
From: Koehnen, Mr. Justice Markus (SCJ)
Sent: Wednesday, September 15, 2021 7:34:07 PM
To:
Subject: Re: In the Matter of Just Energy Group Inc. et al - Court File No. CV-21-00658423-00CL

Email Endorsement

1. Just Energy seeks a number of forms of relief on today's motion. I attach two signed orders approving that relief. The relief is unopposed and was arrived at as a result of lengthy consultations between Just Energy, the Monitor and various stakeholders.

Claims Procedure Order

2. The most substantial form of relief is the approval of the claims procedure order. It is largely uncontroversial. The one issue that arises in connection with it is a consultation process. The order sought provides that Just Energy, in consultation with the Monitor, may consult with and report to the "Consultation Parties" in the review, adjudication and/or resolution of any claims that are subject to the claims process. The process also envisages Just Energy giving seven days written notice to the Consultation Parties of any proposed settlement or claim allowance in an amount over \$5 million. Any Consultation Party may then seek the direction of the court regarding the proposed resolution of such a claim.

3. In Re Laurentian University of Sudbury 2021 ONSC 3885, Chief Justice Morawetz refused to approve a consultation provision in a claims procedure in the form in which it was presented to him. The proposed procedure before me is, however, quite different from the one in Laurentian University.

4. First, in Laurentian University the proposed process was requested by and opposed by the Monitor. Here, it is being requested by the debtor and supported by the Monitor who believes the proposed process is in the best interests of the company.

5. Second, in Laurentian University, the parties that would be consulted were undefined in number. The proposal there was to have any creditor with a claim in excess of \$5 million be entitled to consultation. The number of such creditors was unknown. That proposal made it very difficult for the Monitor to negotiate and settle claims in the ordinary course. That made the claims process more expensive and inefficient than it should.

6. In the case before me, the parties to be consulted are limited to three: the Dip lenders, the Bank Agent and Shell Oil. Although I refer to the Dip lenders in the plural, they are in effect a single entity. They are different funds in a single fund family represented by a single counsel. The Bank Agent is the agent for a syndicate of banks, represented by a single counsel. Counsel for the Bank Agent is unaware of any basis on which a conflict could arise between members of the syndicate. As a result, the number of parties to whom consultation is available is limited to three. Those same three parties have already

been consulted by Just Energy and the Monitor throughout.

7. Third, consultation is not required under the proposed order as it was in Laurentian University but is simply permitted.

Approval of Fees

8. The Monitor seeks approval of its fees (CAN \$3,107,636.36) and those of its counsel (CAN \$1,537,317.14 and U.S. \$ 157,201.37), including disbursements and HST since the inception of the CCAA proceeding. I am satisfied that the fee approval order should be granted.
9. Although the fees are not insignificant, they must be assessed with reference to the proportionality between the fees and the extent of involvement and services provided.
10. This is a significant CCAA proceeding. The dip is US \$125 million, all of which has been advanced. Secured debt is in the hundreds of millions of dollars. There is an inter-creditor dispute worth approximately US \$200 million in which the Monitor was involved to develop a bespoke dispute resolution process. Just Energy's annual revenue was approximately US \$2.7 billion for the year ending March 31, 2021. Cash flow forecast between the end of August and the end of the year foresee

receipts of US \$926,000,000. This CCAA proceeding came on more quickly than others do. While CCAA proceedings are never leisurely, they usually afford the debtor some ability to plan and prepare. Here, the proceeding was required because of a sudden adverse weather event in Texas and the reaction of Texas regulators to that event. That allowed for no advance planning. It was therefore inevitable that costs at the outset of this proceeding would be higher than the already significant cost one would expect in a CCAA proceeding of this size. Significant contracts have been disclaimed. There have been significant regulatory issues in which the Monitor has had to be involved. This is a cross-border proceeding which further increases costs.

Miscellaneous Relief

11. Just Energy seeks to amend the KERP to allow greater flexibility. The original KERP allowed for specific payments to 42 employees. Some of those employees have left, another has declined payments. Foregone payments come to approximately US \$400,000 Just Energy seeks permission to reallocate the foregone payments to the remaining beneficiaries of the KERP. I approve that relief. It is supported by the Monitor. The relief is also consistent with the purpose of the KERP which is to incentivize employees to remain and assume the extra burdens often associated with a CCAA proceeding. The payments involve no additional burden on other stakeholders of Just Energy.

12. The terms of a current Inter-creditor Agreement and certain loan agreements restrict Just Energy from opening new bank accounts. Just Energy requires new bank accounts to deal with a new subsidiary. It may also require additional accounts in the course of these proceedings. Just Energy seeks authority to open new accounts and enter into Account Control Agreements with financial institutions in consultation with the Monitor. I am satisfied that is appropriate. The fundamental

purpose of a CCAA proceeding is to allow the debtor to work out business solutions to its economic difficulties as much as possible. Bank accounts and new subsidiaries pursuing new market opportunities can be essential to that process.

13. Just Energy seeks an extension of the stay until December 15, 2021. The Monitor supports the stay extension. It is supported by cash flow statements that justify the extension.

Justice Markus Koehnen

Ontario Superior Court of Justice

361 University Ave.

Toronto, Ont.

M5G 1T3

416-327-5284