

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

Just Energy Group Inc. et al.

**SIXTH REPORT OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

March 2, 2022

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY
COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST
ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP.,
JUST MANAGEMENT CORP., 11929747 CANADA INC., 12175592 CANADA
INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC.,
8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST
ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST
ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST
ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY
MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY
SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY
GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL
ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC,
JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND
JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

SIXTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the protections

of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); and (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”).

3. The Initial Order was amended and restated on March 19, 2021 and most recently on May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. The Stay Period has been extended by the Court from time to time, including, most recently, on February 9, 2022, until March 4, 2022.
7. On February 9, 2022 (the “**February 9 Hearing**”), Justice McEwen denied certain relief, with reasons to follow, requested by counsel (“**Plaintiffs’ Counsel**”) for Fira Donin and Inna Golovan in their capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the

“**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). On February 23, 2022, Justice McEwen released his written reasons relating to Plaintiffs’ Counsel requested relief (the “**McEwen Endorsement**”).

8. All references to monetary amounts in this Sixth Report of the Monitor (the “**Sixth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Second A&R Initial Order.
9. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
10. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

PURPOSE

11. The purpose of this Sixth Report is to provide information to the Court with respect to the following:
 - (a) certain developments with respect to the Donin/Jordet Action, including the filing by Plaintiffs’ Counsel of a motion for leave to appeal the decision of this Court to the Ontario Court of Appeal;
 - (b) the Monitor’s activities since the Monitor’s Fifth Report to the Court dated February 4, 2022 (the “**Fifth Report**”);
 - (c) the restructuring activities of the Just Energy Entities since the date of the Fifth Report;
 - (d) the Just Energy Entities’ actual cash receipts and disbursements for the 4-week period ending February 26, 2022, and a comparison to the cash flow forecast attached as Appendix “B” to the Fifth Report, along with an updated cash flow forecast for the period ending April 2, 2022;

- (e) the relief sought by the Applicants in their proposed Order (the “**Proposed Order**”) to extend the Stay Period to March 25, 2022; and
- (f) the Monitor’s views in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

12. In preparing this Sixth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
13. Except as otherwise described in this Sixth Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Sixth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
14. Future-oriented financial information reported in or relied on in preparing this Sixth Report is based on assumptions regarding future events. Actual results will vary from these forecasts, and such variations may be material.
15. The Monitor has prepared this Sixth Report to provide information to the Court in connection with the relief requested by the Applicants. This Sixth Report should not be relied on for any other purpose.

UPDATE ON DONIN/JORDET ACTIONS

Background

16. The background to the Donin/Jordet Actions and the relief requested by Plaintiffs' Counsel at the February 9 Hearing was detailed in the Fifth Report.
17. In brief, Plaintiffs' Counsel represents a proposed class of putative claimants that has submitted claims against the Just Energy Entities in the aggregate amount of US\$3.66 billion (the "**Donin/Jordet Claims**") in accordance with the Claims Procedure Order.
18. The Monitor has met with Plaintiffs' Counsel on several occasions at its request to gain an understanding of their claims and provided, in conjunction with the Applicants, adequate responses in the Monitor's view, to information requests prepared by the Plaintiffs' Counsel's financial advisor.
19. Following a thorough review of the Donin/Jordet Claims, and in consultation with the Monitor, the Just Energy Entities prepared, in accordance with the Claims Procedure Order, Notices of Revision or Disallowance and disallowed the Donin/Jordet Claims in their entirety, which were delivered to the claimants by the Monitor on January 11, 2022.
20. Plaintiffs' Counsel subsequently filed a motion for advice and direction (the "**Donin/Jordet Motion**") that was heard by the Court at the February 9 Hearing. The relief requested by the Plaintiffs' Counsel was described in the McEwen Endorsement as follows (the "**Requested Relief**"):
 - (a) an order declaring the class claimants in the Donin/Jordet Claims to be unaffected by the CCAA Proceedings;
 - (b) in the alternative, an order directing amongst other things, "a timely schedule and process" leading to the final adjudication of the Donin/Jordet Claims prior to the Court's determination of the Applicants' plan of compromise and arrangement (to be filed), or other event to exit the CCAA Proceedings; and
 - (c) access to any data room / appointing a mediator/arbitrator to resolve disputes / production of specific documents listed in the Notice of Motion / and a compulsory meeting between the Applicants and the plaintiffs' U.S. counsel.

The Court’s Decision on the Donin/Jordet Motion

21. The Court dismissed the Donin/Jordet Motion in its entirety. The Court’s reasons for the dismissal are set out in the McEwen Endorsement, which is attached hereto as **Appendix “A”**.

Appeal of the Court’s Determination

22. On February 24, 2022, Plaintiffs’ Counsel filed a Notice of Motion for Leave to Appeal the McEwen Endorsement (the “**Notice for Leave to Appeal**”). A copy of the Notice for Leave to Appeal is attached hereto as **Appendix “B”**.
23. The Monitor is reviewing the Notice for Leave to Appeal and intends to report on it as applicable in a future report to the Court
24. In addition to filing the Notice for Leave to Appeal, Plaintiffs’ Counsel submitted additional information requests to the Monitor on February 25, 2022. The Monitor has reviewed the additional information requests with the Applicants and arranged for a preliminary conference call amongst Plaintiffs’ Counsel, the Applicants, and the Monitor to respond to and discuss such requests.

MONITOR’S ACTIVITIES SINCE THE FIFTH REPORT

25. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Fifth Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
 - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities’ restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;
 - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of

Revision or Disallowance (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;

- (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
- (e) assisting the Just Energy Entities to update and extend their cash flow forecasts;
- (f) working with and providing input to the Just Energy Entities and other stakeholders to assist with the development of the Plan;
- (g) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
 - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts and presentations; and
 - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (k) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (l) preparing this Sixth Report.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

26. The Just Energy Entities continue to advance the development of the Plan and have consulted extensively with key stakeholders in that regard to seek a viable going-concern solution for the business.
27. The Plan is intended to facilitate emergence from the CCAA Proceedings, preserve the going concern value of the business, maintain customer relationships, and preserve employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities’ stakeholders.
28. In its Fifth Report, the Monitor noted that the Just Energy Entities intended to bring a motion before the Court on March 3, 2022 to seek the authority to file the Plan and request that the Court grant a Meeting Order. As noted in the McEwen Endorsement however, there was a possibility that the hearing scheduled for March 3, 2022 would need to be delayed if the Plan was not prepared in time.
29. Despite the best efforts of the Just Energy Entities and key stakeholders, which the Monitor has been closely observing, the Just Energy Entities are not yet in a position to present the Plan to the Court. The Just Energy Entities are at a critical juncture of their Plan negotiations and discussions with key stakeholders, and require additional time to finalize and file the Plan.

RECEIPTS AND DISBURSEMENTS FOR THE 4-WEEK PERIOD ENDED FEBRUARY 26, 2022

30. The Just Energy Entities’ actual net cash flow for the 4-week period from January 30, 2022 to February 26, 2022, was approximately \$46.7 million lower than the Cash Flow Forecast appended to the Fifth Report (the “**February Cash Flow Forecast**”) as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
RECEIPTS			
Sales Receipts	\$255.1	\$228.1	(\$27.0)
Miscellaneous Receipts	-	-	-
<i>Total Receipts</i>	\$255.1	\$228.1	(\$27.0)
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$173.5)	(\$196.6)	(\$23.1)
<i>ERCOT Resettlements</i>	-	-	-
Payroll	(7.8)	(7.2)	0.6
Taxes	(11.2)	(10.3)	0.8
Commissions	(9.5)	(7.7)	1.9
Selling and Other Costs	(13.6)	(12.4)	1.1
<i>Total Operating Disbursements</i>	(\$215.5)	(\$234.3)	(\$18.7)
OPERATING CASH FLOWS	\$39.5	(\$6.2)	(\$45.8)
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(1.0)	(1.1)	(0.1)
<i>Restructuring Disbursements</i>			
Professional Fees	(5.3)	(6.2)	(0.8)
NET CASH FLOWS	\$33.2	(\$13.5)	(\$46.7)
CASH			
Beginning Balance	\$131.9	\$131.9	\$ -
Net Cash Inflows / (Outflows)	33.2	(13.5)	(46.7)
Other (FX)	-	0.3	0.3
ENDING CASH	\$165.1	\$118.7	(\$46.4)

31. Explanations for the main variances in actual receipts and disbursements as compared to the February Cash Flow Forecast are as follows:
- (a) The unfavourable variance of approximately \$27.0 million in sales receipts is primarily comprised of the following:
- (i) an unfavourable variance of approximately \$16.0 million due to lower than forecast sales receipts in respect of U.S. residential customers;
 - (ii) an unfavourable variance of approximately \$0.9 million due to lower than forecast sales receipts in respect of U.S. commercial customers; and

- (iii) an unfavourable variance of approximately \$10.1 million primarily due to lower than forecast sales receipts in respect of Canadian residential and commercial customer billings;

Management expects the unfavourable timing variance in Sales Receipts, which are driven by timing of collections, to reverse in future weeks as contemplated in the March Cash Flow Forecast (as defined below).

- (b) The unfavourable variance of approximately \$23.1 million in respect of Energy and Delivery Costs is primarily driven by the following:
 - (i) a permanent unfavourable variance of approximately \$17.2 million due to higher commodity payments, partially driven by increased pricing and load during certain winter storms during the 4-week forecast period; and
 - (ii) a permanent unfavourable variance of approximately \$5.9 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;
- (c) The permanent favourable variance of approximately \$1.9 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions; and
- (d) The permanent favourable variance of approximately \$1.1 million in respect of Selling and Other Costs is primarily due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors.

Reporting Pursuant to the DIP Term Sheet

- 32. The variances shown and described herein compare the February Cash Flow Forecast, as appended to the Fifth Report, with the actual performance of the Just Energy Entities over the 4-week period noted.
- 33. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which

certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week period ended February 5, 2022. All variances reported were within the permitted variances.

34. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the "**DIP Cash Flow Forecasts**"). The Just Energy Entities provided the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week period beginning February 6, 2022.
35. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the February Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the February Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
36. Since the Fifth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
 - (a) Delivery of a Priority Supplier Payables Certificate monthly;
 - (b) Delivery of an ERCOT Related Settlements update weekly;
 - (c) Delivery of a Cash Management Charge update monthly;
 - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;
and
 - (e) Delivery of a Marked to Market Calculation monthly.

CASH FLOW FORECAST FOR THE 5-WEEK PERIOD ENDING APRIL 2, 2022

37. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 5-week period ending April 2, 2022 (the “**March Cash Flow Forecast**”), which encompasses the requested stay extension to March 25, 2022. The March Cash Flow Forecast is attached hereto as **Appendix “C”**, and is summarized below:

<i>(CAD\$ in millions)</i>	5-Week Period Ending April 2, 2022
Forecast Week	Total
RECEIPTS	
Sales Receipts	\$287.6
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$287.6
DISBURSEMENTS	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$225.6)
Payroll	(12.4)
Taxes	(10.9)
Commissions	(10.4)
Selling and Other Costs	(13.8)
<i>Total Operating Disbursements</i>	(\$273.0)
OPERATING CASH FLOWS	\$14.6
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(9.8)
<i>Restructuring Disbursements</i>	
Professional Fees	(7.3)
NET CASH FLOWS	(\$2.5)
CASH	
Beginning Balance	\$118.7
Net Cash Inflows / (Outflows)	(2.5)
Other (FX)	-
ENDING CASH	\$116.2

38. The March Cash Flow Forecast indicates that during the 5-week period ending April 2, 2022, the Just Energy Entities will have operating cash inflows of approximately \$14.6 million with total receipts of approximately \$287.6 million and total operating disbursements of approximately \$273.0 million, before interest expense and fees of

approximately \$9.8 million (which includes quarterly interest payments under the credit facilities advanced by each of the DIP Lenders and the Credit Facility Lenders) and professional fees of approximately \$7.3 million, such that total net cash outflows are forecast to be approximately \$2.5 million.

39. Generally, the underlying assumptions and methodology utilized in the February Cash Flow Forecast have remained the same for this March Cash Flow Forecast; however, the Monitor notes the following:
- (a) The forecast period was extended from the week ending March 12, 2022 to the week ending April 2, 2022;
 - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the March Cash Flow Forecast, which include:
 - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
 - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
 - (iii) Certain expenses not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
 - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
 - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
 - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
40. The March Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient

liquidity to continue funding their operations during the CCAA Proceedings to April 2, 2022.

STAY EXTENSION

41. The Stay Period will expire on March 4, 2022, and the Applicants are seeking an extension to the Stay Period up to and including March 25, 2022.
42. The Monitor supports extending the Stay Period to March 25, 2022 for the following reasons:
 - (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to hopefully finalize the Plan in an effort to achieve a going concern solution in consultation with the Monitor and key stakeholders, including potentially seeking an order from the Court approving a creditors' meeting to vote on same;
 - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with the flexibility and time required to develop and commence steps to implement a successful restructuring;
 - (c) as indicated by the March Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
 - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
 - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

APPROVAL OF THE ACTIVITIES OF THE MONITOR

43. The Proposed Order also seeks approval of this Sixth Report and the actions, conduct, and activities of the Monitor since the date of the Fifth Report.


44. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Fifth Report have been carried out in good faith and in accordance with the provisions of the orders issued in these CCAA Proceedings and should therefore be approved.

CONCLUSION

45. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
46. Accordingly, the Monitor respectfully supports the requested extension of the Stay Period in the Proposed Order and recommends that such Order be granted.

The Monitor respectfully submits to the Court this Sixth Report dated this 2nd day of March, 2022.

FTI Consulting Canada Inc.,
in its capacity as Court-appointed Monitor of
Just Energy Group Inc. *et al*,
and not in its personal or corporate capacity

Per: 

Paul Bishop
Senior Managing Director

Appendix “A”

**WRITTEN REASONS OF THE HONOURABLE JUSTICE MCEWEN DATED
FEBRUARY 23, 2022**

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the Matter of Just Energy Group Inc.
Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: McEwen

Counsel	Telephone No:	Facsimile No:
<u>see counsel slip</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows):

US Class Counsel brought a motion on February 9/22 primarily seeking the following relief:

① an order declaring the class claimants in the Domin v. Just Energy Group Inc et al and the Tardot v. Just Energy Solutions Inc (the "Class Claimants") are to be unaffected by this CCAA Proceeding;

② in the alternative, an order directing

23 Feb 22
Date

McEwen
Judge's Signature

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Judges Endorsment Continued

amongst other things, "a timely schedule and process" leading to the final adjudication of the Donin and Tordet Actions (the "Class Claim") prior to this Court's determination of the Applicants' Plan, or other event to exit this CCAA Proceeding and,

- ③ access to any data room / appointing a mediator / arbitrator to resolve disputes / production of specific documents listed in the Notice of Motion / & a compulsory meeting between the Applicants and U.S. Class Counsel.

Upon the conclusion of the motion I dismissed the motion with reasons to follow. I am now providing those reasons by hand ⁱⁿ given the time sensitive nature of this matter.

I do not propose to outline the background of this matter,

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Judges Endorsment Continued

in great detail, as the facts are well-known to the stakeholders.

Briefly, the Applicants obtained CCAA protection in March /21. The Applicants have been working with its significant stakeholder in their capital structure to develop a going-concern restructuring plan (the "Plan").

The Applicants provide energy to approximately 950,000 customers in Canada and the U.S. and employ over 1,000 people.

Currently, the Applicants are hopeful that agreement on the Plan can be reached in the near future. A motion date has been set for March 3/22 at which time the Applicants will seek an order to file the Plan and obtain a meeting order. There is some

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

possibility that the March 3/22 hearing date will be delayed somewhat if the Plan has not been prepared.

In this regard the Applicants are working with their DIP Lenders (who are also the Term Loan Lenders, and the assignee of a large secured supplier claim from BP), the Credit Facility Lenders and Shell who is also a significant, secured supplier.

The Monitor is assisting and is supportive of the attempt to file a Plan.

Against this backdrop the U.S. Class Counsel bring their motion. Generally, they assert that either the Class Claimants should be unaffected by the CCAA proceeding or, alternatively, that the aforementioned expedited process be

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Judges Endorsment Continued

undertaken before three arbitrators from STAMS(US) to ensure that the Class Claimants can meaningfully participate in the restructuring process and vote at a meeting of creditors considering the Plan.

This would of necessity require a motion or certification, possible summary judgment, outstanding discovery (to date there has been no discovery in the Toront Action) preparation of experts reports, procedural motions, PTC and trial.

US Class Counsel link their schedule to the Creditors' Meeting where a vote would take place.

Although uncertified, the Class Claims have survived an attempt in the US Courts to have them dismissed outright, although the

1. A potential appeal could obviously not be dealt with in the proposed timeframe.

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Judges Endorsment Continued

Class Claims have been narrowed in scope.

Also, US Class Counsel have filed two Proofs of Claims, which the Monitor has denied. Each is in the amount of approximately \$3.6 billion USD and is an unsecured claim.

Insofar as the motion is concerned, the Applicants opposeTM the relief sought and are supported by the Monitor.

The DIP Lenders, the Agent/Credit Facility Lenders and Shell also oppose the motion.

I will now turn to the relief sought by U.S. Class Counsel.

First, as noted, US Class Counsel seek an order that the Class Claimants should be unaffected by

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Judges Endorsment Continued

This CCAA Proceeding-

Generally, they submit that the Applicants cannot have it both ways. Namely, they cannot describe the Class Claims as being meritless / frivolous and at the same time resist a motion to allow them to proceed outside of the CCAA Proceeding.

I disagree. If the order was granted it would allow the unsecured Class Claimants to partially dictate the form of the Plan which has not yet been placed before this Court. This runs contrary to the case law that allows debtors to determine how they should deal with creditors in a proposed plan - subject to a creditor vote.

In this regard, U.S. Class Counsel have not produced any

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caselaw to support its position. To allow the relief sought would, in essence, elevate the Class Claims above other unliquidated, unsecured, contingent claims who would undoubtedly like to receive similar treatment.

Further, as a practical matter, the DIP Lenders who have been longstanding stakeholders, have clearly stated that they will not support a Plan that leaves the Class Claims unaffected.

This is a reasonable position given the nature of the proposed Plan. Second is the motion directing the speedy determination of the Class Claims utilizing JAMS (U.S.) within the general time frame set out above.

Here U.S. Class Counsel submit that the Applicants ignored them

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For approximately three weeks late in 2021 and US Class Counsel were later told in early Feb/22 that there was no time to conduct the proposed process given the proposed meeting date. ✓

US Class Counsel also submit that there is equity in the Applicants based on their own Filings (which is hotly contested by the Applicants).

Overall, they argue that the process must be fair and reasonable / constructive for all stakeholders; that their timeline is achievable and has been accomplished in other similar cases²; and that given the size of the Class Claims that they should be determined before the creditors vote, particularly since they have been disallowed by the Monitor.

2. Essar Steel Algoma (Re) 2016 ONSC 1802, leave ref'd 2016 ONCA 274; Covia Canada Partnership Cap v PWA Corp 1993 CanLII 9429 (ONSC) aff'd 1993 CanLII 815 (ONCA).

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Judges Endorsment Continued

I do not agree for a number of reasons:

- i) I do not accept that the Applicants have "sneakbaggged" the US Class Counsel based on the record before me. Given the complexity of the restructuring and the timing of the U.S. Class Counsel's proposed adjudication plan it is not surprising that it took a matter of weeks to respond;
- ii) within the CCAA Proceeding U.S Class Counsel have not yet contested the disallowance of the Class Claims, thus not triggering the adjudication process provided for in claims procedure order;
- iii) I have significant concerns, and very much doubt, that the process proposed by US Class Counsel is viable given the significant number of hearings - including

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certification and damage - that would have to occur in a compressed timeline (it bears noting that in the 3-4 years that the Class Claims have been outstanding they have not completed these stages).

iv) even if such a process was allowed it would be a tremendous distraction from the restructuring which is at a critical juncture;

v) the Applicants' Plan has not yet been offered to the Court, nor has the issue of a meeting order been addressed - the CCAA process should be allowed to progress further before the adjudication proposed by U.S. Class Counsel is considered;

vi) last and overall, I am not of the view that the hotly contested Class Claims (both an

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liability and quantum) ought to adjudicated before other claims and prior to the next contemplated step in the CCAA Proceeding - in this regard the cases relied upon (Essar and Coura) are distinguishable as per the submission of the DIP Lender at paras 34-35 of their Factum.^{2a}

The third issue concerns the data room / production of documents and related relief.

US Class Counsel generally submit that given the size and nature of their Class Claims that it is appropriate that they have access to the data room and the specific documents referenced in para 3(c) of their Notice of Motion.

In this regard US Class Counsel rely on a number of other

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CCAA cases in which significant stakeholders were given access to data rooms / documentation³.

US Class Counsel have entered into an NDA with the Applicants. With the assistance of the Monitor, certain documentation, including the Applicants' May 21 Business Plan and DIP Term Sheet amongst other documents, have been provided to US Class Counsel. Many requests have not been agreed to by the Applicants.

It bears noting that the secured lenders will not provide their consent to share information/documentation sought which concerns their confidential negotiations.

Further, in this regard the Monitor submits that it, and the Applicants, have been responsive to US Class

3. As per para 84 of US Class Counsel's Paction.

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Class Counsel's request for documentation and that the only documentation withheld relates to information concerning the negotiations. The Monitor again supports the Applicants' position.

At the motion, time did not allow for a granular review of the documents produced and sought.

I agree with the Applicants, however, that US Class Counsel should not be allowed to documentation concerning the ongoing negotiations. Further, based on the record I am generally satisfied that adequate production has been made.

If specific documents not related to the negotiations, are still sought I can be spoken to.

With respect to the issue of production I also note that the cases relied

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upon by US Class Counsel are not analogous to the within CCAA Proceeding. For example, this CCAA Proceeding is far different than that in *Sino-ForestTM* or *Nantel*.⁴

For all of the reasons above the motion is dismissed. Generally, I am of the view that the CCAA Proceeding ought to proceed as per the provisions of the Act without the relief sought by US Class Counsel (save and except some limited production if deemed sensible by this Court).

In due course the Plan will be presented to the Court and the question of a meeting order will be dealt with. US Class Counsel will have the opportunity to make submissions. This is

4. See para 84 of the Applicants' Factum.

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preferable and fairer to all creditors than to have the Class Claims receive enhanced treatment insofar as an expedited hearing and production are concerned.

It also negates the possibility of derailing the ongoing, sensitive negotiations that are currently ongoing and creating a truncated adjudication of the Class Claims that may well be unachievable in the available time period.

M. E. T.

Appendix “B”

NOTICE OF MOTION FOR LEAVE TO APPEAL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

NOTICE OF MOTION FOR LEAVE TO APPEAL

THE MOVING PARTIES, Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, “**U.S. Class Counsel**”), in their capacity as counsel to the plaintiff classes (the “**Class Claimants**”) in *Donin v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and *Trevor Jordet v. Just Energy*

Solutions, Inc. (the “**Jordet Action**”, together with the Donin Action, the “**U.S. Litigation**”), will make a motion to a panel of the Court of Appeal for Ontario, in writing on an expedited basis or, in the alternative, within 36 days after service of the moving parties’ motion record and factum, or on the filing of the moving parties’ reply factum, if any, which ever is earlier.

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

THE MOTION IS FOR:

1. An order granting U.S. Class Counsel leave to appeal to the Court of Appeal for Ontario from the order of Justice McEwen dated February 9, 2022 (the “**Order**”), dismissing the motion of U.S. Class Counsel seeking, *inter alia*, an order that the Class Claimants be treated as unaffected creditors in the CCAA Proceeding (as defined below) or, in the alternative, an order for an expedited adjudication framework and information sharing protocol to allow the Class Claimants the opportunity to vote on a plan and/or have a role in the restructuring process;
2. An order that this leave motion be heard on an expedited basis;
3. An order validating the manner of service of this notice of motion and motion materials herein, if necessary;
4. The costs of this motion; and
5. Such further and other relief as this Honourable Court deems fit.

THE GROUNDS FOR THE MOTION ARE:

6. U.S. Class Counsel's proposed appeal raises serious and arguable grounds with respect to how contingent claims ought to be addressed in *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") proceedings in the face of a pending plan of arrangement or compromise.

7. More specifically, do the CCAA and principles of procedural fairness require the debtor and the Court to implement a process that will make full use of the time available prior to the meeting of the creditors and result in the determination or estimation of the claim for the purpose of voting at a meeting of creditors having regard so far as possible to its merits?

8. There are two core requirements for approval of a restructuring plan pursuant to the CCAA: (i) a vote by creditors; and (ii) a court sanction.

9. Justice McEwen's order undermines the voting requirement, one of the foundational pillars of a CCAA restructuring. Justice McEwen erred in not using the time available and by failing to put a process in place that leads to a determination of the Class Claimants' claims prior to a meeting of creditors so that the Class Claimants position is fairly represented at the meeting and they can vote.

10. In respect of the failure to order access to information, Justice McEwen made a further error in principle in denying the Class Claimants access to meaningful information so that they can vote on an informed basis.

11. The CCAA process must not be engineered in a way that disenfranchises (or increases the likelihood of disenfranchisement of) creditors.

12. These issues are of real and significant interest and importance to the parties, the public, CCAA proceedings, insolvency practice in general, and the law.

A. Background

1. The U.S. Class Actions

1. On October 3, 2017, Fira Donin and Inna Golovan filed a proposed class action lawsuit on behalf of themselves and all other U.S. customers alleging, among other things, that the Applicants named as defendants (the “**Just Energy Defendants**”) breached their contractual obligations and implied covenant of duty of good faith and fair dealing (the Donin Action).

2. On April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers in which he made similar allegations to the plaintiffs in the Donin Action (the Jordet Action).

3. The Donin Action and the Jordet Action encompass 11 states in which the Just Energy Defendants do business.

4. The Just Energy Defendants sought to have the U.S. Class Actions dismissed. They were unsuccessful. In each case, the court ruled that key claims in the U.S. Litigation were plausible. Both of the U.S. class actions remain stayed in the United States.

2. The CCAA Proceeding

5. On March 9, 2021, the Court issued an Initial Order granting CCAA protection to the Applicants (the “**CCAA Proceeding**”).

6. On September 15, 2021, the Applicants proposed and the Court issued a “**Claims Procedure Order**” which, among other things, established a “**Claims Bar Date**” of 5:00 p.m. on November 1, 2021 in respect of Pre-Filing Claims (as defined in the Claims Procedure Order).

7. On November 1, 2021, prior to the expiry of the Claims Bar Date, U.S. Class Counsel filed Proof of Claim forms in respect of the Donin Action and the Jordet Action in the aggregate, unsecured amount of approximately \$3.66 billion (reflecting a joint, composite damages claim encompassing both lawsuits).

8. In each case, U.S. Class Counsel provided Claim Documentation setting out the relevant background and merits of the respective U.S. class action.

3. The Notice of Disallowance

9. On January 11, 2022, the Applicants served a Notice of Revision or Disallowance with respect to both the Donin and Jordet Proofs of Claim (the “**Notice of Disallowance**”). The Notice of Disallowance disallowed the Donin and Jordet Claims in their entirety.

10. The Notice of Disallowance largely repeats the failed legal arguments that the Applicants made in their unsuccessful attempts to have the Donin Action and the Jordet Action dismissed.

11. The Notice of Disallowance takes issue with the alleged size of the Class and quantum of the alleged claim, yet the Applicants continue to refuse to provide U.S. Class Counsel with the necessary data and information to more precisely determine these issues or to verify the Applicants' unsupported assertions related to class size and damages.

12. The Notice of Disallowance also rejects the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report prepared by Serhan Ogur for the U.S. Litigation.

13. The Class Claimants filed a comprehensive Notice of Dispute of Revision or Disallowance on February 10, 2022.

4. U.S. Class Counsel's Efforts to Obtain Information in Connection with this CCAA

14. U.S. Class Counsel repeatedly requested that the Applicants and the Monitor provide them with access to information in connection with the CCAA Proceeding.

15. U.S. Class Counsel's requests were consistent with the type and character of information that is commonly requested and provided as between creditors and debtors in restructuring proceedings.

16. The information that U.S. Class Counsel requested is necessary to properly evaluate and consider the Applicants' restructuring plan formation and resulting plan proposal in this ongoing CCAA Proceeding. Without this information, the Class Claimants cannot exercise their right to vote on any plan on an informed basis.

17. At this time, with the exception of the DIP Term Sheet and its 15th amendment, U.S. Class Counsel has still not received from the Applicants any substantive information which is useful to evaluate any plan proposal.

18. Notwithstanding repeated requests, the Applicants have largely resisted U.S. Class Counsel's requests. As a result, the flow of information has been deficient and contrary to a consensual CCAA restructuring.

5. U.S. Class Counsel, Paliare Roland, Tannor Capital Advisors and the Applicants enter into an NDA

19. On November 30, 2021, Just Energy Group Inc., U.S. Class Counsel, Tannor Capital Advisors and Paliare Roland Rosenberg Rothstein LLP entered into a Confidentiality, Non-Disclosure and Non-Use Agreement (the "**NDA**").

20. Despite the execution of the NDA, the Applicants have continued to delay and resist U.S. Class Counsel's requests for information.

21. Despite requests from U.S. Class Counsel to the Monitor and the Applicants, U.S. Class Counsel has not received substantive information regarding:

- (a) the Plan Term Sheet, and the details of the creditor pool and further information on the quantum of claims in this CCAA Proceeding;
- (b) whether there are any professionals representing unsecured creditors and the Class Claims in the ongoing realization discussions, given that it now appears the Applicants have equity on the balance sheet (as discussed below);

- (c) the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' and/or financiers' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval; and
- (d) how and when the Class Claimants' claims will be adjudicated and/or be treated within a vote.

22. U.S. Class Counsel and its advisors need access to this type of information in order to meaningfully participate in any restructuring file, including this CCAA Proceeding.

23. Without this information, U.S. Class Counsel is hampered in its ability to consider and discuss the Applicant's intended course of conduct, and to develop and propose alternatives that may be attractive to and preserve value for the general body of unsecured creditors.

6. The Class Claimants are Unaffected Creditors

24. U.S. Class Counsel sought an Order that the Class Claimants are unaffected in the CCAA Proceeding so that their claims could continue in the U.S. courts.

25. Alternatively, if the claims were not unaffected, then U.S. Class Counsel sought the prompt and efficient adjudication of the Donin and Jordet Claims within the CCAA Proceeding and meaningful information so that the Class Claimants were not effectively disenfranchised.

7. The Expedited Adjudication Framework

26. In response to a request from Counsel to the Applicants, and in anticipation of the disallowance of the Proofs of Claim, on December 13, 2021, U.S. Class Counsel proposed an adjudication plan for the Donin and Jordet Claims.

27. The proposed adjudication plan was an attempt to put in place a mutually-agreeable process for the adjudication of the Donin and Jordet Claims within the CCAA Proceeding.

28. On February 1, 2022, the Applicants finally responded and sent a with prejudice alternative adjudication process that would see the Donin and Jordet Claims determined on a schedule of more than one year.

29. On February 4, 2022, U.S. Class Counsel proposed a further Expedited Adjudication Framework.

30. To accommodate concerns that had been raised with U.S. Class Counsel, the Expedited Adjudication Framework contemplated a more extensive and lengthier adjudication process than U.S. Class Counsel's initial proposal. Specifically, the Expedited Adjudication Framework proposed:

- (a) adjudication by a tripartite panel of two US arbitrators and one Canadian arbitrator (collectively, the "**Claims Officers**");
- (b) the Honourable Mr. Dennis O'Connor would sit as the Canadian arbitrator and each side would have the right to appoint one Claims Officer from the extensive list of US JAMS arbitrators with class action experience;

- (c) the Claims Officers would have complete jurisdiction and discretion to determine the appropriate process for the proceeding within the JAMS US expedited rules and with consideration to an endorsement from the CCAA court that the deadline for the release of a decision on the merits was to be three days prior to the meeting of creditors (implying an outside date of March 27, 2022, as it appeared as though the DIP lenders were requesting a timeline that would have a vote on March 30, 2022).; and
- (d) any appeal would be to the CCAA court.

31. The Expedited Adjudication Framework established a time-sensitive process that addressed and protected the rights and interests of the parties and ensured that all questions about scope, jurisdiction, discovery or any other matter will be dealt with efficiently by the very panel that would hear the case.

32. Given the potential significance of the Donin and Jordet Claims to the approval of any Plan, there is a need to establish a process for the valuation of these claims in advance of any meeting of creditors and sanction hearing (or any other exit from this CCAA Proceeding).

B. The February 9, 2022 Order

33. Throughout various case conferences and discussions the Applicants and the Monitor told U.S. Class Counsel that their requests for information and for an expedited adjudication process were premature.

34. Then, at approximately 3:20 pm, on February 4, 2022, the day that U.S. Class Counsel's factum was due, and three business days before the motion, the Monitor served the Fifth Report of the Monitor in which it advised that the DIP lenders were requesting a timeline that would see a vote on a plan by March 30, 2022. A motion date was also set for March 3, 2022, at which time the Applicants will seek an order to file the plan and obtain a meeting order.

35. After months of saying that U.S. Class Counsel's requests were premature and that there would be time, a vote was being proposed within 8 weeks.

36. U.S. Class Counsel's motion was heard on February 9, 2022.

37. Justice McEwen dismissed U.S. Class Counsel's motion from the bench, but stated that his Honour "may have some comments on the information sharing". His Honour advised that he hoped to have handwritten reasons delivered to the parties by February 16, 2022.

38. Justice McEwen did not provide handwritten reasons on February 16, 2022.

39. On February 22, 2022, Jeffrey Larry ("**Mr. Larry**"), counsel to U.S. Class Counsel wrote a letter to the Applicants' counsel advising that given that Justice McEwen had not released reasons, and that the import of the decision was not known yet, it was U.S. Class Counsel's position that the time for seeking leave to appeal had not begun running.

40. Mr. Larry requested that the Applicants agree to consent to any motion that U.S. Class Counsel may be required to bring for an extension of time.

41. On February 23, 2022, Justice McEwen delivered handwritten reasons.
42. Later on February 23, 2022, the Applicants' counsel advised that it would not consent to any extension of time regarding this appeal.

C. *Proposed Appeal*

43. If leave is granted, this court would be asked to answer the following questions:
 - (a) How are contingent claims to be addressed in CCAA proceedings in the face of a pending plan?
 - (b) Do the CCAA and the principles of procedural fairness require a debtor and the Court to implement a process that will result in the determination or estimation of the claim for the purpose of voting at a meeting of creditors?

D. *Leave to appeal should be granted*

44. The points raised on the proposed appeal are significant to these proceedings and to the practice, and are *prima facie* meritorious.
45. There is good reason to doubt the correctness of the Order appealed.
46. Justice McEwen erred in principle in allowing the Applicants to pursue a process that will ultimately result in the Class Claimants' disenfranchisement.
47. Justice McEwen also erred in failing to consider the impact of his decision on one of the two core requirements for approval of a restructuring plan – the vote by creditors.

48. The vote by creditors must be meaningful in order to advance the policy objectives underlying the CCAA.

49. The CCAA places the restructuring process under the Court's supervision. The Court is required to impose obligations on the debtor to ensure creditors may meaningfully exercise the right to vote.

50. In making the impugned order, the motion judge denied the Class Claimants' procedural fairness.

51. Given the number of claimants and the size of the Donin and Jordet Claims, the fair treatment and assessment of these claims is critical to the outcome of the CCAA Proceeding.

52. Indeed, the Class Claimants are creditors and potentially key stakeholders in the Applicants' restructuring. The Class Claimants are the Applicants' former and current customers. They have a significant interest in the CCAA Proceeding and a successful restructuring of the Applicants.

53. The proposed appeal involves matters of such importance that leave to appeal should be granted.

54. The proposed appeal is of profound significance to CCAA proceedings in general. Justice McEwen's order dilutes the principle of CCAA proceedings that creditors must be treated fairly and narrows the scope of the fundamental protections to creditors that the CCAA is designed to provide.

55. Justice McEwen's decision is a concerning precedent that threatens to disrupt the relationship between creditors and debtors. His Honour's decision creates a restructuring dynamic that is fundamentally at odds with the principles of the CCAA. It also undermines the obligations on debtors to satisfy the Court that they have proceeded in a manner where the transparency, integrity, credibility and fairness of the process is beyond reproach.

56. Moreover, the learned motion judge's approach will have significant impact on contingent creditors in CCAA proceedings. It will encourage debtors to avoid determining contingent claims.

57. The CCAA has a remedial objective. It is focused on *all* stakeholders. It requires that creditors, including contingent creditors, be treated fairly and meaningfully.

58. The appeal is *prima facie* meritorious and is not frivolous.

59. US Class Counsels' proposed appeal will not unduly hinder the progress of the CCAA Proceeding.

E. An Expedited Hearing of this Motion is Necessary

60. U.S. Class Counsel asks that this motion for leave to appeal be heard as soon as possible by this Court.

61. While this motion remains outstanding, the CCAA Proceeding is continuing and the clock continues to run towards a plan and a vote.

F. Statutory Grounds

62. Rules 1.04, 1.05, 61.03.1 and 63.02 of the *Rules of Civil Procedure*.

63. Sections 11, 11.02 and 18.6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

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

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

1. Orders and endorsements of the court made in the CCAA Proceeding;
2. The evidence before the court on the motion; and
3. Such further and other evidence as counsel may advise and as this Honourable Court may permit.

February 24, 2022

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Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*

Court of Appeal FileNo.
Court File No. CV-21-00658423-00CL

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C.
C 36, AS AMENDED;
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST
ENERGY GROUP INC. ET AL.**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION FOR LEAVE TO APPEAL

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Appendix “C”
CASH FLOW FORECAST FOR THE 5-WEEK PERIOD ENDING APRIL 2, 2022

Weeks Ending (Saturday)		3/5/22 Forecast	3/12/22 Forecast	3/19/22 Forecast	3/26/22 Forecast	4/2/22 Forecast	5-Week Total
Forecast Week		Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Total
RECEIPTS							
Sales Receipts	[1]	\$53.7	\$51.6	\$47.1	\$78.2	\$57.0	\$287.6
Miscellaneous Receipts	[2]	-	-	-	-	-	-
Total Receipts		\$53.7	\$51.6	\$47.1	\$78.2	\$57.0	\$287.6
DISBURSEMENTS							
<i>Operating Disbursements</i>							
Energy and Delivery Costs	[3]	(\$53.0)	(\$16.6)	(\$47.2)	(\$90.1)	(\$18.6)	(\$225.6)
Payroll	[4]	(2.4)	(3.6)	-	(6.3)	-	(12.4)
Taxes	[5]	(0.4)	(0.0)	(5.8)	(4.6)	-	(10.9)
Commissions	[6]	(1.4)	(1.1)	(2.7)	(4.3)	(0.8)	(10.4)
Selling and Other Costs	[7]	(2.8)	(2.8)	(2.8)	(1.1)	(4.4)	(13.8)
Total Operating Disbursements		(\$60.0)	(\$24.2)	(\$58.6)	(\$106.5)	(\$23.8)	(\$273.0)
OPERATING CASH FLOWS		(\$6.3)	\$27.4	(\$11.5)	(\$28.3)	\$33.2	\$14.6
<i>Financing Disbursements</i>							
Credit Facility - Borrowings / (Repayments)	[8]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest Expense & Fees	[9]	(1.6)	-	-	-	(8.3)	(9.8)
<i>Restructuring Disbursements</i>							
Professional Fees	[10]	(0.6)	(0.8)	(0.8)	(3.2)	(1.8)	(7.3)
NET CASH FLOWS		(\$8.5)	\$26.6	(\$12.3)	(\$31.5)	\$23.2	(\$2.5)
CASH							
Beginning Balance		\$118.7	\$110.2	\$136.8	\$124.5	\$93.0	\$118.7
Net Cash Inflows / (Outflows)		(8.5)	26.6	(12.3)	(31.5)	23.2	(2.5)
Other (FX)		-	-	-	-	-	-
ENDING CASH		\$110.2	\$136.8	\$124.5	\$93.0	\$116.2	\$116.2
BORROWING SUMMARY							
DIP Facility Credit Limit		\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	
DIP Draws		-	-	-	-	-	
DIP Principal Outstanding		157.5	157.5	157.5	157.5	157.5	
DIP Availability		\$ -	\$ -	\$ -	\$ -	\$ -	

1. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.
2. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.
3. Energy & Delivery costs reflect the purchase energy from suppliers and the cost of delivery and transmission to the Company's customers.
4. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of payroll taxes and any payments associated with the Company's bonus programs.
5. Taxes reflect the remittance of sales taxes collected from customers and the Company's corporate income taxes.
6. Commissions include fees paid to customer acquisition contractors and suppliers.
7. Selling and Other Costs include selling, general, and administrative payments.
8. The Credit Facility Borrowings / (Repayments) show borrowings and repayments under the Company's credit facilities.
9. Interest expenses & fees include interest and fees on the Company's credit and LC facilities.
10. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, the DIP lenders' professionals, and fees for Lender Support and Certain Commodity Support Agreements.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**SIXTH REPORT OF
FTI CONSULTING CANADA INC., IN ITS
CAPACITY AS COURT-APPOINTED MONITOR**

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