

15 64. Q. Was there an office that you were,
16 sorry, attached to in some way?

17 A. Yes.

18 65. Q. Right, so what physical area were
19 you...

20 A. Etobicoke, Kipling.

21 66. Q. Did you sign a contract at Home
22 Services as well?

23 MR. ROSENFELD: Don't answer the
24 question.

/R

25

1 BY MS. COOPER:

2 67. Q. And before you were at Home
3 Services, what did you do for work prior to that?

4 MR. ROSENFELD: Don't answer the
5 question. /R

6

7 BY MS. COOPER:

8 68. Q. Were you in sales roles before Home
9 Services?

10 MR. ROSENFELD: Don't answer the
11 question. /R

12

13 BY MS. COOPER:

14 69. Q. And did you sign any contracts with
15 those companies?

16 MR. ROSENFELD: Don't answer the
17 question. /R

18 70. MS. COOPER: And if you did, I would
19 like to have copies of those contracts.

20 MR. ROSENFELD: We won't be providing
21 them. /R

22

23 BY MS. COOPER:

24 71. Q. What did you do after leaving Just
25 Energy?

1 MR. ROSENFELD: Don't answer the
2 question.

/R

3 72. MS. COOPER: I would want to know what
4 she did after leaving Just Energy, whether
5 she signed contracts in those roles. I
6 would like copies of those contracts as
7 well.

8 MR. ROSENFELD: We will be refusing
9 those questions.

/R

10

11 BY MS. COOPER:

12 73. Q. How did you end your relationship
13 with Just Energy?

14 A. I advised my crew coordinator...it
15 was actually during a road trip, that once we
16 complete the road trip I will no longer be
17 continuing my employment, and I will hand in my
18 badge and any type of empty contracts that I had,
19 hand in my binder.

20 74. Q. Right, and who was...

21 A. Which I did.

22 75. Q. Who was your crew coordinator?

23 A. Jennifer Borg.

24 76. Q. And where were you on this road
25 trip.

1 A. Sudbury.

2 77. Q. In your affidavit you say that you
3 didn't know what the job entailed when you joined
4 Just Energy, but you knew about the company through
5 Home Services, yes?

6 A. I have heard of it, yes.

7 78. Q. Right, and you knew what type of
8 job...what type of role it was through Mr. Saffari,
9 yes?

10 A. Yes, a brief description.

11 79. Q. Right. So you were aware that it
12 was a sales position?

13 A. I was not aware of all the details
14 it entailed. I was aware that it was a sales job.

15 80. Q. Right.

16 A. Yes.

17 81. Q. And you were aware that you were
18 going to be an independent contractor?

19 A. I was aware I was going to be a
20 sales agent/independent contractor, just like I was
21 with Home Services, just different products this
22 time.

23 82. Q. Right, okay. You went through
24 training and a test, yes?

25 A. Yes, I completed the CPA test.

1 83. Q. Right, and then you signed a
2 contract?

3 A. Correct.

4 84. Q. Okay. Can we just look at that
5 contract? It's at Exhibit G of the Teixeira
6 affidavit, please. Are you ready?

7 A. Yes, sure.

8 85. Q. So in particular I wanted you to
9 look at pages 141.

10 A. Okay, yes.

11 86. Q. Just at the top right there are some
12 page numbers.

13 A. Yes.

14 87. Q. To 146.

15 A. Okay.

16 88. Q. Do you have that?

17 A. Yes, I do.

18 89. Q. This is your independent contractor
19 agreement from Just Energy, yes?

20 A. Yes.

21 90. Q. Okay, and on page 146 that's your
22 signature, yes?

23 A. This is my signature, yes.

24 91. Q. And this contract sets out the
25 various terms of your engagement as an

1 independent...

2 A. I don't recall seeing this.

3 92. Q. ...contractor? Sorry, just let me
4 finish the question.

5 A. Sorry about that.

6 93. Q. So right now we're just looking at
7 141...

8 A. Yes.

9 94. Q. ...to 146. That's what we're
10 talking about, okay?

11 A. Okay.

12 95. Q. So this sets out the terms of your
13 independent contractor engagement, yes?

14 A. Yes, it seems that way.

15 96. Q. Well, you signed the contract, yes?

16 A. Yes, but I have not read through
17 this part. I don't recall seeing this actually. I
18 remember filling out this. This is my handwriting,
19 absolutely.

20 97. Q. That's a different page that we're
21 talking about. What page is that?

22 A. Yes, I understand. I don't...that
23 is...yes, no problem, sorry, 139.

24 98. Q. Okay, yes.

25 A. I have filled that out. I do not

1 recall the details of anything from 141 through the
2 pages you mentioned, to 145.

3 99. Q. Okay, so you don't recall?

4 A. No, I do not.

5 100. Q. But you did sign it on that date
6 that is indicated on it, yes?

7 A. Yes, I did sign it.

8 101. Q. And you had the opportunity to read
9 the contract?

10 A. I don't remember that opportunity,
11 no. I don't recall that...I recall it as being very
12 brief.

13 102. Q. But you understood that this is what
14 was going to govern your relationship, yes?

15 A. I didn't understand the details.

16 103. Q. No, but you understood that this is
17 what was going to be what governed your relationship
18 with Just Energy, yes?

19 A. I understood it meant employment,
20 but I didn't understand any type of terms and
21 conditions this entailed.

22 104. Q. Okay, and when you say "employment"
23 you mean independent contractor. You told me
24 earlier...

25 A. Yes.

1 105. Q. ...that you understood you were
2 going to be an independent contractor, yes?

3 A. Yes, I understood this as this was
4 going to be linking me to the company. So I am
5 going to be marketing for them.

6 106. Q. Right, and just like with Home
7 Services, it was an independent contractor
8 arrangement, yes?

9 A. Yes.

10 107. Q. Right, and you understood that at
11 the time?

12 A. I didn't understand completely what
13 that meant. I don't have an understanding
14 completely, but I agreed to it.

15 108. Q. Right. You understood that you were
16 going to be paid commission, yes?

17 A. Yes, I understood it was going to be
18 commission.

19 109. Q. Right, and you understood that all
20 funds you received from the company would be
21 commission, based on that agreement, yes?

22 A. Yes.

23 110. Q. And you accepted commission payments
24 throughout the time that you were with Just Energy,
25 yes?

1 A. Yes.

2 111. Q. And you were aware that there were
3 no deductions being taken from those commissions for
4 things like taxes, for example, correct?

5 A. Yes.

6 112. Q. Right, and you knew that you could
7 deduct expenses on your tax return, for example?

8 A. Well, actually I was advised by them
9 to do so. As a newcomer to Canada, I didn't really
10 understand fully how this worked. So I didn't
11 really understand what that means, different forms
12 of filing tax and stuff like that.

13 113. Q. Sure. Did you complete tax returns
14 during the years that you were engaged with Just
15 Energy?

16 A. Absolutely.

17 114. MS. COOPER: Could I have copies of
18 those, please?

19 MR. ROSENFELD: No. Sorry, can you
20 repeat the question again?

21 115. MS. COOPER: Copies of the tax returns.

22 MR. ROSENFELD: Oh, no. Thank you.

/R

23

24 BY MS. COOPER:

25 116. Q. And did you ever go to an accountant

1 to ask about the expenses that you could possibly
2 deduct?

3 A. I went to an accountant once I was
4 ready to file my taxes...

5 117. Q. Right.

6 A. ...not prior. I didn't have any
7 prior conversations or discussions on how to go
8 about the situation. It was literally just once I
9 had to do it, I did it.

10 118. Q. Okay.

11 A. That's all.

12 119. Q. And you knew that you were paid on
13 the basis of the contracts that you signed with
14 customers after a certain process was completed. So
15 you were aware that the more contracts that went
16 through the more you would receive from Just Energy,
17 right?

18 A. That's what we were told, yes.

19 120. Q. And so the more you sold, the more
20 you could make, yes?

21 A. That was how we were explained, yes.

22 121. Q. Now, you said that when you were at
23 Just Energy...you mentioned a couple of people.
24 Were you part of a crew at Just Energy, a particular
25 crew at any time?

1 A. It would change.

2 122. Q. Right.

3 A. It would change. We would mix in
4 the office. Sometimes one crew goes out.

5 123. Q. Right.

6 A. Sometimes you mix it. So I would
7 say it was diverse, but it was a smaller office,
8 anyways. So it was kind of one crew to begin with.

9 124. Q. But it varied over time?

10 A. It varied over time, it did,
11 absolutely.

12 125. Q. And was the regional distributor the
13 same throughout your time there?

14 A. Yes, he was.

15 126. Q. And did you have different crew
16 coordinators?

17 A. No, we would...there was
18 actually...yes, there was two crew coordinators. So
19 it would be between the two of them. It would vary
20 who would take us out.

21 127. Q. And who were they?

22 A. There was Jennifer Borg and it was
23 Dominic. I don't remember his last name. I'm
24 sorry.

25 128. Q. That's okay. Thank you.

1 A. I remember the first name.

2 129. Q. You knew that those crew
3 coordinators were also independent contractors,
4 right?

5 A. Yes.

6 130. Q. Yes. So you were never an assistant
7 crew coordinator or crew coordinator?

8 A. No, I was not.

9 131. Q. So you said in your affidavit that
10 you observed the hiring process each week...

11 A. Yes.

12 132. Q. ...at the Etobicoke office?

13 A. That is correct.

14 133. Q. Did you sit in on the actual process
15 every week?

16 A. Of the training?

17 134. Q. No, of the hiring process.

18 A. Not the hiring, just the training.

19 135. Q. Right. So let's just break that
20 down.

21 A. Okay.

22 136. Q. So the hiring process, you didn't
23 observe every week?

24 A. I would see the new hires, that is
25 correct. The actual interview was not done by

1 myself.

2 137. Q. Right.

3 A. I would not witness the interview.

4 138. Q. Right, and when you say you were
5 there for the training...

6 A. Yes.

7 139. Q. ...what do you mean by that, every
8 week?

9 A. Okay, so when we would have new
10 hires come in every week, they would have to go
11 through training, and we would be the ones that they
12 would watch, practise the sales pitch and any...if
13 they had any questions in regards to the paperwork
14 or marketing material, we would be there to help
15 them. So I was part of that in that way.

16 140. Q. Okay. Part of what new hires did
17 was take OEB training as well, yes?

18 A. Yes, the ECPA test.

19 141. Q. Pardon me?

20 A. ECPA test.

21 142. Q. Right. While we are talking about
22 that...

23 A. Yes.

24 143. Q. ...let's just look again at the same
25 exhibit.

1 A. Sure.

2 144. Q. This time, pages 151 to 172.

3 MR. ROSENFELD: Why don't you take a
4 minute to look at that?

5 THE DEPONENT: Yes, absolutely. To 165
6 you said, what page?

7 MR. ROSENFELD: 172, I believe.
8

9 BY MS. COOPER:

10 145. Q. 172.

11 A. 172, okay. Okay.

12 146. Q. Okay. So that is the training
13 module assessment that you completed, yes?

14 A. Yes.

15 147. Q. So when the new people came in for
16 the hiring process, you don't know exactly what
17 happened every week for those people during their
18 interview, right?

19 A. No, I was not there.

20 148. Q. Right, and you don't know what was
21 said during the interviews?

22 A. No.

23 149. Q. Or what the circumstances were of
24 their interviews or any questions they asked?

25 A. No.

1 150. Q. Right, okay. Were you there when
2 they...so you said you were there as part of their
3 training, and in fact, you gave some training, yes?

4 A. Yes.

5 151. Q. And did they sometimes shadow you as
6 well?

7 A. Yes.

8 152. Q. And were you there when they signed
9 their independent contractor agreements?

10 A. No.

11 153. Q. No, so you don't know, again, what
12 they might have asked about their agreement?

13 A. No.

14 154. Q. No, you have no information about
15 that?

16 A. No.

17 155. Q. Right, okay. You don't know why
18 they would have decided to sign the agreement?

19 A. Absolutely not.

20 156. Q. Now, you talk in your affidavit
21 about a standard day, but there were variations in
22 what happened every day, yes?

23 A. Not really. Only the location would
24 change. Every day was exactly the same.

25 157. Q. But you mentioned a road trip. So

1 that was...

2 A. Exactly, location. Location was the
3 only difference. So either it would be within the
4 GTA, or it would be somewhere further in Ontario.
5 That would be the main difference, but every day
6 started the same, at the same time, ended at the
7 same time. It was just a matter of where we were.

8 158. Q. And so you're saying you did exactly
9 the same things on road trips as you did when you
10 were working out of Etobicoke?

11 A. Yes. Our day would start
12 approximately at the same time. We would prepare
13 pretty much the same way like we would at the
14 office, or if we were on a road trip, and from
15 there, we would knock.

16 159. Q. So in terms of the preparation, you,
17 at times, were involved in helping train others?

18 A. Yes.

19 160. Q. You have told me that. I presume
20 you also were receiving training and coaching during
21 those meetings you're describing in the mornings,
22 yes?

23 A. Did I receive training...

24 161. Q. Yes, and coaching?

25 A. ...and coaching? Yes, we would have

1 a meeting where we would practise our sales pitch,
2 absolutely, all of us, yes.

3 162. Q. Right. Now, sometimes people did
4 take days off, yes?

5 A. Not me.

6 163. Q. I didn't...

7 A. People would rarely take days off,
8 rarely.

9 164. Q. But you could have taken a day off
10 if you wanted to?

11 A. Very rarely.

12 165. Q. I didn't ask you how often you did.
13 I said you could have, yes?

14 A. It was not encouraged, and it was
15 not...it was something that I didn't really feel
16 like I had the option to do as I should have. I
17 don't feel like I had the freedom to take a day off
18 whenever I wanted to. I was not allowed to do that.

19 In fact, when I requested days off, a lot
20 of the times I was refused.

21 166. Q. Who did you make the request of?

22 A. Crew coordinator. That's who we
23 would talk to in regards to anything, and then she
24 would talk to the regional from there.

25 167. Q. If you could look back at page 141

1 of the record?

2 A. Yes.

3 168. Q. So in the first full paragraph you
4 see in the second sentence it says, "The purpose of
5 this agreement"? Do you see where I am? So there
6 is one sentence at the top...

7 A. Okay.

8 169. Q. ...and then there is a full
9 paragraph.

10 A. Got it.

11 170. Q. It says, "The purpose of this
12 agreement." Do you see that?

13 A. Yes.

14 171. Q. So as you have already acknowledged,
15 this agreement confirms the terms and conditions of
16 your engagement. So if you keep going, it says, in
17 the next line:

18 "...The contractor is not required to
19 solicit and/or acquire contracts for any
20 minimum number of hours..."

21 So it says that right in your contract, right?

22 A. That was not what it was like.

23 172. Q. No, but that is not my question.

24 A. It says in the paperwork, yes. In
25 reality, it was not executed.

1 173. Q. Right. What do you mean by "not
2 executed"? The contract was executed, yes?

3 A. The contract was there, but it was
4 not...

5 174. Q. And it was executed?

6 A. It was not, no.

7 175. Q. It was executed...

8 A. This did not happen in reality.

9 176. Q. Right. But you signed the contract?

10 A. I did sign it, absolutely.

11 177. Q. So it says you are not required to.

12 So if you had taken the time to look back to your
13 contract, you could have...

14 A. I didn't have a copy.

15 178. Q. Did you ask for a copy?

16 A. I do not recall. It was a little
17 while ago.

18 179. Q. So you could have asked for a copy.
19 You could have pointed to this term that says that
20 you didn't have to solicit for any minimum number of
21 hours, right?

22 A. I could have been advised as well,
23 once I requested my day off, for example, or any
24 change within my hours, but I was never advised of
25 that. I was told that I have to be there for nine

1 o'clock, and we have to end at nine o'clock...sorry,
2 nine p.m. So I didn't have the freedom to execute
3 this, even though it is in the contract like you
4 said, yes.

5 180. Q. It is in the contract.

6 A. Yes.

7 181. Q. So you could have relied on the
8 contract. You could have asked for a copy of your
9 contract and you could have pointed to this term,
10 yes?

11 A. I was not aware it was there.

12 182. Q. No, but you could have?

13 A. If I knew it was there, I would
14 have.

15 183. Q. Okay. Did you ever take vacation?

16 A. No.

17 184. Q. Did you always do residential
18 contracts? Did you ever do any commercial?

19 A. No, I did not do commercial. It was
20 all residential.

21 185. Q. Were you aware of commercial
22 contracts being signed?

23 A. I'm aware they exist.

24 186. Q. Right, but you didn't pursue that?

25 A. No, I wasn't part of that.

1 187. Q. And similarly with renewals, did you
2 ever pursue any renewal work?

3 A. No.

4 188. Q. No?

5 A. Those are not done at the door.

6 189. MS. COOPER: Okay. Can we just take a
7 few minutes?
8

9 --- A BRIEF RECESS
10

11 PETRA FILIPOVIC, resumed

12 CONTINUED CROSS-EXAMINATION BY MS. COOPER:
13

14 190. Q. In your affidavit you say that you
15 worked up until April, 2013 as an independent
16 contractor?

17 A. That is correct.

18 191. Q. With Just Energy?

19 A. Correct.

20 192. Q. Do you recall the exact date?

21 A. I do not recall the exact date.

22 Sorry.

23 193. Q. You mentioned Jahan Saffari. Have
24 you spoken to him about this lawsuit?

25 A. No.

1 194. Q. Have you spoken to Jennifer Borg
2 about the lawsuit?

3 A. No.

4 MR. ROSENFELD: Sorry, don't answer the
5 question. /R

6 195. MS. COOPER: She already answered.

7 MR. ROSENFELD: I know.
8

9 BY MS. COOPER:

10 196. Q. You said that Jahan Saffari was the
11 regional distributor when you joined as an
12 independent contractor, and that you knew him prior
13 to joining. Presumably if you had any questions
14 about the independent contractor agreement, you
15 could have asked Jahan, yes?

16 A. Yes.

17 197. Q. You mentioned that you sold water
18 tanks at Home Services. How long did you do that?

19 A. That was from May to July, I
20 believe.

21 198. Q. Of what year?

22 A. 2012, yes.

23 199. Q. I think I asked, but in case I
24 didn't I would like a copy of the independent
25 contractor agreement she signed.

1 MR. ROSENFELD: You have asked, and
2 refused.

3

4 BY MS. COOPER:

5 200. Q. Are you aware of any others who were
6 asked to provide an affidavit in this lawsuit?

7 MR. ROSENFELD: Don't answer that
8 question.

/R

9

10 BY MS. COOPER:

11 201. Q. We talked about commercial contracts
12 for provision of energy services. Did you ever
13 obtain any contracts from businesses?

14 A. Contracts...did I sign up
15 businesses, you mean?

16 202. Q. Yes.

17 A. Not that I recall, no. It was
18 residential.

19 203. Q. So no commercial?

20 A. Not that I recall, no.

21 204. MS. COOPER: Okay, well, subject to
22 undertakings, refusals and questions
23 arising therefrom, we are completed today.

24 MR. ROSENFELD: Thank you. No re-
25 examination. Thanks.

INDEX OF REFUSALS

	REFUSAL NO.	PAGE NO.	QUESTION NO.
1			
2			
3			
4			
5			
6			
7	1.	4	11
8			
9	2.	5	12
10			
11	3.	5	14
12			
13	4.	5	15
14			
15	5.	5	16
16			
17	6.	6	17
18			
19	7.	6	18
20			
21	8.	6	22
22			
23	9.	7	23
24			
25	10.	7	26
26			
27	11.	7	27
28			
29	12.	8	32
30			
31	13.	9	35
32			
33	14.	9	36
34			
35	15.	9	38
36			
37	16.	10	39
38			
39	17.	11	46
40			
41	18.	11	47
42			
43	19.	13	66
44			
45	20.	14	67
46			
47	21.	14	68

INDEX OF REFUSALS

	REFUSAL NO.	QUESTION NO.	PAGE NO.
1			
2			
3			
4			
5			
6			
7	22.	14	69
8			
9	23.	14	70
10			
11	24.	15	71
12			
13	25.	15	72
14			
15	26.	21	115
16			
17	27.	34	194
18			
19	28.	35	200



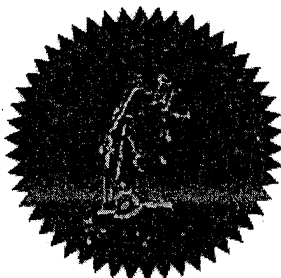
REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the 31st DAY OF MARCH, 2016 and taken to the best of my skill, ability and understanding.

Certified Correct:

Greg Vaughan
Verbatim Reporter



*THIS IS EXHIBIT "11" REFERRED TO IN THE
AFFIDAVIT OF MICHELLE ALEXANDER
SWORN BEFORE ME, THIS 5 DAY OF SEPTEMBER, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

ONTARIO
SUPERIOR COURT OF JUSTICE

GV/sp

B E T W E E N:

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

This is the Cross-Examination of MORTUZA AWAL on his Affidavit affirmed the 2nd day of August, 2015, held at the Offices of Fasken Martineau DuMoulin LLP, Bay Adelaide Centre, 333 Bay Street, Suite 2400, Toronto, Ontario, on the 31st day of March, 2016.

A P P E A R A N C E S:

DAVID ROSENFELD } --- for the Plaintiff
JODY BROWN }
LAURA F. COOPER } --- for the Defendants
PAUL MARTIN }

INDEX OF PROCEEDINGS

PAGE NUMBER

MORTUZA AWAL, affirmed	
Cross-Examination by:	
Ms. Cooper	3 - 31
INDEX OF REFUSALS	32 - 33
CERTIFICATION	34

1 MORTUZA AWAL, affirmed

2 CROSS-EXAMINATION BY MS. COOPER:

3

4 1. Q. Good afternoon, Mr. Awal.

5 A. Good afternoon.

6 2. Q. Could you just please speak up a
7 little bit when you answer the questions so the
8 reporter can hear you?

9 A. Yes, okay.

10 3. Q. Okay, thanks. You affirmed an
11 affidavit on August 2, 2015, correct?

12 A. Yes.

13 4. Q. Was the affidavit true when you
14 affirmed it?

15 A. Yes.

16 5. Q. Is it still true today?

17 A. Yes.

18 6. Q. Are there any changes you want to
19 make to the affidavit?

20 A. No.

21 7. Q. What did you do to prepare to come
22 here today, Mr. Awal?

23 A. I just read my affidavit.

24 8. Q. Okay, did you read anything else?

25 A. No.

1 9. Q. Do you have any paperwork or files
2 from the time you were an independent contractor at
3 Just Energy?

4 MR. ROSENFELD: Don't answer the
5 question. /R

6 10. MS. COOPER: I would like production of
7 any such material.

8 MR. ROSENFELD: Yes, we have refused
9 to do so. Thank you. /R

10

11 BY MS. COOPER:

12 11. Q. How did you become involved with
13 this lawsuit, Mr. Awal?

14 MR. ROSENFELD: Don't answer the
15 question. /R

16

17 BY MS. COOPER:

18 12. Q. Who first contacted you about the
19 lawsuit?

20 MR. ROSENFELD: Don't answer the
21 question. /R

22

23 BY MS. COOPER:

24 13. Q. At some point, you agreed to provide
25 an affidavit, right?

1 A. Yes.

2 14. Q. And how did that come about?

3 MR. ROSENFELD: Don't answer the
4 question.

/R

5

6 BY MS. COOPER:

7 15. Q. So the affidavit you affirmed is in
8 the motion record at page 649. You have that in
9 front of you, sir?

10 A. Yes.

11 16. Q. Were you provided with a draft of
12 this affidavit to sign?

13 MR. ROSENFELD: Don't answer the
14 question.

/R

15

16 BY MS. COOPER:

17 17. Q. Did you have a conversation with
18 someone at Mr. Rosenfeld's firm before you signed
19 this affidavit?

20 A. Yes.

21 18. Q. How many conversations did you have?

22 MR. ROSENFELD: Don't answer the
23 question.

/R

24

25 BY MS. COOPER:

1 19. Q. Did you provide Mr. Rosenfeld's firm
2 with the information in this affidavit, or were you
3 provided with the information and then agreed to
4 sign it?

5 A. I gave them my point of view, so
6 what happened to me. That's about it.

7 20. Q. And did you do that first, or did
8 you see a draft of this first?

9 A. I did that myself.

10 21. Q. Did what yourself?

11 A. I gave them my side of the view, and
12 that's about it.

13 22. Q. Okay, and is what you said exactly
14 in this affidavit?

15 A. Yes.

16 23. Q. There are no changes from what you
17 said?

18 MR. ROSENFELD: Don't answer the
19 question.

/R

20

21 BY MS. COOPER:

22 24. Q. Do you know Haidar Omarali, sir?

23 A. I worked with him.

24 25. Q. And in what capacity did you work
25 with him?

1 A. As an agent.

2 26. Q. At Just Energy?

3 A. Yes.

4 27. Q. Did you know him before you worked
5 at Just Energy?

6 A. No, but I met him at a road trip
7 when I was working for Ottawa for Just Energy.

8 28. Q. And have you been in contact with
9 Mr. Omarali since you left Just Energy?

10 MR. ROSENFELD: Don't answer the
11 question.

/R

12

13 BY MS. COOPER:

14 29. Q. What about Kian Nazerally, do you
15 know him?

16 MR. ROSENFELD: Don't answer the
17 question.

/R

18

19 BY MS. COOPER:

20 30. Q. Petra Filipovic?

21 MR. ROSENFELD: Don't answer the
22 question.

/R

23

24 BY MS. COOPER:

25 31. Q. Have you discussed this case with

1 any of those individuals?

2 MR. ROSENFELD: Don't answer the
3 question.

/R

4

5 BY MS. COOPER:

6 32. Q. Do you know that those individuals
7 also provided affidavits in this case?

8 A. No.

9 33. Q. You're not aware of that?

10 A. Well...

11 34. Q. Yes or no is fine. You just need to
12 say it out loud.

13 MR. ROSENFELD: You can't nod. The
14 court reporting doesn't pick up a nod. It
15 picks up yeses or no's.

16 THE DEPONENT: Well, I don't know if
17 everyone is in it. I know people are
18 involved, but I don't know how many or who
19 is involved.

20

21 BY MS. COOPER:

22 35. Q. Okay. In terms of the material, you
23 have what we call a record in front of you, and
24 you're looking at your affidavit. Have you reviewed
25 any of the other material in that record?

1 A. No, I only see mine.

2 36. Q. So you haven't reviewed the
3 affidavits of anyone else?

4 A. No.

5 37. Q. So I understand you were an
6 independent contractor/sales agent at Just Energy
7 from June, 2012 to June, 2013, right?

8 A. Yes, about that time, yes.

9 38. Q. That is what you have in your
10 affidavit.

11 A. Yes, so I joined Just Energy in the
12 summer of...after my first year of university, and
13 then I quit Just Energy in exactly that time, yes.

14 39. Q. Okay, so how do you...so you are not
15 sure if it was June or July?

16 A. I know it was July, I believe.

17 40. Q. Okay.

18 A. When leaving or joining?

19 41. Q. Joining, let's start with joining.

20 A. Wouldn't it be in the contract that
21 I signed?

22 42. Q. I'm asking you what you remember
23 right now. You said approximately. So I wondered
24 why you said approximately.

25 A. Well, I didn't know the exact date,

1 like the actual day of it.

2 43. Q. Okay, and then in terms of leaving
3 it says June, but you think it might be July that
4 you left?

5 A. Well, I know it has been an entire
6 year that I worked there.

7 44. Q. Okay.

8 A. So maybe one day off of a year, but
9 I know it has been around...somewhere around 360
10 days or so.

11 45. Q. Okay, thanks.

12 A. So that's why I say around a year.

13 46. Q. Sure, and you started in the Ottawa
14 office, and then you moved to the Dundas office,
15 right?

16 A. Yes.

17 47. Q. And what led you to move offices?

18 A. I live in...at that time my family
19 lives in Mississauga. So I thought if I was not
20 going to be in school, it would be better for me to
21 work here in Toronto, closer to my family.

22 48. Q. And so you were able to be an
23 independent contractor in Ottawa, and then at your
24 choice, move and be based out of the Dundas office,
25 yes? It was your choice to do that, correct?

1 A. Yes.

2 49. Q. Did you know anyone at Just Energy
3 before you joined the company...

4 A. No.

5 50. Q. ...as an independent contractor?

6 A. No.

7 51. Q. And before you were an independent
8 contractor at Just Energy, what did you do?

9 MR. ROSENFELD: Don't answer the
10 question.

/R

11 52. MS. COOPER: And I would want copies of
12 any contracts signed in respect of any such
13 arrangements before he joined Just Energy.

14 MR. ROSENFELD: Such arrangements being,
15 like, employment or...

16 53. MS. COOPER: Or contracts, what he did
17 before he worked as an independent
18 contractor with Just Energy.

19 MR. ROSENFELD: If he worked before Just
20 Energy?

21 54. MS. COOPER: If he did.

22 MR. ROSENFELD: Yes, and no, we will
23 refuse those as well.

/R

24

25 BY MS. COOPER:

1 55. Q. And you said you left Just Energy
2 after pretty close to a year. Why did you stop
3 being an independent contractor for Just Energy?

4 A. I didn't feel like I was being
5 compensated for my work.

6 56. Q. And what did you go to do after
7 that?

8 MR. ROSENFELD: Don't answer the
9 question. /R

10 57. MS. COOPER: And I would like copies of
11 any contracts signed with any further
12 companies after he left his independent
13 contractor arrangement with Just Energy.

14 MR. ROSENFELD: No, we won't produce
15 those if they exist. /R

16

17 BY MS. COOPER:

18 58. Q. Have you ever had any other
19 positions or arrangements in which you sold
20 products, sir?

21 MR. ROSENFELD: Outside of Just Energy?

22 59. MS. COOPER: Yes.

23 MR. ROSENFELD: Don't answer the
24 question. /R

25

1 BY MS. COOPER:

2 60. Q. You mentioned your contract. Let's
3 turn to your contract. It's Exhibit E to the
4 Teixeira affidavit. So starting at page 84 to 85,
5 you filled out that form, right, sir?

6 A. Yes.

7 61. Q. And that is your signature on the
8 form on page 85?

9 A. Yes.

10 62. Q. And then continuing on from page 86
11 to 91, which is entitled "Independent contractor
12 agreement", if you look at 91, that's your signature
13 on the contract, yes?

14 A. Yes.

15 63. Q. And you mentioned your contract
16 earlier. This is the contract you were referencing?

17 A. Yes.

18 64. Q. And if you could turn the page at 92
19 to 94, what is that document, sir?

20 MR. ROSENFELD: The page numbers at the
21 bottom of the document appear to be
22 continuing. So it appears to be another
23 page number at the top, does it not?

24 65. MS. COOPER: Sorry, I'm looking at the
25 top, 92, 93, 94.

1 MR. ROSENFELD: I'm referencing the page
2 numbers at the bottom. You imply that it
3 is a different document?

4 66. MS. COOPER: Sorry, no, it's the same
5 document. That's right.
6

7 BY MS. COOPER:

8 67. Q. But can you identify this part of
9 the contract? This is your schedule for
10 commissions, yes?

11 A. This was given to us afterwards as
12 well. So once we signed a contract, they gave us a
13 breakdown of the commission as the person did. We
14 didn't actually read through these pages. They were
15 told what pages to sign, and then hand it in.

16 68. Q. Right, but this is part of your
17 contract, yes?

18 A. Yes.

19 69. Q. And so you agreed to the terms in
20 this contract, yes?

21 A. Well, I didn't read through the
22 whole thing. I wasn't able to, but I did sign it.

23 70. Q. You did sign it. So you agreed to
24 it, yes?

25 A. I guess.

1 71. Q. And you could have read it?

2 A. No, they literally took it out of
3 our hands, so...

4 72. Q. Did you ask for a copy?

5 A. I assume you are provided a copy
6 every time you sign a contract. That is something
7 that is routine in every single job I have ever had.

8 73. Q. So you didn't ask for a copy, right?

9 A. I have asked later on.

10 74. Q. But while you were there, you didn't
11 ask for a copy?

12 A. I asked Just Energy later on. Like,
13 I asked my regional later in my career, "Can I have
14 my contract?"

15 75. Q. Okay, so you need to let me finish
16 asking the question and then answer, okay?

17 A. Okay.

18 76. Q. Because otherwise it's hard for the
19 reporter to get it down.

20 A. All right, sorry.

21 77. Q. So in your affidavit you say that
22 you observed the hiring process each week at the
23 Ottawa and Dundas offices, right?

24 A. Yes.

25 78. Q. So all the people who joined would

1 have signed a contract if they wanted to make sales,
2 right?

3 A. Yes.

4 79. Q. Right, and so there contracts in the
5 office, yes?

6 A. No.

7 80. Q. There were no contracts in the
8 office?

9 A. Not this contract. There are
10 contracts for sales agents, like materials, but this
11 contract, no.

12 81. Q. Okay, let me finish asking the
13 question and then answer it, okay?

14 A. Okay.

15 82. Q. So we have already established that
16 during the hiring process everyone who wants to
17 become an independent contractor signs a contract
18 like this, right?

19 A. Yes.

20 83. Q. Yes, and when I say "this" I'm
21 referring to Exhibit E of the Teixeira affidavit.

22 A. Okay.

23 84. Q. Okay. So they sign these contracts
24 in the office, yes?

25 A. Yes.

1 85. Q. You were present in the office, yes?

2 A. Not when they signed these
3 contracts.

4 86. Q. No, you were present in the office
5 while they were being hired. That's what your
6 affidavit says.

7 A. Yes.

8 87. Q. Okay, so you mean you weren't
9 present in the room when they signed the contracts.
10 Is that what you mean?

11 A. I wasn't present when they signed
12 this. I have seen people sign it, but I'm not
13 always present when contracts are there.

14 88. Q. Okay. When they are being signed?

15 A. Yes, so I have seen them sign them,
16 but there are days that I am not there as well. So
17 there are days I have seen this. There are other
18 days I haven't.

19 89. Q. Okay, thank you. So what I am
20 asking you is this: You are in the office. People
21 are signing the same contracts. If you really
22 wanted a copy you could have got a copy of the blank
23 contract. They were there.

24 A. There is no blank contracts. We
25 don't have access to the actual contract itself. So

1 we are not allowed to approach these guys.

2 90. Q. Who are "these guys"?

3 A. The new people that are being hired.

4 We are not allowed to speak to them and stuff like
5 that, because they are doing their videos and tests
6 or whatever. So the only way I would have to get at
7 this contract is if I go into my regional's...like,
8 in his office and ask him, but I have asked him for
9 a contract, and it was never provided.

10 91. Q. Did you ask him for a copy of the
11 blank contract he was handing out to others while
12 you were there?

13 A. I asked him for a copy of a
14 contract, yes.

15 92. Q. While others were there getting...

16 A. No.

17 93. Q. Again, just let me finish asking the
18 question, okay?

19 A. Okay.

20 94. Q. Okay. So you said you weren't
21 allowed to talk to them, but in fact, you did meet
22 with the people as they were being trained when they
23 came into the office, right?

24 A. We talked to them once the test is
25 done.

1 95. Q. Right.

2 A. So when we are in the office, there
3 is the videos, the Ontario Energy Board stuff that
4 is going on, the quiz that is going on. Clearly, we
5 can't help them during their test. So once that
6 process is done, they have their badge, we get to
7 train them or help them with their materials and
8 their pitch and stuff like that.

9 96. Q. Right, so then you meet with them
10 and you assist with their training. Is that right?

11 A. Well, that's part of the job. They
12 make you do it. So the pitch process has to be done
13 with everyone.

14 97. Q. Okay, sir, I'm asking you a very
15 simple question. I don't need a big long story
16 every time. Just you can answer a complete answer.
17 That's fine, but it's a simple question. All I
18 asked was whether you participate in the training...

19 A. Yes.

20 98. Q. ...when the new people come in?

21 A. Yes.

22 99. Q. Yes, thank you. So you were paid on
23 a commission basis, right?

24 A. Yes.

25 100. Q. A hundred percent commission, yes?

1 A. Yes.

2 101. Q. And you knew you were being paid on
3 100 percent commission basis, yes?

4 A. Yes.

5 102. Q. And you knew that before you signed
6 the contract and you knew it after you signed the
7 contract, right?

8 A. No, when my interview happened, they
9 didn't tell me it was commission. It was actually
10 when I went in for the test and after the test, they
11 told me that it's 100 percent commission.

12 103. Q. Okay, so before you went out and
13 made any sales, you knew it was 100 percent
14 commission?

15 A. Yes.

16 104. Q. And it was the same in Ottawa and it
17 was the same after you decided to move to Dundas,
18 100 percent commission?

19 A. Yes.

20 105. Q. And you knew that then?

21 A. Yes.

22 106. Q. And you knew there was no deductions
23 from the commission payments for taxes or anything
24 like that, yes?

25 A. I found out after when I actually

1 did...

2 107. Q. When you got paid, you could see
3 there were no deductions, right?

4 A. Yes, yes.

5 108. Q. And you filed tax returns, I assume?

6 A. That's when I found out that none of
7 this was happening. I never worked before...there
8 was no deductions being made. So I didn't know.

9 109. Q. So as I said, you filed tax returns,
10 I assume, yes or no?

11 A. From Just Energy, yes.

12 110. Q. Pardon me?

13 A. I didn't work before, so I
14 didn't...Just Energy is my first...

15 MR. ROSENFELD: She is referring to your
16 tax returns that you filed with the
17 government.

18 THE DEPONENT: Yes.

19

20 BY MS. COOPER:

21 111. Q. Did you file tax returns with the
22 government?

23 A. Yes.

24 112. MS. COOPER: Yes. Could I have copies
25 of those tax returns for the years he was

1 an independent contractor at Just Energy,
2 please?

3 MR. ROSENFELD: No. Thank you. /R

4

5 BY MS. COOPER:

6 113. Q. Did you deduct any expenses on your
7 tax return?

8 MR. ROSENFELD: Don't answer the
9 question. /R

10

11 BY MS. COOPER:

12 114. Q. So during your time as an
13 independent contractor at Just Energy, who was your
14 crew coordinator?

15 A. I believe I had two. In the Ottawa
16 office, I think it was relatively new. So we were
17 all...just underneath the regional, himself, Scott
18 Edger, I believe.

19 115. Q. M'hm.

20 A. In Toronto it was...I don't know her
21 last name, but it's Jennifer.

22 116. Q. Okay, thank you. Were there any
23 assistant crew coordinators?

24 A. Not to my knowledge.

25 117. Q. And you knew that the crew

1 coordinators and assistant crew coordinators were
2 also independent contractors?

3 A. Yes.

4 118. Q. And in your affidavit you talk about
5 some of your activities. Did you do any of these
6 activities as part of a crew?

7 A. You mean, like, knocking on doors
8 and the sales part?

9 119. Q. Yes.

10 A. Yes.

11 120. Q. In Ottawa?

12 A. And in Toronto.

13 121. Q. Was Mr. Omarali on your crew in one
14 of those offices?

15 A. Omarali, is that Haidar?

16 122. Q. Haidar, yes.

17 MR. ROSENFELD: Yes.

18 THE DEPONENT: He was on a different
19 crew. So he was in Dominic's. I was in
20 Jennifer's, but we have worked near the
21 same towns and the cities.

22

23 BY MS. COOPER:

24 123. Q. Okay, and what about Kian Nazerally?

25 A. I worked with Kian in Toronto...I

1 mean, sorry, Ottawa.

2 124. Q. Ottawa, and what about Kia
3 Kordestani?

4 A. I worked with him in Ottawa, but
5 once again, it's not always I get to work with him.
6 So it's one day I might be, one day I'm not.

7 125. Q. Right. So it differs from day-to-
8 day, okay. What about Petra Filipovic?

9 A. In Toronto I worked with her.

10 126. Q. Have you discussed this case with
11 any of those individuals?

12 MR. ROSENFELD: Don't answer the
13 question. /R

14

15 BY MS. COOPER:

16 127. Q. Did you make any other types of
17 sales in addition to residential, for example,
18 renewals, did you ever do renewal sales?

19 A. We are pushed to do those. So they
20 wanted us to do those.

21 128. Q. Did you ever do renewal sales? That
22 was my question, sir.

23 A. Yes.

24 129. Q. Could you answer that question?

25 A. Yes.

1 130. Q. Okay. Yes, you did renewal sales?

2 A. Yes.

3 131. Q. In Ottawa or in Toronto?

4 A. Most of it in Toronto. It's not
5 always guaranteed, right. So usually I didn't. I
6 avoided doing it in Ottawa, but I tried doing it in
7 Toronto.

8 132. Q. Okay, and I understand you also did
9 commercial contracts, yes?

10 A. No.

11 133. Q. I understood that you had about five
12 commercial contracts?

13 A. You're not allowed to sell
14 commercial contracts. From what I understand is
15 commercial contracts you have to have a different
16 licence. Now, in Just Energy I think it's 3,300
17 cubic metre, whatever the thing is. So you can go
18 to a grocery store, but technically they're
19 considered residential.

20 134. Q. Okay, so perhaps it is a terminology
21 issue then. Did you ever...so you did do contracts
22 with businesses, then?

23 A. Once again, when I spoke with my
24 regional, he said it's fine, and it was under
25 residential. So I don't have a licence to do

1 commercial.

2 135. Q. So again, the question is...

3 A. To my knowledge...well, if you
4 consider that, then yes, but if...

5 136. Q. That's what I said, to businesses.

6 I said get away from the commercial terminology.

7 Maybe it's a different term. So you are talking

8 about businesses. You mentioned a grocery store,

9 for example. So I'm just confirming that you did

10 conclude contracts with some businesses, correct?

11 A. Yes.

12 137. Q. Thank you. Did you ever sell any

13 other products at the door when you were doing your

14 door-to-door knocking, as you called it, for Just

15 Energy?

16 A. Well, the new program had a

17 thermostat, but that's part of the program. So no.

18 138. Q. Anything else?

19 A. I think that's it. I mean, there is

20 only the Green and like the regular contract, right.

21 So those are the only two programs we get to sell.

22 139. Q. Were you aware of anyone else who

23 sold any other products when they were doing door-

24 to-door knocking for...

25 A. That's not part of Just Energy?

1 140. Q. Yes.

2 A. No. All the Just Energy guys I know
3 only sold Just Energy products.

4 141. Q. Thank you. How many approximately
5 would you say that you sold to businesses, how many
6 contracts?

7 A. I have no idea. I didn't take a
8 record of that.

9 142. Q. Does five sound about right?

10 A. I don't know. It could be less. It
11 could be more. Like, I didn't really get to see who
12 approved or not. I mean, it doesn't tell you their
13 names and stuff like that, right. It has been a few
14 years, so...

15 143. MS. COOPER: Okay, that's fine. Okay,
16 let's take a short break.

17

18 --- A BRIEF RECESS

19

20 MORTUZA AWAL, resumed

21 CONTINUED CROSS-EXAMINATION BY MS. COOPER:

22

23 144. Q. Other than as an independent
24 contractor with Just Energy, have you ever done any
25 other door-to-door sales?

1 MR. ROSENFELD: Don't answer the
2 question.

/R

3

4 BY MS. COOPER:

5 145. Q. Could you look back at page 91,
6 which is in your record? We looked at this before.
7 I just want to confirm that is your signature on
8 that page?

9 A. Yes.

10 146. Q. That's your signature on that page?

11 A. Yes.

12 147. Q. Thank you. We talked about expenses
13 before. Did you keep records of any expenses that
14 you incurred during your time as an independent
15 contractor for Just Energy?

16 MR. ROSENFELD: Don't answer the
17 question.

/R

18

19 BY MS. COOPER:

20 148. Q. You got statements...you received
21 statements showing which contracts you were being
22 paid commission for, correct?

23 A. I got ones that says "Approved" or
24 "Denied". Are you talking about that?

25 149. Q. Yes, so it told which contracts had

1 been approved or denied, right?

2 A. Yes.

3 150. Q. So you knew what you were getting
4 paid commission for?

5 A. Yes, but there are some of them that
6 you have to wait a little while before you get paid.

7 151. Q. Right.

8 A. So on those, we don't really know,
9 because I don't...you don't keep all of them, right.
10 So you don't know.

11 152. Q. You decide not to keep them, but you
12 are given something that shows you the basis on
13 which your commission is being paid, right?

14 A. Yes.

15 153. Q. So you said earlier that you left
16 Just Energy because you felt you weren't being
17 compensated for the work you do. Presumably you
18 were compensated for every contract that was
19 concluded, right?

20 A. I wasn't paid for road trips. So
21 hotels, when we had to go for hotels, I was never
22 given a receipt. So if I'm paying \$200 for a hotel,
23 and if I'm on a road trip for three weeks, 200, 200,
24 200, those are receipts I believe I should be owed.
25 I was never given those receipts.

1 154. Q. Okay, and did you claim those
2 deductions on your taxes?

3 A. I can't if I don't have the
4 receipts.

5 155. Q. Well, did you report those
6 deductions to an accountant?

7 A. Once again, I don't have any
8 materials.

9 156. Q. Did you use an accountant?

10 A. No.

11 157. Q. Did you ever look into deducting
12 those amounts with or without a receipt?

13 MR. ROSENFELD: Don't answer the
14 question. /R

15

16 BY MS. COOPER:

17 158. Q. So that is what you meant when you
18 made that statement? You are talking about the
19 hotel amounts?

20 MR. ROSENFELD: Sorry, you're going to
21 have to refer to what statement. Sorry.

22

23 BY MS. COOPER:

24 159. Q. Well, we were talking about the
25 statement you made that you felt you weren't

1 compensated for your work, and I asked you what you
2 meant.

3 A. Well, I worked while sick. I worked
4 during winter storms. I worked on the weekends. I
5 worked on holidays. I worked on Christmas, New
6 Year's. I have no time with my family, and when I
7 asked for breaks, I get screamed at for not wanting
8 to do something.

9 It got to a point where I had regionals
10 coming to my house to pick me up so I could go to
11 work. So as you can see, that's not...I don't feel
12 like I was compensated for any of those things.

13 160. Q. Okay, but you're not saying that you
14 weren't paid commissions that you earned under the
15 contract, right?

16 A. No.

17 161. MS. COOPER: Okay, thank you. One
18 second. Okay, subject to answers from
19 undertakings and refusals, those are my
20 questions.

21 MR. ROSENFELD: Thank you. No re-
22 examination.

INDEX OF REFUSALS

	REFUSAL NO.	PAGE NO.	QUESTION NO.
1			
2			
3			
4			
5			
6			
7	1.	4	9
8			
9	2.	4	10
10			
11	3.	4	11
12			
13	4.	4	12
14			
15	5.	5	14
16			
17	6.	6	16
18			
19	7.	5	18
20			
21	8.	6	23
22			
23	9.	7	28
24			
25	10.	7	29
26			
27	11.	7	30
28			
29	12.	8	31
30			
31	13.	11	51
32			
33	14.	11	54
34			
35	15.	12	56
36			
37	16.	12	57
38			
39	17.	12	59
40			
41	18.	22	112
42			
43	19.	22	113
44			
45	20.	24	126
46			
47	21.	28	144

INDEX OF REFUSALS

1
2
3
4
5
6
7
8
9

REFUSAL NO.	PAGE NO.	QUESTION NO.
22.	28	147
23.	30	157



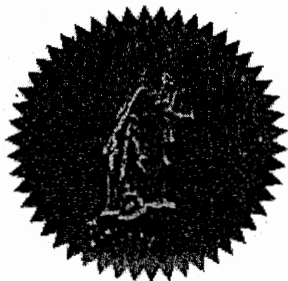
REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the 31st DAY OF MARCH, 2016 and taken to the best of my skill, ability and understanding.

Certified Correct:

Greg Vaughan
Verbatim Reporter



**Haidar Omarali
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*

**PLAINTIFF'S MOTION RECORD
(Summary Judgment Motion)
Returnable June 11-13, 2019**

VOLUME 1 OF 7

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#: 51143A
Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiff