

**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.

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

**AIDE MEMOIRE OF U.S. CLASS COUNSEL
(CASE CONFERENCE BEFORE JUSTICE MCEWEN, MAY 24, 2022)**

May 23, 2022

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Counsel to US counsel for Fira Donin and Inna Golovan, in their capacity as proposed class representatives in *Donin et al. v. Just Energy Group Inc. et al.*

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

TO: **THE SERVICE LIST**

1. After months of advising the Court and interested parties that a Plan was pending, on May 12, 2022, the Applicants served a very lengthy motion record for an authorization order, meetings order, stay extension and other relief returnable May 26, 2022 (the “**Meetings Motion**”).

2. The Applicants did not canvass May 26, 2022 with (at least) U.S. Class Counsel and other interested parties who now seek this adjournment.

3. U.S. Class Counsel oppose the Meetings Motion and take the position that the Plan should not go to a vote in its present form. The U.S. Customers require a reasonable schedule to respond to the Applicants’ motion, including time to properly brief the issues and to cross-examine Mr. Carter and Mr. Caiger on their affidavits sworn May 12, 2022.

4. In the interim, there is no explanation as to why the Meetings Motion needs to proceed on May 26 or even why the vote itself needs to occur on August 2, 2022. Indeed, there are no liquidity concerns that require the Just Energy Entities’ motion to proceed on a hurry up basis on May 26, 2022. Moreover, the suggestion that certain “milestones” must be adhered to is hardly persuasive given that the milestones have repeatedly been adjusted over the past several months as the Applicants have delayed putting their Plan forward; it is hard to accept that the milestones can’t be adjusted again in the interests of fairness.

5. U.S. Class Counsel have three immediate concerns in respect of the Plan pertaining to the Meetings Motion (separate from fairness issues which will be addressed at the sanction hearing):

- (a) the Plan currently contemplates a gross disparity in the consideration to be provided to certain unsecured creditors relative to the general body of unsecured creditors, yet the Plan puts all of the unsecured creditors in one class for voting purposes;
- (b) the Applicants propose to limit the (at least) hundreds of thousands of U.S. Customers to a single vote; and
- (c) the Applicants propose to arbitrarily limit the U.S. Customers claims to one dollar without even any meaningful attempt at independently valuing this claim for voting purposes.¹

6. There is ample time to properly address these issues (which, notably, have also been raised by class counsel in *Omarali v. Just Energy*) in an orderly basis in advance of the meetings.²

7. U.S. Class Counsel are not trying to subvert or delay the process (as has been suggested). They are willing to work within the stated timelines for the meeting and the sanction hearing but simply demand that the U.S Customers' procedural and substantive rights are respected.

¹ In keeping with s. 20 of the CCAA, U.S. Class Counsel intend to bring a motion to this court prior to the meeting of creditors seeking a summary valuation (estimation) of the claim for voting purposes.

² Koskie Minsky's letter to the Monitor and the Just Energy Entities' counsel dated May 19, 2022 attached as Tab 1; Paliare Roland's letter to the Monitor and the Just Energy Entities' counsel dated May 19, 2022 attached as Tab 2; and the Just Energy Entities' letter dated May 19, 2022 attached as Tab 3.

Tab 1

May 19, 2022

David Rosenfeld*
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VIA E-MAIL

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Attention: Marc Wasserman (MWasserman@osler.com)

Thornton Grout Finnigan LLP
100 Wellington St. W., Suite 3200
Toronto, ON M5K 1K7

Attention: Robert Thornton (rthornton@tfg.ca)

Dear Sirs:

**Re: Issues with Meeting Order and Proposed Plan of Arrangement
(Our File No. 15-0110)**

As you know, we are class counsel in *Omarali v. Just Energy*. We have reviewed the Company's materials in support of the Meetings Order and have serious concerns about the relief that is being sought. Our concerns include the following:

1. That the 7,500 creditors that we represent will get a single vote, despite the requirements of Section 6(1) of the CCAA;
2. That our clients' claims are being valued at \$1 and that no dispute resolution process is contemplated in advance of the creditors' meetings;
3. That our clients are being included in the same class as the Term Lender, despite the fact that the Term Lender is receiving a drastically different form of compensation, the value of which is highly uncertain and may in fact be orders of magnitude greater than the compensation that may flow to our clients;
4. That there appears to have been a failure to disclose material sources of funds that may flow to the Just Energy entities that are not discussed in the motion materials and which do not appear to be considered as part of the amount that may be distributed to unsecured

creditors, including amounts that may be recovered through litigation against ERCOT, ultimately meaning that this value will go to the new equity holders of the company.

5. That there appears to be a failure to disclose how the Just Energy entities and the supporting secured and unsecured creditors have valued the Just Energy business and the equity they will receive from this proposed Plan.
6. That our certified class action is being treated differently and less favourably than the uncertified, unsecured and disputed securities class action that has been classified as unaffected.
7. That we do not see how our clients and the other creditors are supposed to participate in a meaningful and informed vote when there is so much uncertainty both with respect to the quantification of unsecured claims and the amount of funds to be distributed to unsecured creditors.

We do not believe that the Plan can go to a vote in its present form, and we will be asking the Court to deny the Company's request.

These are important issues, and we believe that procedural fairness requires that they be properly briefed and argued. We also believe it will be necessary to conduct a cross-examination of Mr. Carter on his May 12, 2022 affidavit.

Given that the Just Energy business is currently stable, we believe that it is appropriate to convert the attendance on Thursday May 26th into a case conference, where we can discuss these issues with Justice McEwen and come up with a schedule for additional disclosure from the Just Energy entities, the exchange of material, and dates for cross examinations and the hearing of these issues. We have discussed our concerns with counsel in the *Jordet* class action and we understand they are supportive of this request. We have copied them on this email.

If you do not consent to convert the May 26th date into a case conference, we will be writing to the Court and seeking a case conference at the earliest possible date.

Yours truly,

KOSKIE MINSKY LLP



David Rosenfeld
Partner
DR:ss

c James Harnum and Vlad Calina, Koskie Minsky
Ken Rosenberg and Jeff Larry, Paliare Roland

Tab 2

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Linda R. Rothstein
Richard P. Stephenson
Donald K. Eady
Gordon D. Capern
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Robert A. Centa
Jeffrey Larry
Kristian Borg-Olivier
Emily Lawrence
Tina H. Lie
Jean-Claude Killey
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Ren Bucholz
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File 99380

May 19, 2022

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Dear Counsel:

**Re: Just Energy Group Inc.
Court File No. CV-21-00658423-00CL**

We write further to the letter of today's date by class counsel in *Omarali v. Just Energy*.

Our clients share and support Mr. Rosenfeld's clients' serious concerns regarding the relief that is being sought on the Applicants' motion returnable on May 26, 2022 (the "Motion").

The proposed Plan should not go to a vote in its present form and our clients are opposed to the Motion. Procedural fairness and our clients' due process rights require a reasonable schedule to respond to the Applicants' motion, including time to cross-examine Mr. Carter and Mr. Caiger on their affidavits sworn May 12, 2022.

Some of our clients' most pressing concerns are as follows:

- Our clients are included in the same class as the Term Lender who is being treated substantially differently from our clients. Pursuant to the Applicants' materials they will obtain a higher recovery and have the right to participate in a backstopped rights offering. There is no common interest between the Term Lender and our clients;
- Our clients' claims are being valued at \$1 and the Applicants have made no allowances to properly estimate the claim for voting purposes in advance of the Meeting;
- Contrary to s. 6(1) of the CCAA, millions of Just Energy creditors represented by our clients and on whose behalf a claim was filed are being denied a vote;

- The Applicants appear to have failed to disclose details of their \$145 million recovery in respect of Texas House Bill 4492 and material funds that might be awarded to the Just Energy entities in the ERCOT litigation;
- The Applicants and the supporting secured and unsecured creditors (PIMCO and others) have failed to provide adequate details of how they have valued the Just Energy Business and the equity they will receive from the Plan;
- Our client's claim is being treated differently and less favourably than the securities class action that has been classified as unaffected; and
- The Applicants have not disclosed sufficient information in respect of the quantification of unsecured claims and the amount of funds to be distributed to unsecured creditors.

Our clients also have many concerns about the merits of the Plan, which we will address in due course.

For these reasons we agree with class counsel in *Omarali v. Just Energy* that additional time is needed to properly respond to the Applicants' motion.

Given that the Applicants' business is currently cash flow stable, we also agree that it would be appropriate to convert the attendance on May 26, 2022 into a case conference to discuss these issues and a reasonable schedule moving forward.

We acknowledge having just received Mr. Wasserman's letter, that counsel tomorrow, with assistance of the Monitor, should address scheduling a case conference at the Court's earliest availability.

Accordingly, we look forward to hearing from you as soon as possible.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Ken Rosenberg
KR:DG

c: Jeff Larry
Danielle Glatt
Clients

Tab 3

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May 19, 2022

Montréal

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Our Matter Number: 1218715

Calgary

SENT BY ELECTRONIC MAIL

Ottawa

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Attention: David Rosenfeld

Vancouver

New York

Dear Sir:

Re: Meetings Order Motion

We are counsel for the Just Energy Entities and are in receipt of your letter of today's date.

The Just Energy Entities served their motion materials on May 12, 2022 in support of the Meetings Order motion scheduled for May 26, 2022. The factum in support of the motion was served the next day on May 13, 2022.

The Just Energy Entities intend to proceed with their motion seeking an Authorization Order and Meetings Order on May 26th. Two weeks' notice is sufficient for a Meetings Order motion that by definition does not engage issues related to the fairness and reasonableness of the proposed Plan of Arrangement. The affiants have been available to be cross-examined since the service of the motion on May 12, 2022 and remain available to be cross-examined at your earliest convenience.

We will make ourselves available for any case conference that may be sought before Justice McEwen prior to the return date of the motion, which can be scheduled as early as tomorrow, subject to the Court's availability.

Yours very truly,



Marc S. Wasserman

c: Robert Thornton and Rebecca Kennedy, *Thornton Grout Finnigan LLP*
Paul Bishop, *FTI Consulting Canada Inc.*
Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
James Hamum and Vlad Calina, *Koskie Minsky LLP*
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