

**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

**FACTUM OF THE APPLICANTS  
(Claims Procedure Hearing)**

September 10, 2021

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West, Suite 6200  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)  
Tel: 416.862.4908  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Michael De Lellis** (LSO# 48038U)  
Tel: 416.862.5997  
Email: [mdelellis@osler.com](mailto:mdelellis@osler.com)

**Jeremy Dacks** (LSO# 41851R)  
Tel: 416.862.4923  
Email: [jdacks@osler.com](mailto:jdacks@osler.com)

Lawyers for the Applicants

**TO: THE SERVICE LIST**

**TABLE OF CONTENTS**

PART I - NATURE OF THIS MOTION ..... 1

PART II - SUMMARY OF FACTS ..... 2

    A.    Update on the Activities of the Just Energy Entities ..... 2

    B.    Proposed Claims Process ..... 3

        (a)    Claims ..... 4

        (b)    Claims Process and Notice..... 4

            (i)    Negative Notice Claims Process ..... 4

            (ii)   General Claims Process ..... 5

            (iii)  Assistance with the Claims Process ..... 7

        (c)    Bar Dates..... 8

        (d)    Adjudication of Claims ..... 9

    C.    The Key Employee Retention plan ..... 10

    D.    Blocked Account Control Agreements ..... 10

PART III - ISSUES AND THE LAW ..... 12

    A.    The Claims Process Should be Approved..... 12

        (a)    Claims Processes Generally ..... 12

        (b)    Negative Notice Claims Process ..... 15

        (c)    Consultation Parties ..... 17

    B.    The Related Orders Should be Granted ..... 19

        (a)    The Stay Extension ..... 19

        (b)    The KERP Clarification ..... 22

        (c)    The BACA Authorization ..... 24

PART IV - NATURE OF THE ORDER SOUGHT ..... 25

SCHEDULE “A” – LIST OF AUTHORITIES ..... 26

SCHEDULE “B” – TEXT OF STATUTES, REGULATIONS & BY-LAWS..... 27

## PART I - NATURE OF THIS MOTION

1. The Applicants obtained relief under the *Companies' Creditors Arrangement Act*<sup>1</sup> by an initial order dated March 9, 2021 (the “**Initial Order**”). The Initial Order, among other things, appointed the Monitor and granted a stay of proceedings in favour of the Applicants up to and including March 19, 2021. On March 19, 2021, this Court issued an Amended & Restated Initial Order (the “**ARIO**”) extending the stay until June 4, 2021 and granting other related relief. On May 26, 2021, this court issued a Second Amended & Restated Initial Order (the “**SARIO**”) further extending the stay until September 30, 2021 and granting other related relief.

2. The Applicants now seek an order (the “**Claims Procedure Order**”), *inter alia*: (i) approving a claims process (the “**Claims Process**”), and (ii) establishing the Claims Bar Date and the Restructuring Period Claims Bar Date. The Applicants submit that the Claims Procedure Order has been developed in consultation with the Monitor, with input from key stakeholders and represents a fair, transparent and objective process for calling for and settling Claims.

3. The Applicants also seek an order (i) clarifying the Key Employee Retention Plan (the “**KERP**”) approved in the ARIO to permit the Just Energy Entities to reallocate funds originally allocated to Key Employees who resign or decline to receive KERP payments, and (ii) authorizing the Just Energy Entities to enter into blocked account control agreements (“**BACAs**”), in accordance with the terms of the Intercreditor Agreement and the DIP Term Sheet, and (iii) extending the Stay Period to December 17, 2021.

4. All of this relief is within this Court’s jurisdiction and discretion to grant under the CCAA and is consistent with the objectives of the CCAA. The Applicants have been proceeding in good

---

<sup>1</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [“CCAA”].

faith and with due diligence to achieve a going-concern restructuring for the benefit of all stakeholders. The Claims Process will provide the Applicants with important information necessary to develop their restructuring solution and allow the resolution of Claims if warranted and at the appropriate time. The other requested relief will provide the additional breathing space needed to move this restructuring forward, with certain adjustments to address needs that have arisen or changing circumstances that have occurred since the date of the Initial Order, as amended in the ARIO and the SARIO.

## **PART II - SUMMARY OF FACTS**

5. The facts underlying this Motion are more fully set out in the Fourth Carter Affidavit<sup>2</sup> and the Third Report of the Monitor.<sup>3</sup> Facts relevant to the requested relief are highlighted below.

### **A. UPDATE ON THE ACTIVITIES OF THE JUST ENERGY ENTITIES**

6. The Just Energy Entities distributed a business plan to the DIP Lenders, Shell, BP, and the Credit Facility Lenders on May 18, 2021.<sup>4</sup> Since that date, the Just Energy Entities, with the assistance of their legal and financial advisors, have been working diligently to advance their restructuring in accordance with the requirements of the DIP Facility Commitment Letter.<sup>5</sup>

7. To this end, the Just Energy Entities have engaged extensively with the Monitor and the DIP Lenders regarding the terms and structure of a restructuring plan. The purpose of this stakeholder engagement is to facilitate the Just Energy Entities' emergence from the current CCAA

---

<sup>2</sup> Affidavit of Michael Carter, sworn September 8, 2021 [the "**Fourth Carter Affidavit**"]. Capitalized terms not otherwise defined have the same meaning as in the Fourth Carter Affidavit.

<sup>3</sup> Third Report of FTI Consulting Canada Inc., in its capacity as Court-Appointed Monitor, dated September 8, 2021 [the "**Monitor's Third Report**"].

<sup>4</sup> Fourth Carter Affidavit, para. 8.

<sup>5</sup> Fourth Carter Affidavit, para. 9.

and Chapter 15 proceedings in a manner which, among other things, preserves going concern value of the business, maintains relations with key Commodity Suppliers to ensure uninterrupted supply for customers, preserves ongoing employment, and maintains critical relationships with regulators and other key stakeholders.<sup>6</sup>

8. Further, the Just Energy Entities have been working with their Financial Advisor to develop a term sheet (the “**Recapitalization Term Sheet**”) setting out a potential framework for the recapitalization of the Just Energy Entities and their respective businesses to ensure their long-term viability upon emergence from these CCAA and Chapter 15 proceedings. Discussions between the Just Energy Entities and the DIP Lenders regarding the Recapitalization Term Sheet remain ongoing. The Just Energy Entities are in the process of broadening the scope of such discussions to include other key stakeholders in due course.<sup>7</sup>

9. Regardless of the outcome of these ongoing discussions and the eventual form that the restructuring takes, the Applicants anticipate that a determination of the universe of claims against them and their respective directors and officers will be necessary to implement a restructuring without undue delay.<sup>8</sup>

## **B. PROPOSED CLAIMS PROCESS**

10. In consultation with the Monitor, the Just Energy Entities have developed the proposed Claims Process to determine the nature, quantum, and validity of claims against the Just Energy Entities and their directors and officers in a flexible, fair, comprehensive, and expeditious manner.<sup>9</sup>

---

<sup>6</sup> Fourth Carter Affidavit, para. 9.

<sup>7</sup> Fourth Carter Affidavit, para. 10.

<sup>8</sup> Fourth Carter Affidavit, para. 11.

<sup>9</sup> Fourth Carter Affidavit, para. 11.

The Applicants' proposed Claims Process is described in detail in the Fourth Carter Affidavit. The basic structure of the Claims Process is outlined below.

**(a) Claims**

11. The Just Energy Entities are soliciting: a) Pre-Filing Claims, including general trade creditor claims, customer claims, employee claims, litigation or class action claims, commodity agreement claims, tax claims, equity claims, and funded debt claims; b) Restructuring Period Claims, being rights or claims arising out of the restructuring, disclaimer, resiliation, termination or breach of agreements on or after the Filing Date; c) Pre-Filing D&O Claims; and d) Restructuring Period D&O Claims.<sup>10</sup>

12. The Claims Process will not resolve inter-creditor priority disputes.<sup>11</sup>

**(b) Claims Process and Notice**

13. A significant feature of the proposed Claims Procedure Order is a negative notice claims procedure for the majority of Claims, with all other Claimants (or potential Claimants) required to file a Proof of Claim in accordance with the prescribed process and timelines.<sup>12</sup>

**(i) Negative Notice Claims Process**

14. A "negative notice" procedure involves the Just Energy Entities providing a Negative Notice Claim form to each Negative Notice Claimant that is shown on their books as having a claim against one or more of the Just Energy Entities. The Negative Notice Claim form will identify the amount of the Claim as shown on the particular debtor's books, and will deem that

---

<sup>10</sup> Fourth Carter Affidavit, para. 13. Excluded Claims are detailed at paras. 14 to 15 of the Fourth Carter Affidavit.

<sup>11</sup> Fourth Carter Affidavit, para. 16.

<sup>12</sup> Fourth Carter Affidavit, para. 17.

amount to be the Claim of the creditor, unless the creditor formally disputes it in accordance with the prescribed process and timeline.<sup>13</sup>

15. The proposed Claims Procedure defines the following as Negative Notice Claims: a) Claims of the Credit Facility Lenders; b) Claims of the Term Loan Lenders; c) Claims of the Noteholders; d) Claims of the Commodity Suppliers that have not been terminated as of the date of the Claims Procedure Order; e) Employee Claims in respect of termination; and f) the claims of any other Persons to whom the Just Energy Entities, in consultation with the Monitor, determine to send a Negative Notice Claim based on the books and records of the Just Energy Entities.<sup>14</sup>

16. The “catch all” provision in the definition of Negative Notice Claims is intended to capture the majority of trade creditors and other third-party creditors who hold Claims that are recorded in the Just Energy Entities’ books and records. While the Just Energy Entities anticipate that the vast majority of Claimants will receive Negative Notice Claims Packages, certain Claimants may hold Claims more easily quantified directly by the Claimant rather than by the Just Energy Entities.<sup>15</sup>

17. In such a scenario, the Claims Process provides the Just Energy Entities and the Monitor the flexibility to issue and make available a General Claims Package (as opposed to a Negative Notice Claims Package) to such Claimants.<sup>16</sup>

## **(ii) General Claims Process**

---

<sup>13</sup> Fourth Carter Affidavit, para. 35.

<sup>14</sup> Fourth Carter Affidavit, para. 19.

<sup>15</sup> Fourth Carter Affidavit, para. 20.

<sup>16</sup> Fourth Carter Affidavit, para. 21.



18. The proposed Claims Process requires the Monitor or the Claims Agent to send a General Claims Package containing a regular Proof of Claim form and D&O Proof of Claim form to: (a) any Person known to the Just Energy Entities or the Monitor as having a potential Claim based on the books and records of the Just Energy Entities that is not captured in any Statement of Negative Notice Claim; (b) each person that appears on the Service List (except Persons that are likely to assert only Excluded Claims, in the reasonable opinion of the Just Energy Entities and the Monitor); and (c) any Person that has requested a Proof of Claim in respect of any potential Claim that is not captured in a Statement of Negative Notice Claim.<sup>17</sup>

19. Further, in order to ensure that all Persons holding or wishing to assert a Claim against the Just Energy Entities receive notice of the Claims Process, the proposed Claims Procedure Order requires the Monitor to publish a Notice to Claimants in specified national and regional newspapers. The Monitor and Claims Agent must also post on their respective websites the Notice to Claimants, the General Claims Package, and a blank form of Notice of Dispute of Claim.<sup>18</sup>

20. For the sake of completeness and out of an abundance of caution, the Just Energy Entities will direct additional noticing to all current employees of the Just Energy Entities and all active vendors listed in the Just Energy Entities' financial records as not having any existing claim.<sup>19</sup>

21. The Just Energy Entities also intend to send a Negative Notice Claims Package or a General Claims Package, as applicable, to persons who have filed Official Form 410 Proof of Claim Forms

---

<sup>17</sup> Fourth Carter Affidavit, para. 22.

<sup>18</sup> Fourth Carter Affidavit, para. 23.

<sup>19</sup> Fourth Carter Affidavit, paras. 24 to 25.

under the U.S. Bankruptcy Code with the U.S. Court within the Chapter 15 proceedings. All such Claims must be re-filed in compliance with the Claims Process and the Final Recognition Order.<sup>20</sup>

22. Any Negative Notice Claimant that wishes to dispute the amount or Characterization of its Negative Notice Claim as set out in its Statement of Negative Notice Claim is required to deliver a Notice of Dispute of Claim to the Monitor or the Claims Agent by the applicable Bar Date. If a completed Notice of Dispute of Claim is not received by the Monitor or the Claims Agent by the applicable Bar Date, then such Negative Notice Claimant is deemed to have accepted the amount and Characterization of its claim as set out in the Statement of Negative Notice Claim.<sup>21</sup>

**(iii) Assistance with the Claims Process**

23. In order to assist the Just Energy Entities and the Monitor to efficiently administer the Claims Process, and to make it as easy as possible for Claimants to submit forms and participate in the Claims Process, the Just Energy Entities have retained the Claims Agent. The Claims Agent is a nationally recognized company in the United States which specializes in, among other things, claims management and the completion, tracking and service of required noticing within claims processes. The Claims Agent is already familiar with the Just Energy Entities and their ongoing CCAA and Chapter 15 proceedings.<sup>22</sup> The proposed Claims Procedure Order also appoints Mr. Edward Sellers, and such further and other persons as may be appointed from time to time by this Court on a motion by the Just Energy Entities or the Monitor, as Claims Officer.<sup>23</sup>

---

<sup>20</sup> Fourth Carter Affidavit, para. 26.

<sup>21</sup> Fourth Carter Affidavit, para. 35.

<sup>22</sup> Fourth Carter Affidavit, para. 27. The role of the Claims Agent, including responsibility for disseminating Claims Packages, receiving and tracking Notices of Dispute or disputed Statements of Negative Notice Claims, receiving and tracking Proofs of Claim, and posting relevant materials and claims submission portals on its website, is detailed at para. 28 of the Fourth Carter Affidavit. See also Monitor's Third Report, paras. 57 to 59.

<sup>23</sup> Fourth Carter Affidavit, para. 29; Monitor's Third Report, para. 60.

24. The proposed Claims Procedure Order gives the Just Energy Entities, in consultation with the Monitor, the discretion to determine whether a disputed Claim should be adjudicated by the Court or by a Claims Officer. If referred to a Claims Officer, the proposed Claims Procedure Order provides that the Claims Officer shall: (a) determine the amount and characterization of the disputed Claim in accordance with the Claims Procedure Order; (b) determine whether any Claim or part thereof constitutes an Excluded Claim; (c) provide written reasons for its determination of the matter; and (d) determine all procedural matters which may arise in respect of his or her determination of the disputed Claim, including any participation rights for any stakeholder.<sup>24</sup>

25. The Claims Procedure Order provides the Claims Officer with the discretion to mediate any dispute and to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid. Each party to the dispute, any other stakeholder (if applicable) and the Monitor may appeal any determination by the Claims Officer to the Court.<sup>25</sup>

26. Finally, as discussed further below, the Just Energy Entities, in consultation with the Monitor, may consult with, and/or provide reporting to, the DIP Lenders and their affiliates holding secured claims against any of the Just Energy Entities, the CA Agent, the CA Lenders, Shell, and their respective counsel and financial advisors (collectively, the “**Consultation Parties**”) in the review, adjudication and/or resolution of any Claims.<sup>26</sup>

(c) *Bar Dates*

---

<sup>24</sup> Fourth Carter Affidavit, para. 30.

<sup>25</sup> Fourth Carter Affidavit, para. 30.

<sup>26</sup> Fourth Carter Affidavit, para. 41.

27. The Just Energy Entities propose a Claims Bar Date of November 1, 2021, for any Person asserting a Pre-filing Claim or a Pre-Filing D&O Claim or disputing a Negative Notice Claim.<sup>27</sup> The Restructuring Period Claims Bar Date is proposed to be the later of (i) November 1, 2021, and (ii) 30 days after the Monitor or Claims Agent sends the Negative Notice Claims Package or General Claims Package.<sup>28</sup> The Monitor, in consultation with the Just Energy Entities, may use its reasonable discretion to determine whether to accept a Claim after the applicable Bar Date.<sup>29</sup>

**(d) *Adjudication of Claims***

28. The Just Energy Entities, in consultation with the Monitor, will review and record all Notices of Dispute of Claim, Proofs of Claim, and D&O Proofs of Claim that are received on or before the applicable Bar Date. If the Just Energy Entities, in consultation with the Monitor, determine that it is necessary to finally determine the amount and characterization of any or all Claims against the Just Energy Entities (or any of them) or their Directors and/or Officers, the Just Energy Entities, in consultation with the Monitor, will review and finally determine the amount and characterization of all such Claims asserted in any Proof of Claim or D&O Proof of Claim or for which a Notice of Dispute of Claim has been received on or before the applicable Bar Date.<sup>30</sup>

29. If there are disputes with respect to any Claim, such disputes will be resolved in accordance with the process set out in the Claims Procedure Order, which may include referral to the Claims Officer or the Court, if necessary.<sup>31</sup>

---

<sup>27</sup> Fourth Carter Affidavit, para. 32.

<sup>28</sup> Fourth Carter Affidavit, para. 33.

<sup>29</sup> Fourth Carter Affidavit, para. 36.

<sup>30</sup> Fourth Carter Affidavit, para. 37.

<sup>31</sup> Fourth Carter Affidavit, para. 39.

**C. THE KEY EMPLOYEE RETENTION PLAN**

30. Since the granting of the Initial Order, the Just Energy Entities have made, and continue to make, employee engagement and communications a priority. Notwithstanding the foregoing, and as is expected in the normal course of business, a small number of employees have resigned from the Just Energy Entities since the Filing Date.<sup>32</sup>

31. The KERP that was approved under the ARIO authorized payments in three installments to certain senior management and other key employees of the Just Energy Entities who are required to guide the business through the restructuring process. In total, the KERP contemplated payments to 42 employees (the “**Key Employees**”) totalling approximately \$6.90 million.<sup>33</sup>

32. As at the date of this motion, two Key Employees have resigned from the Just Energy Entities. In addition, one Key Employee has declined to receive any payments under the KERP. Together with any additional Key Employees who may resign from their employment with the Just Energy Entities or decline their KERP payments in future, this will result in funds previously authorized for distribution under the KERP remaining unallocated. The KERP does not currently address how such unallocated funds are to be treated.<sup>34</sup> The requested relief is intended to address this issue.

**D. BLOCKED ACCOUNT CONTROL AGREEMENTS**

33. The Just Energy Entities primarily supply electricity and natural gas commodities to both consumer and commercial customers. The commercial segment of the Just Energy Entities’ business accounted for approximately 40% of sales made by the Just Energy Entities in the quarter

---

<sup>32</sup> Fourth Carter Affidavit, para. 44.

<sup>33</sup> Fourth Carter Affidavit, para. 45.

<sup>34</sup> Fourth Carter Affidavit, para. 46.

ended December 31, 2020. Sales to commercial customers are made through three main channels: brokers, commercial independent contractors, and inside commercial sales representatives.<sup>35</sup>

34. One such broker which sells electricity plans to commercial customers on behalf of the Just Energy Entities and other third-party suppliers is the Applicant, Interactive Energy Group LLC (“IEG”). IEG is an indirect, wholly owned subsidiary of Just Energy (U.S.) Corp. While IEG’s business has historically focused on the sale of electricity plans to commercial customers through traditional advertising and sales channels (i.e. word of mouth, cold calling, key relationships, etc.), IEG is updating and refocusing its approach to include a digital-based platform geared toward the mass market in recognition of the shift in consumer trends toward e-commerce.<sup>36</sup>

35. In connection with IEG providing a digital, mass market brokerage service, IEG wishes to establish separate bank accounts in the United States and Canada to receive and track revenues, pay vendor and other operating costs, and track all required financial indicators separate and apart from IEG’s current bank accounts. As part of its Cash Management System, and consistent with ordinary course operations, the Just Energy Entities plan to establish these new bank accounts at JPMorgan as an existing Cash Management Bank.<sup>37</sup> It is a requirement of the Intercreditor Agreement and certain other agreements that such new bank accounts can only be opened if the financial institution with whom such account is maintained enters into a BACA.<sup>38</sup>

36. The Just Energy Entities’ plan to establish new bank accounts in respect of IEG’s new product offering is consistent with the Just Energy Group’s normal course business practice. As

---

<sup>35</sup> Fourth Carter Affidavit, para. 50.

<sup>36</sup> Fourth Carter Affidavit, para. 51.

<sup>37</sup> Fourth Carter Affidavit, para. 53.

<sup>38</sup> Fourth Carter Affidavit, paras. 55 to 56.

new streams of product offerings are introduced, new bank accounts are opened to receive revenues, pay expenses, and track the financial performance of the new product offering. Further bank accounts (in addition to those discussed above) may be required by the Just Energy Entities in the normal course of business during the pendency of these CCAA proceedings for such purpose.<sup>39</sup> The Applicants therefore request authorization from this Court to open BACAs.

### **PART III - ISSUES AND THE LAW**

37. The principal issues on this Motion are whether:

- (a) this Court should approve the proposed Claims Process; and
- (b) this Court should issue an order approving the stay extension, clarifying the KERP to permit the Applicants to reallocate funds, and allowing the Applicants to enter into BACAs in accordance with the Intercreditor Agreement and the DIP Term Sheet.

#### **A. THE CLAIMS PROCESS SHOULD BE APPROVED**

##### **(a) *Claims Processes Generally***

38. Section 11 of the CCAA gives the Court the power to make any order it considers appropriate in the circumstances, which includes the ability to approve a process for filing and determining claims against a debtor company. Furthermore, the Court's power under section 12 of the CCAA to "fix deadlines for the purposes of voting and for the purposes of distributions under

---

<sup>39</sup> Fourth Carter Affidavit, para. 54.

a compromise or arrangement” has been held to be sufficient authority for a CCAA Court to grant claims process orders and claims bar orders.<sup>40</sup>

39. The general practice in CCAA proceedings is for debtors to apply to the Court for approval of a process to solicit claims against the debtor company and to establish a deadline for filing claims. This Court routinely approves claims processes in CCAA restructurings.<sup>41</sup>

40. A claims process is “an essential component of any plan”.<sup>42</sup> A claims process order, and, in particular, a claims bar date, assists the debtor in determining the universe of claims against it and provides greater certainty for the debtor and its stakeholders in making informed choices about restructuring options.<sup>43</sup>

41. Claims procedure orders should be both flexible and expeditious, in order to achieve the broad remedial objectives of the CCAA and ensure that stakeholders are treated as advantageously and fairly as the circumstances permit in a restructuring process.<sup>44</sup> The order must be drafted carefully to ensure that it fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims.<sup>45</sup> This Court has the authority to approve a bespoke claims process where “the situation calls for it”.<sup>46</sup>

---

<sup>40</sup> *Re Toys “R” Us (Canada) Ltd.*, [2018 ONSC 609](#) [Commercial List] at para. 8 [“*Toys “R” Us*”]; *Re Timminco Ltd.*, [2014 ONSC 3393](#) at para. 40 [“*Timminco*”].

<sup>41</sup> *Toys “R” Us* at para. 8; see also *Re U.S. Steel Canada Inc.*, [2017 ONSC 1967](#) at paras. 5 to 6.

<sup>42</sup> *Re Laurentian University of Sudbury*, [2021 ONSC 3885](#) at para. 31 [“*Laurentian*”].

<sup>43</sup> *Timminco* at para. 43.

<sup>44</sup> *Re ScoZinc Ltd.*, [2009 NSSC 136](#) at para. 23; *Laurentian* at para. 30.

<sup>45</sup> *Laurentian* at para. 32.

<sup>46</sup> *Laurentian* at para. 41.



42. The proposed Claims Process satisfies all of these requirements and should be approved. The Claims Process was developed following extensive consultation with the Monitor and has the Monitor's full support.<sup>47</sup> It has the support of the DIP Lenders and incorporates feedback from other stakeholders.<sup>48</sup>

43. The bespoke nature of the proposed Claims Process responds to the complex nature of the Just Energy Entities' business. At the same time, it meets the purpose of claims processes generally, "to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost efficient manner."<sup>49</sup>

44. The Claims Process has been designed to make the process as easy as possible for potential Claimants to have their Claims recognized and resolved. The combination of the Negative Notice Claims Process and the General Claims Process, described in greater detail below, along with flexible adjudication mechanisms, ensures that the universe of claims is comprehensively solicited and that the nature, quantum, and validity of Claims are determined fairly, comprehensively, and expeditiously at the appropriate time.<sup>50</sup>

45. Consistent with the objectives of the CCAA, the Claims Process enlists the assistance of both the Claims Agent and the Claims Officer, in light of the complexity of the Just Energy Group's business, the anticipated volume of Claims, and the need for efficiency and certainty.<sup>51</sup>

---

<sup>47</sup> Fourth Carter Affidavit, paras. 11 and 43; Monitor's Third Report, para. 73.

<sup>48</sup> Fourth Carter Affidavit, para. 43.

<sup>49</sup> *Re Canwest Global Communications Corp.*, [2011 ONSC 2215](#) [Commercial List] at para. 40.

<sup>50</sup> Fourth Carter Affidavit, para. 11.

<sup>51</sup> Fourth Carter Affidavit, para. 31.

46. The Claims Bar Date and the Restructuring Period Claims Bar Date were selected by the Just Energy Entities, in consultation with the Monitor. The Just Energy Entities believe that the Claims Bar Date and the Restructuring Period Claims Bar Date are reasonable. They provide sufficient time for potential Claimants to evaluate and submit any Proof of Claim/D&O Proof of Claim or Notice of Dispute of Claim. The Monitor concurs.<sup>52</sup>

47. Key features of the Claims Process are described in greater detail below.

**(b) *Negative Notice Claims Process***

48. A significant feature of the Applicants' proposed Claims Procedure Order is the incorporation of a negative notice claims process for the majority of Claims.<sup>53</sup>

49. This Court has recognized that negative notice claims processes are particularly appropriate where a large insolvent company has full knowledge and details of outstanding payables. In such a case, a regular claims process requiring each creditor to affirmatively prove its outstanding claims at the outset "is often just a make work project that provides no real incremental value beyond the information available" in the debtor's own financial systems.<sup>54</sup> By contrast, a negative claims process can eliminate the need for filing proofs of claim and supporting evidence in the vast majority of cases, and it ensures that known claims do not fall through the cracks due to failure by particular claimants to file claims on a timely basis.<sup>55</sup>

---

<sup>52</sup> Fourth Carter Affidavit, para. 34; Monitor's Third Report, para. 64.

<sup>53</sup> Fourth Carter Affidavit, para. 17.

<sup>54</sup> *Toys "R" Us* at para. 10.

<sup>55</sup> *Toys "R" Us* at para. 13.

50. The Applicants' proposed Negative Notice Claims Process, developed in consultation with the Monitor, is entirely appropriate to the specific business model of the Just Energy Entities. It will allow for the maximum number of Negative Notice Claimants to have their claims assessed efficiently and accurately, while minimizing the administrative burden on the Applicants and the Claims Agent during the restructuring process.<sup>56</sup>

51. Furthermore, other elements of the proposed Claims Process complement, support and overlap with the Negative Notice Claims Process, to ensure that the process is as exhaustive as possible with regards to the solicitation and valuation of claims.<sup>57</sup>

52. Negative Notice Claimants are provided ample opportunity to dispute their Negative Notice Claims, should they wish to do so. A Negative Notice Claimant who wishes to dispute the amount or characterization of its Negative Notice Claim may deliver a Notice of Dispute of Claim. If the Just Energy Entities, in consultation with the Monitor, disagree with a Claim in the Notice of Dispute of Claim, they will attempt to resolve the dispute with the Negative Notice Claimant or, if the case requires, refer the dispute to the Claims Officer or the Court for adjudication.<sup>58</sup>

53. The proposed Claims Process also requires the Monitor or the Claims Agent to send a General Claims Package to persons not captured by the Negative Notice Claim but who are known to have a potential Claim, who are on the Service List (other than Persons having Excluded Claims), or who have requested a Proof of Claim.<sup>59</sup> The proposed Claims Procedure Order also

---

<sup>56</sup> Fourth Carter Affidavit, paras. 19 to 20.

<sup>57</sup> Fourth Carter Affidavit, para. 25.

<sup>58</sup> Fourth Carter Affidavit, para. 39.

<sup>59</sup> Fourth Carter Affidavit, para. 22.

requires the Monitor and Claims agent to advertise the Notice to Claimants in relevant newspapers and make available on their websites resources for persons to file Claims.<sup>60</sup>

54. It is not presently known whether the Just Energy Entities will be required to finally determine the amount and characterization of all Claims. This will depend, among other things, on the restructuring transaction ultimately contemplated by the Just Energy Entities, and the nature and quantum of any proposed distributions sought to be made to creditors within the CCAA proceeding. The proposed Claims Procedure Order accordingly incorporates flexibility for the Just Energy Entities to review and, in consultation with the Monitor, finally determine all Pre-Filing Claims and Restructuring Period Claims (both secured and unsecured) and D&O Claims on an “as needed” basis at the appropriate time.<sup>61</sup>

**(c) Consultation Parties**

55. The proposed Claims Procedure Order provides that the Just Energy Entities, in consultation with the Monitor, may consult with, and/or provide reporting to, the Consultation Parties in the review, adjudication, and/or resolution of any Claims subject to the Claims Process (other than a Claim subject to the Intercreditor Agreement). In particular, the Consultation Parties have the right to receive notice of, and to seek Court direction regarding, the proposed settlement or allowance of any Claim (other than a Claim subject to the Intercreditor Agreement) exceeding \$5 million.<sup>62</sup>

56. Formally designated consultation parties have played a role in other CCAA proceedings. This concept is appropriate where key stakeholders hold a position within the debtor’s business

---

<sup>60</sup> Fourth Carter Affidavit, para. 23.

<sup>61</sup> Fourth Carter Affidavit, para. 38.

<sup>62</sup> Fourth Carter Affidavit, para. 41.

and restructuring process such that consultation and/or notification is warranted at critical restructuring steps.<sup>63</sup>

57. The role of the Consultation Parties in the proposed Claims Procedure is a result of extensive negotiations and has been approved by the Monitor. It is just and appropriate in the circumstances. The Consultation Parties constitute a limited subset of key stakeholders in the Just Energy Entities' business and in the restructuring process.<sup>64</sup> The rights of the Consultation Parties to be informed of, and to seek direction regarding, resolution of significant claims is a matter of fairness and transparency given the Consultation Parties' financial stake in the restructuring operations. Furthermore, the success of the restructuring process depends on the continued cooperation of the key stakeholders named as Consultation Parties.

58. The proposed role of Consultation Parties in the Claims Procedure Order does not suffer from the deficiencies that caused certain consultative rights requested by the pre-filing lenders to be rejected recently by this court in the *Laurentian* proceeding, based on the specific facts of that case.<sup>65</sup> In *Laurentian*, the proposed consultation parties consisted of a potentially large number of persons holding claims in excess of \$5 million, giving rise to significant concerns by the Court that the inclusion of the consultation parties would make the proposed Claims Process more expensive and inefficient.<sup>66</sup> Not only were the consultation rights triggered by the resolution of a claim in excess of \$5 million, the consultation rights would likely have extended to each holder of

---

<sup>63</sup> See e.g. the approved [Sale and Investment Solicitation Process](#) in *Re Essar Steel Algoma Inc.*, Court File No. CV-15-000011169-00CL.

<sup>64</sup> These are: the DIP Lenders and affiliates holding secured claims against any of the Just Energy Entities, the CA Agent, the CA Lenders, Shell, and their respect counsel and financial advisors.

<sup>65</sup> *Laurentian* at paras. 23 and 38.

<sup>66</sup> *Laurentian* at paras. 23 and 40.

such a claim.<sup>67</sup> This is not the case here, where the Consultation Parties consist of three specific key stakeholders and their advisors.

59. Moreover, in *Laurentian*, the proposed consultative rights were proposed by a creditor and not supported by the debtor or the monitor.<sup>68</sup> By contrast, the Applicants, with the full support of the Monitor, support granting the proposed rights to the Consultation Parties to facilitate the Applicants' overall restructuring efforts.

60. In summary, the proposed Claims Process appropriately balances competing views and ensures that claims are treated in accordance with the remedial objectives of the CCAA.<sup>69</sup> And importantly, it will provide the Applicants with necessary information regarding the universe of Claims against them, as they move forward to develop a restructuring solution.

## **B. THE RELATED ORDERS SHOULD BE GRANTED**

### **(a) *The Stay Extension***

61. The stay under the SARIO expires on September 30, 2021. With the support of the Monitor, the Applicants now seek to extend the stay up to and including December 17, 2021.<sup>70</sup>

62. On an application other than an initial application, the Court may make a stay order for any period that the Court considers necessary if the applicant satisfies the Court that: a) circumstances

---

<sup>67</sup> *Laurentian* at para. 38.

<sup>68</sup> *Laurentian* at paras. 22 to 23.

<sup>69</sup> *Laurentian* at paras. 31 to 32; Fourth Carter Affidavit, para. 43.

<sup>70</sup> Fourth Carter Affidavit, paras. 58 to 59; Monitor's Third Report, para. 94.

exist that make the order appropriate; and b) the applicant has acted, and is acting, in good faith and with due diligence.<sup>71</sup> The Applicants satisfy both branches of this test.

63. The extension of the Stay Period is appropriate in the circumstances. It will provide the Just Energy Entities with the necessary breathing room to continue to focus on their stabilization and going concern operations as part of these proceedings, finalize a proposed restructuring plan, and continue their ongoing engagement with key stakeholders regarding restructuring options and terms. Further, the extension of the Stay Period is necessary to allow the Claims Process to be implemented in accordance with the proposed Claims Procedure Order.<sup>72</sup>

64. The Applicants have acted and continue to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order, as amended by the ARIO and SARIO.<sup>73</sup>

65. In addition to the Just Energy Entities' ongoing efforts to canvass viable restructuring options with key stakeholders and finalize the requested Claims Procedure Order, since the issuance of the SARIO on May 26, 2021, the Just Energy Entities have, among other things:

- (a) continued to maintain regular communications with regulators across Canada and the United States, and to satisfy all obligations to regulators;
- (b) obtained approval from the TSX Venture Exchange to list Just Energy's shares;
- (c) continued all required reporting to the DIP Lenders and the Qualified Commodity/ISO Suppliers;

---

<sup>71</sup> CCAA, ss. 11.02(2) to 11.02(3).

<sup>72</sup> Fourth Carter Affidavit, para. 59.

<sup>73</sup> Fourth Carter Affidavit, para. 61.

- (d) negotiated extensions to the milestone deadlines in the DIP Commitment Letter;
- (e) engaged in active negotiations with various other third-party commodity suppliers regarding arrangements to permit for the additional physical and financial purchase, sale, trading and hedging of natural gas, electricity, and environmental credits;
- (f) received denials from the Electric Reliability Council of Texas (“ERCOT”) of certain disputes filed on behalf of the Just Energy Group in respect of ERCOT’s initial settlement statements for the period of the Texas weather event;
- (g) received, disputed, and received denials for an additional off-cycle resettlement received on or about July 27, 2021 from ERCOT;
- (h) received positive 180-day resettlements from ERCOT of approximately \$3.6 million USD;
- (i) continued working with the Monitor and key stakeholders to negotiate and establish a process to facilitate determination of the intercreditor dispute regarding the characterization of certain amounts due from Just Energy to BP (a process which has now been temporarily been put on hold while the Just Energy Entities and its key stakeholders engage in discussions regarding potential restructuring terms);
- (j) finalized and announced its fourth quarter and year end results for fiscal year 2021 and its first quarter results for fiscal year 2022; and



- (k) operated the business in the normal course with a view to maximizing the value of the Just Energy Entities for the benefit of all stakeholders.<sup>74</sup>

66. The Legislative and Regulatory Affairs Committee of the Just Energy Board of Directors—which was formed in March 2021 to (among other things) oversee, review and assess any government or regulatory actions proposed in response to the Texas weather event—has been working continuously with legislators and government relations experts to develop, comment on and advocate for a number of bills for a securitization of charges related to the Texas weather event. Additionally, the Committee has advocated for legislative intervention to address the financial fallout from the Texas weather event.<sup>75</sup>

67. The Monitor’s cash flow forecast demonstrates that, subject to certain underlying assumptions, the Just Energy Entities will have sufficient funds to continue their operations and fund these CCAA proceedings until December 17, 2021.<sup>76</sup>

**(b) *The KERP Clarification***

68. The Just Energy Entities are seeking authorization from the Court to reallocate funds previously authorized for distribution under the KERP either to remaining Key Employees or to other employees that the Just Energy Entities, in consultation with the Monitor, identify as critical

---

<sup>74</sup> Fourth Carter Affidavit, para. 61. See also Monitor’s Third Report, paras. 28 to 30 for additional details regarding commodity supplier engagement; paras. 32-38 regarding the intercreditor dispute resolution process.

<sup>75</sup> Further details surrounding the activities of the Committee since its formation are set out in the Fourth Carter Affidavit, paras. 62 to 65. See also Monitor’s Third Report, paras. 22 to 25 for a description of the Texas legislative developments.

<sup>76</sup> Fourth Carter Affidavit, para. 60. Monitor’s Third Report, para. 92.

to their ongoing business (collectively, the “**Revised Key Employees**”). The Just Energy Entities are proposing to reallocate the funds under the same terms as already authorized under the KERP.<sup>77</sup>

69. This Court has the authority pursuant to its broad powers under s. 11 of the CCAA to make any order that it considers appropriate. This provision gives this Court the jurisdiction to grant the requested order to clarify the KERP allocation, in order to further the Applicants’ restructuring.<sup>78</sup>

70. The Just Energy Entities are of the view that the reallocation of KERP funds in the manner discussed above complies with both the purpose and the spirit of the KERP. Any recipients of reallocated funds have, following the departure of former Key Employees, accepted enhanced workloads of increasing importance in areas of the business that either require significant experience and/or specialized expertise or have otherwise been identified as critical by the Just Energy Entities. The reallocation of funds authorized for distribution to now-departed employees (or Key Employees that declined receipt of such funds) will incentivize these Revised Key Employees to continue their employment throughout the CCAA proceedings for the benefit of the Just Energy Entities and their stakeholders.<sup>79</sup>

71. The requested reallocation of previously approved KERP funds in the manner discussed above will not have any impact on stakeholders of the Just Energy Entities as the funds were already allocated for payment to Key Employees, and there are no changes being requested to the KERP or the KERP Charge. The Just Energy Entities are of the view that a reduction of the funds authorized for distribution under the KERP, and a corresponding reduction to the KERP Charge, are not appropriate at the present time as the current KERP and KERP Charge preserve optionality

---

<sup>77</sup> Fourth Carter Affidavit, para. 47.

<sup>78</sup> CCAA, s. 11.

<sup>79</sup> Fourth Carter Affidavit, para. 48.

and flexibility for the Just Energy Entities to operate and continue stabilizing their respective businesses during these CCAA proceedings.<sup>80</sup>

72. The requested order is therefore consistent with the objectives of the CCAA and appropriate in the circumstances. It is also supported by the Monitor.<sup>81</sup>

**(c) *The BACA Authorization***

73. This Court's authority to allow the Just Energy Entities to enter into the BACAs also derives from its broad power under s. 11 of the CCAA to make any order that it considers appropriate in order to further the Applicants' restructuring.<sup>82</sup>

74. Pursuant to the Intercreditor Agreement, IEG and other obligors are prohibited from opening any bank account for the purpose of retaining money, processing cheques, notes, drafts or other payments, without first causing the financial institution with whom such account is maintained to enter into a BACA with the Collateral Agent.<sup>83</sup>

75. A similar obligation exists within the Credit Agreement. While JPMorgan is prepared to open new bank accounts required by IEG, it will only do so after a BACA is executed or the requirement to execute a BACA is waived by the applicable lenders and suppliers pursuant to the terms of the Intercreditor Agreement and the Credit Agreement.<sup>84</sup>

---

<sup>80</sup> Fourth Carter Affidavit, para. 49.

<sup>81</sup> Monitor's Third Report, para. 77.

<sup>82</sup> CCAA, s. 11.

<sup>83</sup> Fourth Carter Affidavit, para. 55.

<sup>84</sup> Fourth Carter Affidavit, para. 56.

76. Accordingly, the Applicants are seeking authority for the Just Energy Entities to enter into BACAs in accordance with the terms of the Intercreditor Agreement and the DIP Term Sheet, with respect to new bank accounts opened in the ordinary course of business as part of the Just Energy Entities' Cash Management System.<sup>85</sup>

77. The Applicants submit that the BACAs will assist the Just Energy Entities' continued business operations, which will help maximize value for all stakeholders. The BACAs and the exercise of any and all rights thereunder shall be subject to (i) the terms of the DIP Term Sheet and the rights of the DIP Agent and the DIP Lenders thereunder; and (ii) the terms of the SARIO, including the priority of the security interests in the Property granted to holders of the various Charges pursuant to the SARIO.<sup>86</sup>

78. The order is therefore appropriate in the circumstances and will further the Applicants' restructuring efforts. It is supported by the Monitor.<sup>87</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

79. For all of the reasons above, the Applicants submit that this Court should grant the relief requested and issue Orders substantially in the form of the draft Orders attached at Tab 3 and Tab 4 of the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of September, 2021.



---

per Marc Wasserman / Michael De Lellis / Jeremy Dacks

---

<sup>85</sup> Fourth Carter Affidavit, para. 57.

<sup>86</sup> Fourth Carter Affidavit, para. 57.

<sup>87</sup> Monitor's Third Report, para. 81.

**SCHEDULE “A” – LIST OF AUTHORITIES**

**Case Law**

1. *Canwest Global Communications Corp. (Re)*, [2011 ONSC 2215](#) [Commercial List]
2. *Essar Steel Algoma Inc. (Re)*, [Sale and Investment Solicitation Process](#), Court File No. CV-15-000011169-00CL
3. *Laurentian University of Sudbury (Re)*, [2021 ONSC 3885](#)
4. *ScoZinc Ltd. (Re)*, [2009 NSSC 136](#)
5. *Timminco Limited (Re)*, [2014 ONSC 3393](#)
6. *Toys “R” Us (Canada) Ltd. (Re)*, [2018 ONSC 609](#) [Commercial List]
7. *U.S. Steel Canada Inc. (Re)*, [2017 ONSC 1967](#)

## SCHEDULE “B” – TEXT OF STATUTES, REGULATIONS & BY-LAWS

### [Companies’ Creditors Arrangement Act, RSC, 1985, c C-36](#)

#### **General power of court**

11 Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

#### **Stays, etc. — other than initial application**

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

#### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[...]

#### **Fixing deadlines**

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST  
ENERGY GROUP INC. ET AL.**

**Applicants**

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT Toronto

---

**FACTUM OF THE APPLICANTS**

---

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman (LSO# 44066M)**

Tel: 416.862.4908  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Michael De Lellis (LSO# 48038U)**

Tel: 416.862.5997  
Email: [mdelellis@osler.com](mailto:mdelellis@osler.com)

**Jeremy Dacks (LSO# 41851R)**

Tel: 416.862.4923  
Email: [jdacks@osler.com](mailto:jdacks@osler.com)

Lawyers for the Applicants