

Malik, Waleed

From: Koehnen, Mr. Justice Markus (SCJ)
Sent: Friday, March 19, 2021 11:10 AM
To: Malik, Waleed
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List; Irving, Shawn; De Lellis, Michael; Dacks, Jeremy; Wasserman, Marc; Robert Thornton; Rebecca Kennedy; Puya Fesharaki; Jim.Robinson@fticonsulting.com; Paul.Bishop@fticonsulting.com; Rosenblat, Dave; Rachel Bengino
Subject: Re: Just Energy Comeback - Sync.com Link and Confidential Exhibit
Attachments: Just Energy 20210319.pdf; Counsel List (Just Energy) - March 19, 2021.DOCX

Email Endorsement

1. Today was the comeback date in respect of an initial CCAA order that I issued in this matter on March 9, 2021.
2. The order today has either been consented to or is unopposed by approximately 72 different parties. I have signed and attached the order requested as well as the counsel slip for today's hearing.
3. That a proceeding involving so many parties in different jurisdictions is unopposed is a credit to the extraordinary hard work that underlies an order like this. While I was not a party to that hard work, I appreciate the complexities of the issues and the competing interests of various stakeholders. I congratulate all on their constructive approach to focusing on solving problems rather than viewing problems as barriers to progress.
4. I also extend my thanks to the Texas court for the speed with which it addressed this matter.
5. In addition to today's stay extension, today's application also addresses the KERP and the payment of Q3 bonuses that were not dealt with on March 9. I am satisfied from the affidavit of Margaret Munnely

sworn March 16, 2021 and the second affidavit of Michael Carter sworn March 16, 2021 that both the Q3 bonuses and the KERP should be approved.

6. The Q3 bonuses are payable to approximately 400 employees of Just Energy. The average bonus is approximately \$6,500. The vast majority of the employees benefiting from the bonus program are rank-and-file employees rather than senior executives. Employees count on those bonuses as a core part of their income. Failure to pay those bonuses could result in significant personal hardship.
7. I am similarly satisfied that the KERP should be approved. It is limited to senior employees whose continued participation with the company is essential to its restructuring. The size of the incentive is proportionate to the amount of work that can be expected to be required of those individuals throughout the restructuring process. The KERP itself is designed so that 50% of its benefit becomes payable only on completion of a successful restructuring.
8. I note that no creditors oppose the KERP or the bonus payments. The Monitor supports both.
9. Today's proposed order also proposes increases to various charges. The largest among these is the directors' charge which is increased to \$44.1 million. This reflects potential liabilities of \$30.8 million for US sales tax, \$6.3 million for wage and payroll related liability in Canada and the United States and \$3.9 million in respect of US state income taxes. The Monitor supports the increase in the charges and believes they are reasonable in the circumstances.

10. The Company also seeks the ability to post cash collateral in response to requests from regulators and bonding companies from time to time. Just Energy operates in a highly regulated field that requires various levels of security. It is required to post a number of surety bonds. Both regulators and surety bond companies require security. A failure to provide security would result in the disruption collapse of the business. Requests for posting of cash collateral will be reviewed by the monitor. The monitor supports the company's request in this regard. In the circumstances, the request to post cash collateral is reasonable and is approved.
11. The company also seeks authority to grant a cash management charge in favour of certain banks. The charge will be subordinate to all other court order charges. The charge has been negotiated with the banks in question, the DIP lenders and the Monitor who also supports the relief sought.
12. The company and the Monitor have filed cash flow statements which support extending the stay to a June 4, 2021. I approve that extension.

Justice Markus Koehnen
Ontario Superior Court of Justice
361 University Ave.
Toronto, Ont.
M5G 1T3