

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

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

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

APPLICANTS

**SUPPLEMENTARY SUBMISSIONS OF THE DIP LENDER**

**MOTION FOR AUTHORIZATION ORDER, MEETINGS ORDER, AND OTHER RELIEF  
HEARD JUNE 7, 2022**

June 15, 2022

**CASSELS BROCK & BLACKWELL LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Alan Merskey LSO #: 413771**

Tel: 416.860.2948  
amerskey@cassels.com

**John M. Picone LSO #: 58406N**

Tel: 416.640.6041  
jpicone@cassels.com

**Christopher Selby LSO #: 65702T**

Tel: 416.860.5223  
cselby@cassels.com

Lawyers for the DIP Lenders

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1. Under the Applicants' proposed Plan, the Term Loan Lenders will receive equity interests in reorganized Just Energy while General Unsecured Creditors will receive equivalent value in cash. If the Plan were to proceed as framed, that treatment would be necessary to satisfy a material condition to the Plan – that Just Energy cease to be a reporting issuer after it emerges from CCAA. It would also be appropriate in the circumstances.

**A. It Is Necessary for Just Energy to Cease to be a Reporting Issuer**

2. The Plan Sponsor would not have entered into the Plan Support Agreement, and would not support a restructuring, if Just Energy could be required on a go-forward basis to incur the

significant costs necessary to satisfy reporting issuer requirements. As such, it is a material condition precedent to the effectiveness of the Plan that Just Energy cease to be a reporting issuer following emergence from CCAA:

JEGI shall satisfy any and all conditions or requirements necessary to cease to be a reporting issuer (or the equivalent) under the U.S. Exchange Act (or any other U.S. securities laws) and JEGI shall cease to be a reporting issuer and no Just Energy Entity shall be deemed to have become a reporting issuer under applicable Canadian Securities Laws and the Common Shares shall have been delisted from the TSX Venture Exchange, in each case, as and from the Effective Time;<sup>1</sup>

3. Just Energy must meet certain mandatory requirements to cease being a reporting issuer. Among other things, pursuant to National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*, Just Energy would have to ensure that, upon implementation of the Plan, its outstanding securities (which include debt securities and shares) are beneficially owned by less than 15 securityholders in each of the jurisdictions of Canada and less than 51 securityholders in total worldwide (which, along with certain other actions, would satisfy the requirements for Just Energy to cease being a reporting issuer under United States securities laws).

4. The current structure of the Plan was designed in part to satisfy these requirements, with only the Term Loan Lenders (who are backstopping this restructuring) receiving equity. However, if distributions to General Unsecured Creditors were in equity rather than cash, it would be impossible to meet that requirement. There are over two thousand General Unsecured Creditors who have asserted claims – not including the Contingent Claimants.

5. It would be equally impossible to give the Term Loan Lenders cash instead of equity because there is insufficient cash available. Cash constraints have already required the DIP

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<sup>1</sup> Article 10.1(l) of the Plan.

Lender affiliate to accept preferred shares in exchange for the secured BP Claim and the Credit Facility Lenders to roll over a portion of their debt instead of receiving payment in full.<sup>2</sup>

**B. Treatment of Unsecured Creditors Is Appropriate**

6. The different form of treatment as between the Term Loan Lenders and the General Unsecured Creditors is appropriate in the circumstances. The evidence of Just Energy's financial advisor, BMO, is that the economic result under the Plan is such that the Term Loan Lenders and General Unsecured Creditors will receive equivalent value.<sup>3</sup> Unsecured creditors are not receiving materially differential recovery under the Plan.

7. But even if value were not equivalent, it would nevertheless be appropriate for the Term Loan Lenders to receive enhanced recovery. They would be making a substantially different contribution to the restructuring by consenting to substantive consolidation and compromising the claims they hold against all of the Applicants.<sup>4</sup> The same is not true of the General Unsecured Creditors, who primarily hold claims against only certain of the Applicants.

8. As with all CCAA plans, fair and reasonable means equitable treatment, not equal treatment.<sup>5</sup> There is nothing inappropriate about differential treatment within the same class.

9. In *SemCanada Crude Co.*, noteholders were treated more advantageously under the proposed plan than other unsecured creditors in the same class because there was a sound rationale for that differential treatment:

The interests of the Noteholders are unsecured. While it is true that under the integrated plans, the Noteholders would be entitled to a higher share of the distribution of assets than ordinary unsecured

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<sup>2</sup> Affidavit of Michael Carter sworn May 12, 2022 ("Carter Affidavit"), paras [18](#), [65](#), [80](#), Motion Record of the Applicants dated May 12, 2022 ("Applicants' MR") Tab 2, pp [90-91](#), [118](#), [130](#).

<sup>3</sup> Carter Affidavit, [para 77](#), Applicants' MR Tab 2, [p 129](#).

<sup>4</sup> Carter Affidavit, [para 17](#), Applicants' MR, Tab 2, [p 90](#); *Canwest Global Communications Corp., Re.*, [2010 ONSC 4209](#), [para 23](#); *Sino-Forest Corporation, (Re)*, [2012 ONSC 7050](#), [para 66](#); *SemCanada Crude Company (Re)* ("*SemCanada*"), [2009 ABQB 490](#), [para 22](#); *Stelco Inc., Re*, [2005 CanLII 42247](#) (ONCA), [para 26](#).

<sup>5</sup> *Sammi Atlas Inc., Re*, [1998 CanLII 14900](#) (ONSC), [para 4](#).

creditors, the rationale for such difference in treatment relates to the multiplicity of debtor companies that are indebted to the Noteholders, as compared to the position of the ordinary unsecured creditors.<sup>6</sup>

10. In *Sherritt*, which involved a plan of arrangement under the *Canada Business Corporations Act*, the Court approved a plan, applying CCAA principles, which provided that unsecured creditors within a single class would receive vastly different recoveries. In that case, the Court found no conceptual or other reason why it would be difficult or impossible for those unsecured creditor groups to consult with each other despite their vastly different recoveries under the plan.<sup>7</sup>

11. In *Banro*, the Court approved a plan which provided that some creditors would receive shares with no voting restrictions while other creditors in the same class with identical debt would receive shares with voting restrictions. In that case, the Court confirmed that where certain creditors “have contributed to the success of a Plan, they may be entitled to different treatment than other creditors” and that “equitable treatment is not necessarily equal treatment”.<sup>8</sup>

### **C. Treatment of Creditors under the Plan Is a Fairness Issue**

12. Ultimately, treatment of unsecured creditors under the Plan is a fairness issue that should be dealt with at the sanction hearing.

13. Any decision now with respect to whether differential treatment under the Plan is fair and reasonable would constrain this Court from assessing that issue if the Plan were to proceed to a sanction hearing.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of June, 2022.

*Cassels*

**CASSELS BROCK & BLACKWELL LLP**

<sup>6</sup> *SemCanada*, [para 47](#).

<sup>7</sup> *Re Sherritt International Corporation*, [2020 ONSC 5822](#), paras [30](#), [39](#), [43](#).

<sup>8</sup> *Banro Corporation (Re)*, [2018 ONSC 2064](#), para [9](#).

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