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

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.

Applicants

COMPENDIUM OF THE APPLICANTS

June 6, 2022

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TO: THE SERVICE LIST

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Tab 1

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

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APPLICANTS

NOTICE OF MOTION

(Motion for Authorization Order, Meetings Order, Stay Extension, and other relief)

The Applicants will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on May 26, 2022 at 10:00 a.m., or as soon after that

time as the motion may be heard by judicial videoconference via Zoom at Toronto, Ontario. The videoconference details will be circulated when provided by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

THE MOTION IS FOR:

1. An Order substantially in the form included at Tab 4 of the Motion Record:

   (a) approving the Plan Support Agreement, dated May 12, 2022 (as may be amended from time to time, the "**Support Agreement**") among the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors;

   (b) declaring that notwithstanding the stay of proceedings imposed by the Initial Order, a counterparty to the Support Agreement may exercise any termination right that may become available to it pursuant to the Support Agreement, provided that such termination right is exercised in accordance with the Support Agreement;

   (c) approving the Backstop Commitment Letter, dated May 12, 2022 among Just Energy (U.S.) Corp. ("**Just Energy U.S.**") and the Initial Backstop Parties (the "**Backstop Commitment Letter**");

   (d) approving the issuance of the Backstop Commitment Fee Shares to the Backstop Parties in the manner and circumstances described in the Backstop Commitment Letter;

(e) approving the Termination Fee and authorizing Just Energy U.S. (or another Just Energy Entity organized in the United States) to pay the Termination Fee to the Initial Backstop Parties and any Additional Backstop Parties in the circumstances and manner described in the Backstop Commitment Letter;

(f) granting a Court-ordered charge (the "**Termination Fee Charge**") in favour of the Initial Backstop Parties as security for payment of the Termination Fee, with the priority set out in the proposed Authorization Order;

(g) amending the Claims Procedure Order granted by the CCAA Court on September 15, 2021 (the "**Claims Procedure Order**") to permit the Just Energy Entities to request that any Claim that arises from or relates primarily to the winter storm that occurred in Texas in February 2021 and that was submitted by a Claimant who lives in the U.S. (or lived in the U.S. at the time of such winter storm) (each, a "**Winter Storm Claim**") be adjudicated and determined by the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**"), at its discretion, in each case at the election of the Just Energy Entities in consultation with the Monitor;

(h) extending the Stay Period to August 19, 2022;

(i) directing that the unredacted copies of the Support Agreement and the Backstop Commitment Letter (attached as **Confidential Exhibits "D"** and **"F"** to the Affidavit of Michael Carter, sworn May 12, 2022 (the "**Eleventh Carter Affidavit**") be treated as confidential and sealed, and not form part of the public record, pending further order of this Court; and

(j) approving the activities, conduct and Tenth Report of FTI Consulting Canada Inc., in its capacity as Monitor (the "**Monitor**"), and the fees of the Monitor and its counsel.

2. An Order substantially in the form included at Tab 5 of the Motion Record:

(a) accepting the filing of the Just Energy Entities' Plan of Compromise and Arrangement, dated May 26, 2022 and attached as **Exhibit "A"** to the Eleventh Carter Affidavit (as may be amended from time to time, the "**Plan**");

(b) authorizing the Just Energy Entities to establish two classes of creditors for the purpose of considering and voting on the Plan: (i) the Secured Creditor Class; and (ii) the Unsecured Creditor Class;

(c) authorizing the Just Energy Entities to call, hold and conduct virtual meetings of the Secured Creditor Class and the Unsecured Creditor Class (the "**Creditors' Meetings**") to consider and vote on resolutions to approve the Plan, and approving the voting and other procedures to be followed with respect to the Creditors' Meetings; and

(d) setting a date for the hearing of the Just Energy Entities' motion for an order sanctioning the Plan (the "**Plan Sanction Hearing**") should the Plan be approved for filing and approved by the Required Majorities of creditors at the Creditors' Meetings.

3. Capitalized terms used but not defined in this Notice of Motion shall have the meanings given to them in the Eleventh Carter Affidavit.

THE GROUNDS FOR THE MOTION ARE:

Overview

4. On March 9, 2021, the Applicants obtained protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**").

5. The CCAA Court granted an Amended and Restated Initial Order (the "**ARIO**") on March 19, 2021, and a Second Amended and Restated Initial Order on May 26, 2021.

6. The U.S. Bankruptcy Court granted the ARIO full force and effect on a final basis under Chapter 15 of the U.S. Bankruptcy Code on April 2, 2021.

7. After extensive negotiations and lengthy and determined efforts by the Just Energy Entities over the past approximately 12 months, the Just Energy Entities have reached consensus with their key stakeholders regarding the terms of a restructuring plan to facilitate the Just Energy Entities' emergence from the current CCAA and Chapter 15 proceedings in a manner which, among other things, preserves the going concern value of the businesses for the benefit of stakeholders, maintains critical relationships with key Commodity Suppliers and regulators across Canada and the United States, and preserves the employment of most of the Just Energy Entities' more than 1000 employees.

CCAA Plan

8. The combined effect of the Plan and other arrangements will result in a recapitalization of the Just Energy Entities by the conversion of certain secured priority claims and certain unsecured

claims to equity and the injection of new capital into the Just Energy Entities by means of the New Equity Offering and the New Credit Facility.

9. The recapitalization will be considered at the Creditors' Meetings and, if approved at such meetings by the Required Majorities, by the Court at the Plan Sanction Hearing. However, prior to such Creditors' Meetings, the milestones provided under the Support Agreement and Meetings Order establish an approximately two-month period (the "**Voting Period**") for potentially interested parties to propose a superior alternative transaction for the Just Energy Entities to that provided in the Plan, Support Agreement and other transaction-related documents.

10. The stability provided to the restructuring process by having a going concern Plan that will be considered by creditors and the CCAA Court, while also providing the flexibility for Alternative Restructuring Proposals to be presented and considered, is in the best interests of the Just Energy Entities and their stakeholders and will provide the best result possible in these CCAA proceedings.

11. At a high level, the Plan includes the following elements:

(a) *Reorganized Corporate Structure*: the Just Energy Entities will be reorganized such that upon implementation of the Plan, Just Energy U.S. or such other corporation or company organized in the United States will be the ultimate parent of the Just Energy Entities (the "**New Just Energy Parent**"). The New Just Energy Parent will have two classes of shares – newly issued common shares (the "**New Common Shares**") and newly issued preferred shares (the "**New Preferred Shares**");

(b) *New Preferred Shares*: on the Effective Date, the holder and assignee of all pre-filing secured claims previously held by BP (the "**BP Commodity/ISO Services Claimholder**") will receive 100% of the New Preferred Shares of New Just Energy Parent;

(c) *New Equity Offering*: on the Effective Date, the New Just Energy Parent will complete an equity offering in the aggregate amount of US$192.55 million for 80% of the New Common Shares (the "**New Equity Offering**"), which will be backstopped by the Backstop Parties in accordance with the Backstop Commitment Letter. The New Equity Offering is open for participation to all Beneficial Term Loan Claim Holders who are permitted to participate under applicable securities laws;

(d) *New Credit Agreement and Intercreditor Agreement*: on the Effective Date, applicable Just Energy Entities will enter into an amended and restated credit agreement (the "**New Credit Agreement**") with the Credit Facility Lenders pursuant to which a first lien revolving credit facility in the amount of $250 million will be made available, and a new Intercreditor Agreement with the Credit Facility Lenders, Shell, and other applicable Commodity Suppliers will be executed;

(e) *Two Classes of Creditors*: two classes of creditors will be established for purposes of voting on and receiving distributions (or other treatment) under the Plan – the Secured Creditor Class (comprised of the Credit Facility Lenders) and the Unsecured Creditor Class (comprised of the Term Loan Claim Holders, General Unsecured Creditors, and Convenience Claims);

(f) *Secured Creditor Recoveries*: the Credit Facility Claim will be paid in full in cash on the Effective Date, less the Credit Facility Remaining Debt (i.e. the principal amount of up to $20 million of the Credit Facility Claim), if any, and the New Credit Agreement will become effective;

(g) *Unsecured Creditor Recoveries*: within the Unsecured Creditor Class: (i) Term Loan Claim Holders will receive their pro rata share of 10% of the New Common Shares and the ability to participate in the New Equity Offering; (ii) Convenience Claims will be paid in full up to $1,500 from the General Unsecured Creditor Cash Pool (established at $10 million); and (iii) General Unsecured Creditors holding Accepted Claims will be paid their pro rata share of the General Unsecured Creditor Cash Pool (after payment of Convenience Claims and permitted fees and expenses and subject to the turnover requirements in the Subordinated Note Indenture and the Plan);

(h) *Unaffected Claims*: numerous claims are "unaffected" under the Plan and are not entitled to vote on, or receive any distributions under, the Plan, including Post-Filing Claims, the beneficiaries of CCAA Charges, Commodity Supplier Claims, Energy Regulator Claims, and claims that are not capable of compromise under the CCAA; and

(i) *Equity Claims*: Equity Claims will not receive any distributions under the Plan and are not entitled to vote on the Plan.

12. If approved, the Plan will permit the Just Energy Entities to exit the CCAA and Chapter 15 proceedings with a significantly deleveraged balance sheet by eliminating the Just Energy Entities'

funded debt and providing a minimum $75 million of liquidity through the New Equity Offering and the New Credit Facility.

13. Absent receipt of a Superior Proposal during the Voting Period, the Plan provides the best available result for the Just Energy Entities' stakeholders in all of the circumstances and is better than the alternatives, including a forced liquidation of the Just Energy Entities' assets.

Support Agreement

14. On May 12, 2022, the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders (i.e. the Credit Facility Lenders), and the Supporting Unsecured Creditors (i.e. significant Term Loan Lenders) entered into the Support Agreement, pursuant to which the parties have agreed, among other things, to cooperate with each other in good faith and use commercially reasonable efforts to implement the Restructuring.

15. Pursuant to the Support Agreement, the Just Energy Entities have agreed not to directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal.

16. However, the Support Agreement includes two significant safeguards to ensure there is an adequate opportunity for interested parties that may wish to advance an Alternative Restructuring Proposal within the CCAA process to do so for the benefit of the Just Energy Entities' stakeholders:

(a) first, the Support Agreement establishes a 62-day "Voting Period" between the milestone for mailing of the Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022) to allow any interested

parties to complete due diligence and submit a proposal. The Support Agreement permits the Just Energy Entities to consider and respond to any proposals, provide access to non-public information, negotiate any proposal with the applicable party, and other related activities; and

(b) second, the Support Agreement includes a broad "fiduciary out" provision which permits the Just Energy Board to terminate the Support Agreement if it determines, following receipt of advice from outside legal counsel and financial advisors, (i) that proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law, or (ii) in the exercise of its fiduciary duties, to pursue a Superior Proposal.

17. The Voting Period, coupled with the "fiduciary out", ensure that the restructuring process is fair and transparent, provides the opportunity for interested parties to advance an Alternative Restructuring Proposal, and ensures the achievement of the best transaction possible in the circumstances for the Just Energy Entities, all for the benefit of stakeholders.

Backstop Commitment Letter

18. On May 12, 2022, Just Energy U.S. and the same four funds that comprise the DIP Lenders and, together with a related limited partner, the Plan Sponsor and significant Term Loan Lenders (the "**Initial Backstop Parties**") entered into the Backstop Commitment Letter.

19. Participation in the Backstop Commitment Letter is open to all holders of the Term Loan Claim, subject to compliance with all applicable securities laws and other requirements (in such capacity, the "**Additional Backstop Parties**" and together with the Initial Backstop Parties and

the Assignee Backstop Parties (as defined in the Backstop Commitment Letter), the "**Backstop Parties**").

20. The Backstop Commitment Letter ensures that the whole New Equity Offering will be taken up in full and funded either by the New Equity Offering Eligible Participants, or by the Backstop Parties, thereby ensuring that the Just Energy Entities raise the necessary funds to pay all required amounts under the Plan.

21. In consideration of the Initial Backstop Parties executing and delivering the Backstop Commitment Letter, Just Energy U.S. agreed that:

(a) the New Just Energy Parent will issue and deliver to the Backstop Parties, in the aggregate, 10% of the New Common Shares on the Effective Date (the "**Backstop Commitment Fee Shares**"); and

(b) Just Energy U.S. (or another Just Energy entity organized in the United States) will pay to the Initial Backstop Parties and the Additional Backstop Parties, in the aggregate, a cash fee in an amount equal to US$15 million (the "**Termination Fee**") if the Support Agreement is terminated on the basis of the "fiduciary out" provision.

22. The Termination Fee is proposed to be secured in favour of the Initial Backstop Parties by a Court-ordered charge (the "**Termination Fee Charge**") which will have priority over all other security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings. The Just Energy Entities' financial advisor has confirmed that the Termination Fee is in line with market terms and is reasonable in the circumstances.

Meetings Order

23. The proposed Meetings Order authorizes the Just Energy Entities to convene virtual meetings of the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on the Plan. The Meetings Order provides that the Creditors' Meetings will be held virtually and not in person on August 2, 2022 by means of telephonic or electronic facility using a third-party service provider given the ongoing challenges posed by the COVID-19 pandemic.

24. The proposed Meetings Order provides for comprehensive notification of the Creditors' Meetings to the Affected Creditors, including provision of a: (a) Notice of Meetings; and (b) an Information Statement which provides Affected Creditors with detailed information regarding the CCAA proceedings, the Plan, approval requirements with respect to the Plan, the details of the Creditors' Meetings, voting entitlements and procedures, and certain regulatory matters relating to the Plan. Among other things, the proposed Meetings Order requires that: (a) each of the Monitor and Just Energy's noticing agent post all Secured Creditor Class Meeting Materials and Unsecured Creditor Class Meeting Materials on their respective websites; and (b) all Secured Creditor Class Meeting Materials and Unsecured Creditor Class Meeting Materials be sent to each Creditor holding an Affected Claim in accordance with the terms of the Meetings Order.

25. The proposed Meeting Order also provides for, among other things:

(a) procedures that will govern the conduct of the Creditors' Meetings, including that a representative of the Monitor will preside as Chair of the Creditors' Meetings, and subject to further Order of this Court, will determine all matters relating to the conduct of the Creditors' Meetings;

(b) the voting procedures at the Creditors' Meetings;

(c) the process by which the Monitor will keep a separate record of votes cast by Affected Creditors holding Disputed Claims;

(d) the requirements for approval of the Plan, including that the Plan must receive an affirmative vote by the Required Majorities; and

(e) the ability of the Just Energy Entities to make amendments to the Plan.

26. The proposed Meetings Order is fair and reasonable in the circumstances and will allow all Affected Creditors to fully consider the Plan and participate in the applicable Creditors' Meeting.

Amendment of Claims Procedure Order

27. The Claims Procedure Order permits the Just Energy Entities, at their election and in consultation with the Monitor, to refer any dispute raised in a Notice of Dispute of Revision or Disallowance to either a Claims Officer or the CCAA Court for adjudication.

28. Within the Claims Process, the Just Energy Entities have received one or more Winter Storm Claims, the adjudication of which will require particularized understanding and application of the legal and regulatory framework which govern the utility regime in Texas.

29. The Just Energy Entities are accordingly seeking to amend the Claims Procedure Order to permit them, in their sole discretion and in consultation with the Monitor, to have any Winter Storm Claims adjudicated and determined by the U.S. Bankruptcy Court (subject to the entry of an Order by the U.S. Bankruptcy Court recognizing the Authorization Order).

Extension of Stay Period

30. The current stay of proceedings granted in these CCAA proceedings expires on May 26, 2022, or such later date as the Court may order (the "**Stay Period**").

31. The Just Energy Entities are seeking to extend the Stay Period until August 19, 2022, which will allow them to conduct the Creditors' Meetings and, if the Plan is approved by the Required Majorities of Creditors, seek the Sanction Order from this Court and an enforcement and recognition order from the U.S. Bankruptcy Court.

32. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings.

33. It is just and convenient and in the interests of the Just Energy Entities and their stakeholders that the Stay Period be extended to August 19, 2022.

Other Grounds

34. In addition to the other grounds discussed in this Notice of Motion, the Applicants rely on:

(a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

(b) Rules 1.04, 1.05, 2.03, 16, 37, and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) changes to Commercial List operations in light of COVID-19 dated March 16, 2020; and

(d) such further and other grounds as the lawyers may advise.

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

1. The Affidavit of Michael Carter, sworn February 2, 2022;

2. The Affidavit of Michael Carter sworn May 12, 2022;

3. The Affidavit of Mark Caiger, sworn May 12, 2022;

4. The Tenth Report of the Monitor, to be filed; and

5. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 12, 2022

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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.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Motion for Authorization Order, Meetings Order, Stay Extension, and other relief)

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Tab 2

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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.

Applicants

AFFIDAVIT OF MICHAEL CARTER

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. I have been Just Energy Group Inc.'s ("**Just Energy**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of Just Energy and its subsidiaries in these CCAA proceedings (collectively, the "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as defined below) to which the protections and authorizations of the Initial Order were

extended (collectively with the Applicants, the "**Just Energy Entities**"). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Just Energy Entities. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Just Energy Group's senior management team and their financial and legal advisors.

2. I make this affidavit in support of a motion by the Applicants for:

(a) an Order substantially in the form of the draft order attached at Tab 4 of the Applicants' Motion Record (the "**Authorization Order**"), *inter alia*:

(i) approving the Plan Support Agreement, dated May 12, 2022 (as may be amended from time to time, the "**Support Agreement**") among the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors (as each of those terms is defined below);

(ii) declaring that notwithstanding the stay of proceedings imposed by the Initial Order (as defined below), a counterparty to the Support Agreement may exercise any termination right that may become available to it pursuant to the Support Agreement, provided that such termination right is exercised in accordance with the Support Agreement;

(iii) approving the Backstop Commitment Letter, dated May 12, 2022 among Just Energy (U.S.) Corp. ("**Just Energy U.S.**") and the Initial Backstop Parties (as defined below) (the "**Backstop Commitment Letter**");

(iv) approving the issuance of the Backstop Commitment Fee Shares to the Backstop Parties (as defined below) in the manner and circumstances described in the Backstop Commitment Letter;

(v) approving the Termination Fee (as defined below) and authorizing Just Energy U.S. (or another Just Energy Entity organized in the United States) to pay the Termination Fee to the Initial Backstop Parties and any Additional Backstop Parties (as defined below) in the circumstances and manner described in the Backstop Commitment Letter;

(vi) granting a Court-ordered charge (the "**Termination Fee Charge**") in favour of the Initial Backstop Parties as security for payment of the Termination Fee, with the priority set out in the proposed Authorization Order;

(vii) amending the Claims Procedure Order granted by the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") on September 15, 2021 (the "**Claims Procedure Order**") to permit the Just Energy Entities to request that any Claim that arises from or relates primarily to the winter storm that occurred in Texas in February 2021 and that was submitted by a Claimant who lives in the U.S. (or lived in the U.S. at the time of such winter storm (each, a "**Winter Storm Claim**")) be adjudicated and determined by

the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**"), at its discretion, in each case at the election of the Just Energy Entities in consultation with the Monitor;

(viii) extending the Stay Period (as defined in the Second Amended and Restated Initial Order, granted May 26, 2021 (the "**Second ARIO**")) to August 19, 2022; and

(ix) directing that the unredacted copies of the Support Agreement and the Backstop Commitment Letter (attached as **Confidential Exhibits "D"** and **"F"** hereto) be treated as confidential and sealed, and not form part of the public record, pending further order of this Court;

(b) an Order substantially in the form of the draft order attached at Tab 5 of the Applicants' Motion Record (the "**Meetings Order**"), *inter alia*:

(i) accepting the filing of the Just Energy Entities' Plan of Compromise and Arrangement, dated May 26, 2022 and attached as **Exhibit "A"** hereto (as may be amended from time to time, the "**Plan**");

(ii) authorizing the Just Energy Entities to establish two classes of creditors for the purpose of considering and voting on the Plan: (i) the Secured Creditor Class; and (ii) the Unsecured Creditor Class;

(iii) authorizing the Just Energy Entities to call, hold and conduct virtual meetings of the Secured Creditor Class and the Unsecured Creditor Class (the "**Creditors' Meetings**") to consider and vote on resolutions to approve

the Plan, and approving the voting and other procedures to be followed with respect to the Creditors' Meetings; and

(iv) setting a date for the hearing of the Just Energy Entities' motion for an order sanctioning the Plan (the "**Plan Sanction Hearing**") should the Plan be accepted for filing and approved by the Required Majorities of creditors at the Creditors' Meetings.

3. Capitalized terms used in this affidavit but not defined have the meaning given to them in the Plan and in the proposed Meetings Order. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.[1]

A. HISTORY OF THE CCAA PROCEEDINGS

4. On March 9, 2021 (the "**Filing Date**"), the Applicants obtained protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the CCAA Court. The Applicants' filing for protection under the CCAA was precipitated by the acute and unforeseen liquidity challenge caused by the unprecedented winter storm in February 2021 in Texas (the "**Weather Event**") and the Texas regulators' response to same.

[1] As the monetary amounts referenced herein are denominated in both Canadian and United States currencies, a table of all quantified Claims and new equity amounts discussed herein is attached at **Schedule "A"** showing all such amounts both in their original denominated currency and as converted into the other currency at an exchange rate of C$1.27 per $1.00 USD.

5. On the Filing Date, the Court approved the CCAA Interim Debtor-in-Possession Financing Term Sheet (the "**DIP Term Sheet**") pursuant to which the DIP Lenders[2] provided access to emergency financing of US$125 million (together with all accrued and outstanding fees, costs and interest, the "**DIP Lenders' Claim**"). The DIP Term Sheet contained, among other terms, a requirement that the Just Energy Entities meet certain restructuring milestones for the development and implementation of a plan of arrangement. Such milestones have been extended by the DIP Lenders from time to time during the CCAA proceedings.

6. The Initial Order has twice been amended and restated. The CCAA Court granted an Amended and Restated Initial Order (the "**ARIO**") on March 19, 2021, and the Second ARIO on May 26, 2021.

7. On April 2, 2021, the U.S. Bankruptcy Court granted a Final Recognition Order under Chapter 15 of the U.S. Bankruptcy Code (the "**Final Recognition Order**") which, among other things, granted the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the CCAA Court, full force and effect on a final basis with respect to the Just Energy Entities' property located within the United States.[3]

8. On September 15, 2021, the CCAA Court granted the Claims Procedure Order establishing a process to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their respective Directors and Officers. The Claims Procedure Order established a Claims Bar Date of November 1, 2021. Since the Claims Bar Date, the Just Energy Entities have been working

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[2] The DIP Lenders are: LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC and OC II LVS XIV LP (the "**DIP Lenders**").

[3] The Final Recognition Order also provided that, "All parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding."

in consultation with the Monitor to review, record, dispute and, where appropriate, finally determine the amount and characterization of Claims against the Just Energy Entities and their respective Directors and Officers.

9. On November 10, 2021, the CCAA Court granted an Order that, among other things, approved an amendment to the DIP Term Sheet to extend the maturity date thereunder from December 31, 2021 to September 30, 2022, and extended the Stay Period to February 17, 2022. In granting such relief, the CCAA Court recognized that:

> The company has been moving in good faith towards a plan, but the business is of such a complexity that it has taken longer than initially anticipated. This is not surprising. The company is subject to a myriad of regulatory regimes across the United States and Canada. It has complex commercial arrangements with suppliers and a number of secured and unsecured lenders, the integrity of which in turn depends on Just Energy's compliance with regulatory requirements.

10. On February 9, 2022, the CCAA Court heard a Motion for Advice and Directions filed by U.S. counsel to the proposed representative plaintiffs in *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB (PC-11175-1) and in *Fira Donin and Inna Golovan v. Just Energy Group Inc*. et al., Case No. 1:17-cv-05787-WFK-SJB (PC-11177-1) (together, the "**Putative Class Actions**"). At the conclusion of the February 9th hearing, the CCAA Court dismissed the Motion for Advice and Directions (the "**Putative Class Action Dismissal Order**"). A copy of the Putative Class Action Dismissal Order and the Honourable Justice McEwen's hand-written reasons, dated February 23, 2022, are attached hereto as **Exhibit "B"**.

11. On February 24, 2022, U.S. counsel to the proposed representative plaintiffs filed a Notice of Motion for Leave to Appeal the Putative Class Action Dismissal Order.

12. On March 3, 2022, the CCAA Court appointed the Honourable Justice Dennis O'Connor as Claims Officer (as defined in the Claims Procedure Order) for purposes of adjudicating the Putative Class Actions in accordance with the Claims Procedure Order.

13. On February 9, March 3, March 24, and April 21, 2022, the CCAA Court granted short extensions to the Stay Period until and including March 4, March 25, April 22, and May 26, 2022, respectively, to permit the Just Energy Entities to, among other things, work towards finalizing the Plan and filing a motion seeking the Authorization Order and the Meetings Order.

B. BACKGROUND TO THE PROPOSED RESTRUCTURING PLAN

14. Throughout the past months, the Just Energy Entities, with the assistance of their legal and financial advisors, and in consultation with the Monitor, have been working in earnest to advance their restructuring and continue their extensive engagement with their key stakeholders, including (i) the entities who are DIP Lenders and significant lenders under the First Amended and Restated Loan Agreement dated as of September 28, 2020 (as amended from time to time, the "**Term Loan Agreement**" and the lenders thereunder, the "**Term Loan Lenders**"), (ii) the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy U.S., dated as of September 28, 2020 (as amended from time to time, the "**Credit Agreement**" and the lenders thereunder, the "**Credit Facility Lenders**"), and (iii) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, "**Shell**"), regarding a framework for the recapitalization and restructuring of the Just Energy Entities and their respective businesses. Such extensive and ongoing engagement has been productive and resulted in:

(a) the Just Energy Entities, the Plan Sponsor[4], CBHT Energy I LLC (in its capacity as assignee of all secured Pre-Filing Claims previously held by BP, "**CBHT**")[5], Shell, the Credit Facility Lenders (in their capacity as signatories to the Support Agreement, the "**Supporting Secured CF Lenders**"), and certain Term Loan Lenders (in their capacity as signatories to the Support Agreement, the "**Supporting Unsecured Creditors**") reaching consensus on the terms of a comprehensive recapitalization and restructuring transaction, and executing the Support Agreement in respect thereof;

(b) the Just Energy Entities and the Initial Backstop Parties executing the Backstop Commitment Letter;

(c) the Just Energy Entities and the New Credit Facility Lenders (as defined below) negotiating and finalizing a term sheet for the New Credit Facility (as defined below), and the Just Energy Entities, New Credit Facility Lenders, and applicable Commodity Suppliers negotiating and finalizing a term sheet for the New Intercreditor Agreement (as defined below); and

(d) the Just Energy Entities finalizing the Plan for which a Meetings Order is being sought.

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[4] The Plan Sponsor is comprised of the same investment funds that are DIP Lenders and, together with an affiliated limited partner, the holders of substantially all of the Term Loan Claim (as defined below).

[5] CBHT is an affiliate of the DIP Lenders and is the holder and assignee of all secured Pre-Filing Claims previously held by BP Canada Energy Group ULC and BP Energy Company (together, "**BP**") (defined below as the "BP Commodity/ISO Services Claim").

15. The Support Agreement, the Backstop Commitment Letter, the Plan and other related agreements (discussed further below) are the result of extensive efforts by the Just Energy Entities to restructure for the benefit of their stakeholders. Those efforts commenced with the preparation and distribution of a business plan to the DIP Lenders, Shell, BP, and the Credit Facility Lenders on May 18, 2021 (the "**Business Plan**"). The detailed Business Plan accounted for changes caused by the Weather Event to the businesses of the Just Energy Entities and was intended to assist these key stakeholders in understanding, among other things, the operational projections, near and longer-term liquidity requirements, financial projections, and anticipated business operations of the Just Energy Entities during, and upon emergence from, the current CCAA and Chapter 15 proceedings. The Business Plan was created by the Just Energy Entities to facilitate the participation of key stakeholders in the development of a restructuring plan.

16. Since the Business Plan was circulated in May 2021, the Just Energy Entities have been working diligently to reach consensus with their key stakeholders regarding the terms and structure of a restructuring plan to facilitate the Just Energy Entities' emergence from the current CCAA and Chapter 15 proceedings in a manner that, among other things: (a) recapitalizes the Just Energy Entities and in so doing preserves the going concern value of the businesses for the benefit of all stakeholders; (b) maintains relations with Commodity Suppliers[6] to ensure uninterrupted supply of energy to the Just Energy Entities' customers; (c) preserves the ongoing employment of most of the Just Energy Entities' more than 1000 employees; (d) maintains critical regulatory and licensing relationships between the Just Energy Entities and its market regulators across Canada

[6] Any counterparty to a gas supply agreement, electricity supply agreement or other agreement with any of the Just Energy Entities for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement (each, a "**Commodity Supplier**").

and the United States; and (e) sustains relationships with the hundreds of other vendors with whom the Just Energy Entities transact for goods and services, and other business-critical stakeholders.

17. The lengthy and determined efforts of the Just Energy Entities to develop restructuring terms which achieve the foregoing objectives were successful and resulted in the development of the Plan and the execution of the Support Agreement, Backstop Commitment Letter, and other transaction-related documents by the Just Energy Entities, the Plan Sponsor, and other key stakeholders in May 2022. The Plan is being presented on a consolidated basis on behalf of all the Just Energy Entities. As discussed further in my affidavit sworn March 9, 2021 in support of the Initial Order, the business and operations of the Just Energy Entities are heavily intertwined. The Credit Facility Claim, the BP Commodity/ISO Services Claim and the Commodity Supplier Claims are secured against the assets of all of the Just Energy Entities pursuant to the Intercreditor Agreement and various security agreements. In addition, all of the Just Energy Entities are either borrowers or guarantors of the Term Loan Claim.

18. The combined effect of the Plan and these arrangements will result in a recapitalization of the Just Energy Entities by the conversion of certain secured priority claims and certain unsecured claims to equity and the injection of new capital into the Just Energy Entities by means of the New Equity Offering (as defined below) and the New Credit Facility. Among other things, CBHT has agreed to convert its secured, priority claim of approximately US$229.5 million and C$0.2 million, plus all accrued and unpaid interest thereon through to the Effective Date, to preferred equity, the Plan Sponsor has agreed to backstop the US$192.55 million New Equity Offering, and the New Credit Facility Lenders have agreed to (i) advance the New Credit Facility, (ii) permit all issued but undrawn letters of credit under the current Credit Agreement to continue under the New Credit Facility or be replaced with new or replacement letters of credit issued under the New Credit

Facility, and (iii) permit up to $20 million of the current Credit Facility Claim (as defined below) to remain outstanding and be transferred as an initial outstanding principal amount to the New Credit Agreement. In addition, the New Credit Facility Lenders and Shell have agreed to the terms of the New Intercreditor Agreement, which permits for the addition of new commodity suppliers as parties thereto, thereby preserving and protecting the Just Energy Entities' ability to secure ongoing business-critical commodity supply. All of the foregoing is to the direct benefit of the Just Energy Entities and their stakeholders.

19. The recapitalization will be considered at the Creditors' Meetings and, if approved at such meetings by the Required Majorities, by the Court at the Plan Sanction Hearing. As discussed further below, the milestones provided under the Support Agreement and Meetings Order establish an approximately two-month period (defined below as the "Voting Period") for potentially interested parties to propose a superior alternative transaction for the Just Energy Entities to that provided in the Plan, Support Agreement and other transaction-related documents. The Just Energy Entities believe that the stability provided to the restructuring process by having a going concern Plan that will be considered by creditors and the CCAA Court, while also providing the flexibility for Alternative Restructuring Proposals (as defined below) to be presented and considered, is in the best interests of the Just Energy Entities and their stakeholders and will provide the best result possible in these CCAA proceedings.

20. A summary of the Support Agreement, Backstop Commitment Letter and other transaction-related documents, together with a description of the Plan, is provided below.

C. SUPPORT AGREEMENT

21. On May 12, 2022, the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors entered into the Support Agreement, subject to Court approval. As discussed above:

(a) the Plan Sponsor is comprised of the same investment funds that are DIP Lenders and, together with a related limited partner, the holders of substantially all of the Term Loan Claim (the "**Plan Sponsor**"). The Plan Sponsor also comprises all of the "Initial Backstop Parties" under the Backstop Commitment Letter (discussed further below);

(b) the Supporting Unsecured Creditors are the same entities that comprise the Plan Sponsor in their capacity as significant Term Loan Lenders;

(c) CBHT is an affiliate of the Plan Sponsor and the holder and assignee of all BP Commodity/ISO Services Claims;

(d) Shell is the largest commodity supplier to, and a significant secured creditor of, the Just Energy Entities; and

(e) the Supporting Secured CF Lenders are the Credit Facility Lenders.

22. Under the terms of the Support Agreement, the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors have agreed to cooperate with each other in good faith and use commercially reasonable efforts with respect to the pursuit, approval, implementation, and consummation of the transactions

contemplated by the Support Agreement, the Backstop Commitment Letter and the Plan (the "**Restructuring**") as well as the negotiation, drafting, execution, and delivery of the Definitive Documents (as defined in the Support Agreement) to implement the Restructuring. The parties to the Support Agreement account for more than $1 billion of the Just Energy Entities' secured and unsecured debt. A redacted copy of the Support Agreement is attached hereto as **Exhibit "C"**. The Support Agreement attaches a copy of the Restructuring Term Sheet outlining the terms of the proposed Restructuring as Exhibit C thereto.

23. Under the Support Agreement, and unless inconsistent with the Plan Sponsor's obligations or rights under the financing advanced pursuant to the DIP Term Sheet, the Plan Sponsor agreed and committed, among other things, to:

(a) support the Restructuring and vote and exercise any powers or rights available to it in favour of any matter requiring approval to the extent necessary to implement the Restructuring;

(b) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities' other stakeholders;

(c) act in good faith and take all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the U.S. Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and consummation of all transactions and implementation steps provided for or contemplated in the Restructuring;

(d) not object to, delay, impede, or take any other action to interfere with sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Restructuring, the Plan or the Support Agreement;

(e) not file any motion, pleading, or other document with the CCAA Court, the U.S. Bankruptcy Court or any other court that, in whole or in part, is not materially consistent with the Restructuring; and

(f) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims against the Just Energy Entities.

24. Similar support and good faith commitments and agreements are provided by each of CBHT, Shell, the Supporting Secured CF Lenders and the Supporting Unsecured Creditors under the Support Agreement.

25. In turn, subject to the terms of the Support Agreement, the Just Energy Entities agreed and committed that they would, among other things:

(a) support and use commercially reasonable efforts to complete the Restructuring as set forth in the Plan and the Support Agreement, including making commercially reasonable efforts to complete the Restructuring in accordance with each Milestone (as defined below) provided in the Support Agreement;

(b) not file any motion, pleading, or Definitive Documents with the CCAA Court, the U.S. Bankruptcy Court, or any other court that, in whole or in part, is inconsistent with the Support Agreement or the Plan or undertake any action that is inconsistent

with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Restructuring;

(c) take commercially reasonable efforts to ensure that all consents and approvals necessary for the implementation of the Restructuring have been obtained to the satisfaction of the Plan Sponsor, National Bank of Canada, as administrative agent under the Credit Agreement (the "**Credit Facility Agent**"), and the Just Energy Entities prior to the Effective Date (the day on which the conditions precedent to the implementation of the Plan are satisfied or otherwise waived in accordance with the Plan and the Monitor delivers the required certificates to the Just Energy Entities' counsel and the Plan Sponsor's counsel, the "**Effective Date**");

(d) pay the reasonable and documented fees and expenses of all parties to the Support Agreement incurred in connection with the Restructuring and in accordance with the arrangements in place as of the date of the Support Agreement, including as set forth in the DIP Term Sheet or, with respect to any additional fees and expenses, as otherwise agreed to by the Plan Sponsor;

(e) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with the Support Agreement, and use commercially reasonable efforts to preserve intact the Just Energy Entities' business, organization and relationships with third parties and employees (including not disclaiming or terminating any employment or consulting agreement with an officer, director, or member of senior management other than "for cause" without the prior written consent of the Plan Sponsor); and

(f) keep the Plan Sponsor, the Supporting Secured CF Lenders, the Credit Facility Agent, and the Supporting Unsecured Creditors informed about the operations of the Just Energy Entities and provide each of the parties to the Support Agreement with any material information reasonably requested regarding the Just Energy Entities (in accordance with the terms therein, including on a confidential basis).

26. In addition, the Just Energy Entities agreed in the Support Agreement that they would not directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal[7]. Importantly, the foregoing commitment is expressly subject to two material caveats to provide the opportunity for interested parties that may wish to advance an Alternative Restructuring Proposal within the CCAA process to do so for the benefit of the Just Energy Entities' stakeholders.

27. First, the milestones set out in the Support Agreement incorporate a 62-day period between the milestone for mailing of the Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022) (the "**Voting Period**"). The Voting Period allows any interested parties that may wish to propose a restructuring transaction more favourable than the Plan or otherwise to submit a bid for all or some of the Just Energy Entities' property to complete due diligence and submit their proposal. While the Just Energy Entities are prohibited from

[7] Any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity's material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the Restructuring (each, an "**Alternative Restructuring Proposal**").

soliciting Alternative Restructuring Proposals under the Support Agreement, they are expressly permitted to:

(a) consider and respond to any Alternative Restructuring Proposals;

(b) provide any person with access to non-public information concerning the Just Energy Entities pursuant to a confidentiality or non-disclosure agreement or enter into confidentiality agreements or non-disclosure agreements with any person that has made an Alternative Restructuring Proposal;

(c) engage in, maintain, or continue discussions or negotiations with respect to Alternative Restructuring Proposals, including facilitating the due diligence process in connection with any Alternative Restructuring Proposal;

(d) cooperate with, assist, or participate in any unsolicited inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals;

(e) enter into or continue discussions or negotiations with holders of Claims against, or interests in, a Just Energy Entity (including any party to the Support Agreement), any other party in interest in the CCAA or Chapter 15 proceedings, or any other entity regarding the Restructuring or an Alternative Restructuring Proposal; and

(f) enter into an agreement with respect to an Alternative Restructuring Proposal if, following receipt of legal and financial advice, and having regard to the approvals that would be required to implement such transaction, the board of directors of Just Energy (the "**Just Energy Board**") determines that the terms of such Alternative Restructuring Proposal are more favourable to the Just Energy Entities and their

stakeholders than the Restructuring (a "**Superior Proposal**"). A further description of the Support Agreement can be found in the Information Statement at pages 31-34 (a copy of which is attached as Exhibit "BB" hereto).

28. Second, the Support Agreement includes a "fiduciary out" provision which permits the Just Energy Board to terminate the Support Agreement (subject to the Termination Fee discussed below) if it determines, following receipt of advice from outside legal counsel and financial advisors, (a) that proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law or (b) in the exercise of its fiduciary duties, to pursue a Superior Proposal. Importantly, the "fiduciary out" does not terminate on expiration of the Voting Period, but continues until termination of the Support Agreement or sanction of the Plan.

29. When taken together, the Voting Period, coupled with the "fiduciary out" provided in the Support Agreement, ensures not only that interested parties have an opportunity to complete due diligence and make an Alternative Restructuring Proposal to the Just Energy Entities should they wish to do so, but also that the Just Energy Entities have the ability to respond to any due diligence requests, cooperate with and assist interested parties in their consideration and formulation of an Alternative Restructuring Proposal, negotiate any Alternative Restructuring Proposals received and, if determined to be a Superior Proposal to the current Restructuring, enter into a binding agreement with respect to same.

30. These provisions ensure that the ongoing restructuring process being undertaken by the Just Energy Entities is fair and transparent, provides the opportunity for interested parties to advance an Alternative Restructuring Proposal, and ensures the achievement of the best transaction possible in the circumstances for the Just Energy Entities and their respective businesses for the

benefit of all stakeholders. BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the "**Financial Advisor**"), has confirmed that in its experience, and based on its knowledge of the business, the 62-day Voting Period provided under the Support Agreement is sufficient for interested parties to complete the necessary due diligence and submit an Alternative Restructuring Proposal.

31. During the CCAA proceedings, the Just Energy Entities and the Financial Advisor were proactively approached on a confidential basis by third parties with respect to potential acquisition opportunities for all or some of the Just Energy Entities' business. The Just Energy Entities entered into non-disclosure agreements with three of the third parties, following which the Just Energy Entities proceeded to facilitate due diligence by the third parties, including multiple rounds of non-public information disclosure, and discussions with the Just Energy Entities' finance, operations, tax, risk management and other groups. While the Just Energy Entities engaged in extensive discussions with two of the three third parties, these discussions did not result in any opportunities that were superior to the Restructuring, taking into account the regulatory conditions and other risks associated with the opportunities. As a result, the Just Energy Entities entered into the Support Agreement and related documents.

32. In addition, as set out in the documents publicly disclosed by Just Energy in connection with the Plan of Arrangement (defined below), in 2019 and 2020, the Just Energy Entities undertook a formal review process to evaluate strategic alternatives for the business with a view to the best interests of the Just Energy Entities and all their stakeholders (the "**Strategic Review**"). The Strategic Review was announced by Just Energy on June 6, 2019, following the receipt of expressions of interest from a number of parties concerning potential transactions involving Just Energy. The Just Energy Board appointed a Special Committee comprised of independent directors

(the "**Special Committee**") to oversee the Strategic Review with the assistance of Guggenheim Partners, LLC and National Bank Financial Inc. (collectively, the "**Sale Advisors**").

33. With the assistance of the Sale Advisors, Just Energy undertook an extensive sale process to identify a potential transaction for its business. During this process, Just Energy solicited a range of potential acquirors, set up a data room with due diligence materials, provided access to the data room to parties that signed non-disclosure agreements ("**NDAs**"), and engaged in discussions with various parties. The Sale Advisors contacted 19 potential bidders, which included both publicly traded strategic generation and retail businesses, as well as private equity companies with experience in these sectors. Just Energy entered into NDAs with 15 different parties.

34. Notwithstanding the receipt of various non-binding offers during phase I of the sale process, no binding bids were submitted before the phase II bid deadline and, as a result, the sale process did not result in any executable transactions.

35. Following the conclusion of the sale process in August 2019, Just Energy continued engaging with parties that had expressed interest during the sale process regarding a potential acquisition transaction. Such discussions continued between September 2019 and April 2020, and again in June 2020 when an additional non-binding proposal was received. Ultimately, Just Energy concluded that the proposals did not offer sufficient returns for stakeholders to be viable or acceptable and, on September 28, 2020, Just Energy instead completed a balance sheet recapitalization transaction through a plan of arrangement under section 192 of the *Canada Business Corporations Act* (the "**Plan of Arrangement**").

36. As a result, over the past approximately 2.5 years, the business of the Just Energy Entities has been marketed broadly and extensively. While certain interest has been expressed by third

parties in a potential acquisition transaction both within, and prior to commencement of, the CCAA proceedings, no binding or executable offers have been received, nor have any discussions to date identified any proposals which are superior to the Plan, taking into account the current circumstances and regulatory requirements. Importantly, the pool of likely potential purchasers for the Just Energy Entities is limited in light of the capital-intensive and highly specialized nature of the Just Energy Entities' business.

37. Notwithstanding the foregoing, the Just Energy Entities believed it was appropriate that a final opportunity for interested parties to present any Alternative Restructuring Proposals be preserved within the construct of the Support Agreement and the Plan. As a result, the "fiduciary out" provision and the Voting Period were negotiated to be included in the Support Agreement.

38. In addition to the milestones establishing the 62-day Voting Period between mailing of the Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022), the Support Agreement establishes the following milestones for the remainder of the CCAA and Chapter 15 proceedings (as may be extended in accordance with the Support Agreement, the "**Milestones**"):

Milestone	Date
Authorization Order and Meetings Order granted	May 26, 2022
Solicitation Materials mailed with respect to the Creditors' Meetings	June 1, 2022
Order(s) of the U.S. Bankruptcy Court granted recognizing the Authorization Order (the "**Authorization Recognition Order**"), the Meetings Order (the "**Meetings Recognition Order**") and the Claims Procedure Order ("**Claims Procedure Recognition Order**")	June 22, 2022
Creditors' Meetings held	August 2, 2022
Sanction Order granted	August 12, 2022

Milestone	Date
Motion filed for an Order of the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (“**Recognition and Enforcement Motion**”)	~ August 16, 2022 (2 business days after Sanction Order)
Hearing set before the U.S. Bankruptcy Court on the Recognition and Enforcement Motion	no later than September 9, 2022
Recognition and Enforcement Motion granted by the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (the “**Sanction Recognition Order**”)	September 15, 2022
Outside date for the Effective Date of the Plan to occur, unless extended by the Plan Sponsor (or, if the only outstanding condition is receipt of regulatory approval(s), as automatically extended by an additional 60 days) (the “**Outside Date**”)	September 30, 2022

39. The previous milestones under the DIP Term Sheet have been amended by the DIP Lenders and the Just Energy Entities to align with the aforementioned Milestones under the Support Agreement.

40. The Support Agreement may be terminated by the Plan Sponsor, the Just Energy Entities, or any of the parties thereto upon the occurrence of certain specified events unless waived or cured by the applicable party in accordance with the terms of the Support Agreement. In the case of the Plan Sponsor, such termination events include: (a) any failure by the Just Energy Entities to meet any of the Milestones, unless such failure is the result of any act, omission, or delay on the part of the Plan Sponsor; and (b) any determination by the Just Energy Entities to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal in accordance with the Support Agreement. In the case of Shell and the Supporting Secured CF Lenders, such termination events include if the Effective Date of the Plan has not occurred by:

(a) November 15, 2022 with respect to the Supporting Secured CF Lenders, provided that if the Effective Date of Plan has not occurred by November 15, 2022, solely as a result of all required Transaction Regulatory Approvals not having been obtained,

then the date will automatically be extended until December 31, 2022 upon written notice from the Just Energy Entities or the Plan Sponsor that there is a reasonable expectation that the condition will be satisfied by December 31, 2022; and

(b) January 31, 2023 with respect to Shell, unless further extended in accordance with the Support Agreement.

41. In addition, neither Shell nor the Supporting Secured CF Lenders have any obligations under the Support Agreement unless the Authorization Order is granted by the CCAA Court on or before May 26, 2022 (unless such date is extended in accordance with the Support Agreement).

42. The Just Energy Entities seek approval of the Support Agreement and authorization to perform their obligations thereunder. In the Just Energy Entities' view, the Support Agreement represents an important achievement in launching the next stage of their going concern Restructuring, and appropriately balances advancement of the Plan while maintaining both a process for the Just Energy Entities to respond to and negotiate an Alternative Restructuring Proposal, and the ability of the Just Energy Entities to accept a Superior Proposal.

43. Since the commencement of the CCAA proceedings, the Just Energy Board has been kept apprised of the status of restructuring efforts, discussions with interested parties and, more recently, negotiation of the Support Agreement, the Plan, and related documents. The Just Energy Board has met to receive financial and legal advice regarding the Restructuring, and to review and evaluate the terms of the Support Agreement (including all attachments thereto), the Backstop Commitment Letter and the Plan. The Just Energy Board approved of the Just Energy Entities seeking the approval of the CCAA Court to file the Plan and to pursue solicitation and approval thereof. The Just Energy Board also approved of the Just Energy Entities entering into the Support

Agreement, the Backstop Commitment Letter and related documents and, subject to approval of the CCAA Court, performing their obligations thereunder.

44. An unredacted copy of the Support Agreement is attached as **Confidential Exhibit "D"** hereto. The Support Agreement contains confidential, commercially sensitive information relating to the Plan Sponsor's contact information and the holding percentages of the Plan Sponsor in the Term Loan Claim and the DIP Lenders' Claim which the Support Agreement requires be kept confidential and not publicly disclosed. The Just Energy Entities therefore seek an order that Confidential Exhibit D be sealed and not form part of the court record pending further order of the Court.

D. BACKSTOP COMMITMENT LETTER

45. The Support Agreement attaches the Backstop Commitment Letter as Exhibit D thereto. A redacted copy of the Backstop Commitment Letter is attached as **Exhibit "E"** hereto. Any termination of the Backstop Commitment Letter also constitutes a termination event under the Support Agreement entitling each of the Plan Sponsor, the Just Energy Entities, Shell, and the Supporting Secured CF Lenders to terminate the Support Agreement upon the provision of written notice to the others.

46. The purpose of the Backstop Commitment Letter is to ensure that the Just Energy Entities are able to secure the necessary funds required to implement the Plan, subject to various assumptions and forecasted financial projections leading up to the Effective Date (as discussed further below). Participation in the Backstop Commitment Letter is open to all holders of the Term Loan Claim as of 5:00 p.m. (Toronto time) on May 11, 2022 (the "**Term Loan Record Date**"). The same four funds which comprise the DIP Lenders and, together with the related limited

partner, the Plan Sponsor and significant Term Loan Lenders (collectively, the "**Initial Backstop Parties**")[8] and Just Energy U.S. are party to the Backstop Commitment Letter. In addition, the Backstop Commitment Letter permits:

(a) each holder of the Term Loan Claim as of the Term Loan Record Date (that is not an Initial Backstop Party) to become party to the Backstop Commitment Letter, subject to compliance with all applicable securities laws, delivery of the required joinder agreement and participation form within fifteen (15) Business Days of the date of a notice from Just Energy U.S., and funding of all required commitments (each such holder of the Term Loan Claim that meets applicable securities law requirements, executes and delivers the joinder agreement and funds the required amounts, an "**Additional Backstop Party**"); and

(b) each Initial Backstop Party and Additional Backstop Party may designate one or more of its Affiliates to (i) perform its obligations or assign its rights and obligations under the Backstop Commitment Letter and/or (ii) receive some or all of the New Common Shares it is entitled to receive pursuant to the Plan and Backstop Commitment Letter, upon the execution by such affiliate of a joinder agreement in accordance with the Backstop Commitment Letter and compliance with all applicable securities laws (each such Affiliate that executes and delivers a joinder agreement and meets applicable securities law requirements, an "**Assignee**

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[8] The "Initial Backstop Parties" are LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP and OC III LFE I LP.

Backstop Party", and together with the Initial Backstop Parties and the Additional Backstop Parties, the "**Backstop Parties**").[9]

47. Under the Plan, the Just Energy Entities will be reorganized such that upon implementation of the Plan, Just Energy U.S., or such other corporation or limited or unlimited liability company organized in the United States as determined by the Just Energy Entities and the Plan Sponsor (the "**New Just Energy Parent**"), will be the ultimate parent of the Just Energy Entities. On the Effective Date of the Plan, the New Just Energy Parent will complete an equity offering pursuant to which 80% of the newly issued common shares of the New Just Energy Parent (the "**New Common Shares**") will be issued in exchange for a new money investment of US$192.55 million (the "**New Equity Offering**"), subject to dilution by the equity issued or issuable pursuant to the Management Incentive Plan ("**MIP**"), discussed further below.

48. The New Equity Offering is open for participation to each person that as of the Term Loan Record Date is (a) a Beneficial Term Loan Claim Holder, or permitted designee thereof, and (b) a Backstop Party, which in each case is permitted to participate under applicable securities laws (each a "**New Equity Offering Eligible Participant**").

49. Pursuant to the Backstop Commitment Letter, each Backstop Party has agreed to subscribe for and receive: (a) its pro rata share of the New Equity Offering available to it pursuant to the Plan; (b) its pro rata share of any unsubscribed New Common Shares issued under the New Equity Offering, if any, and (c) its pro rata share of any New Common Shares for which a New Equity Offering Eligible Participant subscribes but otherwise fails to fulfill its subscription obligations by

[9] Each of the Initial Backstop Parties or Additional Backstop Parties that assigns its rights and obligations under the Backstop Commitment Letter to an Assignee Backstop Party remains jointly and severally liable with the Assignee Backstop Party for performing their obligations thereunder.

the New Equity Participation Deadline (5:00 p.m. (Toronto time) on August 23, 2022 or such other date agreed to by the Just Energy Entities and the Plan Sponsor, each acting reasonably).

50. The Backstop Commitment Letter ensures that the whole New Equity Offering proposed by the New Just Energy Parent will be taken up in full and funded either by the New Equity Offering Eligible Participants, or by the Backstop Parties, or some combination thereof, thereby ensuring that the Just Energy Entities raise the necessary funds to pay all required amounts under the Plan (subject to various assumptions and forecasted financial projections leading up to the Effective Date, as discussed further below).

51. The commitments of the Backstop Parties under the Backstop Commitment Letter terminate on the earlier of: (a) the Effective Date of the Plan; (b) the termination of the Backstop Commitment Letter by Just Energy U.S. and/or the Backstop Parties in accordance with the terms thereof; or (c) the Outside Date.

52. In consideration of the Initial Backstop Parties executing and delivering the Backstop Commitment Letter, Just Energy U.S. agreed that:

(a) the New Just Energy Parent will issue and deliver to the Backstop Parties, in the aggregate, New Common Shares representing 10% of the outstanding New Common Shares on the Effective Date, subject to dilution by the equity issued or issuable pursuant to the MIP (the "**Backstop Commitment Fee Shares**") pursuant to the Backstop Commitment Letter and the Plan; and

(b) a Just Energy Entity organized in the United States (which may be Just Energy U.S.) will pay to the Initial Backstop Parties and the Additional Backstop Parties

(if any), in the aggregate, a cash fee in an amount equal to US$15 million (the "**Termination Fee**") if (and only if): (i) the Just Energy Entities terminate the Support Agreement on the basis that the Restructuring would be inconsistent with the exercise of the Just Energy Board's fiduciary duties or applicable law or to pursue a Superior Proposal, or (ii) the Plan Sponsor terminates the Support Agreement based on the Just Energy Board making the determination to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal. The Termination Fee is payable concurrently with the consummation of an Alternative Restructuring Proposal and is deemed automatically waived by the Initial Backstop Parties and the Additional Backstop Parties upon the consummation of the transactions contemplated by the Backstop Commitment Letter or if the Support Agreement is terminated for any other reason.

53. The quantum of the Termination Fee was derived taking into account (i) the aggregate subscription amount for the New Common Shares to be issued by the New Just Energy Parent under the New Equity Offering (US$192.55 million), plus (ii) the New Preferred Shares being issued to CBHT (defined in the Plan as the "BP Commodity/ISO Services Claimholder"), in its capacity as assignee of all secured Pre-Filing Claims previously held by BP (the "**BP Commodity/ISO Services Claim**"), under the Plan (such shares being issued in full satisfaction of a secured claim in the amount of US$229.5 million and C$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date). The New Equity Offering represents additional liquidity being made available to the Just Energy Entities, while the New Preferred Shares being issued to CBHT represent the conversion of the BP Commodity/ISO Services Claim to preferred equity which would otherwise be payable in cash were it not for the terms of the Restructuring.

Both comprise the new value contribution by the Plan Sponsor and CBHT to the Restructuring under the Support Agreement and Plan.

54. Accordingly, in the event the Support Agreement is terminated based on one of the enumerated grounds triggering entitlement to payment of the Termination Fee, the Termination Fee can be analyzed as a percentage of the foregoing value contributions. The US$15 million Termination Fee equates to 3.4%[10] of the additional value contribution of the Plan Sponsor and CBHT.

55. The Termination Fee is proposed to be secured in favour of the Initial Backstop Parties by a Court-ordered charge (the "**Termination Fee Charge**") on all of the Property (as defined in the Second ARIO) of the Just Energy Entities. The Termination Fee Charge will have priority over all other security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings.

56. An unredacted copy of the Backstop Commitment Letter is attached as **Confidential Exhibit "F"** hereto. The Backstop Commitment Letter contains confidential, commercially sensitive information relating to the ownership percentages of, and contact information for, the various entities comprising the Plan Sponsor that the Support Agreement requires be kept confidential and not publicly disclosed. The Just Energy Entities therefore seek an order that Confidential Exhibit F be sealed and not form part of the court record pending further order of the Court.

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[10] US$15 million Termination Fee / (US$192.55 million (New Equity Offering) + C$315.7 million (the BP Commodity/ISO Services Claim including all accrued and unpaid interest to September 30, 2022, converted at a rate of C$1.27 per US$1.00) = 3.4%.

E. THE CCAA PLAN

(a) OVERVIEW OF THE PLAN

57. The Just Energy Entities seek authority to file the Plan and call, hold and conduct the Creditors' Meetings to allow Affected Creditors to consider and vote on resolutions to approve the Plan. A copy of the Plan is attached as **Exhibit "A"** hereto. A copy of the Press Release issued by the Just Energy Entities announcing the proposed Plan and their execution of the Support Agreement and Backstop Commitment Letter is attached as **Exhibit "G"** hereto.

58. The Plan includes the following elements:

(a) the operations of the Just Energy Entities are intended to continue in the normal course without disruption following implementation of the Plan;

(b) the Just Energy Entities will be reorganized such that upon implementation of the Plan, the New Just Energy Parent will be the ultimate parent of the Just Energy Entities;

(c) the New Just Energy Parent will be the issuer of the New Preferred Shares (as defined below) and the New Common Shares to be issued pursuant to the Plan;

(d) on the Effective Date, the New Just Energy Parent will complete the New Equity Offering in the aggregate amount of US$192.55 million, which will be backstopped by the Backstop Parties in accordance with the Backstop Commitment Letter and the Plan. Participation in the New Equity Offering will be open to all New Equity Offering Eligible Participants;

(e) on the Effective Date, Just Energy U.S. and Just Energy Ontario L.P. will enter into an amended and restated credit agreement (the "**New Credit Agreement**") with the Credit Facility Lenders (the "**New Credit Facility Lenders**") pursuant to which a first lien revolving credit facility in the amount of $250 million will be made available to the Just Energy Entities and (i) the principal amount of up to $20 million of the Credit Facility Claim (the "**Credit Facility Remaining Debt**"), if any, will remain outstanding as an initial outstanding principal amount under the New Credit Agreement, and (ii) the letters of credit issued by the Credit Facility Lenders but which remain undrawn under the current Credit Agreement will continue under the New Credit Facility or be replaced with new or replacement letters of credit issued under the New Credit Facility (the "**New Credit Facility**");

(f) a new Intercreditor Agreement (which may be an amendment and restatement of the current Intercreditor Agreement) (the "**New Intercreditor Agreement**") will be executed by the Just Energy Entities, the New Credit Facility Lenders (or the Credit Facility Agent on their behalf), Shell and the applicable Commodity Suppliers;

(g) on the Effective Date:

   (i) the DIP Lenders will receive an amount equal to the DIP Lenders' Claim in cash in full and final satisfaction of the DIP Lenders' Claim; and

   (ii) CBHT (as the BP Commodity/ISO Services Claimholder) will receive 100% of the New Preferred Shares of New Just Energy Parent in full satisfaction of the BP Commodity/ISO Services Claim;

(h) on or prior to the Effective Date, the Just Energy Entities will deliver or cause to be delivered to the Monitor the aggregate amount of: (i) $1.9 million (the "**Administrative Expense Reserve**"); and (ii) $10 million (the "**General Unsecured Creditor Cash Pool**", and together with the Administrative Expense Reserve, the "**Plan Implementation Fund**");

(i) two Classes of Creditors will be established for purposes of voting on and receiving distributions (or other treatment) under the Plan: (i) the Secured Creditor Class, consisting of the Credit Facility Lenders in respect of all amounts owing under the current Credit Agreement as of the Effective Date, excluding any Cash Management Obligations (as defined in the Second ARIO), Commodity Supplier Claim, or any letters of credit issued but undrawn under the Credit Agreement (the "**Credit Facility Claim**"); and (ii) the Unsecured Creditor Class, consisting of holders of the Term Loan Claim, General Unsecured Creditor Claims, the Subordinated Note Claim and Convenience Claims (all as defined below);

(j) on the Effective Date, in full satisfaction of the Credit Facility Claim: (i) the Just Energy Entities will pay, or cause to be paid, to the Credit Facility Agent an amount equal to the Credit Facility Claim in full in cash, less the Credit Facility Remaining Debt, if any, which will remain outstanding; and (ii) the New Credit Agreement (and New Credit Facility Documents) will become effective;

(k) within the Unsecured Creditor Class:

(i) on the Effective Date, in full satisfaction of its Term Loan Claim, each Beneficial Term Loan Claim Holder will receive its pro rata share of 10%

of the total New Common Shares of the New Just Energy Parent, subject to dilution by the equity issued or issuable pursuant to the MIP, and each Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant will be entitled to participate in the New Equity Offering;

(ii) from and after the Effective Date, the Monitor will pay from the General Unsecured Creditor Cash Pool:

(A) each Convenience Claim (as defined below);

(B) the reasonable and documented fees and disbursements (plus any applicable taxes thereon) incurred by the Just Energy Entities' legal, financial, or other advisors, the Monitor and its legal counsel, or any other Person retained by the Just Energy Entities or the Monitor, in connection with post-Effective Date matters (other than the Monitor Administration Expenses (as defined below)) relating to the Plan and the CCAA proceedings, including in connection with the implementation of the Plan, the administration of the Plan Implementation Fund, the continued administration of the claims process provided for in the Claims Procedure Order (the "**Claims Process**") and the resolution of Disputed Claims thereunder, and the termination of the CCAA proceeding and the Chapter 15 proceeding following the Effective Date; and

(C) after deduction of the foregoing amounts, each General Unsecured Creditor with an Accepted Claim, its pro rata share of the remaining portion of the General Unsecured Creditor Cash Pool (subject to the terms of the Trust Indenture between Just Energy and Computershare Trust Company of Canada, dated as of September 28, 2020 (the "**Subordinated Note Indenture**"), a copy of which is attached hereto as **Exhibit "H"**), and the "turnover" provisions set forth in the Subordinated Note indenture and in the Plan and described further below.

(l) the following claims, among others, are Unaffected Claims under the Plan:

(i) claims secured by a CCAA Charge;

(ii) all Pre-Filing Claims of Commodity Suppliers that are party to the Intercreditor Agreement (determined as of the Effective Date) in respect of a Commodity Agreement, plus any interest thereon to the Effective Date, after provision for any resettlements that are known by the Just Energy Entities as of the Effective Date, but excluding any BP Commodity/ISO Services Claim (the "**Commodity Supplier Claims**"); and

(iii) any Claims for sales, use, or other Taxes by a U.S. Taxing Authority which could result in a responsible person associated with a Just Energy Entity being held personally liable for any non-payment (each, a "**Responsible Person Claim**");

(m) holders of Accepted Claims that are less than $10 (each, a "**De Minimis Claim**") will not receive any distributions under the Plan on account of their De Minimis Claims, which De Minimis Claims will be fully and finally cancelled and discharged; and

(n) holders of Equity Claims will not receive any distribution under the Plan on account of their Existing Equity or Equity Claims, which will be transferred to the New Just Energy Parent or cancelled and extinguished as of the Effective Date without return of capital or other payment.

59. A summary of stakeholder treatment under the Plan (which is discussed further below) is as follows:

Stakeholder	**Plan Treatment**
DIP Lenders' Claim	Repaid in full in cash (US$125 million plus accrued and outstanding fees, costs and interest through Effective Date)
Commodity Supplier Claims	Repaid in full in cash (including all accrued and unpaid interest up to the Effective Date)
BP Commodity/ISO Services Claim	Issued 100% of the New Preferred Shares of the New Just Energy Parent in exchange for secured claim in the amount of approximately US$229.5 million and C$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date
Credit Facility Claim	Funded debt in the estimated amount of US$43.3 million and C$96.4 million, plus accrued default interest through the Effective Date, less the Credit Facility Remaining Debt (if any), repaid in full in cash Letters of credit which are issued but undrawn at the Effective Date rolled into the New Credit Agreement
Term Loan Claim	Receive pro rata share of 10% of the New Common Shares of the New Just Energy Parent and the ability to participate in the New Equity Offering in satisfaction of the Term Loan Claim in the principal amount of US$208.6 million plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement (and, with respect

Stakeholder	Plan Treatment
	to Non-Participating Term Loan Claim Holders, their pro rata share of the Turnover Amounts)
General Unsecured Creditor Claim	Receive pro rata share of the General Unsecured Creditor Cash Pool, less payments made to Convenience Creditors and permitted professional fees for post-Effective Date services relating to the Plan and the CCAA proceedings
Convenience Claims	Paid in full up to the maximum amount of $1,500
Subordinated Note Claim	Notionally receive pro rata share of the General Unsecured Creditor Cash Pool, subject to turnover requirements in Subordinated Note Indenture and the Plan
De Minimis Claims	No recovery
Equity Claims	No recovery

60. The Plan is the result of extensive negotiations and consultation with the Just Energy Entities' key stakeholders over a more than 11-month period (since circulation of the Business Plan in May 2021). Absent receipt of a Superior Proposal during the Voting Period, the Plan provides the best available result for the Just Energy Entities' stakeholders in all of the circumstances and is better than the alternatives available to the Just Energy Entities, including a forced liquidation of their assets.

61. If approved by the Just Energy Entities' Affected Creditors and the CCAA Court (and if recognized and given effect by the U.S. Bankruptcy Court), the Plan will permit the Just Energy Entities to exit these CCAA and Chapter 15 proceedings with a significantly deleveraged balance sheet by eliminating the Just Energy Entities' funded debt and providing a minimum $75 million of liquidity through the New Equity Offering and the New Credit Facility.

62. Importantly, the Plan is based on various assumptions and projections regarding, among other things, the financial performance of the Just Energy Entities over the coming months, forecasted commodity prices for natural gas and electricity, and minimum liquidity requirements

for operation of the business and implementation of the Plan. As a result, various inputs will impact the Just Energy Entities' cash position as at the Effective Date which, in turn, may impact the Just Energy Entities' ability to complete all transactions under the Plan if inputs deviate materially from those forecasted. The Plan incorporates some margin for deviations in the Just Energy Entities' financial projections between now and the Effective Date. Any significant differences between the assumptions and forecasts underlying the economics of the Plan and actual financial results may pose a risk to the Just Energy Entities' abilities to close the transaction detailed in the Plan. There is a risk that more capital may be required in order for the Just Energy Entities to be able to implement the Plan. The Just Energy Entities have no certainty that such capital will be available, the terms on which it may be provided, or the impact it will have on other stakeholders.

63. The Plan is supported by a number of the Just Energy Entities' key stakeholders including, importantly, the DIP Lenders, the Credit Facility Lenders, Shell, CBHT, and significant holders of the Term Loan Claim.

64. The US$125 million advanced by the DIP Lenders, as approved by the Initial Order, permitted the Just Energy Entities to continue as going concerns and to meet their obligations to the Electric Reliability Council of Texas, Inc. ("**ERCOT**") arising from the Weather Event (which obligations precipitated the CCAA and Chapter 15 filings), avoid suspension of the Just Energy Entities' market participation rights in Texas and the likely transfer of their customers to another retail energy provider called a "Provider of Last Resort", and therefore preserve the going concern value of their businesses for the benefit of all stakeholders. In addition, a potential litigation of an intercreditor dispute among the Just Energy Entities' lenders and certain of its significant secured creditors arose during the early stages of these CCAA proceedings. That litigation had the potential to significantly affect the Just Energy Entities' restructuring efforts. Subsequently, CBHT acquired

the BP Commodity/ISO Services Claim (approximately US$229.5 million and C$0.2 million) which effectively resolved the need to litigate the dispute, which litigation was suspended pending further developments in the CCAA proceedings. The Plan Sponsor/DIP Lenders (in its various capacities) have supported the Just Energy Entities throughout these CCAA and Chapter 15 proceedings. They support the Plan and have executed the Support Agreement.

65. In addition to the Plan Sponsor/DIP Lenders, the Plan is supported by the Credit Facility Lenders and Shell, all of whom have executed the Support Agreement. In accordance with the Plan, the Credit Facility Lenders have agreed to advance the New Credit Facility to the Just Energy Entities (subject to the completion of definitive documentation and applicable conditions), and have agreed both to continue to provide necessary letters of credit to allow the Just Energy Entities to continue to operate in their highly regulated industry, and to permit up to $20 million of the current Credit Facility Claim to remain outstanding as initial principal under the New Credit Agreement. Shell has agreed, among other things, to continue to provide commodity supply in accordance with existing agreements between Shell and the Just Energy Entities (as may be amended, restated, supplemented and/or replaced) and to enter into the New Intercreditor Agreement.

66. Both Shell and the Credit Facility Lenders have supported the Just Energy Entities throughout these CCAA and Chapter 15 proceedings. Shell executed a Qualified Support Agreement immediately prior to the Filing Date (which agreement was approved and ratified by the CCAA Court in the Initial Order) agreeing to continue providing the Just Energy Entities with business-critical commodity supply that had been contracted prior to the CCAA proceedings, notwithstanding the CCAA and Chapter 15 proceedings. The Credit Facility Lenders signed an Accommodation and Lender Support Agreement on March 18, 2021 (which agreement was

approved and ratified by the CCAA Court in the ARIO, the "**Lender Support Agreement**") agreeing to continue issuing LCs on behalf of the Just Energy Entities and providing Cash Management Arrangements (as defined in the Lender Support Agreement) to the Just Energy Entities (subject to the terms and conditions provided therein), notwithstanding the CCAA and Chapter 15 proceedings. Both support the Plan.

67. I understand that the Monitor is supportive of both the Plan and the process proposed by the Just Energy Entities to establish the Voting Period prior to the Creditors' Meetings to allow interested parties to propose Alternative Restructuring Proposals.

68. A more detailed summary of the Plan is provided below.

(b) CLASSIFICATION AND TREATMENT OF CREDITORS

(i) *Affected Creditors*

69. For purposes of considering and voting on the Plan and receiving a distribution thereunder, where applicable, the Affected Creditors are grouped into two classes: (a) the Secured Creditor Class; and (b) the Unsecured Creditor Class.

70. The Secured Creditor Class is comprised of the holders of the Credit Facility Claim. On the Effective Date, the Credit Facility Claim will be paid in full in cash (estimated to be US$43.3 million and C$96.4 million, plus accrued default and unpaid interest through the Effective Date), less the Credit Facility Remaining Debt (up to $20 million), if any. In addition, on the Effective Date, the New Credit Agreement (and New Credit Facility Documents) will become effective and the Credit Facility Remaining Debt will remain outstanding as an initial outstanding principal amount under the New Credit Agreement. All letters of credit issued by the Credit Facility Lenders

but which remain undrawn under the current Credit Agreement will continue under the New Credit Facility or be replaced with new or replacement letters of credit issued under the New Credit Facility.

71. The Unsecured Creditor Class is comprised of the following:

(a) *Term Loan Claim*: the aggregate principal amount of US$208.6 million owing by the Just Energy Entities under the Term Loan Agreement plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement, as determined in accordance with the Claims Procedure Order (the "**Term Loan Claim**" and each registered holder thereof, a "**Term Loan Claim Holder**", and each beneficial holder thereof, a "**Beneficial Term Loan Claim Holder**");

(b) *General Unsecured Creditor Claims*: all Affected Claims, as determined in accordance with the Claims Procedure Order, which are not a Term Loan Claim, an Equity Claim, a Credit Facility Claim or a BP Commodity/ISO Services Claim, and which include the Subordinated Note Claim and Convenience Claims (collectively, "**General Unsecured Creditor Claims**" and each holder thereof, a "**General Unsecured Creditor**"). Included within the group of potential General Unsecured Creditor Claims are:

(i) Claims asserted in one certified and two uncertified class actions in respect of which Proofs of Claim were filed in accordance with the Claims Procedure Order, the details of which are as follows:

(A) *Haidar Omarali v. Just Energy Group Inc. et al.*, Ontario Superior Court of Justice Court File No. CV-15-527493-00CP, a certified class action proceeding filed in Ontario against Just Energy, Just Energy Corp., and Just Energy Ontario L.P. alleging that the class members were improperly classified as independent contractors instead of employees by the applicable Just Energy Entities. The representative plaintiff filed a Proof of Claim in respect of this litigation in the Claims Process in the amount of $105.9 million, which has been denied in its entirety by those Just Energy Entities named as defendants, in consultation with the Monitor, through the delivery of a Notice of Revision or Disallowance. Despite none of the directors or officers of any Just Energy Entity being named in the underlying litigation, the representative plaintiff also filed a D&O Claim for the same amount in the Claims Process which has similarly been denied in its entirety through the delivery of a Notice of Revision or Disallowance. The representative plaintiff filed Notices of Dispute of Revision or Disallowance on February 10, 2022. Copies of the Proof of Claim, D&O Claim and corresponding Notices of Revision or Disallowance and Notices of Dispute of Revision or Disallowance are attached hereto as **Exhibits "I"** to **"N"**;

(B) *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB, a proposed and uncertified class action proceeding

filed solely against Just Energy Solutions Inc. in the Eastern District of Pennsylvania on April 6, 2018, and subsequently transferred to the U.S. District Court in the Western District of New York on behalf of a putative class of all "Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present". The proposed representative plaintiff has filed a Proof of Claim in respect of this litigation in the Claims Process in the amount of US$3.7 billion (this number represents a joint damages calculation with the *Donin* claim referred to below), which has been denied in its entirety by the Just Energy Entities, in consultation with the Monitor, through the delivery of a Notice of Revision or Disallowance. The proposed representative plaintiff filed a Notice of Dispute of Revision or Disallowance on February 10, 2022. Copies of the Proof of Claim, Notice of Revision or Disallowance, and Notice of Dispute of Revision or Disallowance are attached hereto as **Exhibits "O"** to **"Q"**; and

(C) *Fira Donin and Inna Golovan v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB, a proposed and uncertified class action proceeding filed in the U.S. District Court pending against Just Energy and Just Energy New York Corp. in the Western District of New York on April 27, 2018 on behalf of a putative class of "all Just Energy customers in the United States […] who were charged a variable rate for their energy at any time from [applicable statute

of limitations period] to the date of judgment". The proposed representative plaintiff has filed a Proof of Claim in respect of this litigation in the Claims Process in the amount of US$3.7 billion (this number represents a joint damages calculation with the *Jordet* claim referred to above), which has been denied in its entirety by the Just Energy Entities, in consultation with the Monitor, through the delivery of a Notice of Revision or Disallowance. The proposed representative plaintiff filed a Notice of Dispute of Revision or Disallowance on February 10, 2022. Copies of the Proof of Claim, Notice of Revision or Disallowance, and Notice of Dispute of Revision or Disallowance are attached hereto as **Exhibits "R"** to **"T"**;

(collectively, the "**Subject Class Action Claims**"); and

(ii) 364 claims filed on behalf of Texas customers (or alleged Texas customers - the Just Energy Entities believe that based on their records, 141 of the 364 claims were submitted by claimants who were not customers of the Just Energy Entities during the relevant time period) by legal counsel related to the Weather Event (collectively, the "**Texas Power Interruption Claim**" and together with the Subject Class Action Claims, the "**Contingent Litigation Claims**"). Most of the claims filed by legal counsel as part of the Texas Power Interruption Claim do not specify the amount being claimed and provide little to no supporting documentation from either a quantum or liability perspective. The Just Energy Entities have disallowed the Texas

Power Interruption Claim, in consultation with the Monitor, in its entirety in accordance with the Claims Procedure Order. On February 17, 2022, Notices of Dispute of Revision or Disallowance were filed by legal counsel with respect to both the Proofs of Claim and the D&O Claims filed in the Texas Power Interruption Claim which, among other things, withdrew 92 of the 364 submitted claims. Copies of the Notices of Revision or Disallowance and the Notices of Dispute of Revision or Disallowance with respect to the Texas Power Interruption Claim are attached hereto as **Exhibits "U"** to **"Z"**;

(c) *Subordinated Note Claim*: the aggregate principal amount of $13.2 million currently owing by Just Energy under the Subordinated Note Indenture, plus all accrued and outstanding fees, costs, interest, and other amounts owing pursuant to the Subordinated Note Indenture, as determined in accordance with the Claims Procedure Order (the "**Subordinated Note Claim**" and each holder thereof, a "**Subordinated Noteholder**" or "**Beneficial Subordinated Note Claim Holder**", as applicable);

(d) *Convenience Claims*: any Accepted Claim of a General Unsecured Creditor in an amount that is either (a) less than or equal to $1,500; or (b) greater than $1,500, if the relevant General Unsecured Creditor has made a valid Distribution Election not later than two (2) Business Days before the date of the Creditors' Meetings in accordance with the Meetings Order, provided, however, that in no case shall a "Convenience Claim" include any Contingent Litigation Claims or the

Subordinated Note Claim ("**Convenience Claims**" and each holder thereof, a "**Convenience Creditor**").

72. The Unsecured Creditor Class is treated under the Plan as follows:

(a) (i) on the Effective Date, each Beneficial Term Loan Claim Holder will receive its pro rata share of 10% of the total New Common Shares of the New Just Energy Parent, subject to dilution by the equity issued or issuable pursuant to the MIP, in full satisfaction of the Term Loan Claim, (ii) on the Effective Date, each Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant will be entitled to participate in the New Equity Offering, and (iii) each Beneficial Term Loan Claim Holder that is not a Backstop Party or that does not participate in the New Equity Offering as a New Equity Offering Eligible Participant (each a "**Non-Participating Term Loan Claim Holder**") will receive its pro rata share of the Turnover Amounts (as defined below); and

(b) from and after the Effective Date, the Monitor will pay from the General Unsecured Creditor Cash Pool:

(i) each Convenience Claim (in full up to a maximum of $1,500 per Convenience Claim) which, for greater certainty, excludes De Minimis Claims;

(ii) the reasonable and documented fees and disbursements (plus any applicable taxes thereon) incurred by the Just Energy Entities' legal, financial, or other advisors, the Monitor and its legal counsel, or any other Person retained by

the Just Energy Entities or the Monitor, in connection with post-Effective Date matters (as discussed further in paragraph 58(k)(ii)(B) above) relating to the Plan and the CCAA proceedings; and

(iii) after deduction of the foregoing amounts, each General Unsecured Creditor with an Accepted Claim will receive its pro rata share of the remaining portion of the General Unsecured Creditor Cash Pool, provided, however, that with respect to the Subordinated Note Claim, the Plan restricts the Monitor from making any distribution to the Subordinated Noteholder or Beneficial Subordinated Note Claim Holders until all persons entitled to turnover of such distributions (the "**Turnover Amounts**") pursuant to the terms of the Subordinated Note Indenture have been paid in full.

73. The Subordinated Note Indenture provides, among other things, that the Subordinated Note Claim is "subordinated and postponed and subject in right of payment…to the prior full and final payment of all existing and future Senior Indebtedness[11] of the Corporation [Just Energy]." The Subordinated Note Indenture further provides that upon any distribution of the assets of Just Energy on any dissolution, winding up, liquidation, or reorganization:

(a) all Senior Indebtedness must be paid indefeasibly in full, or provision made for such payment, before any payment is made on account of the Subordinated Note Claim; and

[11] "Senior Indebtedness" is defined in the Subordinated Note Indenture to include any indebtedness under the Credit Agreement, the Term Loan Agreement, or trade and other creditors of Just Energy other than indebtedness which by its terms is *pari passu* with, or subordinate to, the Subordinated Note Claim.

(b) any payment or distribution of assets of Just Energy shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent directly to the holders of such Senior Indebtedness.

74. The Plan accordingly requires that the Monitor distribute the Turnover Amounts to the beneficiaries of the General Unsecured Creditor Cash Pool, provided however that any Turnover Amounts that are required to be paid to the Participating Term Loan Claim Holders (those Beneficial Term Loan Claim Holders that are Backstop Parties or that participate in the New Equity Offering as New Equity Offering Eligible Participants) will be contributed to the other beneficiaries of the General Unsecured Creditor Cash Pool. The applicable portion of section 3.4(4) of the Plan addressing the foregoing is reproduced below:

> For certainty, the Monitor shall not make any distribution to any Subordinated Noteholder or Beneficial Subordinated Note Claim Holder until all Persons entitled to turnover of any such distribution (any such amounts, the "**Turnover Amounts**") pursuant to the terms of the Subordinated Note Indenture have been paid in full. Instead, the Monitor shall distribute: (i) the Non-Participating Term Loan Lender Pro Rata Shares of the Turnover Amounts to the Non-Participating Term Loan Claim Holders (collectively, the "**Term Loan Turnover Amount**"); and (ii) the Turnover Amounts, less the Term Loan Turnover Amount, to the beneficiaries of the General Unsecured Creditor Cash Pool. For the purposes of this Section, with respect to any Turnover Amounts that would otherwise be required to be paid to Beneficial Term Loan Claim Holders that are not Non-Participating Term Loan Claim Holders, such amounts shall be contributed to the beneficiaries of the General Unsecured Creditor Cash Pool.

75. Holders of De Minimis Claims (less than $10) are not entitled to receive any distributions pursuant to the Plan in respect of such De Minimis Claims, and all De Minimis Claims will be fully, finally and forever compromised, released, discharged and cancelled in accordance with the Plan.

76. As noted above, the Plan provides for the recapitalization of the Just Energy Entities, most significantly, by the conversion of certain secured and unsecured claims to equity and the injection of new capital by the Term Loan Lenders. This conversion of claims and injection of new capital will include: (a) the Term Loan Lenders receiving 10% of the New Common Shares of the New Just Energy Parent in full satisfaction and discharge of the Term Loan Claim (US$208.6 million, plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement), (b) the New Equity Offering Eligible Participants committing new capital of US$192.55 million for the purchase of 80% of the New Common Shares of New Just Energy Parent as part of the New Equity Offering or pursuant to the Backstop Commitment Letter, (c) the Backstop Parties receiving the Backstop Commitment Fee Shares (10% of the total New Common Shares of New Just Energy Parent); and (d) CBHT voluntarily agreeing to compromise its Claim of approximately US$229.5 million and C$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date, for preferred equity rather than cash recovery.[12]

77. As discussed in the Affidavit of Mark Caiger, sworn May 12, 2022 (the "**Caiger Affidavit**"), the enterprise value of the Just Energy Entities implied by the Plan falls within a narrow range of between 4.8 and 5.1 times the current mid-point of Just Energy Entities' 2023 estimated EBITDA ($115 - $125 million).[13] Within this narrow range and based on the various assumptions discussed in the Caiger Affidavit, the amount of the residual cash in the General

[12] The issuance of New Common Shares in each of (a), (b) and (c) is subject to dilution by the equity issued or issuable pursuant to the MIP.

[13] The Just Energy Entities note that the forecasted EBITDA provides a $10 million range as the business is volatile and often difficult to predict with precision due to many risk factors including weather, commodity prices and other factors described in the Just Energy Entities' public financial disclosure. For example, the Just Energy Entities' originally forecasted EBITDA for the fiscal year ended March 31, 2022 to be $107 million, however EBITDA for the fiscal year ended March 31, 2022 is now estimated to be approximately $95 million. The variance is primarily driven by higher supply costs due to higher and more volatile commodity prices and unfavorable weather.

Unsecured Creditor Cash Pool is expected to provide equivalent (but not necessarily equal) recoveries to the General Unsecured Creditors as those realized by the Term Loan Lenders.

78. While the precise recovery rate of the General Unsecured Creditors is not known at this time because the amount of the Accepted Claims and the amount of the residual cash in the General Unsecured Creditor Cash Pool is not yet known, for purposes of considering the estimated recovery of General Unsecured Creditors under the Plan, the Just Energy Entities estimate that based on the best information available to management of the Just Energy Entities, their knowledge of the facts and issues underlying the most significant claims submitted within the Claims Process, and discussions with the Monitor:

(a) the range of General Unsecured Claims submitted within the Claims Process that will eventually become Accepted Claims, prior to taking into account litigation claims, is between approximately \$65 million and \$68 million, and the range of litigation claims submitted within the Claims Process that are likely to become Accepted Claims is between approximately \$0.5 million and \$40 million, for a total estimated range of General Unsecured Claims (including litigation claims) that will eventually become Accepted Claims of between \$66 million and \$108 million; and

(b) the range of permitted fees and expenses that is expected to be paid from the General Unsecured Creditor Cash Pool is between \$4 million and \$7 million, which will cover, among other things, legal fees to be incurred in litigation undertaken post-Effective Date by the holders of Disputed Claims.

79. The eventual quantum of General Unsecured Claims that become Accepted Claims may exceed the upper end of the foregoing range, and the residual cash in the General Unsecured

Creditor Cash Pool after payment of permitted fees and expenses may be higher or lower than anticipated (depending on whether the holders of Disputed Claims engage in protracted litigation or settle such Disputed Claims expediently). In either scenario, the recovery rate of the General Unsecured Creditors and the Term Loan Lenders under the Plan may change, but the equivalence as between their respective recoveries will remain consistent (subject to the assumptions and analysis contained in the Caiger Affidavit).

(ii) ***BP Commodity/ISO Services Claims***

80. On the Effective Date, CBHT will receive 100% of the New Preferred Shares of New Just Energy Parent in full satisfaction of the BP Commodity/ISO Services Claim.

(iii) ***D&O Claims***

81. All D&O Claims that are released under the Plan (discussed further below) and all corresponding claims for indemnity by any Director or Officer of the Just Energy Entities with respect to such D&O Claims are fully, finally and irrevocably compromised, released, discharged, cancelled, extinguished and barred on the Effective Date.

82. The Plan does not release:

(a) any Responsible Person Claims, which will continue unaffected under the Plan. The Plan provides that the Sanction Order must declare that each Just Energy Entity shall indemnify any Director, Officer or other Person employed or previously employed by a Just Energy Entity for any amount for which such Person is held personally liable as a result of nonpayment of any Taxes (including, without limitation, sale, use, withholding, unemployment and excise Tax) by a Just Energy

Entity, along with any expenses or fees incurred in connection with defending any matter for which any of the foregoing Persons could be entitled to indemnification, provided that such indemnities do not apply in circumstances of fraud, gross negligence or wilful misconduct (subject to the caveat that in cases where gross negligence or wilful misconduct are requirements for a beneficiary to be held personally liable as a result of nonpayment of any Taxes by a Just Energy Entity, the Just Energy Entities must indemnify such beneficiary notwithstanding any gross negligence or wilful misconduct and, in such cases, there is no requirement that the beneficiary has reasonable grounds for believing the conduct was lawful);

(b) any D&O Claims which are not released under the Plan (each, a "**Non-Released D&O Claim**"). All Non-Released D&O Claims will be irrevocably limited to recovery from any insurance proceeds payable in respect of such Non-Released D&O Claims pursuant to the Insurance Policies, and persons with such Non-Released D&O Claims will have no right to make any claim or seek any recoveries other than enforcing such persons' rights to be paid from the proceeds of the applicable Insurance Policies by the applicable insurer(s). The Plan requires that from and after the Effective Date, any action for a D&O Claim may only be commenced with: (a) the consent of the Monitor; or (b) the leave of the CCAA Court on notice to the applicable Director or Officer, the Just Energy Entities, the Monitor and any applicable insurer(s), or if the action will be commenced within the United States, an Order of the U.S. Bankruptcy Court on notice to the applicable Director or Officer, the Just Energy Entities, the Monitor and any applicable insurer(s); and

(c) any existing or future right of any Director or Officer of any Just Energy Entity as of the Effective Date against any of the Just Energy Entities which arose as a result of any D&O Claim for which such Director or Officer is entitled to be indemnified by any of the Just Energy Entities and that is: (i) a Non-Released D&O Claim, or (ii) a D&O Claim released under the Plan that is asserted by a person other than a Consenting Party (a person that is party to the Support Agreement or who submits a vote in favour of the Plan) (each, an "**Excluded D&O Indemnity Claim**"). All Excluded D&O Indemnity Claims will continue unaffected.

(iv) ***Unaffected Creditors***

83. The Plan does not compromise or otherwise affect the following Claims (collectively, the "**Unaffected Claims**"):

(a) Post-Filing Claims which will be paid or otherwise satisfied by the Just Energy Entities in the normal course;

(b) all outstanding obligations, liabilities, fees and disbursements secured by:

(i) the DIP Lenders' Charge will be paid in full in cash in full and final satisfaction of the DIP Lenders' Claim (US$125 million plus all other accrued and outstanding fees, costs, and interest through the Effective Date) and the DIP Lenders' Charge discharged;

(ii) the Administration Charge will be paid in full (to the extent evidenced by invoices delivered to Just Energy as at the Effective Date) and the Administration Charge discharged. Any reasonable and documented fees

and disbursements (plus applicable taxes thereon) for any post-Effective Date Services incurred by:

(A) the Monitor, its legal counsel and any other Person retained by the Monitor, in connection with administrative and estate matters (the "**Monitor Administration Expenses**") will be paid from the Administrative Expense Reserve. Any unused portion of the Administrative Expense Reserve will be transferred by the Monitor to the New Just Energy Parent; and

(B) the reasonable and documented fees and disbursements (plus any applicable taxes thereon) incurred by the Just Energy Entities' legal, financial, or other advisors, the Monitor and its legal counsel, or any other Person retained by the Just Energy Entities or the Monitor, in connection with post-Effective Date matters (other than the Monitor Administration Expenses) relating to the Plan and the CCAA proceedings will be paid from the General Unsecured Creditor Cash Pool;

(iii) the FA Charge will be paid in full (to the extent evidenced by invoices delivered to Just Energy as at the Effective Date) and the FA Charge will be deemed to be fully and finally satisfied and discharged;

(iv) the Directors' Charge will be deemed to be fully and finally satisfied and discharged and all D&O Claims (other than Responsible Person Claims,

Non-Released D&O Claims, and Excluded D&O Indemnity Claims) will be fully and finally compromised, released, and extinguished;

(v) amounts secured by the KERP Charge will be fully paid by the Just Energy Entities to the beneficiaries thereof and the KERP Charge will be deemed to be fully and finally satisfied and discharged;

(vi) the Cash Management Obligations will continue unaffected and the Cash Management Charge will be deemed to be fully and finally satisfied and discharged; and

(vii) all other charges granted within the CCAA proceeding will be deemed to be fully and finally satisfied and discharged;

(c) all Commodity Supplier Claims will be paid in full by the Just Energy Entities on the Effective Date;

(d) all Claims of Credit Facility Lenders relating to any letters of credit which are issued but undrawn immediately prior to the Effective Date will be unaffected and continue under the New Credit Facility or, if required, replaced with new letters of credit issued under the New Credit Agreement;

(e) Government Priority Claims outstanding as at the Filing Date or related to the period ending on the Filing Date (if any) will be paid in full by the applicable Just Energy Entities on or as soon as reasonably practicable following the Effective Date;

(f) Employee Priority Claims due and accrued to the Effective Date (if any) will be paid in full by the applicable Just Energy Entities on the Effective Date;

(g) any Claim that may be asserted by any Energy Regulator,[14] excluding any: (i) Claim with respect to the subject matter of the adversary proceeding commenced on November 12, 2021 by various of the Just Energy Entities against ERCOT and the Public Utility Commission of Texas (the "**Adversary Proceeding**"), including any Claim with respect to obligations of the Just Energy Entities underlying the invoices that are the subject of the Adversary Proceeding; and (ii) any Claim by any Taxing Authority, will continue unaffected and be addressed in the ordinary course consistent with past practice;

(h) (i) Civil Action 20-590 *Thaddeus White, et al. v. Just Energy Group Inc., et al.*; (ii) *Gilchrist v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-627174-00CP) commenced on September 11, 2019; (iii) *Saha v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-630737-00CP); and (iv) any claim for contribution or indemnity in respect of or related to those claims, will continue unaffected as against the applicable Insurance Policies;

(i) all or any portion of a Claim for which the applicable insurer or a court of competent jurisdiction has confirmed that the applicable Just Energy Entity or Director or

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[14] Any federal or provincial energy regulators, provincial regulators of consumer sales that have authority with respect to energy sales, U.S. municipal, state, federal or other foreign energy regulatory bodies or agencies, local energy transmission and distribution companies, or regional transmission organizations or independent system operators.

Officer is insured under an Insurance Policy (each, an "**Insured Claim**") will continue unaffected as against the applicable Insurance Policies;

(j) on or prior to the Effective Date, all intercompany claims that may be asserted against any of the Just Energy Entities by or on behalf of any of the Just Energy Entities or any of their affiliated companies, partnerships, or other corporate entities (each, an "**Intercompany Claim**") will be addressed in accordance with the supplement to the Plan that details the manner in which the steps and compromises will be effected in the implementation of the Plan and the treatment of Intercompany Claims (the **"Restructuring Steps Supplement**");

(k) any Claims finally determined in accordance with the Claims Procedure Order to be a secured or priority claim against any of the Just Energy Entities and entitled to be paid in full in priority to the General Unsecured Creditor Claims and the Term Loan Claims (and which is not and does not become a Disallowed Claim) will be unaffected;

(l) any Responsible Person Claims will continue unaffected and each Just Energy Entity will indemnify all Directors, Officers or other person employed or previously employed by a Just Energy Entities against such Responsible Person Claims;

(m) any Excluded D&O Indemnity Claims will continue unaffected;

(n) Claims that may be asserted by any of the Just Energy Entities against any Directors and/or Officers will continue unaffected; and

(o) Claims enumerated in sections 5.1(2) and 19(2) of the CCAA will continue unaffected (except as otherwise provided in the Plan).

84. Persons with Unaffected Claims are not entitled to vote at any Creditors' Meeting or receive any distributions under the Plan in respect of the portion of their claim which is an Unaffected Claim, subject to the express provisions of the Plan providing for payment of certain Unaffected Claims and/or the treatment of Insurance Claims. Nothing in the Plan affects the Just Energy Entities' rights and defences with respect to any Unaffected Claim, including any rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

(v) ***Equity Claims***

85. On the Effective Date, the Plan will be binding on all Equity Claimants, including the holders (the "**Existing Common Shareholders**") of existing common shares of Just Energy (the "**Common Shares**"). Equity Claimants, including the Existing Common Shareholders, will not receive a distribution or other consideration under the Plan and will not be entitled to vote on the Plan in respect of their Equity Claims or attend either of the Creditors' Meetings in such capacity. On the Effective Date: (a) all Common Shares will be mandatorily transferred to, and acquired by, the New Just Energy Parent for no consideration; and (b) all Existing Equity[15] (other than the Common Shares transferred or issued to the New Just Energy Parent, the New Common Shares

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[15] (a) all Common Shares; (b) all other Equity Interests (excluding any Intercompany Interest), including all options, warrants, rights, or similar instruments, derived from, relating to, or exercisable, convertible, or exchangeable therefor; and (c) all instruments whose value is based upon or determined by reference to any Equity Interest whether or not such instrument is exercisable, convertible, or exchangeable for such an Equity Interest, and, in all such cases, which are issued and outstanding immediately prior to the Effective Time.

and New Preferred Shares, and the Intercompany Interests[16]) will be cancelled and extinguished without any liability, payment or other compensation in respect thereof, and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any liability, payment or other compensation in respect thereof.

86. In proposing the Plan, the Just Energy Entities considered, in consultation with their legal and financial advisors, the legal entitlements of stakeholders in the absence of the CCAA proceedings, their expected economic recovery if no Plan is approved and their proposed treatment under the Plan. Since the value of the recoveries to be given to Affected Creditors is less than the value of their Claims, there is no residual value in Just Energy to be given to the holders of Existing Equity and/or other Equity Claims.

(c) VOTING ENTITLEMENT

87. The voting entitlement on the Plan is determined and calculated as follows:

(a) *Secured Creditor Class*: each Credit Facility Lender will be entitled to one (1) vote in the amount equal to such Credit Facility Lender's pro rata share of the Credit Facility Claim that is an Accepted Claim (provided that such Credit Facility Lender delivers a Secured Creditor Proxy in accordance with the Meetings Order);

(b) *Unsecured Creditor Class*:

(i) each Term Loan Claim Holder will be entitled to one (1) vote in the amount equal to such Term Loan Claim Holder's pro rata share of the Term Loan

[16] Any Equity Interest held by a Just Energy Entity or New Just Energy Parent in any other Just Energy Entity or New Just Energy Parent, as applicable.

Claim in the amount that is an Accepted Claim, or if not accepted by two (2) Business Days before the date of the Meeting of the Unsecured Creditor Class, in the amount set out in the Negative Notice Claims Package in respect of the Term Loan Claim (provided that such Term Loan Claim Holder delivers an Unsecured Creditor Proxy in accordance with the Meetings Order);

(ii) each Convenience Creditor will be deemed to vote in favour of the Plan in the amount of such Convenience Creditor's Accepted Claim;

(iii) each General Unsecured Creditor will be entitled to one (1) vote in the amount equal to such General Unsecured Creditor's Voting Claim (provided that such General Unsecured Creditor delivers an Unsecured Creditor Proxy in accordance with the Meetings Order), provided, however, that:

(A) the Subordinated Noteholder will be entitled to one (1) vote in the amount equal to the Subordinated Note Claim (provided that such Subordinated Noteholder delivers an Unsecured Creditor Proxy in accordance with the Meetings Order). The Subordinated Noteholder's Voting Claim will be deemed to have been voted in proportion to the tabulation of voting instructions received from Beneficial Subordinated Note Claim Holders identifying the principal amount of the Subordinated Note Claim voting FOR or AGAINST the Plan. Neither the Beneficial Subordinated Note

Claim Holders nor Computershare Trust Company of Canada as Subordinated Note Trustee under the Subordinated Note Indenture (the "**Subordinated Note Trustee**") will have a Voting Claim or be entitled to vote at the Unsecured Creditors' Meeting. All Beneficial Subordinated Note Claim Holders may instruct the Subordinated Noteholder with respect to how the Subordinated Noteholder should vote its Voting Claim by completing and returning the Subordinated Noteholder VIF in accordance with the Meetings Order;

(B) with respect to the Subject Class Action Claims, each representative plaintiff in any certified Subject Class Action Claim or each proposed representative plaintiffs in any uncertified Subject Class Action Claim (each a "**Subject Class Action Plaintiff**") will be entitled to one (1) vote in the amount equal to its Voting Claim (valued by the Just Energy Entities for voting purposes at $1); and

(C) with respect to the Texas Power Interruption Claim, each of Robins Cloud LLP, Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP (collectively, the "**Texas Power Interruption Claimants' Counsel**") will be entitled to one (1) vote in an amount equal to its Voting Claim (valued by the Just Energy Entities for voting purposes at $1).

88. The complexity of the unresolved Contingent Litigation Claims is such that it is not possible to carry out a summary process in relation to these claims before the Creditors' Meetings

are held, nor is it possible to delay the Creditors' Meetings until the resolution of the Contingent Litigation Claims without jeopardizing the entire Restructuring.

89. In addition, each Affected Creditor with a Disputed Claim against the Just Energy Entities (other than the Subject Class Action Plaintiffs and the Texas Power Interruption Claimants' Counsel) will be entitled to attend the applicable Creditors' Meeting and will have one (1) vote at the Creditors' Meeting in the dollar value of such Disputed Claim as set out in the Negative Notice Claims Package or the Disputed Claim acceptance value for voting and distribution purposes, prepared in consultation with the Monitor (the "**Acceptance Value**"), as applicable, sent to the holder of the Disputed Claim or, if no Negative Notice Claims Package or Acceptance Value was sent, the value set forth in the corresponding Proof of Claim.

(d) NEW EQUITY OFFERING AND THE NEW JUST ENERGY PARENT

90. As detailed above, on the Effective Date, the New Just Energy Parent will complete the New Equity Offering and, immediately following issuance, the New Preferred Shares and New Common Shares (together with any equity interests outstanding under the MIP) will constitute all of the issued and outstanding shares of the New Just Energy Parent.

91. The New Preferred Shares will have a redemption amount equal to the amount of the BP Commodity/ISO Services Claim, as of the Effective Date, all converted into United States currency, plus accrued and unpaid dividends, redeemable at the Company's option or redeemable upon a change of control transaction in respect of New Just Energy Parent, plus a 5.00% exit fee. Holders of New Preferred Shares will have the right to cause New Just Energy Parent to undertake a liquidity event within six years of the Effective Date. The New Preferred Shares will have a 12.50% accreting yield with dividends as and when declared by the board of directors for the first

four (4) years, increasing 1% annually thereafter. The terms and conditions of the New Preferred Shares are discussed further in the New Preferred Shares Term Sheet attached as Exhibit 2 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit "D" to this Affidavit).

92. The material terms of the New Just Energy Entities' corporate governance are set forth in the Corporate Governance Term Sheet for the New Just Energy Parent attached as Exhibit 3 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit "D" to this Affidavit). The initial board of directors of the New Just Energy Parent (the "**New Board**") will consist of five (5) directors selected by the Plan Sponsor.

93. In addition, the material terms of a post-emergence MIP for management of the New Just Energy Parent are set forth in the MIP Term Sheet attached as Exhibit 4 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit "D" to this Affidavit).

(e) NEW CREDIT AGREEMENT AND NEW INTERCREDITOR AGREEMENT

94. On the Effective Date, Just Energy U.S. and Just Energy Ontario L.P. and the New Credit Facility Lenders will enter into the New Credit Agreement pursuant to which the New Credit Facility will be made available to the Just Energy Entities, generally in accordance with the terms set forth in the New Credit Facility Term Sheet attached as Exhibit 1 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit "D" to this Affidavit).

95. In addition, on the Effective Date, the New Intercreditor Agreement will be executed by the Just Energy Entities, the New Credit Facility Lenders, and applicable Commodity Suppliers defining the relative priorities of the various parties' security interests as between them, generally in accordance with the terms set forth in the New Intercreditor Agreement Term Sheet attached as Exhibit 5 to the Restructuring Term Sheet (which in turn is attached as Exhibit C to the Support Agreement, a redacted copy of which is attached as Exhibit "D" to this Affidavit).

(f) RELEASES

96. If approved by the Affected Creditors and sanctioned by the Court, the Plan provides:

(a) *Third-Party Releases*: (a) the Just Energy Entities and their respective current and former employees, contractors, advisors, legal counsel and agents; (b) the Directors and Officers; (c) the Monitor, the Supporting Parties (all parties that have executed the Support Agreement other than the Just Energy Entities), Backstop Parties, the DIP Agent, the DIP Lenders, the Plan Sponsor, the Credit Facility Agent, the Term Loan Agent, and the Subordinated Note Trustee, and each of their respective present and former affiliates, subsidiaries, directors, officers, members, partners, employees, auditors, advisors, legal counsel and agents (the "**Released Parties**" and individually a "**Released Party**") will be released from the Released Claims (as defined below); and

(b) *Debtor Releases*: the Released Parties will be released by each of the Just Energy Entities and their respective current and former affiliates, and discharged from any and all Released Claims held by the Just Energy Entities as of the Effective Date, provided however that nothing limits or modifies in any way any Claim or defence

which any of the Just Energy Entities may hold or be entitled to assert against any of the Released Parties as of the Effective Date relating to any contracts, leases, agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices, or other ordinary course obligations which remain in effect following the Effective Date.

97. The requested releases are necessary to bring finality to the CCAA proceedings and to protect the Released Parties from any and all claims, demands, causes of action, dealings, occurrences (or other matters included within the definition of "Released Claims" in the Plan) which existed or took place prior to the Effective Date, or which relate to implementation of the Plan, including distributions pursuant to the Plan following the Effective Date, that constitute or are in any way related to, arise out of or in connected with (i) any Claims (including Equity Claims), any D&O Claims and any indemnification obligations with respect thereto (excluding Excluded D&O Indemnity Claims), (ii) any payments, distributions or share issuances under the Plan, (iii) the business and affairs of the Just Energy Entities whenever or however conducted, (iv) the business and assets of the Just Energy Entities, (v) the administration and/or management of the Just Energy Entities, (vi) the Affected Claims, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the Plan, the Existing Equity, the CCAA and Chapter 15 proceedings, or any document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing, (vii) any contract that has been restructured, terminated, repudiated, disclaimed, or resiliated in accordance with the CCAA, (viii) liabilities of the Directors and Officers and any alleged fiduciary or other duty, or (ix) any Claim that has been barred or extinguished by the Claims Procedure Order (subject to the exclusions described below, collectively the "**Released Claims**").

98. The releases provided in the Plan explicitly do not release or discharge:

(a) Insured Claims, provided that from and after the Effective Date, any person having an Insured Claim will be irrevocably limited to recovery from the proceeds of the applicable Insurance Policies;

(b) any obligations of any of the Released Parties under or in connection with the Plan, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the New Credit Facility Documents, the New Intercreditor Agreement, the New Common Shares, the New Preferred Shares, the MIP or the New Corporate Governance Documents;

(c) the Just Energy Entities from or in respect of any Unaffected Claim that has not been paid in full under the Plan, or any claim that is not permitted to be released pursuant to section 19(2) of the CCAA; or

(d) any Director from any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

99. All of the Released Parties have made significant and often critical contributions to the development and implementation of the Just Energy Entities' restructuring in these CCAA proceedings. As discussed further above, the Released Parties have worked diligently towards ensuring the implementation of the restructuring of the Just Energy Entities' financial obligations and operations for the benefit of all stakeholders. Such efforts have resulted in the execution and approval of the Support Agreement and the Plan. If the Support Agreement is approved and the

transactions under the Plan are consummated, the Just Energy Entities and their businesses will continue, and their going concern value will be preserved for the benefit of stakeholders.

100. In addition to the Third-Party Releases and the Debtor Releases discussed above, the Plan also includes various exculpations which the Just Energy Entities will request be approved by the U.S. Bankruptcy Court in the Sanction Recognition Order. The Plan provides that, to the fullest extent possible under applicable law, any current officer, director, employee, and retained professional (including financial advisors, investment bankers, and attorneys) of the Just Energy Entities, the Monitor, the DIP Lenders, the Plan Sponsor, the Backstop Parties, the Supporting Parties, the DIP Agent, the Credit Facility Agent, the Term Loan Agent, and the Subordinated Note Trustee (the "**Exculpated Parties**") are released and exculpated from any cause of action for any act or omission in connection with, relating to, or arising out of: (a) the CCAA proceedings and the Chapter 15 proceeding; (b) the formulation, preparation, dissemination, negotiation, filing, or consummation of the Support Agreement, the Backstop Commitment Letter, the Plan, any Definitive Documents, or the recognition thereof in the United States; or (c) any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the filing of the CCAA proceeding or the Chapter 15 proceeding, the pursuit of approval and/or consummation of the Plan, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement.

101. The Plan expressly does not release the Exculpated Parties from any causes of action related to any act or omission that is determined in a final order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence.

102. On the Effective Date, each Consenting Party (each person who is or becomes a party to the Support Agreement or who submits a vote in favour of the Plan) is deemed to have consented and agreed to the releases, injunctions and exculpations referred to in the Plan.

(g) AMENDMENTS TO THE PLAN

103. The Plan permits the Just Energy Entities, at any time prior to or at the Creditors' Meetings, to vary, modify, amend, or supplement the Plan (each a "**Plan Modification**"), with the prior consent of the Monitor, the Credit Facility Lenders, Shell and the Plan Sponsor (which consent shall not be unreasonably withheld, conditioned or delayed), provided that:

(a) prior to the Creditors' Meetings, notice of any Plan Modification must be posted on the Monitor's Website and provided to the Service List established in the CCAA proceedings (the "**Service List**"); and

(b) during the Creditors' Meetings, notice of any Plan Modification must be given to all Affected Creditors present (or deemed present) at such meeting in person or by proxy prior to the vote being taken, promptly posted on the Monitor's Website, promptly provided to the Service List, and filed with the Court as soon as practicable following the applicable Creditors' Meeting.

104. The Plan further permits the Just Energy Entities to effect a Plan Modification after the Creditors' Meetings (and both prior to and subsequent to the obtaining of any Sanction Order) without obtaining an Order of the CCAA Court or providing notice to the Creditors, if the Just Energy Entities, the Plan Sponsor, the Credit Facility Lenders, Shell and the Monitor, each acting reasonably, determine that such Plan Modification would not be materially prejudicial to the

interests of any Creditors under the Plan or is necessary in order to give effect to the substance of the Plan or the Sanction Order.

(h) RESTRUCTURING STEPS SUPPLEMENT

105. The steps, compromises and releases to be effected in the implementation of the Plan shall occur, and be deemed to have occurred in the order and manner to be set out in the Restructuring Steps Supplement. The Restructuring Steps Supplement is required to be in form and substance acceptable to the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably. The Plan requires that the Restructuring Steps Supplement not be materially prejudicial to the interests of any Creditors under the other sections of the Plan.

(i) CONDITIONS TO IMPLEMENTATION OF THE PLAN

106. In order for the Plan to be implemented, the following conditions, among others, must be satisfied or waived prior to or at the Effective Date:

(a) the Plan shall have been approved by the Required Majorities in conformity with the CCAA;

(b) the Restructuring Steps Supplement shall have been agreed to by the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably;

(c) the Meetings Order, the Authorization Order, and the Sanction Order shall have been issued by the CCAA Court and become Final Orders;

(d) the Meetings Recognition Order, the Authorization Recognition Order, the Sanction Recognition Order and the Claims Procedure Recognition Order shall have been entered by the U.S. Bankruptcy Court and become Final Orders;

(e) the commitments of each of the parties to the Support Agreement shall have been satisfied in all material respects or waived;

(f) all conditions to the Backstop Parties' commitments under the Backstop Commitment Letter shall have been satisfied or waived;

(g) the Just Energy Entities have provided for the payment or satisfaction in full of the DIP Lenders' Claim, the Commodity Supplier Claims, the Government Priority Claims, the Employee Priority Claims and the Claims secured by the Administration Charge, the FA Charge, the Directors' Charge and the KERP Charge;

(h) the Monitor shall have received from the Just Energy Entities the funds necessary to establish and shall have established the Plan Implementation Fund;

(i) no proceeding shall have been commenced that could reasonably be expected to result in an injunction, and no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by the Plan, the Support Agreement or the Backstop Commitment Letter;

(j) the New Credit Facility Documents and the New Intercreditor Agreement shall have become effective, subject only to implementation of the Plan;

(k) Just Energy shall have satisfied all conditions or requirements necessary to cease to be a reporting issuer under the U.S. Exchange Act (or any other U.S. securities laws) and ceased to be a reporting issuer thereunder, Just Energy shall cease to be a reporting issuer under applicable Canadian Securities Laws, and no Just Energy Entity shall be deemed to have become a reporting issuer under applicable Canadian Securities Laws;

(l) the New Board shall have been appointed in accordance with the terms of the Support Agreement and the New Corporate Governance Documents and the MIP and other new corporate governance documents shall have become effective, subject only to implementation of the Plan;

(m) the aggregate amount of proceeds from the New Equity Offering and Cash on Hand shall be equal or greater than the total amount to be paid, distributed, or reserved for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan;

(n) the total amounts to be paid, distributed or reserved in Canadian and US dollars for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan shall not exceed C$170 million and US$337 million, respectively, plus any accrued and outstanding interest with respect to such amounts;

(o) Shell shall have provided various written confirmations regarding its Continuing Contracts;

(p) all necessary Transaction Regulatory Approvals shall have been obtained and be in full force and effect;

(q) all necessary corporate action and proceedings shall have been taken to approve the Plan and all agreements, resolutions, documents and other instruments reasonably necessary in order to implement the Plan have been executed and delivered;

(r) each of the Employment Agreements[17] shall either remain in place or have been amended as contemplated by the Support Agreement; and

(s) the Effective Date shall have occurred on or prior to the Outside Date.

(j) SUMMARY

107. The Just Energy Entities are of the view that the Plan represents the best alternative available to stakeholders of the Just Energy Entities, while allowing for the receipt, consideration and negotiation of Alternative Restructuring Proposals during the Voting Period. The Plan will enable the business of the Just Energy Entities to continue as a going concern in the expectation that a greater benefit will be derived from the continued operation of the business than would result from bankruptcy or a forced liquidation of the Just Energy Entities' assets. As discussed further above, the Plan has been developed following extensive consultation with the Just Energy Entities' key stakeholders and is supported by such stakeholders.

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[17] The employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the Directors, Officers and employees of any of the Just Energy Entities that, on or prior to the Effective Date, have not resigned in each case in existence on the effective date of the Support Agreement.

108. The CCAA and Chapter 15 proceedings have been ongoing for more than 13 months, and despite the relative stability created by the process, continue to generate uncertainty for employees, suppliers, regulators and other business-critical stakeholders necessary for the long-term viability of the Just Energy Entities. It is imperative that a process to facilitate the Just Energy Entities' exit from the CCAA and Chapter 15 proceedings as a going concern be put in place. In the Just Energy Entities' view, the Plan, together with the Voting Period, provides such a process.

109. The Just Energy Entities accordingly seek the relief detailed in paragraph 2 above so as to permit the Plan to be put to Affected Creditors of the Just Energy Entities for consideration (and, if the Required Majorities are obtained, the approval of the CCAA Court), and to establish the period for submission of Alternative Restructuring Proposals.

F. MEETINGS ORDER

110. The proposed Meetings Order authorizes the Just Energy Entities to convene virtual meetings of the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on the Plan. The Just Energy Entities propose that the Creditors' Meetings be held virtually and not in person on August 2, 2022 by means of telephonic or electronic facility using a third-party service provider given the ongoing challenges posed by the COVID-19 pandemic.

(a) NOTIFICATION

111. The proposed Meetings Order provides for comprehensive notification of the Creditors' Meetings to the Affected Creditors, including provision of: (a) a Notice of Meetings (the "**Notice of Meetings**"); (b) an Information Statement which provides Affected Creditors with detailed information regarding the CCAA proceedings, the Plan, approval requirements with respect to the Plan, the details of the Creditors' Meetings, voting entitlements and procedures, and certain

regulatory matters relating to the Plan (the "**Information Statement**"); and (c) one or more proxies, voting instruction forms, distribution election notices and/or new equity offering participation forms, as applicable. A copy of the Notice of Meetings is attached hereto as **Exhibit "AA"**. A Copy of the Information Statement is attached hereto as **Exhibit "BB"**.

112. The Meetings Order provides that:

(a) the Monitor shall, within four (4) days following the date of the Meetings Order, post or cause to be posted electronic copies of the Secured Creditor Class Meeting Materials[18] and the Unsecured Creditor Class Meeting Materials[19] on the Monitor's Website and the website of the Just Energy Entities' noticing agent, Omni Agent Solutions (the "**Noticing Agent's Website**");

(b) the Monitor shall, not later than the seventh (7th) day following the date of the Meetings Order, send or cause to be sent the Secured Creditor Class Meeting Materials by email to the Credit Facility Agent, copied to legal counsel to the Credit Facility Agent. Upon receipt, the Credit Facility Agent is required, at its option, to email the Secured Creditor Class Meeting Materials to each Credit Facility Lender, or post the Secured Creditor Class Meeting Materials to the web-based platform used by the Credit Facility Agent to manage posting of agreements, information and materials for review by the Credit Facility Lenders;

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[18] The Secured Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, and the Secured Creditor Proxy (the "**Secured Creditor Class Meeting Materials**").

[19] The Unsecured Creditor Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, the Unsecured Creditor Proxy, the Subordinated Noteholder VIF, the Distribution Election Notice, the New Equity Offering Participation Form, and the New Shareholder Information Form (the "**Unsecured Creditor Class Meeting Materials**").

(c) the Monitor shall, not later than the seventh (7th) day following the date of the Meetings Order, send or cause to be sent the Unsecured Creditor Class Meeting Materials (excluding the Subordinated Noteholder VIF, the New Shareholder Information Form and the New Equity Offering Participation Form) by pre-paid ordinary mail, courier, personal delivery or email to each General Unsecured Creditor (other than holders of the Subordinated Note Claim) at the address set out in the Negative Notice Claim or Proof of Claim, as applicable, sent or submitted pursuant to the Claim Procedure Order with respect to such General Unsecured Creditor Claim (or in any other written notice that has been received by the Monitor in advance of such date regarding a change of address for a holder of a General Unsecured Creditor Claim);

(d) the Just Energy Entities shall:

(i) not later than the fourth (4th) day following the date of the Meetings Order, provide or cause to be provided to the Subordinated Note Trustee, by courier or delivery in person, the Unsecured Creditor Class Meeting Materials (excluding the Distribution Election Notice, the New Shareholder Information Form, and the New Equity Offering Participation Form). Not later than the third (3rd) business day following receipt of such materials, the Subordinated Note Trustee must provide or cause to be provided to the Subordinated Noteholder by pre-paid first class or ordinary mail, courier, or by delivery in person, the Unsecured Creditor Class Meeting Materials (excluding the Distribution Election Notice, the New Shareholder Information Form, and the New Equity Offering Participation Form); and

(ii) subsequently provide or cause to be provided to Broadridge and other mailing intermediaries for delivery to Beneficial Subordinated Note Claim Holders, generally in accordance with the provisions of *National Instrument 54-101 – Communications With Beneficial Owners of Securities of a Reporting Issuer of the Canadian Securities Administrators*, the Unsecured Creditor Class Meeting Materials (excluding the Unsecured Creditor Proxy, the Distribution Election Notice, the New Shareholder Information Form and the New Equity Offering Participation Form); and

(e) the Monitor shall, not later than the fourth (4th) day following the receipt of a list from Computershare Trust Company of Canada as Agent under the Term Loan Agreement (the "**Term Loan Agent**") providing the names, email addresses, mailing addresses, and other reasonably available contact information for each Term Loan Claim Holder, send or cause to be sent to the Term Loan Agent and each Term Loan Claim Holder, by pre-paid ordinary mail, courier, personal delivery, or email, the Unsecured Creditor Class Meeting Materials (excluding the Subordinated Noteholder VIF and the Distribution Election Notice), as well as an Additional Backstop Notice (as defined in the Backstop Commitment Letter).

113. In addition, the Meetings Order requires the Just Energy Entities to cause CDS Clearing and Depositary Services Inc. ("**CDS**") to publish a bulletin to each institution that is a CDS participant holding Subordinated Notes (each, a "**Participant Holder**") outlining the particulars of the Unsecured Creditors' Meeting and the instructions for obtaining and recording voting instructions submitted by way of Subordinated Noteholder VIF or such other documentation as

the Participant Holder may customarily request for purposes of obtaining voting instructions by Beneficial Subordinated Note Claims Holders.

(b) CONDUCT OF THE CREDITORS' MEETINGS

114. The Meetings Order authorizes the Just Energy Entities to call, hold and conduct the Creditors' Meetings of the Secured Creditor Class on August 2, 2022 at 10:00 a.m. (EDT) (the "**Secured Creditors' Meeting**"), and the Unsecured Creditor Class on August 2, 2022 at 10:30 a.m. (EDT) (the "**Unsecured Creditors' Meeting**" and together with the Secured Creditors' Meeting (the "**Creditors' Meetings**"), for the purposes of considering and if deemed advisable by the Secured Creditor Class and the Unsecured Creditor Class, as applicable, voting in favour of, with or without variation, the Plan.

115. The Creditors' Meetings will be held entirely by electronic means using the platform, technology and services of Lumi Holdings Ltd. ("**Lumi**"). I am advised by counsel to the Just Energy Entities, Osler Hoskin & Harcourt ("**Osler**"), that Lumi's software affords all meeting participants, regardless of geographic location, an equal opportunity to observe the meeting, to ask questions, and to submit votes, all in real-time. The software is web-based, and it can be accessed from any computer or cell phone with an internet connection. There is no fee for meeting participants. Attached as **Exhibit "CC"** is a copy of Lumi's brochure describing its platform and services.

116. The Meetings Order provides that a representative of the Monitor will preside as the Chairperson of the Creditors' Meetings and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Creditors' Meetings. The Monitor may appoint scrutineers

for the supervision and tabulation of the attendance at, quorum at, and votes cast at the Creditors' Meetings. A Person designated by the Monitor will act as secretary of the Creditors' Meetings.

117. The only Persons entitled to attend the Creditors' Meetings are: (a) the Affected Creditors entitled to vote at that Creditors' Meeting (or, if applicable, any Person holding a valid Secured Creditor Proxy or Unsecured Creditor Proxy on behalf of one or more such Affected Creditors), and any such Affected Creditor's legal counsel and financial advisors; (b) the Chairperson, the scrutineers and the secretary; (c) the Monitor and the Monitor's legal counsel; (d) one or more representatives of the board and/or senior management of the Just Energy Entities, and the Just Energy Entities' legal counsel and financial advisor; and (e) the Plan Sponsor and the Plan Sponsor's legal counsel and financial advisor. Any other person may be admitted to a Creditors' Meeting on invitation of the Just Energy Entities, in consultation with the Monitor.

118. Neither Beneficial Subordinated Note Claim Holders nor the Subordinated Note Trustee are permitted to attend or vote at the Unsecured Creditors' Meeting. Beneficial Subordinated Note Claim Holders must provide any voting instructions through their Participant Holder by completing and returning a Subordinated Noteholder VIF in accordance with the Meetings Order. Only the Subordinated Noteholder is entitled to vote on the Plan on behalf of all holders of the Subordinated Note Claim using the procedures provided in the Meetings Order.

(c) VOTING

119. The voting procedures were designed by the Just Energy Entities, in consultation with the Monitor, to provide an opportunity for Affected Creditors to register their votes for or against the Plan. The Meetings Order and the Plan provide, *inter alia*:

(a) at each Creditors' Meeting, the Chairperson will direct a vote using the voting options available at the virtual Creditors' Meeting or by proxy on a resolution to approve the Plan and any amendments thereto and any other resolutions that the Just Energy Entities consider appropriate with the consent of the Plan Sponsor, the Credit Facility Agent (with respect to the Secured Creditors' Meeting) and the Monitor;

(b) the quorum required at each Creditors' Meeting is one Secured Creditor with an Accepted Claim at the Secured Creditors' Meeting, and one Unsecured Creditor with an Accepted Claim at the Unsecured Creditors' Meeting, in each case present in person (by electronic means) or by proxy;

(c) if the requisite quorum is not present at a Creditors' Meeting, the Chairperson may adjourn the meeting, provided that any such adjournment or adjournments must be for a period of not more than 2 days in total, unless otherwise agreed to by the Just Energy Entities, the Credit Facility Agent, the Plan Sponsor and the Monitor;

(d) each Affected Creditor (other than Beneficial Subordinated Note Claim Holders who are not entitled to attend either of the Creditors' Meetings) will be permitted to attend the applicable Creditors' Meeting itself or may appoint another person to attend the applicable Creditors' Meeting as its proxyholder in accordance with the process provided in the Meetings Order. The Meetings Order contains provisions detailing the registration requirements for voting (including the requirement that Term Loan Claim Holders, General Unsecured Creditors and the Subordinated Noteholder each submit an Unsecured Creditor Proxy, Beneficial Subordinated

Note Claim Holders each submit a Subordinated Noteholder VIF to their Participant Holders, and the Credit Facility Lenders each submit a Secured Creditor Proxy, each in accordance with the Meetings' Order) and sets out the procedures and deadlines for submitting the necessary registrations and/or proxies;

(e) the Chairperson has the discretion to accept for voting purposes any Unsecured Creditor Proxy or Secured Creditor Proxy submitted to the Monitor in accordance with the Meetings Order notwithstanding any minor error or omission in such Unsecured Creditor Proxy or Secured Creditor Proxy;

(f) Affected Claims may be transferred or assigned in accordance with the Plan and the Support Agreement;

(g) as discussed further above, each Affected Creditor with a Disputed Claim against the Just Energy Entities (other than the Subject Class Action Plaintiffs and the Texas Power Interruption Claimants' Counsel) will be entitled to attend the applicable Creditors' Meeting and will have one (1) vote at the Creditors' Meeting in the dollar value of such Disputed Claim as set out in the Negative Notice Claims Package or the Acceptance Value, as applicable, sent to the holder of the Disputed Claim or, if no Negative Notice Claims Package or Acceptance Value was sent, the value set forth in the corresponding Proof of Claim, provided however, that:

(i) the Subject Class Action Plaintiffs will be entitled to attend the Creditors' Meeting of the Unsecured Creditor Class and will have one (1) vote per Subject Class Action Plaintiff in an amount equal to $1.00; and

(ii) each of the Texas Power Interruption Claimants' Counsel will be entitled to attend the Creditors' Meeting of the Unsecured Creditor Class and will have one (1) vote in an amount equal to $1.00;

(h) the Monitor is required to keep a separate record of votes cast by Affected Creditors with Disputed Claims and report to the CCAA Court with respect thereto at the Plan Sanction Hearing. If approval or non-approval of the Plan by Affected Creditors would be affected by the votes cast in respect of Disputed Claims, such result must be reported to the CCAA Court as soon as reasonably practicable after the Creditors' Meetings; and

(i) Unaffected Claims, the BP Commodity/ISO Services Claim and Equity Claims are not entitled to vote at the Creditors' Meetings.

120. I have been advised by Osler that (i) the provisions of Multilateral Instrument 61 -101 "Protection of Minority Securityholders in Special Transactions", that require "minority" shareholder approval in respect of certain "related party transactions" or "business combinations" may be triggered by the Plan, and (ii) the CCAA provides that shareholders are not required to vote on the Plan unless specifically ordered by the Court.

(d) APPROVAL AND COURT SANCTION OF THE PLAN

121. To be approved, the Plan must receive an affirmative vote by the Required Majorities at each Creditors' Meeting. The result of any vote at the Creditors' Meetings shall be binding on all Affected Creditors in the relevant class for such Meeting, regardless of whether such Affected

Creditor was present at or voted at the applicable Creditors' Meetings) or was entitled to be present or vote at either or both of the Creditors' Meetings.

122. The Just Energy Entities propose that, in the event the Plan is approved by the Required Majorities, the Just Energy Entities will bring a motion on a date to be scheduled by the CCAA Court seeking a Sanction Order sanctioning the Plan under the CCAA.

123. The Monitor will provide a report to the Court as soon as practicable after the Creditors' Meetings with respect to: (a) the results of voting at the Creditors' Meetings; (b) whether the Required Majorities have approved the Plan; (c) the separate tabulation for Disputed Claims; and (d) in its discretion, any other matters relating to the requested Sanction Order (the "**Monitor's Report Regarding the Meetings**"). The Monitor's Report Regarding the Meetings will be served on the Service List and posted on the Monitor's Website and the Noticing Agent's Website prior to the Plan Sanction Hearing.

124. The Just Energy Entities are of the view that the proposed Meetings Order is fair and reasonable in the circumstances and will allow all Affected Creditors to fully consider the Plan and participate in the applicable Creditors' Meeting. The Just Energy Entities accordingly seek approval of the proposed Meetings Order by the CCAA Court.

G. AMENDMENT OF THE CLAIMS PROCEDURE ORDER

125. The Claims Procedure Order permits the Just Energy Entities, at their election and in consultation with the Monitor, to refer any dispute raised in a Notice of Dispute of Revision or Disallowance to either a Claims Officer or the CCAA Court for adjudication. A copy of the Claims Procedure Order is attached hereto as **Exhibit "DD"**.

126. Within the Claims Process, the Just Energy Entities have received one or more Winter Storm Claims which engage, and are based significantly on, the utility regulatory regime in Texas, including the Texas *Public Utility Regulatory Act*. Adjudication and determination of such Winter Storm Claims will require particularized understanding and application of the legal and regulatory framework which govern the transmission, distribution, delivery, procurement, and resale of electricity in Texas. The Winter Storm Claims raise issues of U.S. law which are specific to utility regulation in Texas and, as such, are particularly well suited for determination by the U.S. Bankruptcy Court based in Texas which has carriage of the Applicants' restructuring in the United States instead of by a Claims Officer or the CCAA Court.

127. The Just Energy Entities are accordingly seeking to amend the Claims Procedure Order to permit them, in their sole discretion and in consultation with the Monitor, to have any Winter Storm Claims adjudicated and determined by the U.S. Bankruptcy Court (subject to the entry of an Order by the U.S. Bankruptcy Court recognizing the Authorization Order) rather than by a Claims Officer or the CCAA Court.

128. Should the requested amendment to the Claims Procedure Order be granted by the CCAA Court and the Authorization Order recognized by the U.S. Bankruptcy Court, it is the intention of the Just Energy Entities to request that the Texas Power Interruption Claim be adjudicated and determined by the U.S. Bankruptcy Court.

H. <u>EXTENSION TO THE STAY PERIOD</u>

129. The Initial Order granted a Stay Period until and including March 19, 2021. The Stay Period has subsequently been extended on numerous occasions including, most recently, to May 26, 2022.

130. The Just Energy Entities are seeking to extend the Stay Period up to and including August 19, 2022. The Just Energy Entities believe that the extension of the Stay Period is necessary and appropriate in the circumstances to provide the Just Energy Entities with the necessary breathing room to:

(a) satisfy all milestones dates under the Support Agreement, including the 62-day Voting Period;

(b) call, hold and conduct the Creditors' Meetings to allow Affected Creditors to consider and vote on resolutions to approve the Plan (if no definitive Alternative Restructuring Proposal or definitive Superior Proposal is received and accepted in accordance with the terms of the Support Agreement (or the Support Agreement is not otherwise terminated));

(c) if approved by the Required Majorities of Creditors at the Creditors' Meetings, seek the Sanction Order from the CCAA Court sanctioning the Plan and an enforcement and recognition order from the U.S. Bankruptcy Court; and

(d) if granted, implement the Plan and emerge from the CCAA and Chapter 15 proceedings as well-capitalized, financially viable entities well positioned for long-term success.

131. The extension of the Stay Period is also necessary to allow the Just Energy Entities, in consultation with the Monitor, to continue the process of reviewing and determining all necessary Claims received within the Claims Process in accordance with the Claims Procedure Order.

132. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Since the last extension to the Stay Period on April 21, 2022, the Just Energy Entities have worked in earnest to finalize the Plan, the Support Agreement, the Backstop Commitment Letter, the Restructuring Term Sheet, the MIP Term Sheet, the Corporate Governance Term Sheet for New Just Energy Parent, the terms of the New Credit Facility, New Intercreditor Agreement and other transaction-related agreements and documents so as to be in a position to seek the Meetings Order and Authorization Order on May 26, 2022.

133. I understand that the Monitor will file a report (the "**Monitor's Tenth Report**") which will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Just Energy Entities will have sufficient funds to continue their operations and fund these CCAA proceedings until August 19, 2022. I further understand that the Monitor's Tenth Report will recommend that the Stay Period be extended.

SWORN BEFORE ME over video teleconference this 12th day of May, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.

C. Nanfara

Commissioner for Taking Affidavits
Chloe Nanfara (LSO No. 79715G)

Michael Carter

SCHEDULE "A"

Claim[20]	USD Principal Amount	CAD Principal Amount	USD/CAD Including Accrued but Unpaid Interest
DIP Lenders' Claim	$125 million	$158.8 million	Interest paid in the normal course
BP Commodity/ISO Services Claim[21]	$229.7 million	$291.7 million	US248.6 million[22] C$315.7 million
Credit Facility Claim[23]	$119.2 million	$151.4 million	US$126.9 million[24] C$161.1 million
Term Loan Claim	$208.6 million	$264.9 million	US$218.7 million[25] C$277.7 million
Subordinated Note Claim	$10.4 million	$13.2 million	US$10.7 million[26] C$13.6 million

New Equity Offering[27]	USD	CAD
New Equity Offering	$192.55 million	$244.5 million

[20] All Claims converted at a rate of C$1.27 per US$1.00.

[21] US$229.5 million and C$0.2 million.

[22] Interest accrued to September 30, 2022.

[23] US$43.3 million and C$96.4 million.

[24] While interest is being paid to the Credit Facility Lenders in the normal course, default interest continues to accrue and will be paid on the Effective Date. The US$126.9 million / C$161.1 million reflects only accrued but unpaid default interest since regular interest is being paid in the normal course.

[25] Interest accrued to the Filing Date (March 9, 2021).

[26] Interest accrued to the Filing Date (March 9, 2021).

[27] All Claims converted at a rate of C$1.27 per US$1.00.

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

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Tab 3

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

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

AFFIDAVIT OF MARK CAIGER

I, Mark Caiger, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Managing Director, Mergers & Acquisitions, at BMO Nesbitt Burns Inc. ("**BMO**"). I have 30 years of transaction experience and have been working at BMO for more than 20 years. While at BMO, I have had a broad range of mergers and acquisitions and restructuring experience involving transaction values totaling in excess of $115 billion. Recapitalization/restructuring experience includes an aggregate transaction value that exceeds $34 billion and includes advisory

assignments for AbitibiBowater, Call-Net Enterprises (Sprint Canada), Calpine Power Income Fund, Connacher Oil & Gas, MEG Energy, PostMedia, Sears Canada and Yellow Media, among others. I am a Chartered Professional Accountant and a CFA Charterholder and am a member of the Insolvency Institute of Canada (for which I previously served as a member of the Board of Directors).

2. BMO was engaged by Just Energy Group Inc. ("**Just Energy**") in late February 2021 as an independent financial advisor to assist Just Energy in dealing with the liquidity challenges it was facing following the unprecedented winter storm in February 2021 in Texas and to provide financial advisory services to, among other things, assist in exploring and evaluating potential transactional alternatives. BMO's engagement as financial advisor to Just Energy was approved by the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") in the Initial Order (the "**Initial Order**") granted March 9, 2021 (the "**Filing Date**").

3. Prior to BMO's engagement as financial advisor to Just Energy in February 2021, BMO had provided financial advisory services to Just Energy from March to September 2020 in respect of Just Energy's exploration and evaluation of potential transaction alternatives as part of a broader strategic review process undertaken by Just Energy commencing in mid-2019. The process concluded in Just Energy completing a balance sheet recapitalization transaction through a plan of arrangement under section 192 of the *Canada Business Corporations Act* on September 28, 2020.

4. I was a member of the BMO senior advisory team on both assignments for Just Energy and as such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.

5. All terms used but not otherwise defined herein have the meanings given to such terms in the Just Energy Entities' proposed CCAA Plan of Compromise and Arrangement, dated May 26, 2022 (the "**Plan**") or the Support Agreement between the Just Energy Entities, the Plan Sponsor, CBHT Energy I LLC ("**CBHT**"), Shell, certain Term Loan Lenders, and the Credit Facility Lenders, dated May 12, 2022 (the "**Support Agreement**").

6. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise. United States dollars have been converted to Canadian dollars using an exchange rate of C$1.27 per US$1.00[1].

A. Effect of the Proposed Restructuring Plan

7. The proposed restructuring plan, as described in the affidavit of Michael Carter, Chief Financial Officer of Just Energy (the "**Carter Affidavit**") and in the Just Energy Entities' Press Release, will, if implemented:

(a) repay more than $550 million of secured claims with cash including the proceeds of a US$192.55 million ($244.5 million) backstopped New Equity Offering;

(b) convert more than US$229 million plus accrued interest ($315.7 million) of secured debt to preferred equity;

(c) extend Just Energy's credit facility to June 2025 and reduce such facility to $250 million;

---

[1] The daily average Canadian dollar / U.S. dollar exchange rate rounded to two decimal places on April 22, 2022, as reported on the Bank of Canada website.

(d) settle more than $277 million of unsecured term loan claims and numerous other unsecured claims; and

(e) enable Just Energy to emerge from CCAA Court protection while maintaining stable business conditions with its employees, customers, suppliers and other continuing stakeholders.

A copy of the Just Energy Entities' Press Release is attached hereto as **Exhibit "A"**.

B. Unsolicited Inquiries received by the Just Energy Entities

8. During the pendency of the CCAA proceedings, BMO and/or the Just Energy Entities have received unsolicited, confidential inquiries from 24 third parties regarding potential acquisition opportunities for all or portions of the Just Energy Entities' business[2], and from 3 third parties regarding potential plan sponsorship opportunities. In most cases, the inquiries were of a more general nature with little specificity provided and were targeting only narrow sub-components of the business. In all cases, BMO confirmed the nature of the third parties' respective interests in the Just Energy Entities and/or intended involvement in the Just Energy Entities' restructuring efforts, and the third parties' respective contact information for purposes of future communications. Prior to the Just Energy Entities entering into the Support Agreement, BMO contacted each third party to advise them of the expected filing of the Plan and the issuance of a press release by the Just Energy Entities.

[2] Three of the 24 parties entered into non-disclosure agreements with the Just Energy Entities and received confidential information disclosure. Two of the three parties engaged in extensive discussions with the Just Energy Entities.

C. Equivalence of Value in the Unsecured Creditor Class

9. The Plan is, in essence, a recapitalization of the Just Energy Entities by the Term Loan Lenders who will acquire 100% of the common equity of the New Just Energy Parent (subject to dilution from the MIP) by paying valuable consideration, including new capital of $244.5 million by means of the New Equity Offering and compromising approximately US$208.6 million ($277.7 million which includes accrued but unpaid interest and certain fees as of the Filing Date) Term Loan Claim.

10. The claims of the General Unsecured Creditors rank *pari passu* with the Term Loan Claim but General Unsecured Creditors will not receive any of the common equity and will not invest any new capital. Instead, the General Unsecured Creditors will receive, in satisfaction of their Accepted Claims, the residual cash remaining in the General Unsecured Creditor Cash Pool after payment of all permitted fees and expenses therefrom.

11. The Plan affords General Unsecured Creditors equivalent value to that received by the holders of the Term Loan Claim when the value of the common equity acquired by the holders of the Term Loan Claim as a class, less the value of new capital invested, implies a recovery rate for the Term Loan Claim that is equivalent to the recovery rate afforded the General Unsecured Creditors from the General Unsecured Creditor Cash Pool.

12. The enterprise value of the Just Energy Entities at which the Plan is taking place results in an equivalent recovery rate as between the General Unsecured Creditors and the Term Loan Lenders and can be determined by calculating the enterprise value implied by the recovery rate of the General Unsecured Creditors.

13. If there is a party willing to provide a more favourable proposal than the transactions contemplated under the Plan, the Support Agreement contains "fiduciary out" provisions that are favourable to the Just Energy Entities that, for a period of time, permits them to consider an Alternative Restructuring Proposal that may be superior to the Plan, as described in more detail below.

14. The precise recovery rate of the General Unsecured Creditors is not known at this time because the amount of the Accepted Claims and the amount of the residual cash in the General Unsecured Creditor Cash Pool is not yet known.

15. However, based on a set of reasonable assumptions, a number of which are enumerated below, the enterprise value of the Just Energy Entities implied by the Plan falls within a narrow range of between 4.8 and 5.1 times the mid-point of Just Energy Entities' 2023 estimated EBITDA ($115 - $125 million) ("**Estimated Fiscal 2023 EBITDA**").[3]

16. A significant portion of this implied multiple range consists of the pro forma capital structure and the capital contributed to fund the Plan as depicted in the table below:

New Preferred Shares (at par value)[4]	$315.7
New Money Invested	244.5
Other (net)	21.7
Total	$581.9
Multiple Implied by Pro Forma Capital Structure / New Capital Contributed	4.85x

[3] Based on a current estimate provided by Just Energy's management.

[4] US$229.5 million plus C$0.2 million plus accrued interest to September 30,2022 converted at C$1.27/US$1.00.

17. Any recovery to unsecured creditors (whether they be General Unsecured Creditors or Term Loan Lenders) would be value that is incremental to the foregoing and would imply an enterprise value in excess of 4.85x Estimated Fiscal 2023 EBITDA.

18. As mentioned above, the enterprise value of the Just Energy Entities implied by the Plan falls within a range that is, among other things, a function of the quantum of Accepted Claims and the residual amount of cash in the General Unsecured Creditor Cash Pool:

(a) the higher the total quantum of Accepted Claims, and the lower the residual value of the General Unsecured Creditor Cash Pool, the lower the implied enterprise value multiple will be; and

(b) the opposite is also true – the lower the total quantum of Accepted Claims, and the higher the residual value of the General Unsecured Creditor Cash Pool, the higher the implied enterprise value multiple will be.

19. The implied enterprise value multiple range is narrow because, as shown above, the vast majority of the multiple is a function of the pro forma capital structure and the capital contributed to fund the Plan and, incrementally, it is not materially affected by whether the eventual General Unsecured Creditor Claims sharing in the General Unsecured Creditor Cash Pool are at the low end or the high end of Just Energy's management's estimated range of approximately $66 million to $108 million (for Accepted Claims).

20. To demonstrate this concept, and for illustrative purposes only, two different assumptions regarding the quantum of funds remaining in the General Unsecured Creditor Cash Pool for distribution to General Unsecured Creditors (the initial available amount being $9.5 million after

deducting an estimated $0.5 million for payment of Convenience Claims) after payment of all permitted fees and expenses therefrom (estimated by Just Energy management to be in the range of $4 to $7 million) has been adopted for this analysis - $5.5 million and $2.5 million.

21. The illustrative recovery rate of General Unsecured Creditors has been reflected in the table below. To demonstrate the lack of sensitivity of the implied enterprise value multiple in the section below, an amount of Accepted Claims much higher than the range estimated by Just Energy's management has been added to the table ($500 million):

General Unsecured Recovery Table

Illustrative Residual Amount in General Unsecured Creditor Cash Pool		$2.5 million			$5.5 million	
Illustrative Accepted Claims (millions)	$66	$108	$500	$66	$108	$500
Illustrative Accepted Claim Recovery Rate	4.7%	2.6%	0.5%	10.4%	5.8%	1.1%
Implied Enterprise Value to Estimated Fiscal 2023 EBITDA multiple	4.96x	4.91x	4.86x	5.09x	4.98x	4.87x

22. In each of the scenarios identified above, an enterprise value multiple to Estimated Fiscal 2023 EBITDA can be calculated reflecting the Illustrative Accepted Claim Recovery Rate shown in the General Unsecured Recovery Table above and it can be seen in the Term Loan Lender

Recovery Rate Table below that at this enterprise value multiple, the General Unsecured Recovery Rate is equivalent to the Term Loan Lender Recovery Rate.

23. It can also be seen in the Term Loan Lender Recovery Table below, that the multiples all fall within a narrow range of 4.8x to 5.1x. As mentioned above, to demonstrate the lack of sensitivity of the implied enterprise value multiple, an amount of Accepted Claims much higher than the range estimated by Just Energy's management has been added to the table ($500 million).

Term Loan Lender Recovery Table

Illustrative Residual Amount in General Unsecured Creditor Cash Pool	$2.5 million			$5.5 million		
Illustrative Accepted Claims (millions)	$66	$108	$500	$66	$108	$500
Implied Enterprise Value to Estimated Fiscal 2023 EBITDA multiple	4.96x	4.91x	4.86x	5.09x	4.98x	4.87x
Implied Term Loan Lender Recovery Rate[5]	4.7%	2.6%	0.5%	10.4%	5.8%	1.1%

24. In summary, it can be seen from the foregoing that:

(a) the Plan is, at its most basic, a recapitalization of the Just Energy Entities by the

[5] For the small number of Term Loan Lenders who may choose not to participate in the New Equity Offering (Non-Participating Term Loan Claim Holders) the recovery rate will be different than is shown above (see paragraphs 72(a) and 74 of the Carter Affidavit).

Term Loan Lenders for valuable consideration that values the Just Energy Entities in a narrow range of approximately 4.8x and 5.1x Estimated Fiscal 2023 EBITDA;

(b) given a range of reasonable assumptions, the Term Loan Lenders and General Unsecured Creditors (holding Accepted Claims) receive consideration that is of reasonably equivalent value although in different forms at enterprise values within this narrow value range;

(c) the foregoing transaction multiple analysis is, within reasonable ranges, not particularly sensitive to the amount of cash remaining in the General Unsecured Creditor Cash Pool nor the amount of Accepted Claims, neither of which have been determined at this time; and

(d) if a different transaction arises that offers a materially higher enterprise value multiple the result, if such a transaction were implemented, would be a greater recovery available to the unsecured creditors (Term Loan Lenders and the General Unsecured Creditors (holding Accepted Claims)). The 62-day Voting Period under the Support Agreement is specifically crafted to allow any interested party to complete due diligence and submit a more favourable proposal to the Just Energy Entities than the Restructuring provided under the Plan.

D. Process under the Support Agreement and Plan

25. The Plan is the result of lengthy discussions between the Just Energy Entities and their significant stakeholders. It provides for the recapitalization of the Just Energy Entities, the equivalent treatment of unsecured creditors, and represents the best available proposal for the Just

Energy Entities in the circumstances. However, as no formal sale process or canvassing of the market has been undertaken by the Just Energy Entities within the current CCAA proceedings, the Plan includes two significant safeguards.

26. First, the Support Agreement provides a 62-day period (the "**Voting Period**") between the milestone for mailing of the Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022) to allow any interested parties that may want to submit a bid for all or some of the Just Energy Entities' property or otherwise wish to propose a transaction more favourable than the Plan to complete due diligence and submit their proposal. If an interested party is of the view that the Just Energy Entities have value beyond that provided in the Plan, such party is expressly permitted to submit an Alternative Restructuring Proposal.

27. In BMO's experience and based on its knowledge of the Just Energy Entities' business and discussions with management, the 62-day Voting Period is sufficient to allow interested parties to complete all necessary due diligence and submit an Alternative Restructuring Proposal. Among other things:

(a) the pool of potential purchasers for the Just Energy Entities is limited in light of the capital intensive and highly specialized nature of the business and must have the financial backing to post sufficient collateral and access required supply of energy in the electricity and natural gas commodity markets;

(b) over the past 2.5 years, the business of the Just Energy Entities has been broadly marketed, both within and outside of a formal sales process. BMO understands that prior to its engagement in March 2020, significant due diligence was undertaken by various third parties;

(c) since the commencement of the CCAA proceedings, of the 24 unsolicited inquiries received by BMO/the Just Energy Entities, three parties engaged in due diligence in connection with potentially submitting a proposal for the purchase of substantially all of or a portion of the Just Energy Entities' business. The Just Energy Entities, in conjunction with BMO, facilitated multiple rounds of confidential information disclosure and engaged in extensive discussions with two of the three parties regarding the business, finances and operations of the Just Energy Entities. BMO was heavily involved in these processes and discussions. Notwithstanding the foregoing, none of the third parties submitted executable proposals to the Just Energy Entities that were superior to the restructuring; and

(d) BMO and Just Energy made inquiries of major stakeholders to obtain comfort that there are no arrangements that have been made by those stakeholders with third-parties in their capacity as a potential purchaser of all or part of the business of the Just Energy Entities that would cause such parties not to submit an Alternative Restructuring Proposal that they might otherwise be inclined to submit.

28. In light of the foregoing, BMO is of the view that the 62-day Voting Period provided in the Support Agreement for submission of Alternative Restructuring Proposals is sufficient from a process perspective. Such a period will allow due diligence to be undertaken (in addition to the significant due diligence which has already been made available to, and in many cases undertaken by, interested third parties) and for Alternative Restructuring Proposals to be submitted, negotiated and, if appropriate, finalized by the Just Energy Entities.

29. Second, the Support Agreement includes a broad “fiduciary out” provision which permits the Just Energy Board to terminate the Support Agreement if it determines, following receipt of advice from outside legal counsel and financial advisors, (a) that proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law or (b) in the exercise of its fiduciary duties, to pursue a Superior Proposal.

30. BMO has also read the “fiduciary out” in the Support Agreement. In BMO’s experience, the provision is significantly broader than the standard “fiduciary out” provision found in most publicly announced Canadian transactions in the recent past. In particular, under the Support Agreement, the Just Energy Entities are permitted to provide access to non-public information pursuant to a confidentiality or nondisclosure agreement to, and engage in discussions with, any person that had made an inquiry with respect to an alternative transaction. Such person need not submit a written expression of interest or a Superior Proposal to engage the Just Energy Entities’ broad participation and disclosure rights. A verbal inquiry is sufficient. Such provisions are exceptionally broad and, in BMO’s experience, exceed the scope of market standard “fiduciary out” provisions in Canada over the past number of years.

31. In BMO’s view, when taken as a whole, the Plan and the Support Agreement are both facilitative of market engagement by publicly disseminating the best currently available value for the Just Energy Entities as a multiple of Estimated Fiscal 2023 EBITDA, while simultaneously preserving the process for submissions of an Alternative Restructuring Proposal or Superior Proposal by interested third parties, all for the benefit of the Just Energy Entities and their stakeholders.

E. Quantity of the Termination Fee

32. The Backstop Commitment Letter, dated May 12, 2022 among Just Energy (U.S.) Corp. ("**Just Energy U.S.**") and the Backstop Parties (the "**Backstop Commitment Letter**") provides for payment of a cash fee of US$15 million (C$19.1 million) (the "**Termination Fee**") to the Initial Backstop Parties and the Additional Backstop Parties, if any, if: (i) the Just Energy Entities terminate the Support Agreement on the basis that the Restructuring would be inconsistent with the exercise of the Just Energy Board's fiduciary duties or applicable law or to pursue a Superior Proposal, or (ii) the Plan Sponsor terminates the Support Agreement based on the Just Energy Board making the determination to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal.

33. The Termination Fee represents:

(a) 3.4% of the equity[6] to be contributed by the Plan Sponsor and CBHT to the restructuring of the Just Energy Entities under the Support Agreement and the Plan, and[7]

(b) 3.3% - 3.4% of the equity value (including preferred equity) that corresponds to the range of implied enterprise values discussed above.[8]

---

[6] (i) the aggregate subscription amount for the New Common Shares to be issued by the New Just Energy Parent under the New Equity Offering (C$244.5 million), plus (ii) the New Preferred Shares being issued to the BP Commodity/ISO Services Claimholder under the Plan having a par amount of approximately $315.7 million.

[7] $19.1 million Termination Fee / ($244.5 million (New Equity Offering) + $315.7 million New Preferred equity par Value) = 3.4%.

[8] $19.1 million Termination Fee / (common equity value range implied by an enterprise value to Estimated Fiscal 2023 EBITDA multiple of 4.9x – 5.1x of $245.9 - $270.4 million plus New Preferred equity par value of $315.7 million) = 3.3% - 3.4%

34. In BMO's experience, the quantum of the Termination Fee is in line with market terms and is reasonable in the circumstances. As shown in the table below, BMO has sampled 638 publicly announced transactions in Canada between 2007 and early April 2022, which sampling showed that 462 of the transactions (or 72%) included a termination/break fee of between 2.5% and 4.5% of market capitalization. Of these transactions:

(a) 107 (or 17%) termination/break fee of between 2.5% and 3.0%;

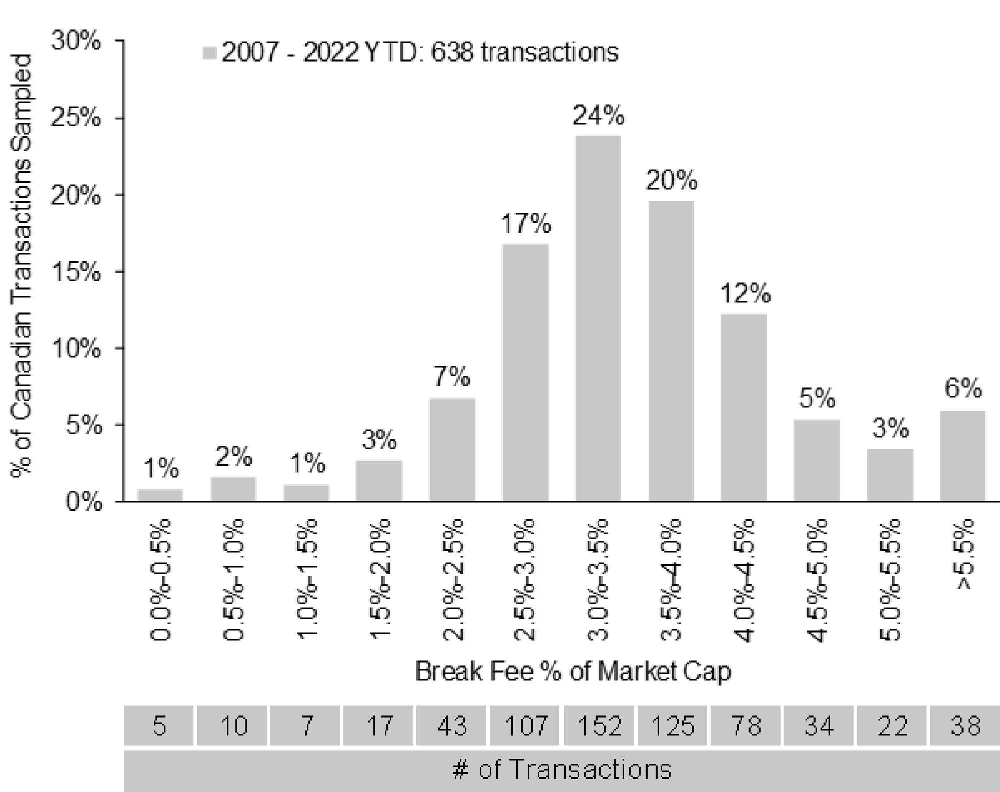
(b) 152 (or 24%) included a termination/break fee of between 3.0% and 3.5% (the equity-based metrics for the Termination Fee are in the 3.3% - 3.4% range and fall within this category);

(c) 125 (or 20%) included a termination/break fee of between 3.5% and 4.0%; and

(d) 78 (or 12%) termination/break fee of between 4.0% and 4.5%.

A table detailing the results of BMO's sampling is provided below:

BREAK FEE AS % OF MARKET CAPITALIZATION

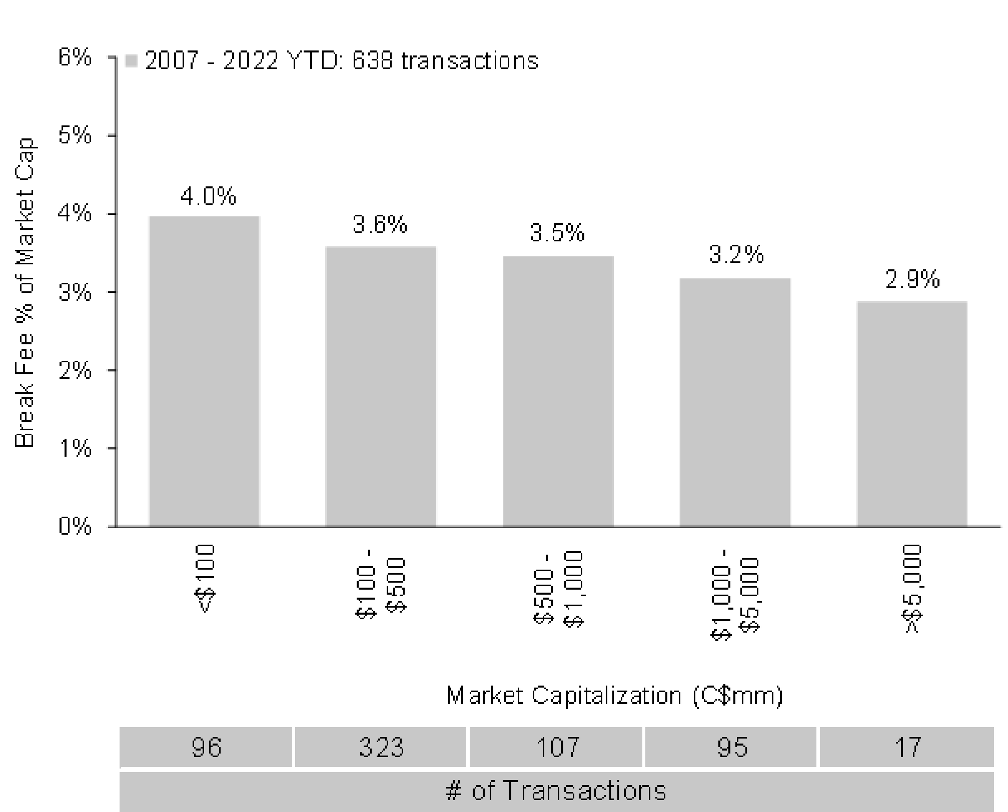


35. In addition to the foregoing, BMO has also sampled the termination/break fee data by market capitalization size for the same 638 transactions. Such sampling showed that the average termination/break fee:

(a) for transactions of between $100 million and $500 million was 3.6% of market capitalization; and

(b) for transactions between $500 million and $1 billion was 3.5% of market capitalization.

36. A table detailing these results, among others, is provided below:



96	323	107	95	17
# of Transactions				

37. Based on the foregoing, the quantum of the Termination Fee accords with the average break fee percentage (2.5% to 4.5%) payable in the 638 publicly announced transactions sampled by BMO since 2007 and falls in the range of the average break fee percentage payable in transactions of comparable value.

38. In BMO's experience, the quantum of the Termination Fee is consistent with market practice.

SWORN BEFORE ME over video teleconference this 12th day of May, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant and the Commissioner were located in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
Chloe Nanfara (LSO No. 79715G)

Mark Caiger

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.

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Ontario
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Proceeding commenced at: TORONTO

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Tab 4

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

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

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.

APPLICANTS

PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving the Applicants and the partnerships listed in Schedule "A" hereto.

May 26, 2022

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PLAN OF COMPROMISE AND ARRANGEMENT

WHEREAS:

(A) Just Energy Group Inc. ("**JEGI**"), 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. ("**JEFH**"), 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. ("**JEUS**"), 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. (collectively, the "**Initial Applicants**", and the Initial Applicants other than JEFH, the "**Applicants**") are debtor companies under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

(B) On March 9, 2021 (the "**Filing Date**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an Order (as amended and restated on March 17, 2021 and May 26, 2021, and as it may be further amended, restated, varied and/or supplemented from time to time, the "**Initial Order**") commencing a proceeding pursuant to the CCAA (the "**CCAA Proceeding**") in respect of the Initial Applicants and the partnerships listed on Schedule "A" hereto (collectively, other than JEFH, the "**Just Energy Entities**").

(C) On the Filing Date, JEGI, as authorized foreign representative, commenced a recognition proceeding (the "**Chapter 15 Proceeding**") on behalf of the Initial Applicants pursuant to Chapter 15, Title 11 of the United States Code ("**Chapter 15**"), and on April 2, 2021, the United States Bankruptcy Court for the District of Texas (the "**U.S. Court**") granted an Order giving full force and effect to the Initial Order in the United States.

(D) On January 22, 2022, JEFH was dissolved pursuant to an Order of the Court in the CCAA Proceeding dated November 10, 2021.

(E) The Applicants hereby propose and present this plan of compromise and arrangement (the "**Plan**") under and pursuant to the CCAA and, as applicable, the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**"), to, among other things, implement a restructuring of the Just Energy Entities and ensure the continuation of the Just Energy Entities and their business.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

"**1145 Securities**" means New Shares issued in reliance on Section 1145.

"**4(a)(2) Securities**" has the meaning ascribed thereto in Section 5.3(g).

"**Accepted Claim**" means any Affected Claim of a Creditor, as finally determined in accordance with the Claims Procedure Order, any other Order of the Court in the CCAA Proceeding or the U.S. Court in the Chapter 15 Proceeding, and/or the Plan.

"**Additional Backstop Parties**" has the meaning ascribed thereto in the Backstop Commitment Letter and "**Additional Backstop Party**" means any one of the Additional Backstop Parties.

"**Administration Charge**" has the meaning ascribed thereto in the Initial Order.

"**Administrative Expense Reserve**" means the amount of $1,900,000.

"**Advance Ruling Certificate**" means an advance ruling certificate issued by the Commissioner pursuant to section 102 of the Competition Act with respect to the transactions contemplated by the Plan.

"**Adversary Proceeding**" means the adversary proceeding commenced on November 12, 2021 by JEGI, Just Energy Texas LP, Fulcrum Retail Energy LLC and Hudson Energy Services LLC against Electric Reliability Council of Texas, Inc. and the Public Utility Commission of Texas.

"**Affected Claim**" means any Claim other than an Unaffected Claim.

"**Affected Creditor**" means a holder of an Affected Claim, but only with respect to and to the extent of such Affected Claim.

"**Affiliate**" of any Person shall mean any Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided, that, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. For greater certainty, an Affiliate of a Person shall include such Person's investment funds and managed accounts and any funds managed or directed by the same investment advisor.

"**Antitrust Approval**" means any approval, clearance, filing or expiration or termination of a waiting period pursuant to which a transaction would be deemed to be unconditionally approved in relation to the transactions contemplated by the Plan under any Antitrust Law of any country or jurisdiction that the Just Energy Entities and the Plan Sponsor may agree, each acting reasonably, is required, other than the Competition Act Approval.

"**Antitrust Laws**" means all Applicable Laws, including any antitrust, competition or trade regulation laws, that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, restraint of trade or lessening or preventing competition through merger or acquisition.

"**Applicable Law**" means any law (including any principle of civil law, common law or equity), statute, Order, decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law, whether in Canada, the United States or any other country, or any domestic or foreign state, county, province, city or other political subdivision of any Governmental Entity.

"**Applicants**" has the meaning ascribed thereto in the recitals, and "**Applicant**" means any one of the Applicants.

"**Assessments**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Authorization Order**" means the Order of the Court in the CCAA Proceeding that, among other things, approves the Support Agreement and the Backstop Commitment Letter and seals certain portions of the Support Agreement and the Backstop Commitment Letter, which Order may form part of the Meetings Order, as same may be further amended, restated or varied from time to time, and in all such cases such Order shall be in form and substance reasonably acceptable to the Just Energy Entities, the Credit Facility Lenders, Shell and the Plan Sponsor.

"**Authorization Recognition Order**" means the Order entered by the U.S. Court in the Chapter 15 Proceeding recognizing and enforcing the Authorization Order in the Chapter 15 Proceeding, which Order may form part of the Meetings Recognition Order, as same may be further amended, restated or varied from time to time, and in all such cases such Order shall be in form and substance reasonably acceptable to the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor.

"**Backstop Commitment Fee Shares**" means 10% of the total New Common Shares, subject to dilution by the equity issued or issuable pursuant to the MIP, which will be issued to the Initial Backstop Parties and, if applicable, Additional Backstop Parties (or their permitted designees) in each case on the Effective Date pursuant to the Backstop Commitment Letter and the Plan.

"**Backstop Commitment Letter**" means the backstop commitment letter dated as of May 12, 2022 among New Just Energy Parent and the Backstop Parties, as may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Backstop Party**" has the meaning ascribed thereto in the Backstop Commitment Letter, and "**Backstop Parties**" means all of them.

"**Backstop Party's Commitments**" means the commitments of the Backstop Parties to subscribe for any Backstopped Shares subject to the terms and conditions of the Backstop Commitment Letter.

"**Backstopped Shares**" means, collectively, the Unsubscribed New Equity and the Defaulted Subscription Shares.

"**Beneficial Subordinated Note Claim Holder**" means any beneficial holder of the Subordinated Note Claim as of the Record Date, in such capacity, and "**Beneficial Subordinated Note Claim Holders**" means all of them.

"**Beneficial Term Loan Claim Holder**" means any beneficial holder of the Term Loan Claim as of the Term Loan Record Date, in such capacity, and "**Beneficial Term Loan Claim Holders**" means all of them.

"**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

"**BP Commodity / ISO Services Claim**" means all Pre-Filing Claims of BP Canada Energy Group ULC and BP Energy Company, which shall be Accepted Claims for the purposes of this Plan in the aggregate principal amounts of US$229,461,558.59 and $170,652.60, plus all accrued and unpaid interest thereon through to and including the Effective Date.

"**BP Commodity/ISO Services Claimholder**" means CBHT Energy I LLC, in its capacity as assignee from BP Canada Energy Group ULC and BP Energy Company of the BP Commodity/ISO Services Claim, or such other Person that the BP Commodity/ISO Services Claim may be assigned to in accordance with the terms of the Claims Procedure Order.

"**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario and New York, New York.

"**Canadian Securities Commissions**" means, collectively, the applicable securities commissions or regulatory authorities in each of the provinces and territories of Canada.

"**Canadian Securities Laws**" means, collectively, and, as the context may require, the applicable securities laws of each of the provinces and territories of Canada, and the respective regulations and rules made under those securities laws together with all applicable published policy statements, instruments, blanket orders, and rulings of the Canadian Securities Commissions and all discretionary orders or rulings, if any, of the Canadian Securities Commissions made in connection with the transactions contemplated by the Plan together with applicable published policy statements of the Canadian Securities Administrators, as the context may require.

"**Cash Management Charge**" has the meaning ascribed thereto in the Initial Order.

"**Cash Management Obligations**" has the meaning ascribed thereto in the Initial Order.

"**Cash on Hand**" means all cash and cash equivalents (including marketable securities and short-term investments) of the Just Energy Entities, excluding amounts posted as collateral immediately prior to the Effective Time.

"**Causes of Action**" means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured,

suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise.

"**CBCA**" has the meaning ascribed thereto in the recitals.

"**CBCA Arrangement**" means the arrangement under section 192 of the CBCA, set out in that certain amended and restated plan of arrangement dated September 2, 2020, which arrangement was approved by a final order of the Court on September 2, 2020, following an application by JEGI and 12175592 Canada Inc.

"**CCAA**" has the meaning ascribed thereto in the recitals.

"**CCAA Charges**" means, collectively, the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge, the Termination Fee Charge and the Cash Management Charge, each as may be amended by order of the Court, and "**CCAA Charge**" means any one of the CCAA Charges.

"**CCAA Proceeding**" has the meaning ascribed thereto in the recitals.

"**Chapter 15**" has the meaning ascribed thereto in the recitals.

"**Chapter 15 Proceeding**" has the meaning ascribed thereto in the recitals.

"**Claim**" or "**Claims**" means any or all Pre-Filing Claims, Restructuring Period Claims and D&O Claims; provided, however, that in any case "**Claim**" shall not include any right or claim of any Person that was previously released, barred, estopped, stayed and/or enjoined pursuant to the CBCA Arrangement, but for greater certainty, shall include any Claim arising through subrogation against any Just Energy Entity or any Director or Officer.

"**Claims Bar Date**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Claims Procedure Order**" means the Order of the Court dated September 15, 2021 in the CCAA Proceeding establishing a claims procedure in respect of the Just Energy Entities, as same may be further amended, restated or varied from time to time, and in all such cases such Order shall be in form and substance reasonably acceptable to the Just Energy Entities and the Plan Sponsor.

"**Claims Procedure Recognition Order**" means an Order, which may be part of the Meetings Recognition Order, entered by the U.S. Court, recognizing and enforcing the Claims Procedure Order in the Chapter 15 Proceeding, and in all such cases such Order shall be in form and substance reasonably acceptable to the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor.

"**Class**" means any one of the classes of Creditors set out in Section 3.2 for the purpose of considering and voting upon the Plan and receiving distributions hereunder.

"**Commissioner**" means the Commissioner of Competition appointed under the Competition Act or any person duly authorized to exercise powers of the Commissioner of Competition.

"**Commodity Agreement**" means a gas supply agreement, electricity supply agreement or other agreement with any of the Just Energy Entities for the physical or financial purchase, sale, trading

or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement.

"**Commodity Supplier**" means any counterparty to a Commodity Agreement.

"**Commodity Supplier Claim**" means any Pre-Filing Claim, plus any interest thereon to the Effective Date, of any Commodity Supplier that is party to the Intercreditor Agreement in respect of a Commodity Agreement determined as of the Effective Date, after provision for any resettlements that are known by the Just Energy Entities as of the Effective Date, in each case in an amount acceptable to the Just Energy Entities and the applicable Commodity Supplier, with the consent of the Monitor and the Plan Sponsor, each acting reasonably; provided, however, that in any case for the purposes of this Plan "**Commodity Supplier Claim**" shall not include any BP Commodity / ISO Services Claim.

"**Common Shares**" means the common shares of JEGI.

"**Company Counsel**" means Osler, Hoskin & Harcourt LLP, Canadian counsel to the Just Energy Entities, and Kirkland & Ellis LLP, United States counsel to the Just Energy Entities.

"**Competition Act**" means the *Competition Act* (Canada), R.S.C., 1985, c. C-34.

"**Competition Act Approval**" means that: (a) the Commissioner shall have issued an Advance Ruling Certificate under subsection 102(1) of the Competition Act in respect of the transactions contemplated by the Plan; or (b) the applicable waiting period under section 123 of the Competition Act shall have expired or been waived by the Commissioner, or the obligation to submit a notification shall have been waived under paragraph 113(c) of the Competition Act, and the Commissioner shall have issued a No Action Letter.

"**Consenting Party**" means any Person who (a) is, at the Effective Time, a party to the Support Agreement; or (b) submits a vote in favour of the Plan, and "**Consenting Parties**" means all of them.

"**Contingent Litigation Claims**" means, collectively, the Subject Class Action Claims and the Texas Power Interruption Claim.

"**Continuing Contract**" means a contract, arrangement, or other agreement (oral or written) for which a notice of disclaimer pursuant to section 32 of the CCAA has not been sent by any of the Just Energy Entities.

"**Convenience Cash Pool**" means the funds taken from the General Unsecured Creditor Cash Pool, prior to any distributions therefrom, to be held by the Monitor in a segregated account, in an amount necessary to satisfy all Convenience Claims in full in accordance with Section 3.4(3).

"**Convenience Claim**" means (a) any Accepted Claim of a General Unsecured Creditor in an amount that is less than or equal to $1,500; and (b) any Accepted Claim of a General Unsecured Creditor in an amount greater than $1,500, if the relevant General Unsecured Creditor has made a valid Distribution Election for purposes of the Plan in accordance with the Meetings Order;

provided, however, that in any case "**Convenience Claim**" shall not include any Contingent Litigation Claim or any Subordinated Note Claim.

"**Convenience Creditor**" means a General Unsecured Creditor that holds a Convenience Claim.

"**Court**" has the meaning ascribed thereto in the recitals.

"**Credit Agreement**" means the ninth amended and restated credit agreement dated as of September 28, 2020, by and among Just Energy Ontario L.P. and JEUS, as borrowers, the Credit Facility Agent and the Credit Facility Lenders, as such credit agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Credit Facility Agent**" means National Bank of Canada, in its capacity as administrative agent for the Credit Facility Lenders.

"**Credit Facility Claim**" means any amounts owing by the Just Energy Entities to the Credit Facility Lenders as of the Effective Date under the Credit Facility Documents, including all principal and all accrued and outstanding fees, costs, interest, or other amounts owing pursuant to the Credit Facility Documents as determined in accordance with the Claims Procedure Order; provided that, the Credit Facility Claim shall not include any Credit Facility LC Claim, Commodity Supplier Claim or Cash Management Obligations.

"**Credit Facility Documents**" means, collectively, the Credit Agreement and all related documentation, including, all guarantee and security documentation related to the foregoing.

"**Credit Facility LC Claim**" means any Claim of any Credit Facility Lender relating to any letter of credit issued but undrawn under the Credit Facility Documents immediately prior to the Effective Time.

"**Credit Facility Lender Termination Event**" has the meaning ascribed thereto in the Support Agreement.

"**Credit Facility Lenders**" means the lenders party to the Credit Agreement from time to time, in such capacity.

"**Credit Facility Remaining Debt**" means the principal amount of up to $20,000,000 of the Credit Facility Claim, which may remain outstanding under the New Credit Agreement upon the implementation of the Plan.

"**Creditor**" means any Person having a Claim, but only with respect to and to the extent of such Claim, including the transferee or assignee of a transferred Claim that is recognized as a Creditor in accordance with the Plan, Claims Procedure Order, or any other Order, as applicable, or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person.

"**Crown**" means Her Majesty in right of Canada or any province or territory of Canada.

"**D&O Claim**" or "**D&O Claims**" means any or all Pre-Filing D&O Claims and Restructuring Period D&O Claims.

"**D&O Indemnity Claim**" means any existing or future right of any Director or Officer against any of the Just Energy Entities which arose or arises as a result of any D&O Claim for which such Director or Officer is entitled to be indemnified by any of the Just Energy Entities; provided, however, that in any case "**D&O Indemnity Claim**" shall not include any Excluded D&O Indemnity Claim.

"**De Minimis Claims**" has the meaning ascribed thereto in Section 3.7.

"**Defaulted Subscription Shares**" means any New Equity Offering Shares arising from any event where a New Equity Offering Eligible Participant subscribes for any portion of the New Equity Offering Shares and fails to fulfill its subscription obligations by the New Equity Participation Deadline.

"**Defaulting Backstop Party**" has the meaning ascribed thereto in the Backstop Commitment Letter.

"**Definitive Documents**" has the meaning ascribed thereto in the Support Agreement.

"**Determination Date**" has the meaning ascribed thereto in Section 7.1.

"**DIP Agent**" means Alter Domus (US) LLC, in its capacity as administrative and collateral agent for the DIP Lenders.

"**DIP Documents**" means, collectively, the DIP Term Sheet and all related documentation, including, without limitation, all guarantee and security documentation, related to the foregoing.

"**DIP Lenders**" means the lenders under the DIP Term Sheet, in such capacity, and "**DIP Lender**" means any one of them.

"**DIP Lenders' Charge**" has the meaning ascribed thereto in the Initial Order.

"**DIP Lenders' Claim**" means the DIP Loan and all other debts, liabilities, and obligations (including, without limitation accrued and outstanding fees, costs, and interest) owing by the Just Energy Entities to the DIP Agent and the DIP Lenders pursuant to the DIP Documents.

"**DIP Loan**" means the principal and aggregate amount of accrued and unpaid interest outstanding on the Effective Date pursuant to the DIP Documents.

"**DIP Term Sheet**" means the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities party thereto, the DIP Agent and the DIP Lenders, dated as of March 9, 2021, as such term sheet may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Director**" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Just Energy Entities, and "**Directors**" means all of them.

"**Directors' Charge**" has the meaning ascribed thereto in the Initial Order.

"**Disallowed Claim**" means any Claim (or any portion thereof) which has been finally disallowed in accordance with the Claims Procedure Order or any other Order of the Court in the CCAA Proceeding or the U.S. Court in the Chapter 15 Proceeding.

"**Disputed Claim**" means any Claim (or any portion thereof) in respect of which a Proof of Claim has been filed or a Negative Notice Claims Package delivered, in each case, in accordance with the Claims Procedure Order that has not been finally determined to be an Accepted Claim or a Disallowed Claim, in whole or in part, in accordance with the Claims Procedure Order or any other Order of the Court in the CCAA Proceeding or the U.S. Court in the Chapter 15 Proceeding.

"**Distribution Date**" means the date or dates from time to time on or after the Effective Date, set by the Monitor in its discretion, to make interim and final distributions in respect of the applicable Accepted Claims pursuant to the Plan.

"**Distribution Election**" means an election: (a) made by a General Unsecured Creditor with an Accepted Claim greater than $1,500 by delivery of a duly completed and executed Distribution Election Notice to the Just Energy Entities and the Monitor by no later than the Distribution Election Deadline electing to receive the Distribution Election Amount in full satisfaction of its Accepted Claim; and (b) deemed to have been made by each General Unsecured Creditor with an Accepted Claim equal to or less than $1,500.

"**Distribution Election Amount**" means, in respect of any Accepted Claim of a General Unsecured Creditor for which a valid Distribution Election has been made or has been deemed to have been made in accordance with the Plan, the lesser of (a) a cash amount equal to $1,500; and (b) the amount of such Accepted Claim.

"**Distribution Election Deadline**" has the meaning ascribed thereto in the Meetings Order.

"**Distribution Election Notice**" means a notice substantially in the form attached to the Meetings Order.

"**DTC**" has the meaning ascribed thereto in Section 5.3(d).

"**Effective Date**" means the Business Day on which the Monitor delivers the Monitor's Certificate pursuant to Section 10.2.

"**Effective Time**" means 12:01 a.m. on the Effective Date, or such other time on the Effective Date as the Just Energy Entities and the Plan Sponsor may jointly determine (and designate in their written notices to the Monitor contemplated by Section 10.2).

"**Employee Priority Claim**" means any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of any of the Just Energy Entities whose employment was terminated between the Filing Date and the Effective Date; and (b) unpaid amounts provided for in section 6(5)(a) of the CCAA.

"**Employment Agreements**" means, collectively, the employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the Directors, Officers, and employees of any of the Just Energy Entities that, on or prior to the Effective Date, have not resigned, in each case in existence on the effective date of the Support Agreement;

provided, however, that solely for purposes of Sections 2.5 and 10.1(t), Employment Agreements shall not include employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the Directors, Officers, and employees of any of the Just Energy Entities that have been terminated or disclaimed without the consent of the Plan Sponsor.

"**Encumbrance**" means any charge, mortgage, lien, pledge, claim, restriction, hypothec, adverse interest, security interest or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario.

"**Energy Regulator**" means any federal or provincial energy regulators, provincial regulators of consumer sales that have authority with respect to energy sales, U.S. municipal, state, federal or other foreign energy regulatory bodies or agencies, local energy transmission and distribution companies, or regional transmission organizations or independent system operators.

"**Energy Regulator Claim**" means any Claim that may be asserted by any Energy Regulator, excluding any: (i) Claim with respect to the subject matter of the Adversary Proceeding, including any Claim with respect to obligations of the Just Energy Entities underlying the invoices that are the subject of the Adversary Proceeding; and (ii) Claim by any Taxing Authority.

"**Equity Claim**" means an "equity claim" as defined in section 2(1) of the CCAA in respect of any Just Energy Entity or New Just Energy Parent (excluding any right or claim of the Credit Facility Lenders or the Credit Facility Agent pursuant to the Credit Facility Documents, including any pledge of any Intercompany Interest).

"**Equity Claimant**" means any Person with an Equity Claim or holding Existing Equity, in such capacity.

"**Equity Interest**" means an "equity interest" as defined in section 2(1) of the CCAA in respect of any Just Energy Entity or New Just Energy Parent.

"**Escrow Agent**" means the escrow agent appointed pursuant to the Escrow Agreement.

"**Escrow Agreement**" has the meaning ascribed thereto in the Backstop Commitment Letter.

"**Excluded D&O Indemnity Claim**" means any existing or future right of any Director or Officer of any Just Energy Entity as of the Effective Date against any of the Just Energy Entities, which arose or arises as a result of any D&O Claim for which such Director or Officer is entitled to be indemnified by any of the Just Energy Entities and which is (a) a Non-Released D&O Claim; or (b) a Released D&O Claim asserted by a Person other than a Consenting Party.

"**Exculpated Party**" means any current officer, director, employee, or retained professional (including financial advisors, investment bankers, and legal counsel) of (a) the Just Energy Entities; (b) the Monitor; (c) the DIP Lenders; (d) the Plan Sponsor; (e) the Backstop Parties; (f)

the Supporting Parties; (g) the DIP Agent; (h) the Credit Facility Agent; (i) the Term Loan Agent; and (j) the Subordinated Note Trustee, and "**Exculpated Parties**" means all of them.

"**Existing Common Shareholder**" mean any holder of Common Shares immediately prior to the Effective Time, and "**Existing Common Shareholders**" means all of them.

"**Existing Equity**" means (a) all Common Shares; (b) all other Equity Interests (excluding any Intercompany Interest), including all options, warrants, rights, or similar instruments, derived from, relating to, or exercisable, convertible, or exchangeable therefor; and (c) all instruments whose value is based upon or determined by reference to any Equity Interest whether or not such instrument is exercisable, convertible, or exchangeable for such an Equity Interest, and, in all such cases, which are issued and outstanding immediately prior to the Effective Time.

"**FA Charge**" has the meaning ascribed thereto in the Initial Order.

"**Filing Date**" has the meaning ascribed thereto in the recitals.

"**Final Order**" means any order or judgment of the Court or the U.S. Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceeding or the Chapter 15 Proceeding or the docket of any court of competent jurisdiction, that has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Just Energy Entities, the Credit Facility Lenders, Shell and the Plan Sponsor, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice; provided, however, that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the U.S. Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

"**Financial Advisor**" means BMO Nesbitt Burns Inc., financial advisor to the Just Energy Entities.

"**Fractional Interests**" has the meaning ascribed thereto in Section 5.12.

"**General Unsecured Creditor**" means the holder of a General Unsecured Creditor Claim.

"**General Unsecured Creditor Cash Pool**" means the amount of $10,000,000 (inclusive of the Convenience Cash Pool).

"**General Unsecured Creditor Claim**" means any Affected Claim, as determined in accordance with the Claims Procedure Order, which is not a Term Loan Claim, an Equity Claim, a Credit Facility Claim or a BP Commodity / ISO Services Claim, and includes, for certainty, any Convenience Claim or Subordinated Note Claim.

"**Government Priority Claim**" means any Claim of any Governmental Entity against any Just Energy Entity in respect of amounts that are outstanding, if any, provided for in section 6(3) of the CCAA.

"**Governmental Entity**" means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Initial Applicants**" has the meaning ascribed thereto in the recitals, and "**Initial Applicant**" means any one of the Initial Applicants.

"**Initial Backstop Parties**" has the meaning ascribed thereto in the Backstop Commitment Letter.

"**Initial Distribution Date**" means a date not more than ten (10) Business Days after the Effective Date or such other date specified in the Sanction Order.

"**Initial Distribution Record Date**" means the date that is ten (10) Business Days prior to the Initial Distribution Date.

"**Initial Order**" has the meaning ascribed thereto in the recitals.

"**Insurance Policy**" means any insurance policy maintained by any of the Just Energy Entities pursuant to which any of the Just Energy Entities or any Director or Officer is insured, and "**Insurance Policies**" means all of them.

"**Insured Claim**" means all or that portion of a Claim for which the applicable insurer or a court of competent jurisdiction has confirmed that the applicable Just Energy Entity or Director or Officer is insured under an Insurance Policy, to the extent that such Claim, or portion thereof, is so insured, and "**Insured Claims**" means all of them.

"**Intercompany Claim**" means any claim that may be asserted against any of the Just Energy Entities by or on behalf of any of the Just Energy Entities or any of their affiliated companies, partnerships, or other corporate entities, and "**Intercompany Claims**" means all of them.

"**Intercompany Interest**" means any Equity Interest held by a Just Energy Entity or New Just Energy Parent in any other Just Energy Entity or New Just Energy Parent, as applicable, and "**Intercompany Interests**" means all of them.

"**Intercreditor Agreement**" means the Sixth Amended and Restated Intercreditor Agreement dated as of September 1, 2015 between National Bank of Canada, as collateral agent and agent for itself as agent and the Lenders (as defined therein); Shell; BP Canada Energy Group ULC; BP Canada Energy Marketing Corp.; BP Energy Company; Exelon Generation Company, LLC; Bruce Power L.P.; EDF Trading North America, LLC; Nextera Energy Power Marketing, LLC; Macquarie Bank Limited; Macquarie Energy Canada Ltd.; Macquarie Energy LLC; Morgan Stanley Capital Group Inc.; and each other person identified as an Other Commodity Supplier (as

defined therein) from time to time party thereto, and Just Energy Ontario L.P. and JEUS, as Borrowers (as defined therein) and each of the Guarantors (as defined therein) from time to time party thereto, as amended (as may be further amended, restated, supplemented, or otherwise modified from time to time).

"**Investment Canada Act**" means the *Investment Canada Act* (Canada), R.S.C., 1985, c. 28 (1st Supp.).

"**Investment Canada Act Approval**" means both:

> (1) receipt by the Plan Sponsor of a certification letter from the Director of Investments under the Investment Canada Act pursuant to subsection 13(1) of the Investment Canada Act confirming that that the transactions contemplated by the Plan are not reviewable under Part IV of the Investment Canada Act; and
>
> (2) either: (A) no notice is given under subsection 25.2(1) or 25.3(2) of the Investment Canada Act within the prescribed period; or, (B) if notice is given under subsection 25.2(1) or 25.3(2) of the Investment Canada Act, then either (a) the Minister or Ministers under the Investment Canada Act have sent to the Plan Sponsor a notice under paragraph 25.2(4)(a) or 25.3(6)(b) of the Investment Canada Act; or (b) the Governor in Council has issued an order under subsection 25.4(1)(b) of the Investment Canada Act authorizing the transactions contemplated by the Plan.

"**ITA**" means the *Income Tax Act* (Canada), R.S.C. 1985, c. 1 (5th Supp.), as amended.

"**JEFH**" has the meaning ascribed thereto in the recitals.

"**JEGI**" has the meaning ascribed thereto in the recitals.

"**JEUS**" has the meaning ascribed thereto in the recitals.

"**Just Energy Entities**" has the meaning ascribed thereto in the recitals, and "**Just Energy Entity**" means any one of the Just Energy Entities.

"**KERP**" means the key employee retention plan approved in the Initial Order and clarified and amended in the Order in the CCAA Proceeding dated September 15, 2021.

"**KERP Charge**" has the meaning ascribed thereto in the Initial Order.

"**Meetings**" means, collectively, the meetings of each Class of Affected Creditors held on the Meetings Date and held and called pursuant to the Meetings Order for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meetings Order, and "**Meeting**" means any one of the Meetings.

"**Meetings Date**" means the date on which the Meetings are held in accordance with the Meetings Order.

"**Meetings Order**" means the Order of the Court in the CCAA Proceeding that, among other things, accepts the filing of the Plan, sets the date for the Meeting and approves the materials for the Meetings, as same may be amended, restated or varied from time to time, and in all such cases such Order shall be in form and substance reasonably acceptable to the Just Energy Entities, the Credit Facility Lenders, Shell and the Plan Sponsor.

"**Meetings Recognition Order**" means the Order entered by the U.S. Court recognizing and enforcing the Meetings Order in the Chapter 15 Proceeding, as same may be amended, restated, varied and/or supplemented from time to time, and in all such cases such Order shall be in form and substance reasonably acceptable to the Just Energy Entities, the Credit Facility Lenders, Shell and the Plan Sponsor.

"**MIP**" means a new management incentive plan to be effective from and after the Effective Date, the terms of which shall be consistent in all respects with the management incentive plan term sheet attached as Exhibit 4 to the Restructuring Term Sheet.

"**Monitor**" means FTI Consulting Canada Inc., as Court-appointed monitor of the Just Energy Entities in the CCAA Proceeding and not in its personal capacity.

"**Monitor Administration Expenses**" has the meaning ascribed thereto in Section 4.2(a).

"**Monitor's Certificate**" has the meaning ascribed thereto in Section 10.2.

"**Monitor's Website**" means http://cfcanada.fticonsulting.com/justenergy

"**Negative Notice Claims Package**" has the meaning ascribed thereto in the Claims Procedure Order.

"**New Boards**" means the board of directors or the equivalent governing body of New Just Energy Parent and JEGI, as applicable, to be appointed on the Effective Date in accordance with the terms of the Support Agreement and the New Corporate Governance Documents and Article 6 of the Plan, which board of directors or the equivalent governing body shall be comprised as specified in the Restructuring Term Sheet.

"**New Common Shares**" means the common equity interests of New Just Energy Parent, to be designated, which shall be issued by New Just Energy Parent in accordance with the Support Agreement, the Backstop Commitment Letter and the Plan, and in accordance with the steps and sequences set forth in the Restructuring Steps Supplement shall constitute all of the issued and outstanding common equity interests of New Just Energy Parent together with any equity interests outstanding under the MIP.

"**New Corporate Governance Documents**" means the organizational documents of New Just Energy Parent and a registration rights agreement (if provisions applicable to registration rights are not included in the organizational documents of New Just Energy Parent) with New Just Energy Parent, in each case, on the terms set out in the Restructuring Term Sheet.

"**New Credit Agreement**" means an amendment and restatement of the Credit Agreement in accordance with the terms attached to the Support Agreement to be entered into by, among others, some or all of the Just Energy Entities and the New Credit Facility Lenders in connection with the

New Credit Facility, which may be a new credit agreement, in either case on terms consistent with the term sheet for the New Credit Facility attached to the Restructuring Term Sheet and containing such other terms as agreed by the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably.

"**New Credit Facility**" means the first lien revolving credit facility to be made available to some or all of the Just Energy Entities by the New Credit Facility Lenders on the Effective Date pursuant to the New Credit Facility Documents with (a) the Credit Facility Remaining Debt, if any, remaining outstanding as an initial outstanding principal amount under the New Credit Agreement; and (b) the New Credit Facility Letters of Credit issued and outstanding.

"**New Credit Facility Documents**" means, collectively, (a) the New Credit Agreement; and (b) all related documentation (including all existing or amended and restated guarantee and security documentation related to the foregoing), some or all of which may be new agreements and documentation to the extent agreed by the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably.

"**New Credit Facility Lenders**" means some or all of the Credit Facility Lenders and/or such other financial institution(s) acceptable to the Just Energy Entities and the Plan Sponsor, each acting reasonably.

"**New Credit Facility Letters of Credit**" means, collectively, (a) the letters of credit issued by the Credit Facility Lenders pursuant to the Credit Facility Documents that are outstanding and undrawn at the Effective Time; and (b) any new or replacement letters of credit to be issued pursuant to the New Credit Facility Documents, in all cases, as agreed by the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably.

"**New Equity Offering**" means the offering to New Equity Offering Eligible Participants to subscribe for and receive New Equity Offering Shares at an aggregate purchase price of US$192,550,000, on the terms described in the Backstop Commitment Letter and Support Agreement.

"**New Equity Offering Documentation**" has the meaning ascribed thereto in the Backstop Commitment Letter.

"**New Equity Offering Eligible Participant**" means a Person that, on the Term Loan Record Date, is (a) a Backstop Party or a Beneficial Term Loan Claim Holder (or a permitted designee thereof); (b) (i) located or resident in Canada, (ii) located or resident in the United States, or (iii) located or resident outside Canada and the United States and is entitled to participate in the New Equity Offering in accordance with the laws of such jurisdiction without obliging New Just Energy Parent to register or qualify for distribution the New Common Shares or file a prospectus, registration statement or other similar disclosure document, cause New Just Energy Parent to become a reporting issuer, registrant or equivalent entity in any jurisdiction or to make any other material filings that New Just Energy Parent is not already obligated to make; and in the case of (iii) above, such Person, if required by JEGI, demonstrates, and provides evidence reasonably satisfactory to JEGI (which evidence may include an opinion of counsel of recognized standing to the effect of the matters set forth in (iii) above), that it is qualified to participate in the New Equity

Offering in accordance with the laws of its jurisdiction of residence; and (c) an "accredited investor" (as defined in Rule 501(a) promulgated under the U.S. Securities Act).

"**New Equity Offering Participation Form**" means a participation form, substantially in the form attached at Schedule "I" to the Meetings Order, to be delivered to each Beneficial Term Loan Claim Holder in accordance with the Meetings Order, in order for Beneficial Term Loan Claim Holders to make certain acknowledgments, agreements, and certifications (as applicable to the applicable Beneficial Term Loan Claim Holder) and to participate in the New Equity Offering Rights.

"**New Equity Offering Proceeds**" means the total amount of Subscription Amounts and Backstop Party's Commitments received and held by the Escrow Agent as of the Effective Date pursuant to Section 3.9.

"**New Equity Offering Rights**" means the offering of New Equity Offering Shares to the New Equity Offering Eligible Participants, pursuant to and in accordance with the Backstop Commitment Letter, the New Equity Offering Documentation and the Plan.

"**New Equity Offering Shares**" means 80% of the total New Common Shares to be issued on the Effective Date pursuant to the New Equity Offering under the Plan, subject to dilution by the equity issued or issuable pursuant to the MIP, to be issued to the Participating Term Loan Claimants pursuant to the Plan and, if applicable, to the Backstop Parties in accordance with the Backstop Commitment Letter and the Plan.

"**New Equity Participation Deadline**" shall mean 5:00 p.m. on August 23, 2022 or such other date agreed to by the Just Energy Entities and the Plan Sponsor, each acting reasonably.

"**New Intercreditor Agreement**" means the new intercreditor agreement on the terms set out in the Support Agreement to be entered into by, among others, the Just Energy Entities, the New Credit Facility Lenders (or the Credit Facility Agent on their behalf), and the applicable Commodity Suppliers in accordance with the Support Agreement and the Plan, which may be an amendment and restatement of the Intercreditor Agreement, in either case on terms consistent with the term sheet for the New Intercreditor Agreement attached to the Restructuring Term Sheet and containing such other terms, all as agreed by the Just Energy Entities, the Plan Sponsor and the other parties thereto, each acting reasonably.

"**New Just Energy Parent**" means the new parent company of the Just Energy Entities, which shall be JEUS or such other corporation, or limited or unlimited liability company organized in the United States as determined by the Just Energy Entities and the Plan Sponsor.

"**New Preferred Shares**" means preferred equity interest of New Just Energy Parent having such terms as specified in the Restructuring Term Sheet, which shall be issued by New Just Energy Parent in accordance with the Support Agreement, the Plan, and, in accordance with the steps and sequences set forth in the Restructuring Steps Supplement, shall constitute all of the issued and outstanding preferred equity interests of New Just Energy Parent.

"**New Shareholder Information Form**" means an information form, substantially in the form attached at Schedule "J" to the Meetings Order, to be delivered to each Beneficial Term Loan

Claim Holder in accordance with the Meetings Order, in order for Beneficial Term Loan Claim Holders to make certain acknowledgments, agreements, and certifications (as applicable to the applicable Beneficial Term Loan Claim Holder) and to receive Term Loan Claim Shares.

"**New Shares**" means, collectively, the New Common Shares and the New Preferred Shares, which immediately following the issuance thereof shall constitute all of the issued and outstanding equity interests of New Just Energy Parent together with any equity interests outstanding under the MIP.

"**NI 45-106**" means National Instrument 45-106 "Prospectus Exemptions" of the Canadian Securities Commissions.

"**No Action Letter**" means written confirmation from the Commissioner that the Commissioner does not, at that time, intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by the Plan.

"**Non-Participating Term Loan Claim**" means the portion of the Term Loan Claim held by a Non-Participating Term Loan Claim Holder as of the Term Loan Record Date.

"**Non-Participating Term Loan Claim Holder**" means each Beneficial Term Loan Claim Holder that is not a Backstop Party or a Participating Term Loan Claimant.

"**Non-Participating Term Loan Lender Pro Rata Share**" means, as at any relevant date of determination, the percentage that a Non-Participating Term Loan Claim Holder's Non-Participating Term Loan Claim bears to the aggregate of all Non-Participating Term Loan Claims and General Unsecured Creditor Claims that are Accepted Claims and Disputed Claims (for certainty, valued at the amounts asserted by such General Unsecured Creditors).

"**Non-Released D&O Claim**" means any D&O Claim that is not a Released D&O Claim, and "**Non-Released D&O Claims**" means all of them.

"**Officer**" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or de facto officer of any of the Just Energy Entities, in such capacity, and "**Officers**" means all of them.

"**Order**" means any order of the Court made in the CCAA Proceeding, any order of the U.S. Court made in the Chapter 15 Proceeding, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Entity.

"**Outside Date**" has the meaning ascribed thereto in the Support Agreement.

"**Participating Term Loan Claimants**" means each Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant (or a permitted designee thereof) and validly submits a duly completed and executed New Equity Offering Participation Form, together with such beneficial holder's Subscription Amount to be paid by or wire transfer in indefeasible funds, in accordance with the Meetings Order and the New Equity Offering Documentation on or prior to the New Equity Participation Deadline.

"**Person**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), joint venture,

unincorporated organization, governmental unit, body or agency or any instrumentality thereof, Canadian or non-Canadian regulatory body or agency or any instrumentality thereof, or any other entity.

"**Plan**" has the meaning ascribed thereto in the recitals.

"**Plan Implementation Fund**" means an amount equal to the aggregate amount of funds to be delivered or paid or caused to be delivered or paid by the Just Energy Entities to the Monitor pursuant to Section 4.1, to be held in a segregated account and distributed by the Monitor in accordance with the Plan.

"**Plan Sponsor**" means, collectively, LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP and OC III LFE I LP.

"**Plan Sponsor Counsel**" means Cassels Brock & Blackwell LLP, Canadian counsel to the Plan Sponsor, and Akin Gump Strauss Hauer & Feld LLP, United States counsel to the Plan Sponsor.

"**Post-Filing Claim**" or "**Post-Filing Claims**" means any or all indebtedness, liability, or obligation of the Just Energy Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Effective Date in respect of services rendered or supplies provided to the Just Energy Entities during such period or under or in accordance with any Continuing Contract; provided that, for certainty, such amounts are not a Restructuring Period Claim or a Restructuring Period D&O Claim.

"**Pre-Filing Claim**" or "**Pre-Filing Claims**" means any or all right or claim of any Person against any of the Just Energy Entities, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Just Energy Entity to such Person, in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or claim with respect to any Assessment, or contract, or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Just Energy Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right or claim, including in connection with indebtedness, liability or obligation, is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any Equity Claim, any claim brought by any proposed or confirmed representative plaintiff on behalf of a class in a class action, and any D&O Indemnity Claim.

"**Pre-Filing D&O Claim**" or "**Pre-Filing D&O Claims**" means any or all right or claim of any Person against one or more of the Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments, any claim brought by any proposed or confirmed representative

plaintiff on behalf of a class in a class action, and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer.

"**Priority Commodity/ISO Charge**" has the meaning ascribed thereto in the Initial Order.

"**Pro Rata Share**" means, as at any relevant date of determination, the proportionate share of a Person's holdings of an amount or thing to the total of all Persons' holdings of such amount or thing and, in the case of,

(a) each General Unsecured Creditor, the percentage that such General Unsecured Creditor's General Unsecured Creditor Claim that is an Accepted Claim, bears to the aggregate of all General Unsecured Creditor Claims that are Accepted Claims and Disputed Claims (for certainty, valued at the amounts asserted by such General Unsecured Creditors);

(b) each Beneficial Term Loan Claim Holder, the percentage that such Beneficial Term Loan Claim Holder's Term Loan Claim that is an Accepted Claim, bears to the aggregate Term Loan Claim that is an Accepted Claim;

(c) each Beneficial Subordinated Note Claim Holder, the percentage that such Beneficial Subordinated Note Claim Holder's Subordinated Note Claim that is an Accepted Claim, bears to the aggregate Subordinated Note Claim that is an Accepted Claim; and

(d) each Credit Facility Lender, the percentage that such Credit Facility Lender's Credit Facility Claim that is an Accepted Claim, bears to the aggregate Credit Facility Claim that is an Accepted Claim.

"**Proof of Assignment**" means a notice of transfer of the whole of a Claim executed by a Creditor and the transferee, together with satisfactory evidence of such transfer as may be reasonably required by the Monitor.

"**Proof of Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Record Date**" has the meaning ascribed thereto in the Meetings Order.

"**Regulatory Approvals**" means any material licenses, permits or approvals required from any Governmental Entity or under any Applicable Laws relating to the business and operations of the Just Energy Entities that would be required to be obtained in order to permit JEGI, New Just Energy Parent and the Plan Sponsor to complete the transactions contemplated by the Plan and the Backstop Commitment Letter, including the issuance and acquisition of the New Common Shares, other than the Competition Act Approval, the Antitrust Approval and the Investment Canada Act Approval.

"**Released Claim**" and "**Released Claims**" have the meaning ascribed thereto in Section 8.1.

"**Released D&O Claim**" means any D&O Claim that is released pursuant to Section 8.1, and "**Released D&O Claims**" means all of them.

"**Released Party**" and "**Released Parties**" have the meaning ascribed thereto in Section 8.1.

"**Releasing Party**" and "**Releasing Parties**" means any and all Persons (besides the Just Energy Entities and their respective current and former affiliates), and their current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

"**Required Majorities**" means, with respect to each Class of Affected Creditors, the affirmative vote of a majority in number of all voting (in person or by proxy) Creditors holding Voting Claims in such Class and representing not less than 66 2/3% in value of the Voting Claims voting (in person or by proxy) in such Class at the applicable Meeting.

"**Restructuring Period Claim**" or "**Restructuring Period Claims**" means any or all right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Just Energy Entity to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Just Energy Entity on or after the Filing Date of any contract, lease or other agreement, whether written or oral, and including any right or claim with respect to any Assessment.

"**Restructuring Period D&O Claim**" or "**Restructuring Period D&O Claims**" means any or all right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer.

"**Restructuring Steps Supplement**" has the meaning ascribed thereto in Section 6.2.

"**Restructuring Term Sheet**" means that certain restructuring term sheet attached at Exhibit "C" to the Support Agreement as may be amended in accordance with the terms of the Support Agreement.

"**Sanction Order**" means the Order of the Court in the CCAA Proceeding, which, among other things, sanctions and approves the Plan, as same may be further amended, restated or varied from time to time, and in all such cases such Order shall be in form and substance reasonably acceptable to the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor.

"**Sanction Recognition Order**" means the Order entered by the U.S. Court recognizing and enforcing the Sanction Order in the Chapter 15 Proceeding, which shall be in form and substance reasonably acceptable to the Just Energy Entities, the Credit Facility Lenders, Shell and the Plan Sponsor.

"**Section 1145**" means section 1145 of the U.S. Bankruptcy Code.

"**Secured Creditor Class**" means the Class comprised of the Credit Facility Lenders in respect of the Credit Facility Claims.

"**Secured Creditor Proxy**" has the meaning ascribed thereto in the Meetings Order.

"**Shell**" means, collectively, Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC.

"**Specified Equity Class Action Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Subject Class Action Claims**" means, collectively, the Claims in respect of which Proofs of Claim have been filed in accordance with the Claims Procedure Order by (a) Haidar Omarali, representative plaintiff; (b) Fira Donin and Inna Golovan, proposed representative plaintiffs; and (c) Trevor Jordet, proposed representative plaintiff.

"**Subject Class Action Plaintiff**" means, as applicable, (a) the representative plaintiff in any certified Subject Class Action Claim; or (b) the proposed representative plaintiffs in any uncertified Subject Class Action Claim.

"**Subordinated Note**" means the subordinated notes issued by JEGI pursuant to the Subordinated Note Indenture.

"**Subordinated Note Claim**" means the aggregate principal amount of $13,179,000 currently owing by JEGI under the Subordinated Note Documents and pursuant to the Subordinated Notes, plus all accrued and outstanding fees, costs, interest, and other amounts owing pursuant to the Subordinated Note Documents as determined in accordance with the Claims Procedure Order.

"**Subordinated Note Documents**" means, collectively, the Subordinated Note Indenture and all related documentation.

"**Subordinated Note Indenture**" means the trust indenture entered into on September 28, 2020 by JEGI and the Subordinated Note Trustee.

"**Subordinated Note Trustee**" means Computershare Trust Company of Canada, in its capacity as the indenture trustee under the Subordinated Note Indenture.

"**Subordinated Noteholder**" means any registered holder of Subordinated Notes, in such capacity, and "**Subordinated Noteholders**" means all of them.

"**Subscription Amount**" means (a) in respect of a Beneficial Term Loan Claim Holder, an amount such beneficial holder has agreed to subscribe for New Equity Offering Shares at the Subscription Price; and (b) in respect of a Backstop Party, an amount equal to its Subscription Share Percentage of the New Equity Offering Shares multiplied by the Subscription Price.

"**Subscription Price**" means US$10 per New Equity Offering Share.

"**Subscription Share Percentage**" means a Beneficial Term Loan Claim Holder's Pro Rata Share of the Term Loan Claim as of the Term Loan Record Date.

"**Support Agreement**" means that certain plan support agreement dated May 12, 2022 between the Just Energy Entities, the Plan Sponsor, the Credit Facility Lenders, Shell, the BP Commodity/ISO Services Claimholder and such other parties who may become bound by such agreement, as may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Supporting Parties**" means the parties that have executed the Support Agreement with the Just Energy Entities other than the Just Energy Entities.

"**Tax**" or "**Taxes**" means any and all federal, provincial, state, municipal, local and foreign taxes, assessments, reassessments and other Governmental Entity charges, duties, impositions and liabilities, including, for greater certainty, taxes based upon or measured by reference to income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, all licence, franchise and registration fees and all employment insurance, health insurance and federal, provincial, state, municipal, local and foreign government pension plan premiums or contributions, together with all interest, penalties, fines and additions with respect to such amounts.

"**Taxing Authorities**" means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the United States and each and every state and locality of the United States, and any Canadian, United States or other Governmental Entity exercising taxing authority or power, and "**Taxing Authority**" means any one of the Taxing Authorities.

"**Term Loan**" means the senior unsecured term loan issued pursuant to the Term Loan Agreement.

"**Term Loan Agent**" means Computershare Trust Company of Canada, in its capacity as administrative agent under the Term Loan Agreement.

"**Term Loan Agreement**" means the First Amended and Restated Loan Agreement dated as of September 28, 2020 among JEGI as borrower, Sagard Credit Partners, LP and each other person

from time to time party thereto as a lender, and the Term Loan Agent, as may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Term Loan Claim**" means the aggregate principal amount of US$208,588,899.18 owing by the Just Energy Entities under the Term Loan Agreement and pursuant to the Term Loan, plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement as determined in accordance with the Claims Procedure Order.

"**Term Loan Claim Holder**" means any registered holder of the Term Loan Claim as of the Term Loan Record Date, in such capacity, and "**Term Loan Claim Holders**" means all of them.

"**Term Loan Claim Shares**" means 10% of the total New Common Shares, subject to dilution by the equity issued or issuable pursuant to the MIP, to be issued on the Effective Date to the Beneficial Term Loan Claim Holders pursuant to Section 3.4(2).

"**Term Loan Record Date**" means 5:00 p.m. on May 11, 2022.

"**Term Loan Turnover Amount**" has the meaning ascribed thereto in Section 3.4(4).

"**Termination Fee Charge**" has the meaning ascribed thereto in the Authorization Order.

"**Texas Power Interruption Claim**" means the Claim in respect of which Proofs of Claim have been filed in accordance with the Claims Procedure Order by the Texas Power Interruption Claimants' Counsel, by and on behalf of claimants whom they represent and who authorized them to do so.

"**Texas Power Interruption Claimants' Counsel**" means, collectively, Robins Cloud LLP, Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP.

"**Transaction Regulatory Approvals**" means, collectively, and in each case to the extent it has been agreed to in accordance with Article 7 hereof that such approval shall be obtained, the Competition Act Approval, the Antitrust Approvals, the Investment Canada Act Approval and the Regulatory Approvals.

"**Turnover Amounts**" has the meaning ascribed thereto in Section 3.4(4).

"**U.S. Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"**U.S. Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 15 Proceeding, and the general, local and chambers rules of the U.S. Court, as amended.

"**U.S. Court**" has the meaning ascribed thereto in the recitals.

"**U.S. Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**U.S. Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Unaffected Claim**" means any:

(a) Post-Filing Claim;

(b) Claim secured by a CCAA Charge, including the DIP Lenders' Claim secured by the DIP Lenders' Charge and the Cash Management Obligations secured by the Cash Management Charge;

(c) Commodity Supplier Claim;

(d) BP Commodity/ISO Services Claim;

(e) Credit Facility LC Claim;

(f) Government Priority Claim;

(g) Employee Priority Claim;

(h) Energy Regulator Claim;

(i) Specified Equity Class Action Claim, solely to the extent preserved pursuant to the CBCA Arrangement;

(j) Insured Claim;

(k) Intercompany Claim, subject to Section 5.4(f);

(l) Claim finally determined in accordance with the Claims Procedure Order to be a secured or priority claim against any of the Just Energy Entities and entitled to be paid in full in priority to the General Unsecured Creditor Claims and the Term Loan Claim, and which Claim is not and does not become a Disallowed Claim;

(m) Claim for sales, use or other Taxes by a U.S. Taxing Authority whereby the nonpayment of which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such nonpayment;

(n) Excluded D&O Indemnity Claim;

(o) Claim that may be asserted by any of the Just Energy Entities against any Directors and/or Officers;

(p) Claim against Directors that cannot be compromised due to the provisions of section 5.1(2) of the CCAA; or

(q) Claim that cannot be compromised due to the provisions of section 19(2) of the CCAA, except any Claim to which Section 8.7 applies, which shall be Affected Claims for the purposes of the Plan,

and for greater certainty, shall include any Unaffected Claim arising through subrogation.

“**Unaffected Creditor**” means a Creditor who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim.

“**Undeliverable Distribution**” has the meaning ascribed thereto in Section 5.6.

“**Unissued New Shares**” has the meaning ascribed thereto in Section 5.3(e).

“**Unsecured Creditor Class**” means the Class comprised of General Unsecured Creditors and Term Loan Claim Holders.

“**Unsecured Creditor Proxy**” has the meaning ascribed thereto in the Meetings Order.

“**Unsubscribed New Equity**” means the aggregate number of New Equity Offering Shares, less the aggregate number of New Equity Offering Shares to be issued pursuant to the Subscription Amount submitted to the Just Energy Entities on or before the New Equity Participation Deadline.

“**Voting Claim**” means the amount of an Affected Claim for which a Proof of Claim has been filed or a Negative Notice Claims Package delivered, which, as of the Record Date or the Term Loan Record Date, as applicable, (a) is an Accepted Claim; or (b) has been accepted or deemed to be accepted solely for voting purposes pursuant to the Claims Procedure Order, the Meetings Order or any other Order of the Court or the U.S. Court; provided that notwithstanding the foregoing, (i) with respect to the Term Loan Claim, (x) the Term Loan Agent shall not have a Voting Claim, and (y) each Term Loan Claim Holder shall have a Voting Claim in the amount equal to its Pro Rata Share of the Term Loan Claim in the amount that is an Accepted Claim, or if not an Accepted Claim by two (2) Business Days before the Meetings Date, in the amount set out in the Negative Notice Claims Package in respect of the Term Loan Claim, (ii) with respect to the Subordinated Note Claim, (x) the Subordinated Noteholder shall have a Voting Claim in the amount equal to the Subordinated Note Claim, and (y) the Beneficial Subordinated Note Claim Holders shall not have a Voting Claim, and (iii) with respect to the Credit Facility Claim, (x) the Credit Facility Agent shall not have a Voting Claim, and (y) each Credit Facility Lender shall have a Voting Claim in the amount equal to its Pro Rata Share of the Credit Facility Claim that is an Accepted Claim.

1.2 Certain Rules of Interpretation

For the purposes of the Plan:

(a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(b) any reference in the Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, restated, modified, supplemented or varied from time to time;

(c) unless otherwise specified, all references to currency and to “$” are to Canadian dollars;

(d) the division of the Plan into "Articles" and "Sections" and the insertion of a Table of Contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "Articles" and "Sections" otherwise intended as complete or accurate descriptions of the content thereof;

(e) any references in the Plan to "Articles", "Sections", "Subsections" and "Schedules" are references to Articles, Sections, Subsections and Schedules of or to the Plan;

(f) the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of the Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;

(g) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(h) unless otherwise specified, all references to time herein and in any document issued pursuant hereto shall mean the prevailing local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;

(i) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all rules and regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(j) references to a specified "Article" or "Section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the Plan, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "Article", "Section" or other portion of the Plan and include any documents supplemental hereto; and

(k) the word "or" is not exclusive.

1.3 Date and Time for any Action

For the purposes of the Plan:

(a) in the event that any date on which any action is required to be taken under the Plan by any Person is not a Business Day, that action shall be required to be taken on the next succeeding day which is a Business Day, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day; and

(b) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day.

1.4 Successors and Assigns

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, receivers, trustees in bankruptcy, successors and assigns of any Person or party directly or directly named or referred to in or subject to the Plan.

1.5 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the Court; provided that, the Chapter 15 Proceeding shall be subject to the jurisdiction of the U.S. Court.

1.6 Schedules

The following is the Schedule to the Plan, which is incorporated by reference into the Plan and forms a part of it:

Schedule "A" **Just Energy Partnerships**

ARTICLE 2
PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of the Plan is:

(a) to implement a restructuring of the Just Energy Entities;

(b) to provide for a compromise and arrangement of all Affected Claims;

(c) to effect a release and discharge of all Affected Claims and Released Claims; and

(d) to ensure the continuation of the Just Energy Entities and their business,

in the expectation that the Persons who have a valid economic interest in the Just Energy Entities will derive a greater benefit from the implementation of the Plan than they would derive from a bankruptcy or liquidation of the Just Energy Entities.

2.2 Persons Affected

The Plan provides for a full and final release and discharge of the Affected Claims and Released Claims, a settlement of, and consideration for, all Affected Claims that are Accepted Claims and a restructuring of the Just Energy Entities. The Plan will become effective at the Effective Time in accordance with its terms and in the sequence set forth in the Restructuring Steps Supplement and shall be binding on and enure to the benefit of the Just Energy Entities, the Affected Creditors, the Released Parties and all other Persons directly or indirectly named or referred to in or subject to Plan, and each of their respective heirs, executors, administrators, legal representatives, successors, and assigns in accordance with the terms hereof.

2.3 Persons Not Affected

The Plan does not affect the Unaffected Creditors, subject to the express provisions hereof providing for the payment of certain Unaffected Claims and/or treatment of Insured Claims. Nothing in the Plan shall affect the Just Energy Entities' rights and defences, both legal and equitable, with respect to any Unaffected Claims, including all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

2.4 Equity Claimants

On the Effective Date, the Plan will be binding on all Equity Claimants, including the Existing Common Shareholders. Equity Claimants, including the Existing Common Shareholders, shall not receive a distribution or other consideration under the Plan and shall not be entitled to vote on the Plan in respect of their Equity Claims or Existing Equity or attend any of the Meetings. On the Effective Date, in accordance with the steps and sequences set forth in the Restructuring Steps Supplement, all Existing Equity (other than, for certainty, the Common Shares transferred and the Common Shares issued to New Just Energy Parent on the Effective Date in accordance with the steps and sequences set forth in the Restructuring Steps Supplement, the Intercompany Interests and the New Shares) shall be cancelled and extinguished and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged and barred without any compensation of any kind whatsoever.

2.5 Treatment of Employment Agreements

Unless otherwise expressly required by the terms of this Plan, provided for by the MIP, or agreed to in writing by and among the Just Energy Entities, the Plan Sponsor, and the applicable employee (or employees) affected by any change or modification, each of the Employment Agreements will not be disclaimed and will remain in place as of, and as a condition to the occurrence of, the Effective Date.

2.6 Management Incentive Plan

On the Effective Date, the New Board shall adopt the MIP, on terms consistent in all respects with the management incentive plan term sheet, attached as Exhibit 4 to the Restructuring Term Sheet.

ARTICLE 3
CLASSIFICATION AND TREATMENT OF CREDITORS AND RELATED MATTERS

3.1 Claims Procedure

The procedure for determining the validity and quantum of the Affected Claims and for resolving Disputed Claims for voting and distribution purposes under the Plan shall be governed by the Claims Procedure Order, the Meetings Order, the CCAA, the Plan and any further Order of the Court. For the avoidance of doubt, the Claims Procedure Order will remain in full force and effect from and after the Effective Date.

3.2 Classification of Creditors

In accordance with the Meetings Order, for the purposes of considering and voting on the Plan and receiving a distribution hereunder, the Affected Creditors will be divided into two (2) separate Classes: (a) the Unsecured Creditor Class; and (b) the Secured Creditor Class.

3.3 Meetings

The Meetings shall be held in accordance with the Meetings Order and any further Order of the Court in the CCAA Proceeding. The only Persons entitled to attend and vote at the Meetings are those specified in the Meetings Order and any further Order of the Court in the CCAA Proceeding.

3.4 Affected Claims of the General Unsecured Creditors

(1) Voting of the Unsecured Creditor Class

Pursuant to and in accordance with the Meetings Order, each of the following Creditors shall be entitled to vote on the Plan at the Meeting for the Unsecured Creditor Class as follows:

(a) each Term Loan Claim Holder shall be entitled to one (1) vote in the amount equal to its Voting Claim; provided that, in order to vote on the Plan, a Term Loan Claim Holder must deliver an Unsecured Creditor Proxy in accordance with the Meetings Order;

(b) Convenience Creditors shall each be deemed to vote in favour of the Plan in the amount of such Creditor's Accepted Claim;

(c) General Unsecured Creditors (other than the Subordinated Noteholder) with Voting Claims shall be entitled to one (1) vote in the amount equal to such Creditor's Voting Claim; provided that, in order to vote on the Plan, a General Unsecured Creditor (other than a Convenience Creditor or a Subordinated Noteholder) must deliver an Unsecured Creditor Proxy in accordance with the Meetings Order; and

(i) with respect to any Subject Class Action Claim, each Subject Class Action Plaintiff with Voting Claims shall be entitled to one (1) vote in an amount equal to its Voting Claim; and

(ii) with respect to the Texas Power Interruption Claim, each Texas Power Interruption Claimants' Counsel with Voting Claims shall be entitled to one (1) vote in an amount equal to its Voting Claim; and

(d) the Subordinated Noteholder shall be entitled to one (1) vote in the amount equal to its Voting Claim.

(2) Treatment of the Term Loan Claim

In accordance with the terms and in the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, in full and final satisfaction of the Term Loan Claim:

(a) subject to Section 5.3(e), each Beneficial Term Loan Claim Holder shall be entitled to receive its Pro Rata Share of the Term Loan Claim Shares;

(b) each Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant shall be entitled to participate in the New Equity Offering Rights based on its Subscription Share Percentage; and

(c) each Non-Participating Term Loan Claim Holder shall be entitled to receive its Non-Participating Term Loan Lender Pro Rata Share of the Turnover Amounts.

(3) Treatment of the General Unsecured Claims

In accordance with the terms and in the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, in full and final satisfaction of the General Unsecured Creditor Claims:

(a) *Convenience Creditors:*

(i) General Unsecured Creditors with Accepted Claims on the Initial Distribution Record Date equal to or less than $1,500 shall be deemed to have made a Distribution Election and to have elected to and shall receive the Distribution Election Amount in respect of their Accepted Claim from the Convenience Cash Pool on the Initial Distribution Date in accordance with the Plan; and

(ii) General Unsecured Creditors with Accepted Claims on the Initial Distribution Record Date greater than $1,500 that have made a Distribution Election prior to the Distribution Election Deadline shall receive the Distribution Election Amount in respect of their Accepted Claim from the Convenience Cash Pool on the Initial Distribution Date in accordance with the Plan.

(b) *Other General Unsecured Creditors*

(i) Each General Unsecured Creditor with an Accepted Claim greater than $1,500 that has not made a Distribution Election prior to the Distribution Election Deadline shall receive its Pro Rata Share of the General Unsecured

Creditor Cash Pool (after deducting all Distribution Election Amounts payable under the Plan and any amounts paid, payable or reserved under Section 5.2 on a Distribution Date).

(4) Treatment of the Subordinated Note Claim

Subject to and in accordance with the provisions of the Subordinated Note Indenture, including sections 5.2 and 5.5 thereof, each Beneficial Subordinated Note Claim Holder shall receive the applicable portion of the General Unsecured Creditor Cash Pool (after deducting all Distribution Election Amounts payable under the Plan) provided for in Section 3.4(3)(b)(i) of the Plan in full satisfaction of its Subordinated Note Claim and each Subordinated Note Claim and all Subordinated Notes shall be fully, finally, and irrevocably and forever compromised, released, discharged, cancelled, extinguished, and barred on the Effective Date. For certainty, the Monitor shall not make any distribution to any Subordinated Noteholder or Beneficial Subordinated Note Claim Holder until all Persons entitled to turnover of any such distribution (any such amounts, the "**Turnover Amounts**") pursuant to the terms of the Subordinated Note Indenture have been paid in full. Instead, the Monitor shall distribute: (i) the Non-Participating Term Loan Lender Pro Rata Shares of the Turnover Amounts to the Non-Participating Term Loan Claim Holders (collectively, the "**Term Loan Turnover Amount**"); and (ii) the Turnover Amounts, less the Term Loan Turnover Amount, to the beneficiaries of the General Unsecured Creditor Cash Pool. For the purposes of this Section, with respect to any Turnover Amounts that would otherwise be required to be paid to Beneficial Term Loan Claim Holders that are not Non-Participating Term Loan Claim Holders, such amounts shall be contributed to the beneficiaries of the General Unsecured Creditor Cash Pool.

(5) D&O Claims

(a) All Released D&O Claims shall be fully, finally, and irrevocably compromised, released, discharged, cancelled, extinguished and barred on the Effective Date. All D&O Indemnity Claims shall be treated for all purposes under the Plan as General Unsecured Creditor Claims and shall be fully, finally, and irrevocably compromised, released, discharged, cancelled, extinguished and barred on the Effective Date.

(b) All Non-Released D&O Claims shall not be compromised, released, discharged, cancelled, extinguished and barred on the Effective Date, but shall be irrevocably limited to recovery from any insurance proceeds payable in respect of such Non-Released D&O Claims pursuant to the Insurance Policies, and Persons with such Non-Released D&O Claims shall have no right to, and shall not, make any claim or seek any recoveries other than enforcing such Persons' rights to be paid from the proceeds of the applicable Insurance Policies by the applicable insurer(s).

(c) Notwithstanding anything to the contrary herein, from and after the Effective Date, any Person may only commence an action for a D&O Claim against a Director or Officer if such Person has first obtained (i) the consent of the Monitor, or (ii) the leave of the Court on notice to the applicable Director or Officer, the Just Energy Entities, the Monitor and any applicable insurer(s), or if the action will be

commenced within the United States, if such Person has first obtained an Order of the U.S. Court in the Chapter 15 Proceeding on notice to the applicable Director or Officer, the Just Energy Entities, the Monitor and any applicable insurer(s).

3.5 Affected Claims of the Secured Creditor Class

(1) Voting of the Secured Creditor Class

Pursuant to and in accordance with the Meetings Order, the Secured Creditor Class shall be entitled to vote on the Plan at the Meeting as follows: each Credit Facility Lender shall be entitled to one (1) vote in the amount equal to its Voting Claim; provided that, in order to vote on the Plan, a Credit Facility Lender must deliver a Secured Creditor Proxy in accordance with the Meetings Order.

(2) Treatment of the Credit Facility Claim

In accordance with the terms and in the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, in full and final satisfaction of the Credit Facility Claim,

(a) the Just Energy Entities, shall pay, or shall cause to be paid, to the Credit Facility Agent, an amount equal to the Credit Facility Claim less the Credit Facility Remaining Debt, if any, in full in cash in the currency that such Credit Facility Claim was originally denominated in full and final satisfaction of the Credit Facility Claim less the Credit Facility Remaining Debt, if any; and

(b) provided that a Credit Facility Lender Termination Event has not occurred (or if it has occurred, it has been waived by the Credit Facility Lenders in accordance with the Support Agreement) before the Effective Time, the New Credit Facility and the New Credit Facility Documents shall become effective in accordance with their terms, and the Credit Facility Remaining Debt, if any, shall remain outstanding as an initial outstanding principal amount under the New Credit Agreement, upon implementation of the Plan pursuant and subject to the terms of the New Credit Facility Documents.

3.6 Treatment of the BP Commodity / ISO Services Claims

In accordance with the terms and in the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, in full and final satisfaction of the BP Commodity / ISO Services Claims, New Just Energy Parent shall issue the New Preferred Shares to the BP Commodity / ISO Services Claimholder. The BP Commodity / ISO Services Claimholder shall not be entitled to vote on the Plan in respect of the BP Commodity / ISO Services Claims.

3.7 Treatment of De Minimis Claims

Notwithstanding any other provision of this Plan, no holder of an Accepted Claim that is less than $10 (a "**De Minimis Claim**") shall be entitled to or receive any distributions pursuant to the Plan in respect of such De Minimis Claim, and all such De Minimis Claims shall be fully, finally,

irrevocably and forever compromised, released, discharged, cancelled and barred, and shall be treated as such in the calculation of any Pro Rata Share under this Plan.

3.8 Unaffected Claims

Unaffected Claims shall not be compromised under the Plan. No holder of an Unaffected Claim shall: (a) be treated as a Convenience Creditor; (b) be entitled to vote on the Plan or attend at any of the Meetings in respect of such Unaffected Claim; or (c) be entitled to or receive any payments or distributions, or be subject to any compromise or settlement, pursuant to the Plan in respect of such Unaffected Claim, unless specifically provided for under and pursuant to the Plan, including without limitation, pursuant to Section 3.6, Section 5.4(a)(v) and Section 11.3.

3.9 New Equity Offering

(a) Each Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant shall have the right, but not the obligation, to elect irrevocably to participate in the New Equity Offering and exercise its New Equity Offering Rights to subscribe for and purchase up to its Subscription Share Percentage of New Equity Offering Shares by submitting, in accordance with the New Equity Offering Documentation, a duly completed and executed New Equity Offering Participation Form, together with such Beneficial Term Loan Claim Holder's Subscription Amount to be paid to the Escrow Agent, by wire transfer in indefeasible funds, in accordance with the Meetings Order and the New Equity Offering Documentation on or prior to the New Equity Participation Deadline. Any New Equity Offering Participation Form received by the Just Energy Entities after the New Equity Participation Deadline or not accompanied by such Beneficial Term Loan Claim Holder's Subscription Amount will be deemed to be invalid and not effective and shall be disregarded for all purposes of the Plan.

(b) Submission of a validly completed New Equity Offering Participation Form and the applicable Subscription Amount by a Beneficial Term Loan Claim Holder that qualifies as a New Equity Offering Eligible Participant in accordance with the Meetings Order, the New Equity Offering Documentation and this Section 3.9 shall constitute an irrevocable subscription by the applicable Beneficial Term Loan Claim Holder, and a commitment by the applicable Beneficial Term Loan Claim Holder, to participate in the New Equity Offering Rights by purchasing up to its Subscription Share Percentage of the New Equity Offering Shares.

(c) Subject to the terms and conditions of the Backstop Commitment Letter, each Backstop Party shall deliver a completed and executed New Equity Offering Participation Form and fund its Subscription Amount in accordance with the Backstop Commitment Letter.

(d) Additional Backstop Parties shall fund their Backstop Party's Commitments in accordance with the Backstop Commitment Letter. To the extent an Additional Backstop Party's Backstop Party Commitments are unused, they will be returned to the Additional Backstop Party in accordance with the Backstop Commitment Letter.

(e) Within five (5) Business Days following the New Equity Participation Deadline, the Just Energy Entities shall provide written notice to each Initial Backstop Party and the Monitor setting forth the Just Energy Entities' calculation of: (i) the number of Backstopped Shares, (ii) the New Equity Offering Shares subscribed for and funded by New Equity Offering Eligible Participants in the New Equity Offering, and (iii) such Backstop Party's Backstop Party's Commitments.

(f) The Escrow Agent shall promptly return to a Beneficial Term Loan Claim Holder any Subscription Amount received from a Beneficial Term Loan Claim Holder who did not submit a duly completed and executed New Equity Offering Participation Form on or prior to the New Equity Participation Deadline or who does not qualify as a New Equity Offering Eligible Participant, in accordance with this Section 3.9, and the Just Energy Entities shall notify such Beneficial Term Loan Claim Holder of the reason for the return of the Subscription Amount.

(g) Subject to and in accordance with the terms and conditions of the Backstop Commitment Letter, no less than five (5) Business Days prior to the anticipated Effective Date (or such other date as may be agreed by the Just Energy Entities and the Initial Backstop Parties, each acting reasonably), each such Initial Backstop Party (or its assignee under the Backstop Commitment Letter) shall deliver to the Escrow Agent an amount equal to its Backstop Party Commitments in accordance with the Backstop Commitment Letter, and each such Initial Backstop Party (or its assignee under the Backstop Commitment Letter) shall be deemed to have subscribed for the purchase of such allocation of the Backstopped Shares, subject to the terms and conditions of the Backstop Commitment Letter.

(h) Each Initial Backstop Party that is not a Defaulting Backstop Party thereunder, may assume the Defaulting Backstop Party's Backstop Party Commitments and obligation to subscribe for such Defaulting Backstop Party's New Equity Offering Shares available under its New Equity Offering Rights, subject to and in accordance with the terms and conditions of the Backstop Commitment Letter.

(i) All Subscription Amounts and Backstop Party's Commitments received by the Escrow Agent in accordance with this Section 3.9 shall be held by the Escrow Agent, in escrow, and shall be transferred by the Escrow Agent as directed by the Just Energy Entities in accordance with the Plan upon the Effective Date. In the event that the Plan is terminated, withdrawn or revoked in accordance with the terms hereof, the Support Agreement or the Backstop Commitment Letter, or the Backstop Commitment Letter is terminated in accordance with its terms, the Escrow Agent shall forthwith return all Subscription Amounts and Backstop Party's Commitments received pursuant to this Section 3.9 to the applicable Beneficial Term Loan Claim Holder and Backstop Party.

(j) On the Effective Date, New Just Energy Parent shall issue the Backstop Commitment Fee Shares to the Initial Backstop Parties and Additional Backstop Parties in accordance with the Backstop Commitment Letter.

3.10 Transferred Claims

Any General Unsecured Creditor may transfer the whole of its Claim prior to the Meeting for General Unsecured Creditors in accordance with the Subordinated Note Documents, the Claims Procedure Order and the Meetings Order, as applicable; provided that, the Just Energy Entities and the Monitor shall not be obligated to recognize the transferee of such Claim as a General Unsecured Creditor in respect thereof, including allowing such transferee to vote at the Meeting for General Unsecured Creditors, unless a Proof of Assignment has been received by the Just Energy Entities and the Monitor prior to 5:00 p.m. on the day that is at least ten (10) Business Days prior to the date of the Meeting and such transfer has been acknowledged in writing by the Just Energy Entities and the Monitor. Thereafter such transferee shall, for all purposes in accordance with the Claims Procedure Order, the Meetings Order, the CCAA and the Plan, constitute a General Unsecured Creditor and shall be bound by any notices given or steps taken in respect of such Claim in accordance with the Meetings Order and any further Order of the Court in the CCAA Proceeding.

If a General Unsecured Creditor transfers the whole of its Claim to more than one Person or part of such Claim to another Person after the Filing Date, such transfer shall not create a separate Voting Claim and such Claim shall continue to constitute and be dealt with for the purposes hereof as a single Voting Claim. Notwithstanding such transfer, the Just Energy Entities and the Monitor shall not be bound to recognize or acknowledge any such transfer and shall be entitled to give notices to and otherwise deal with such Claim only as a whole and only to and with the Person last holding such Claim in whole as the General Unsecured Creditor in respect of such Claim; provided that, such General Unsecured Creditor may, by notice in writing to the Just Energy Entities and the Monitor in accordance with and subject to the Meetings Order and given prior to 5:00 p.m. on the day that is at least ten (10) Business Days prior to the date of the Meeting, direct the subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such transferee of the Claim and the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with the Meetings Order and any further Order of the Court in the CCAA Proceeding or the U.S. Court in the Chapter 15 Proceeding.

No Beneficial Term Loan Claim Holder shall be entitled to transfer its Pro Rata Share of the Term Loan Claim on or following the Term Loan Record Date; provided that the Just Energy Entities shall have the authority, with the consent of the Monitor and the Plan Sponsor (such consent not to be unreasonably withheld, conditioned or delayed), to permit a transfer of a Beneficial Term Loan Claim Holder's Pro Rata Share of the Term Loan Claim following the Term Loan Record Date for distribution purposes under the Plan for the sole purpose of a Beneficial Term Loan Claim Holder transferring the whole of its Pro Rata Share of the Term Loan Claim to a single designee in order for such Beneficial Term Loan Claim Holder to transfer such Pro Rata Share of the Term Loan Claim to a party that can receive the Term Loan Claim Shares in accordance with this Plan and Applicable Laws and so long as such transfer will not result in the Just Energy Entities being unable to satisfy the condition precedent set forth in Section 10.1(l).

3.11 Extinguishment of Claims

On the Effective Date, in accordance with the terms and in the steps and sequences set forth in the Restructuring Steps Supplement and in accordance with the provisions of the Sanction Order, the treatment of all Affected Claims and all Released Claims, in each case as set forth in the Plan, shall be final and binding on the Just Energy Entities, all Creditors, any Person having a Released Claim

and all other Persons named or referred to in or subject to the Plan (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns), and all Affected Claims and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred except as provided for herein, and the Just Energy Entities and the Released Parties shall thereupon have no further obligation whatsoever in respect of such Affected Claims or the Released Claims, as applicable; provided that, nothing herein releases the Just Energy Entities or any other Person from their obligations to make distributions in the manner and to the extent provided for in the Plan and provided further that, such discharge and release of the Just Energy Entities shall be without prejudice to the right of a Creditor in respect of a Disputed Claim to prove such Disputed Claim in accordance with the Claims Procedure Order so that such Disputed Claim may become an Accepted Claim.

3.12 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim that is compromised and released under the Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim that is compromised under the Plan shall be entitled to any greater rights than the Person whose Claim is compromised under the Plan.

3.13 Set-Off

The law of set-off applies to all Claims.

ARTICLE 4
PLAN IMPLEMENTATION FUND

4.1 Plan Implementation Fund

On or prior to the Effective Date, the Just Energy Entities shall deliver, or cause to be delivered, to the Monitor from (i) the New Equity Offering Proceeds, and/or (ii) Cash on Hand, to the extent necessary, the following amounts which shall be held by the Monitor in a segregated account of the Monitor and shall constitute the Plan Implementation Fund, and shall be used by the Monitor to pay or satisfy, on behalf of the Just Energy Entities:

(a) the amount of the Administrative Expense Reserve; and

(b) the amount of the General Unsecured Creditor Cash Pool.

4.2 Administrative Expense Reserve and Other Fees and Expenses

(a) From and after the Effective Date, the Monitor shall pay from the Administrative Expense Reserve, the reasonable and documented fees and disbursements (plus any applicable Taxes thereon) for any post-Effective Date services incurred by the Monitor, its legal counsel and any other Persons from time to time retained by the Monitor, in connection with administrative and estate matters (collectively, the "**Monitor Administration Expenses**"). Any unused portion of the Administrative Expense Reserve shall be transferred by the Monitor to New Just Energy Parent.

(b) The Monitor shall have the sole discretion to determine whether the fees and disbursements of the Monitor, its legal counsel and any other Persons from time to time retained by the Monitor should be classified as Monitor Administration Expenses or fees and disbursements incurred under Section 5.2(b).

ARTICLE 5
DISTRIBUTIONS, PAYMENTS AND TREATMENT OF CLAIMS

5.1 Distributions Generally

All distributions to be effected pursuant to the Plan shall be made pursuant to this Article 5 and Article 6 and shall occur in the manner set forth herein and therein. Notwithstanding any other provisions of the Plan, an Affected Creditor holding a Disputed Claim shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Disputed Claim becomes an Accepted Claim.

5.2 Distributions to the General Unsecured Creditors

(a) General Unsecured Creditors with Accepted Claims shall receive distributions from the General Unsecured Creditor Cash Pool in accordance with Section 3.4(3).

(b) From and after the Effective Date, other than in respect of the Monitor Administration Expenses that are provided for in Section 4.2(a), the Monitor shall pay from the General Unsecured Creditor Cash Pool, the reasonable and documented fees and disbursements (plus any applicable Taxes thereon) incurred by the Just Energy Entities' legal, financial and other advisors, the Monitor and its legal counsel and any other Persons that may from time to time be retained by the Just Energy Entities or the Monitor, in connection with post-Effective Date matters relating to the Plan and the CCAA Proceeding, including in connection with the implementation of the Plan, the administration of the Plan Implementation Fund, the continued administration of the claims process provided for in the Claims Procedure Order and the resolution of Disputed Claims, and the termination of the CCAA Proceeding and the Chapter 15 Proceeding following the Effective Date.

(c) All cash distributions to be made under the Plan to a General Unsecured Creditor shall be made by the Monitor on behalf of the Just Energy Entities by cheque or by wire transfer and (i) in the case of a cheque, will be sent, via regular mail, to such Creditor to the address specified in the Proof of Claim filed by, or Negative Notice Claims Package delivered to, such Creditor or such other address as the Creditor may from time to time notify the Monitor in writing in accordance with Section 11.14, or (ii) in the case of a wire transfer, shall be sent to an account specified by such Creditor to the Monitor in writing to the satisfaction of the Monitor.

(d) The Monitor may, but shall not be obligated to, make any distribution to the General Unsecured Creditors before (i) all Disputed Claims have been finally resolved for distribution purposes in accordance with the Claims Procedure Order or further Order of the Court in the CCAA Proceeding or the U.S. Court in the Chapter 15 Proceeding; and (ii) all expenses have been incurred and paid pursuant to Section

5.2(b), and in doing so the Monitor may reserve such amount as it considers appropriate from the General Unsecured Creditor Cash Pool.

(e) Notwithstanding anything else in the Plan, the aggregate of the distributions provided for in Section 3.4(3) and this Section 5.2 shall not exceed the amount of funds in the General Unsecured Creditor Cash Pool.

5.3 Distributions of the New Shares

(a) All New Shares issued under the Plan shall be deemed to have been issued as fully paid and non-assessable shares of New Just Energy Parent, free and clear of any Encumbrances, except as provided in New Just Energy Parent's New Corporate Governance Documents and arising under applicable securities laws.

(b) Delivery by New Just Energy Parent of the New Shares issued and distributed under the Plan will be made by book-entry positions in the equity records of New Just Energy Parent in the name of the applicable recipient (or such other Person as such recipient directs in writing) (subject to subsequent determination in the discretion of New Just Energy Parent as to the form in which the New Shares will be issued as may be required to implement any provision of the Plan).

(c) On the Effective Date, New Just Energy Parent shall issue New Shares in accordance with the steps and sequences set forth in the Restructuring Steps Supplement (or reserve New Shares for issuance, as applicable, in accordance with Section 5.3(e)).

(d) Notwithstanding anything to the contrary in the Plan, no Person (including, for the avoidance of doubt and if applicable, the Depository Trust Company ("**DTC**")) may require a legal opinion regarding the validity of any transaction contemplated by the Plan, including for the avoidance of doubt, whether the securities to be issued under the Plan are exempt from registration and/or eligible for DTC book entry delivery, settlement and depository services. Any such Person, (including, for the avoidance of doubt and if applicable, DTC), shall be required to accept and conclusively rely upon the Plan and court order related thereto in lieu of any such legal opinion regarding whether the securities to be issued under the Plan are exempt from registration and/or eligible for DTC book entry delivery, settlement, and depository services.

(e) Notwithstanding Section 5.3(c), no Person shall be entitled to the rights associated with the New Shares and all such New Shares shall be reserved for issuance on the books and records of New Just Energy Parent (but, for the avoidance of doubt, not actually issued) until such time as it has delivered a duly executed and completed New Shareholder Information Form to New Just Energy Parent. In the event that such Person fails to deliver a duly executed and completed New Shareholder Information Form in accordance with this Section 5.3(e) on or before the date that is six (6) months following the Effective Date, New Just Energy Parent shall have no further obligation to issue or deliver, and shall have no further obligation to reserve on its books and records, any New Shares otherwise issuable to such Person

(such shares, the "**Unissued New Shares**") that have not delivered a duly executed and completed New Shareholder Information Form in accordance with this Section 5.3(e) and all such Persons shall cease to have a claim to, or interest of any kind or nature against or in, New Just Energy Parent or the Unissued New Shares.

(f) The stated capital accounts for the Common Shares and the New Shares and any adjustments thereto resulting from the transactions contemplated by the Plan shall be as determined by the applicable New Board, in accordance with the Restructuring Steps Supplement and Applicable Law, as applicable.

(g) The Just Energy Entities intend that the issuance and distribution, pursuant to the Plan, of all the New Shares, shall qualify for exemption from the prospectus and registration requirements of Canadian Securities Laws on the basis of the exemption provided in section 2.11 of NI 45-106. The Just Energy Entities also intend that the issuance and distribution, pursuant to the Plan, of all the New Shares, other than as set forth in the next sentence, shall be exempt from the registration requirements of the U.S. Securities Act in reliance upon Section 1145 to the maximum extent permitted under Applicable Law. Notwithstanding anything to the contrary herein, the New Equity Offering Shares to be offered and sold in the New Equity Offering and any New Shares to be offered and sold to the Backstop Parties pursuant to their Backstop Party's Commitments and for which the exemption to registration pursuant to Section 1145 is unavailable are being offered and sold exclusively to the Participating Term Loan Claimants and, if applicable, the Backstop Parties, in reliance on the exemption from registration under the U.S. Securities Act set forth in section 4(a)(2) thereof (such New Equity Offering Shares and New Shares, the "**4(a)(2) Securities**").

(h) Pursuant to Section 1145, the offering, issuance, and distribution of the 1145 Securities shall be exempt from, among other things, the registration and prospectus delivery requirements of section 5 of the U.S. Securities Act and any other applicable U.S. federal, state, local or other law requiring registration prior to the offering, issuance, distribution, or sale of the 1145 Securities. Each of the 1145 Securities, (a) will not be "restricted securities" as defined in rule 144(a)(3) under the U.S. Securities Act; and (b) will be freely tradable and transferable in the United States by each recipient thereof that (i) is an entity that is not an "underwriter" as defined in section 1145(b)(1) of the U.S. Bankruptcy Rules, (ii) is not an "affiliate" of New Just Energy Parent as defined in Rule 144(a)(1) under the U.S. Securities Act, (iii) has not been such an "affiliate" within ninety (90) days of the time of the transfer, and (iv) has not acquired such securities from such an "affiliate" within one year of the time of transfer. Notwithstanding the foregoing, the 1145 Securities remain subject to compliance with applicable securities laws and any rules and regulations of the U.S. Securities and Exchange Commission, if any, applicable at the time of any future transfer of such 1145 Securities and subject to any restrictions in the New Corporate Governance Documents.

(i) The 4(a)(2) Securities will be issued without registration under the U.S. Securities Act in reliance upon the exemption set forth in section 4(a)(2) of the U.S. Securities Act, Regulation D and/or Regulation S (and similar registration exemptions

applicable outside of the United States). Any New Shares issued in reliance on section 4(a)(2) of the U.S. Securities Act, including in compliance with Rule 506 of Regulation D, and/or Regulation S will be "restricted securities" subject to resale restrictions and may be resold, exchanged, assigned or otherwise transferred only pursuant to registration, or an applicable exemption from registration under the U.S. Securities Act and other Applicable Law, including state securities laws and subject to any restrictions in the New Corporate Governance Documents.

5.4 Distributions, Payments and Settlements of Unaffected Claims

(a) Claims Secured by the CCAA Charges

(i) Administration Charge

In accordance with the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, all outstanding obligations, liabilities, fees, and disbursements secured by the Administration Charge which are evidenced by invoices of the beneficiaries thereof delivered to JEGI as at the Effective Date, shall be fully paid by the Just Energy Entities.

The Monitor Administration Expenses shall continue to be secured by the Administrative Expense Reserve, and the Administration Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(ii) FA Charge

In accordance with the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, all outstanding obligations, liabilities, fees, and disbursements secured by the FA Charge, which are evidenced by invoices of the Financial Advisor delivered to JEGI as at the Effective Date, shall be fully paid by the Just Energy Entities. Effective upon the Effective Date, the FA Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(iii) Directors' Charge

On the Effective Date, all Released D&O Claims shall be fully, finally, and irrevocably compromised, released, discharged, cancelled, extinguished, and barred in accordance with Article 8 and the Directors' Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(iv) KERP Charge

On the Effective Date, all amounts owing under the KERP and secured by the KERP Charge as at the Effective Date shall be fully paid by the Just Energy Entities to the beneficiaries thereof. Effective upon the Effective Date, the KERP Charge shall be and be deemed to be fully and finally satisfied and discharged from and

against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(v) DIP Lenders' Charge

In accordance with the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, the Just Energy Entities shall pay to the DIP Agent an amount equal to the DIP Lenders' Claim in full in cash in the currency that such DIP Lenders' Claim was originally denominated in full and final satisfaction of the DIP Lenders' Claim. Upon the Effective Date, the DIP Lenders' Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(vi) Priority Commodity/ISO Charge

In accordance with the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, the Priority Commodity/ISO Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(vii) Cash Management Charge

In accordance with the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, the Cash Management Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(viii) Termination Fee Charge

In accordance with the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, the Termination Fee Charge shall be and be deemed to be fully and finally satisfied and discharged from and against any and all assets of the Just Energy Entities and the Plan Implementation Fund.

(b) Commodity Supplier Claims

In accordance with the steps and sequences set forth in the Restructuring Steps Supplement, on the Effective Date, the Just Energy Entities shall pay to each Commodity Supplier an amount equal to such Commodity Supplier's Commodity Supplier Claim in full in cash in the currency that such Commodity Supplier Claim was originally denominated in full and final satisfaction of such Commodity Supplier Claim.

(c) Government Priority Claims

On or as soon as reasonably practicable following the Effective Date, the applicable Just Energy Entities shall pay or cause to be paid in full all Government Priority Claims, if any, outstanding as

at the Filing Date or related to the period ending on the Filing Date, to the applicable Governmental Entity.

(d) Employee Priority Claims

On the Effective Date, applicable Just Energy Entities shall pay or cause to be paid in full all Employee Priority Claims due and accrued to the Effective Date, to each holder of an Employee Priority Claim to the full amount of his, her, or their respective Employee Priority Claim.

(e) Post-Filing Claims and Energy Regulator Claims in the Ordinary Course

All Post-Filing Claims and all Energy Regulator Claims outstanding as of the Effective Date, if any, shall be paid by the applicable Just Energy Entity in the ordinary course consistent with past practice, and, for greater certainty, any cash collateral of any of the Just Energy Entities held by any such Person to the Just Energy Entities shall be unaffected by the Plan and shall continue to be held in accordance with existing terms.

(f) Intercompany Claims

On or prior to the Effective Date, Intercompany Claims shall be paid in cash or property, set-off, cancelled, maintained, re-instated, contributed or distributed, or otherwise addressed, in each case, as set forth on the books and records of, and/or in documents executed by, the applicable Just Energy Entity (provided that any such documents executed after the date of the Support Agreement shall be in form and substance satisfactory to the Plan Sponsor, acting reasonably) and in accordance with the terms and in the steps and sequences set forth in the Restructuring Steps Supplement, all of which, in the manner agreed by the Just Energy Entities and the Plan Sponsor, each acting reasonably.

5.5 Distributions in respect of Transferred Claims

The Just Energy Entities and the Monitor shall not be obligated to deliver any distributions under the Plan to any transferee of the whole of an Affected Claim unless a Proof of Assignment has been delivered to the Monitor no later than the Initial Distribution Record Date or, in the case of a Beneficial Term Loan Claim Holder, the Term Loan Record Date.

5.6 Treatment of Undeliverable Distributions

If any Creditor entitled to a distribution pursuant to the Plan cannot be located by the Monitor on the applicable Distribution Date, or if any Creditor's distribution under the Plan is returned as undeliverable (an "**Undeliverable Distribution**"), no further distributions to such Creditor shall be made unless and until the Monitor is notified by such Creditor of such Creditor's current address, at which time all such distributions shall be made to such Creditor. If such Creditor cannot be located by the Monitor or if any delivery or distribution to be made pursuant to the Plan is returned as undeliverable, or in the case of any distribution made by cheque, the cheque remains uncashed, for a period of more than six (6) months after the applicable Distribution Date or the date of delivery or mailing of the cheque, whichever is later, the Claim of any Creditor with respect to such undelivered or unclaimed distribution shall be discharged and forever barred, notwithstanding any Applicable Law to the contrary, and any such cash allocable to the

undeliverable or unclaimed distribution shall be released and returned by the Monitor to New Just Energy Parent or its designee, free and clear of any claims of such Creditor or any other Creditors and their respective successors and assigns. Nothing contained in the Plan shall require the Just Energy Entities, New Just Energy Parent or the Monitor to attempt to locate any holder of any Undeliverable Distributions.

5.7 Currency

Unless specifically provided for in the Plan or the Sanction Order, any payment or distribution provided for in the Plan in respect of any Affected Claim shall be made in the currency denominated in the Proof of Claim or Negative Notice Claims Package, as applicable, relating to such Affected Claim, and if no currency has been denominated in such Proof of Claim or Negative Notice Claims Package, then such Affected Claim shall be deemed to be denominated in Canadian dollars.

5.8 Allocation of Payments and Distributions

All payments and distributions made pursuant to the Plan shall be allocated first towards the repayment of the principal amount in respect of the applicable Claim and second, if any, towards the repayment of all accrued but unpaid interest in respect of the applicable Claim.

5.9 Interest

Interest shall not accrue or be paid on any Affected Claim of any of the General Unsecured Creditors or Beneficial Term Loan Claim Holders on or after the Filing Date, and no holder of any such Claim shall be entitled to interest accruing on or after the Filing Date.

5.10 Tax Matters

All distributions hereunder shall be subject to any withholding and reporting requirements imposed by any Applicable Law or any Taxing Authority and the Just Energy Entities or the applicable agent shall, and shall direct the Monitor, on behalf of the Just Energy Entities or the applicable agent, to, deduct, withhold and remit from any distributions hereunder payable to a Creditor or to any Person on behalf of any Creditor, such amounts, if any, as the Just Energy Entities or the applicable agent determines that it or the Monitor, on behalf of the Just Energy Entities or the applicable agent, is required to deduct and withhold with respect to such payment under the ITA or under Applicable Law. To the extent that amounts are so deducted and withheld, such withheld amounts shall be treated for all purposes as having been paid to the Person in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate Taxing Authority.

5.11 Priority Claims

Any terms or conditions of any Affected Claim of any of the General Unsecured Creditors or Beneficial Term Loan Claim Holders which purport to deal with the ordering of or grant of priority of payments of principal, interest, penalties, or other amounts shall be deemed to be void and ineffective.

5.12 Fractional Interests

No fractional interests of New Shares ("**Fractional Interests**") will be issued or allocated under the Plan. Any legal, equitable, contractual and any other rights or claims (whether actual or contingent, and whether or not previously asserted) of any Person with respect to any Fractional Interests shall be rounded down to the nearest whole number without compensation therefor.

5.13 Calculations

All amounts of consideration to be received hereunder will be calculated to the nearest cent ($0.01). All calculations and determinations made by the Monitor and/or the Just Energy Entities and agreed to by the Monitor for the purposes of and in accordance with the Plan, including, without limitation, the allocation of consideration, shall be conclusive, final and binding.

5.14 Cancellation

On the Effective Date, in accordance with the terms and in the steps and sequences set forth in the Restructuring Steps Supplement, and except as otherwise expressly provided for herein, all debentures, indentures, notes, certificates, agreements, invoices, guarantees, pledges and other instruments evidencing Affected Claims (excluding the Credit Facility Claims) and Existing Equity shall (a) not entitle any holder thereof to any compensation or participation other than as expressly provided for in the Plan; and (b) be cancelled and will be null and void (other than, for certainty, the Common Shares transferred and the Common Shares issued to New Just Energy Parent on the Effective Date in accordance with the steps and sequences set forth in the Restructuring Steps Supplement, the Intercompany Interests and the New Shares).

5.15 Modifications to Distribution Mechanics

The Just Energy Entities and the Monitor, as applicable, in each case with the consent of the Plan Sponsor, acting reasonably, and in the case of payment or distributions on account of the Credit Facility Claims, with the consent of the Credit Facility Agent, acting reasonably, shall be entitled to make such additions and modifications to the process for making distributions pursuant to the Plan as may be deemed necessary or desirable in order to achieve the proper distribution and allocation of consideration to be distributed pursuant to the Plan, and any such additions or modifications shall not require an amendment to the Plan or any further Order of the Court in the CCAA Proceeding or the U.S. Court in the Chapter 15 Proceeding.

ARTICLE 6
RESTRUCTURING TRANSACTION

6.1 Corporate Actions

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving any corporate actions of the Just Energy Entities will occur and be effective as of the Effective Date, and shall be deemed to be authorized and approved under the Plan and by the Court, where applicable, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, partners, Directors or Officers of the Just Energy Entities. All necessary approvals to take actions shall be deemed to have been

obtained from the Directors, Officers, shareholders or partners of the Just Energy Entities, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and any shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by the Plan shall be deemed to have no force or effect.

6.2 Effective Date Transactions

The steps and compromises and releases to be effected in the implementation of the Plan shall occur, and be deemed to have occurred in the order and manner to be set out in a supplement to the Plan in accordance with Section 11.7 (the "**Restructuring Steps Supplement**"), without any further act or formality. The Restructuring Steps Supplement shall be in form and substance acceptable to the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably, provided that in no event will the Restructuring Steps Supplement be materially prejudicial to the interests of any Creditors under the other sections of this Plan.

6.3 Issuances Free and Clear

Any issuance of any securities or other consideration pursuant to the Plan will be free and clear of any Encumbrances, except as otherwise provided herein.

ARTICLE 7
REGULATORY MATTERS

7.1 Competition Act and Investment Canada Act Approval

New Just Energy Parent and the Plan Sponsor, each acting reasonably, shall work together in good faith to determine, on a date that is not later than ten (10) Business Days following the date of the Backstop Commitment Letter (the "**Determination Date**"), whether it is necessary or advisable that a filing be made to obtain Competition Act Approval and/or Investment Canada Act Approval in connection with the transactions contemplated by the Plan. In the event that New Just Energy Parent and the Plan Sponsor jointly determine that Competition Act Approval and/or Investment Canada Act Approval is required or should be obtained, as applicable:

(a) New Just Energy Parent and the Plan Sponsor shall, as soon as reasonably practicable, and in no event more than ten (10) Business Days after the Determination Date, submit a request to the Commissioner for an Advance Ruling Certificate or, in the alternative, a No Action Letter in respect of the transactions contemplated by the Plan;

(b) New Just Energy Parent and the Plan Sponsor shall submit, at their joint election and within ten (10) Business Days of such mutually agreed election, notification filings in accordance with Part IX of the Competition Act in respect of the transactions contemplated by the Plan; and

(c) the Plan Sponsor shall, as soon as reasonably practicable and in no event more than ten (10) Business Days after the Determination Date, submit the notification for the Investment Canada Act Approval.

7.2 Antitrust Approvals

On a date that is on or prior to the Determination Date, New Just Energy Parent and the Plan Sponsor, each acting reasonably, shall also work together in good faith to determine whether any Antitrust Approvals are required or advisable and if so, shall proceed to make any such filings on an expeditious basis. New Just Energy Parent shall be responsible for the payment of any filing fees required to be paid in connection with any filing made in respect of the Competition Act Approval and the Antitrust Approvals, as applicable.

7.3 Regulatory Approvals

New Just Energy Parent and the Plan Sponsor shall, from and after the date hereof, work together to determine whether any Regulatory Approvals would be required to be obtained in order to permit JEGI, New Just Energy Parent and Plan Sponsor to perform their obligations hereunder and the issuing, acquisition and holding of the New Common Shares. In the event any such determination is made, New Just Energy Parent and the Plan Sponsor shall use commercially reasonable efforts to apply for and obtain any such Regulatory Approvals in accordance with Section 7.4 as soon as reasonably practicable, except for such Regulatory Approvals that need not be obtained or in full force and effect prior to the implementation of the Plan, which shall be applied for as soon as reasonably practicable after the implementation of the Plan, in each case at the sole cost and expense of New Just Energy Parent.

7.4 Transaction Regulatory Approvals

New Just Energy Parent and the Plan Sponsor shall use commercially reasonable efforts to apply for and obtain the Transaction Regulatory Approvals and shall co-operate with one another in connection with obtaining such approvals. Without limiting the generality of the foregoing, New Just Energy Parent and the Plan Sponsor shall: (a) give each other reasonable advance notice of all meetings or other oral communications with any Governmental Entity relating to the Transaction Regulatory Approvals, as applicable, and provide as soon as practicable but in any case, if any, within the required time, any additional submissions, information and/or documents requested by any Governmental Entity necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (b) not participate independently in any such meeting or other oral communication regarding the Transaction Regulatory Approvals without first giving the other party (or the other party's outside counsel) an opportunity to attend and participate in such meeting or other oral communication, unless otherwise required or requested by such Governmental Entity; (c) if any Governmental Entity initiates an oral communication regarding the Transaction Regulatory Approvals as applicable, promptly notify the other party of the substance of such communication; (d) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any Just Energy Entity or Plan Sponsor) with a Governmental Entity regarding the Transaction Regulatory Approvals as applicable; and (e) promptly provide each other with copies of all written communications to or from any Governmental Entity relating to the Transaction Regulatory Approvals as applicable.

7.5 Competitively Sensitive Information

Each of New Just Energy Parent and the Plan Sponsor may, as advisable and necessary (acting reasonably), designate any competitively sensitive material provided to the other under this Article 7 as "Outside Counsel Only Material"; provided that, the disclosing party also provides a redacted version to the receiving party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between New Just Energy Parent and Plan Sponsor, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.

7.6 No Divestitures or Material Operating Restrictions

The obligation of New Just Energy Parent and the Plan Sponsor to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require New Just Energy Parent or the Plan Sponsor (or any Affiliate thereof) to undertake any divestiture of any business or business segment of New Just Energy Parent or the Plan Sponsor (or any Affiliate thereof), to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Plan Sponsor and New Just Energy Parent. In connection with obtaining the Transaction Regulatory Approvals, no Just Energy Entity shall agree to any of the foregoing items without the prior written consent of the Plan Sponsor.

ARTICLE 8
RELEASES

8.1 Third-Party Releases

On the Effective Date, in accordance with the steps and sequences set forth in the Restructuring Steps Supplement, (a) the Just Energy Entities and their respective current and former employees, contractors, advisors, legal counsel and agents; (b) the Directors and Officers; (c) the Monitor, the Supporting Parties, the Backstop Parties, the DIP Agent, the DIP Lenders, the Plan Sponsor, the Credit Facility Agent, the Term Loan Agent and the Subordinated Note Trustee, and each of their respective present and former affiliates, subsidiaries, directors, officers, members, partners, employees, auditors, advisors, legal counsel and agents (collectively, (a), (b) and (c), in their capacities as such, the "**Released Parties**" and individually a "**Released Party**") shall be released by the Releasing Parties and discharged from any and all demands, claims, actions, Causes of Action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity, which any Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Effective Date, or that relates to matters relating to implementation of the Plan, including distributions pursuant to the Plan following the Effective Date, that constitute or are in any way relating to, arising out of or in connection with (i) any Claims (including Equity Claims), any D&O Claims or any D&O Indemnity Claims with respect thereto, (ii) any payments, distributions or share

issuances under the Plan, (iii) the business and affairs of the Just Energy Entities whenever or however conducted, (iv) the business and assets of the Just Energy Entities, (v) the administration and/or management of the Just Energy Entities, (vi) the Affected Claims, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the Plan, the Existing Equity, the CCAA Proceeding or the Chapter 15 Proceeding, or any document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing, (vii) any contract that has been restructured, terminated, repudiated, disclaimed, or resiliated in accordance with the CCAA, (viii) the liabilities of the Directors and Officers and any alleged fiduciary or other duty, including any and all Claims that may be made against the Directors or Officers where by law such Directors or Officers may be liable in their capacity as Directors or Officers, or (ix) any Claim that has been barred or extinguished by the Claims Procedure Order (subject to the excluded matters in the proviso below, referred to collectively as the "**Released Claims**" and individually a "**Released Claim**"), and all Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law; provided that, nothing therein will waive, discharge, release, cancel or bar (w) any obligations of any of the Released Parties under or in connection with the Plan, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the New Credit Facility Documents, the New Intercreditor Agreement, the New Shares, the MIP or the New Corporate Governance Documents, (x) the Just Energy Entities from or in respect of any Unaffected Claim that has not been paid in full under the Plan, (y) subject to Section 8.4, any claim that is not permitted to be released pursuant to section 19(2) of the CCAA, or (z) any Director from any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

8.2 Debtor Releases

On the Effective Date, in accordance with the steps and sequences set forth in the Restructuring Steps Supplement, the Released Parties shall be released by each of the Just Energy Entities and their respective current and former affiliates, and discharged from, any and all Released Claims held by the Just Energy Entities as of the Effective Date, and all Released Claims shall be deemed to be fully, finally, irrevocably, and forever waived, discharged, released, cancelled, and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law; provided that, nothing therein will waive, discharge, release, cancel or bar (a) any obligations of any of the Released Parties under or in connection with the Plan, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the New Credit Facility Documents, the New Intercreditor Agreement, the New Shares, the MIP or the New Corporate Governance Documents; (b) the Just Energy Entities from or in respect of any Unaffected Claim that has not been paid in full under the Plan; (c) subject to Section 8.7, any claim that is not permitted to be released pursuant to section 19(2) of the CCAA; or (d) any Director from any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

Notwithstanding anything to the contrary in the Plan and the Definitive Documents (and any exhibits thereto), or in the Sanction Order or the Sanction Recognition Order, the releases set forth in this Section 8.2 shall not include, nor limit or modify in any way, any Claim (or any defenses) which any of the Just Energy Entities may hold or be entitled to assert against any Released Party as of the Effective Date relating to any contracts, leases, agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices, or other ordinary course obligations which are remaining in effect following the Effective Date.

8.3 Limitation on Insured Claims

Notwithstanding anything to the contrary in this Article 8, Insured Claims shall not be compromised, released, discharged, cancelled or barred by the Plan; provided that, from and after the Effective Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with an Insured Claim shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries in respect thereof from the Just Energy Entities, any Director or Officer or any other Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

8.4 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all claim or Cause of Action released under this Plan (including, but not limited to the Released Claims), from (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties or Exculpated Parties; (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, Exculpated Parties, or their respective property; (c) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties or the Exculpated Parties; (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, Exculpated Parties, or their respective property; or (e) taking any actions to interfere with the implementation or consummation of the Plan; and any such proceedings will be deemed to have no further effect against the Just Energy Entities or any of their assets and will be released, discharged or vacated without cost to the Just Energy Entities.

8.5 Exculpation

Effective as of the Effective Date, to the fullest extent permissible under Applicable Law and without affecting or limiting Section 8.1, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action against such Exculpated Party for any act or omission in connection with, relating to, or arising out of the CCAA Proceeding, the Chapter 15 Proceeding, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Support Agreement, the Backstop Commitment Letter, the Plan, any Definitive Documents, or the recognition thereof in the United States, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the filing of the CCAA Proceeding or the Chapter 15 Proceeding, the pursuit of approval and/or of consummation of the Plan, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion

requested by any Person or entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on any Orders of the Court or the U.S. Court or in lieu of such legal opinion), except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon entry of an order approving the Plan, shall be deemed to have, participated in good faith and in compliance with the Applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any Applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan or for any actions taken in the Chapter 15 Proceeding seeking and obtaining recognition thereof.

8.6 Consenting Parties

In addition to and without limiting in any way the terms of this Article 8, on the Effective Date, each Consenting Party shall be deemed to have consented and agreed to this Article 8, including the releases, injunctions and exculpation referred to herein.

8.7 Compromise of Claims under Section 19(2) of the CCAA

On the Effective Date, the following Claims shall be compromised under the Plan, including pursuant to the terms of this Article 8, and shall be deemed to be a Released Claim pursuant to this Article 8:

(a) any fine, penalty, restitution order, or other order similar in nature to a fine, penalty, or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of (i) bodily harm intentionally inflicted, or sexual assault, or (ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation, or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the Just Energy Entities that arises from an Equity Claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d),

provided that, this Section 8.7 shall only apply to a Person who voted (in person or by proxy) in favour of the Plan.

ARTICLE 9
COURT SANCTION

9.1 Application for Sanction Order

If the Required Majorities approve the Plan, the Applicants shall apply for the Sanction Order in accordance with the terms of the Support Agreement.

9.2 Sanction Order

The Just Energy Entities shall seek a Sanction Order that, among other things:

(a) declares that (i) the Plan has been approved by the Required Majorities in conformity with the CCAA, (ii) the Just Energy Entities have acted in good faith and been in compliance with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding in all respects, (iii) the Court is satisfied that the Just Energy Entities have not done or purported to do anything that is not authorized by the CCAA, and (iv) the Plan and the transactions contemplated by the Plan are fair and reasonable;

(b) declares that as of the Effective Time, the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved pursuant to section 6 of the CCAA, binding and effective as herein set out upon and with respect to the Just Energy Entities, all Creditors and all other Persons named or referred to in or subject to the Plan;

(c) declares that the steps to be taken and the compromises and releases to be effective on the Effective Date are deemed to occur and be effected in the steps and sequential order set forth in the Restructuring Steps Supplement, beginning at the Effective Time;

(d) declares that the releases effected by the Plan are approved and declared to be binding and effective as of the Effective Date upon the Just Energy Entities, all Creditors, all Persons with Released Claims and all other Persons named or referred to in or subject to the Plan, and shall enure to the benefit of all such Persons;

(e) declares that, subject to performance by the Just Energy Entities of their obligations under the Plan and except as provided in the Plan or the Sanction Order, all obligations, agreements or leases to which any of the Just Energy Entities are a party on the Effective Date, including all Continuing Contracts, shall be and remain in full force and effect, unamended, as at the Effective Date, except as they may have been amended by the parties thereto subsequent to the Filing Date, and no party to any such obligation or agreement shall on or following the Effective Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right (including any right of set-off, option, dilution or other remedy) or remedy under or in respect of any such obligation or agreement, by reason: (i) of any event which occurred prior to, and not continuing after, the

Effective Date, or which is or continues to be suspended or waived under the Plan, which would have entitled such party to enforce those rights or remedies, (ii) that the Just Energy Entities have sought or obtained relief or have taken steps as part of the Plan or under the CCAA or Chapter 15, or that the Plan has been implemented by the Just Energy Entities, (iii) of any default or event of default arising as a result of the financial condition or insolvency of the Just Energy Entities, (iv) of any change of control of the Just Energy Entities arising from implementation of the Plan, (v) of the effect upon the Just Energy Entities of the completion of any of the transactions contemplated by the Plan, or (vi) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan; and declares that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any non-competition agreement or obligation, provided that such agreement shall terminate or expire in accordance with the terms thereof or as otherwise agreed by the Just Energy Entities and the applicable Persons;

(f) authorizes the establishment of the Plan Implementation Fund with the Monitor and authorizes the Monitor to perform its functions and fulfil its obligations under the Plan and to facilitate the implementation of the Plan on and after the Effective Date, including matters relating to the resolution of Disputed Claims, distributions and payments from the Plan Implementation Fund and the termination of the CCAA Proceeding and the Chapter 15 Proceeding;

(g) subject to the payment of the amounts secured thereby, declares, except for the Administration Charge which shall continue against the Administrative Expense Reserve, all CCAA Charges, shall be terminated, released and discharged effective on the Effective Date;

(h) provides the basis for an exemption from the registration requirements of the U.S. Securities Act in respect of the distribution of the New Shares pursuant to Section 1145 and section 4(a)(2) of the U.S. Securities Act, in each case, as described in Section 5.3(g) to 5.3(i);

(i) declares all Accepted Claims and Disallowed Claims determined in accordance with the Claims Procedure Order are final and binding on the Just Energy Entities and all Creditors and that all Encumbrances of Affected Creditors (other than Encumbrances in respect of Unaffected Claims, the New Credit Facility and the New Intercreditor Agreement), including all security registrations in respect thereof, are discharged and extinguished, and the Just Energy Entities or their counsel shall be authorized and permitted to file discharges and full terminations of all related filings (whether pursuant to personal property security legislation or otherwise) against the Just Energy Entities in any jurisdiction without any further action or consent required whatsoever;

(j) declares any Claims that have been preserved in accordance with the Claims Procedure Order against Directors that cannot be compromised due to the provisions of section 5.1(2) of the CCAA will be limited in recovery to the proceeds of any Insurance Policy;

(k) declares that, from and after the Effective Date, any Person may only commence an action for a D&O Claim against a Director or Officer if such Person has first obtained (i) the consent of the Monitor, or (ii) the leave of the Court on notice to the applicable Director or Officer, the Just Energy Entities, the Monitor and any applicable insurer(s);

(l) declares the New Credit Facility, the New Credit Facility Documents, the New Intercreditor Agreement, the MIP, and the New Corporate Governance Documents are approved and the applicable Just Energy Entities and New Just Energy Parent shall be authorized and directed to carry out their obligations thereunder; and

(m) declares that each Just Energy Entity shall indemnify any Director, Officer or other Person employed or previously employed by a Just Energy Entity for any amount for which such Person is held personally liable as a result of nonpayment of any Taxes (including, without limitation, sale, use, withholding, unemployment and excise Tax) by a Just Energy Entity, along with any expenses or fees incurred in connection with defending any matter for which any of the foregoing Persons could be entitled to indemnification, notwithstanding any provision of the Plan; provided that:

(i) the terms of indemnification shall be consistent with the indemnification obligations of the Just Energy Entities for Directors and Officers immediately prior to the Filing Date; provided that: (A) Persons employed or previously employed by a Just Energy Entity shall be afforded the benefit of such indemnification obligations notwithstanding that they may not be Directors or Officers; (B) the indemnification obligations shall be indefinite; and (C) all Just Energy Entities shall be subject to the indemnification obligations herein;

(ii) the foregoing indemnification obligations shall not apply in circumstances of fraud, gross negligence or wilful misconduct; and

(iii) notwithstanding subparagraphs (i) and (ii) above, where gross negligence or wilful misconduct are requirements for a beneficiary of these indemnification obligations to be held personally liable as a result of nonpayment of any Taxes by a Just Energy Entity, the Just Energy Entities shall indemnify the applicable Director, Officer or other Person notwithstanding any gross negligence or wilful misconduct, and in such cases there shall be no requirement that the Director, Officer or other Person had reasonable grounds for believing their conduct was lawful.

ARTICLE 10
CONDITIONS PRECEDENT AND IMPLEMENTATION

10.1 Conditions Precedent to Implementation of the Plan

The implementation of the Plan shall be conditional upon satisfaction or waiver, where applicable, of the following conditions prior to or at the Effective Date, each of which is for the mutual benefit

of the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, and subject to the Support Agreement may be waived by the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably (except, in the case of Sections 10.1(a) and (c)(i) below, which may not be waived):

(a) the Plan shall have been approved by the Required Majorities in conformity with the CCAA;

(b) the Restructuring Steps Supplement and the treatment of the Intercompany Claims pursuant to the Plan shall have been agreed to by the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably;

(c) (i) the Sanction Order shall have been issued by the Court, (ii) the Sanction Recognition Order shall have been entered by the U.S. Court, and (iii) each of the Sanction Order and the Sanction Recognition Order shall have become a Final Order;

(d) (i) the Authorization Order shall have been issued by the Court, (ii) the Authorization Recognition Order shall have been entered by the U.S. Court, and (iii) each of the Authorization Order and the Authorization Recognition Order shall have become a Final Order;

(e) (i) the Meetings Order shall have been issued by the Court, (ii) the Meetings Recognition Order shall have been entered by the U.S. Court, (iii) the Claims Procedure Recognition Order shall have been entered by the U.S. Court, and (iv) each of the Meetings Order, the Meetings Recognition Order and the Claims Procedure Recognition Order shall have become a Final Order;

(f) the commitments of each of the parties to the Support Agreement (as set out therein) shall have been satisfied in all material respects or waived in accordance with the terms of the Support Agreement;

(g) the conditions to the Backstop Parties' commitments under the Backstop Commitment Letter (as set out therein) shall have been satisfied or waived in accordance with its terms;

(h) the Just Energy Entities have provided for the payment or satisfaction in full of the DIP Lenders' Claim, the Commodity Supplier Claims, the Government Priority Claims, the Employee Priority Claims and the amounts secured by the Administration Charge, the FA Charge, the Directors' Charge and the KERP Charge;

(i) the Monitor shall have received from the Just Energy Entities the funds necessary to establish and shall have established the Plan Implementation Fund;

(j) no proceeding shall have been commenced that could reasonably be expected to result in an injunction or other order to, and no injunction or other order shall have been issued to, enjoin, restrict or prohibit any of the transactions contemplated by the Plan, the Support Agreement or the Backstop Commitment Letter;

(k) each of the New Credit Facility Documents and the New Intercreditor Agreement, shall be in form and substance consistent with the term sheets for the New Credit Facility and New Intercreditor Agreement appended to the Restructuring Term Sheet and containing such other terms as agreed by the Just Energy Entities, the Plan Sponsor and the parties thereto, each acting reasonably, and shall have become effective in accordance with its terms, subject only to the implementation of the Plan;

(l) 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;

(m) the New Boards shall have been appointed in accordance with the terms of the Support Agreement and the New Corporate Governance Documents, and the MIP and the New Corporate Governance Documents shall be in form and substance acceptable to the Just Energy Entities and the Plan Sponsor, each acting reasonably, and shall have become effective, subject only to the implementation of the Plan;

(n) the aggregate amount of the New Equity Offering Proceeds and Cash on Hand shall be equal to or greater than the total amount to be paid, distributed or reserved for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan in accordance with its terms;

(o) the total amounts to be paid, distributed or reserved in Canadian and US dollars for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan in accordance with its terms shall not exceed $170,000,000 and US$337,000,000, respectively, plus any accrued and outstanding interest with respect to such amounts;

(p) Shell shall have confirmed, in writing, to the Just Energy Entities and the Plan Sponsor that (i) it will not exercise any termination right under its Continuing Contracts solely as a result of the CCAA Proceeding, the Chapter 15 Proceeding, the Plan or any document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing, and (ii) all existing and any potential future trades will be transacted in accordance with the Continuing Contracts (as may be amended, restated, supplemented and/or replaced by the Just Energy Entities and Shell from time to time following the Effective Date) or new arrangements, in each case, in accordance with the terms thereof and subject to the terms of the New Intercreditor Agreement. The Continuing Contracts with respect to Shell shall not include the Third Amended and Restated Scheduling Coordinator Agreement dated December 1, 2014 between Shell Energy North America (US), L.P., Just Energy New York Corp, JEUS and Just Energy Solutions Inc. (formerly Commerce Energy, Inc.) or any other agreement whereby Shell performs ISO or scheduling services on behalf of any Just

Energy Entity whereby a Just Energy Entity has reimbursement obligations to Shell for payments made by Shell on behalf of a Just Energy Entity to an ISO;

(q) all required Transaction Regulatory Approvals shall have been obtained and shall be in full force and effect, except for such Transaction Regulatory Approvals that need not be obtained or in full force and effect prior to the implementation of the Plan;

(r) all necessary corporate action and proceedings of the Just Energy Entities shall have been taken to approve the Plan and to enable the Just Energy Entities to execute, deliver, and perform their respective obligations under the agreements, documents, and other instruments to be executed and delivered by it pursuant to the Plan;

(s) all agreements, resolutions, documents, and other instruments, which are reasonably necessary to be executed and delivered by the Just Energy Entities, in order to implement the Plan or perform their respective obligations under the Plan or the Sanction Order, shall have been executed and delivered;

(t) the MIP shall have been executed on terms consistent in all respects with the management incentive plan term sheet, attached as Exhibit 4 to the Restructuring Term Sheet;

(u) each of the Employment Agreements shall either (i) not have been disclaimed and remain in place; or (ii) otherwise have been amended as contemplated by the Support Agreement; and

(v) the Effective Date shall have occurred on or prior to the Outside Date.

10.2 Monitor's Certificate

Upon delivery of written notice from each of the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor of the satisfaction or waiver of the conditions precedent to implementation of the Plan as set out in Section 10.1, the Monitor shall forthwith deliver to the Just Energy Entities, the Credit Facility Lenders and the Plan Sponsor a certificate substantially in the form attached to the Sanction Order stating that the Effective Date has occurred and that the Plan is effective in accordance with its terms and the terms of the Sanction Order (the "**Monitor's Certificate**"). As soon as practicable following the Effective Date, the Monitor shall file such certificate with the Court and with the U.S. Court, and shall post a copy of same on the Monitor's Website.

ARTICLE 11
GENERAL

11.1 Binding Effect

On the Effective Date, or as otherwise provided in the Plan:

(a) the Plan will become effective and binding at the Effective Time and the sequence of steps set out in the Restructuring Steps Supplement will be implemented;

(b) the treatment of Affected Claims under the Plan shall be final and binding for all purposes and shall be binding upon and enure to the benefit of the Just Energy Entities, the Plan Sponsor, all Affected Creditors, any Person having a Released Claim and all other Persons directly or indirectly named or referred to in or subject to the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(c) all Affected Claims shall be forever discharged and released, excepting only the distribution thereon in the manner and to the extent provided for in the Plan;

(d) all Released Claims shall be forever discharged, released, enjoined and barred;

(e) each Person named or referred to in or subject to the Plan shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety;

(f) each Person named or referred to in, or subject to, the Plan shall be deemed to have executed and delivered to the Just Energy Entities all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety; and

(g) each Person named or referred to in, or subject to, the Plan shall be deemed to have received from the Just Energy Entities all statements, notices, declarations and notifications, statutory or otherwise, required to implement and carry out the Plan in its entirety.

11.2 Waiver of Defaults

(a) From and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of the Just Energy Entities then existing or previously committed by any of the Just Energy Entities, or caused by any of the Just Energy Entities, the commencement of the CCAA Proceeding or the Chapter 15 Proceeding, any matter pertaining to the CCAA Proceeding or Chapter 15 Proceeding, any of the provisions in the Plan or steps or transactions contemplated in the Plan, or any non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, indenture, note, lease, guarantee, agreement for sale or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and any of the Just Energy Entities, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith shall be deemed to have been rescinded and of no further force or effect; provided that, nothing shall be deemed to excuse the Just Energy Entities from performing their respective obligations under the Plan and the related documents, or be a waiver of defaults by any of the Just Energy Entities under the Plan and the related documents.

(b) Effective on the Effective Date, any and all agreements that are assigned to New Just Energy Parent shall be and remain in full force and effect, unamended, as at the Effective Date, and no Person shall, following the Effective Date, accelerate,

terminate, rescind, refuse to perform or otherwise repudiate its obligations under, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand against New Just Energy Parent or any Just Energy Entity under or in respect of any such agreement, by reason of: (i) any event that occurred on or prior to the Effective Date that would have entitled any Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Just Energy Entities), (ii) the fact that the Just Energy Entities commenced or completed the CCAA Proceeding or the Chapter 15 Proceeding, (iii) the implementation of the Plan, or the completion of any of the steps, transactions or things contemplated by the Plan, or (iv) any compromises, arrangements, transactions, releases, discharges or injunctions effected pursuant to the Plan or any Order.

11.3 Claims Bar Date

Nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order.

11.4 Preferential Transactions

Sections 95 to 101 of the BIA and any Applicable Law relating to preferences, settlements, fraudulent conveyances, or transfers at undervalue shall not apply in any respect, including, without limitation, to any dealings prior to the Filing Date, to the Plan, to any payments or distributions made in connection with the restructuring and recapitalization of the Just Energy Entities, whether made before or after the Filing Date, or to any and all transactions contemplated by and to be implemented pursuant to the Plan; provided, however, that the foregoing shall not apply with respect to the subject matter of the Adversary Proceeding.

11.5 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

11.6 Non-Consummation

Subject to the Support Agreement, the Just Energy Entities reserve the right to revoke or withdraw the Plan at any time prior to the Effective Date. Subject to the Support Agreement, if the Just Energy Entities revoke or withdraw the Plan, or if the Sanction Order is not issued or if the Effective Date does not occur, (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan or any document or agreement executed pursuant to or in connection with the Plan shall be deemed to be null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against any of the Just Energy Entities or any other Person, (ii) prejudice in any manner the rights of the Just Energy Entities or any other Person in any further proceedings involving any of the Just Energy Entities, or (iii) constitute an admission of any sort by any of the Just Energy Entities or any other Person.

11.7 Amendments to the Plan Prior to Approval

Subject to the terms and conditions of the Support Agreement, the Just Energy Entities reserve the right to vary, modify, amend, or supplement the Plan by way of a supplementary or amended and restated plan or plans of compromise or arrangement or both filed with the Court at any time or from time to time prior to the commencement of the Meetings; provided that, the Just Energy Entities obtain the prior consent of the Plan Sponsor, the Credit Facility Lenders, Shell and the Monitor to any such variation, modification, amendment, or supplement, which consent shall not be unreasonably withheld, conditioned or delayed. Any such supplementary or amended and restated plan or plans of compromise or arrangement or both shall, for all purposes, be deemed to be a part of and incorporated into the Plan. Any such variation, modification, amendment, or supplement shall be posted on the Monitor's Website and e-mail notice will be provided to the CCAA Proceeding service list. Creditors are advised to check the Monitor's Website regularly. Creditors who wish to receive written notice of any variation, modification, amendment, or supplement to the Plan should contact the Monitor in the manner set out in Section 11.14 of the Plan. Creditors in attendance at the Meetings will also be advised of any such variation, modification, amendment or supplement to the Plan.

In addition, the Just Energy Entities may propose a variation or modification of, or amendment, or supplement to, the Plan during the Meetings, provided that the Just Energy Entities obtain the prior consent of the Plan Sponsor, the Credit Facility Lenders, Shell and the Monitor to any such variation, modification, amendment, or supplement, which consent shall not be unreasonably withheld, conditioned or delayed, and that notice of such variation, modification, amendment, or supplement is given to all Creditors entitled to vote, present in person or by proxy at the applicable Meeting prior to the vote being taken at such Meeting, in which case any such variation, modification, amendment, or supplement shall, for all purposes, be deemed to be part of and incorporated into the Plan. Any variation, amendment, modification, or supplement at a Meeting will be promptly posted on the Monitor's Website, served by e-mail to the service list in the CCAA Proceeding and filed with the Court as soon as practicable following the applicable Meeting.

11.8 Amendments to the Plan Following Approval

After the Meetings (and both prior to and subsequent to obtaining the Sanction Order), the Just Energy Entities may at any time and from time to time vary, amend, modify, or supplement the Plan without the need for obtaining an Order of the Court or providing notice to the Creditors, if the Just Energy Entities, the Plan Sponsor, the Credit Facility Lenders, Shell and the Monitor, each acting reasonably, determine that such variation, amendment, modification, or supplement would not be materially prejudicial to the interests of any Creditors under the Plan or is necessary in order to give effect to the substance of the Plan or the Sanction Order.

11.9 Paramountcy

From and after the Effective Time on the Effective Date, any conflict between:

(a) the Plan or any Final Order of the Court in the CCAA Proceeding or the U.S. Court in the Chapter 15 Proceeding; and

(b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Just Energy Entities immediately prior to the Effective Date or the notice of articles, articles, bylaws or constating documents of the Just Energy Entities or New Just Energy Parent immediately prior to the Effective Date,

will be deemed to be governed by the terms, conditions and provisions of the Plan or the applicable Final Order, which shall take precedence and priority; provided that, any settlement agreement executed by the Just Energy Entities and any Person asserting a Claim that was entered into from and after the Filing Date shall be read and interpreted in a manner that assumes such settlement agreement is intended to operate congruously with, and not in conflict with, the Plan.

11.10 Severability of Plan Provisions

If any term, section or provision of the Plan is held by the Court or the U.S. Court to be invalid, void or unenforceable, the Court or the U.S. Court, as applicable, at the request of the Just Energy Entities and with the consent of the Monitor, the Credit Facility Lenders and the Plan Sponsor, each acting reasonably, shall have the power to either (a) sever such term, section or provision from the balance of the Plan as approved by the Court or the U.S. Court, as applicable, and provide the Just Energy Entities with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Effective Date; or (b) alter and interpret such term, section or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of such term, section or provision held to be invalid, void or unenforceable, and such term, section or provision shall then be applied as altered or interpreted. Notwithstanding any such holding, alteration or interpretation of the Plan, the remainder of the terms, sections and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

11.11 The Monitor

(a) The Monitor is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceeding and not in its personal or corporate capacity. The Monitor will not be responsible or liable whatsoever for any obligations of the Just Energy Entities. The Monitor will have the powers and protections granted to it by the Plan, the CCAA and the Orders made by the Court in the CCAA Proceeding. Both prior to and after the Effective Date, the Just Energy Entities shall provide such assistance as reasonably required by the Monitor in connection with the completion of the Monitor's duties and obligations under the Plan.

(b) The Monitor shall not incur any liability whatsoever, including in respect of (i) any amount paid, required to be paid or not paid pursuant to the Plan, (ii) any costs or expenses incurred in connection with, in relation to or as a result of any payment made, required to be made or not made, or (iii) any deficiency in the Plan Implementation Fund or any reserves established pursuant to the Plan. Notwithstanding any other provision of the Plan, and without in any way limiting

the protections for the Monitor set out in the Orders made by the Court in the CCAA Proceeding or the CCAA, the Monitor shall have no obligation to make any payment contemplated under the Plan, and nothing shall be construed as obligating the Monitor to make any such payment, unless and until the Monitor is in receipt of funds adequate to effect any such payment.

11.12 Different Capacities

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Just Energy Entities and the Plan Sponsor, each acting reasonably, and the Person, in writing, or unless its Claims overlap or are otherwise duplicative.

11.13 Authority and Reliance Upon Consent

For the purposes of the Plan, where a matter shall have been agreed, waived, consented to or approved by:

(a) the Just Energy Entities, or a matter must be satisfactory or acceptable to the Just Energy Entities, any Person shall be entitled to rely on written confirmation from either Company Counsel that the Just Energy Entities has agreed, waived, consented to or approved a particular matter;

(b) the Plan Sponsor, or a matter must be satisfactory or acceptable to the Plan Sponsor, such matter shall be decided by the majority of parties composing the Plan Sponsor, and any Person shall be entitled to rely on written confirmation from either Plan Sponsor Counsel that the Plan Sponsor has agreed, waived, consented to, or approved a particular matter;

(c) the Credit Facility Lenders, or a matter must be satisfactory or acceptable to the Credit Facility Lenders, any person shall be entitled to rely on written confirmation from the Credit Facility Agent or its counsel that the Credit Facility Lenders have agreed, waived, consented to or approved a particular matter;

(d) Shell, or a matter must be satisfactory or acceptable to Shell, any person shall be entitled to rely on written confirmation from Shell or its counsel that Shell has agreed, waived, consented to or approved a particular matter;

(e) the Supporting Parties, or a matter must be satisfactory or acceptable to the Supporting Parties, such matter shall be decided in accordance with the terms of the Support Agreement; and

(f) the Backstop Parties, or a matter must be satisfactory or acceptable to the Backstop Parties, such matter shall be decided in accordance with the terms of the Backstop Commitment Letter,

provided that any provision that requires an agreement, waiver, consent or approval from a party in respect of a matter will not limit any agreement, waiver, consent or approval required from a Supporting Party pursuant to the Support Agreement in respect of the same subject matter.

11.14 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject to as hereinafter provided, be made or given by personal delivery, ordinary mail or by email addressed to the respective parties as follows:

(a) if to the any of the Just Energy Entities:

Just Energy Group Inc.
100 King Street West, Suite 2630
Toronto, ON M5X 1E1
Attention: Jonah Davids, General Counsel
E-mail: jdavids@justenergy.com

With a copy to (which shall not constitute notice):

Osler, Hoskin & Harcourt LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8
Attention: Marc Wasserman / Michael De Lellis / Jeremy Dacks
Email: mwasserman@osler.com / mdelellis@osler.com / jdacks@osler.com

With a copy to (which shall not constitute notice):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Brian Schartz / Mary Kogut Brawley / Neil Herman
Email: brian.schartz@kirkland.com / mary.kogut@kirkland.com / neil.herman@kirkland.com

With a copy to (which shall not constitute notice):

FTI Consulting Canada Inc.,
in its capacity as Monitor of the Just Energy Entities
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON M5K 1G8
Attention: Paul Bishop / Jim Robinson
Email: paul.bishop@fticonsulting.com / jim.robinson@fticonsulting.com

(b) if to the Monitor:

FTI Consulting Canada Inc.,
in its capacity as Monitor of the Just Energy Entities
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON M5K 1G8
Attention: Paul Bishop / Jim Robinson
Email: paul.bishop@fticonsulting.com / jim.robinson@fticonsulting.com

With a copy to (which shall not constitute notice):

Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 200
Toronto, ON M5K 1K7
Attention: Robert Thornton / Rebecca Kennedy
Email: rthornton@tgf.ca / rkennedy@tgf.ca

(c) if to the Plan Sponsor:

Akin Gump Straus Hauer & Feld LLP
Bank of America Tower, One Bryant Park
New York, NY 10036
Attention: David Botter / Sarah Link Schultz
Email: dbotter@akingump.com / sschultz@akingump.com

and

Cassels Brock & Blackwell LLP
Scotia Plaza, Suite 2100
40 King Street West
Toronto, ON M5H 3C2
Attention: Ryan Jacobs / Jane Dietrich / Joseph Bellissimo
Email: rjacobs@cassels.com / jdietrich@cassels.com / jbellissimo@cassels.com

(d) if to a Creditor:

To the address specified in the Proof of Claim or Negative Notice Claims Package in respect of such Creditor or such other address as the Creditor may from time to time notify the Just Energy Entities and the Monitor in accordance with this Section 11.14,

or to such other address as any party may from time to time notify the others in accordance with this Section 11.14. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of sending by

means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered or sent before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the following Business Day.

11.15 Further Assurances

Each of the Persons directly or indirectly named or referred to in or subject to the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated by the Plan.

SCHEDULE A

JUST ENERGY PARTNERSHIPS

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

Tab 5

PLAN SUPPORT AGREEMENT

This PLAN SUPPORT AGREEMENT (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, together with all exhibits and schedules attached hereto or incorporated herein, this "**Agreement**") dated May 12, 2022 is made among:

(a) Just Energy Group Inc. ("**Just Energy**"), 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP (collectively, the "**Just Energy Entities**" or the "**Company**");

(b) LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, and OC III LFE I LP (each in its capacity as holder of Term Loan Claims (as defined below) and holder of Claims under the DIP Financing (as defined below), collectively, the "**Plan Sponsor**");

(c) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, "**Shell**");

(d) CBHT Energy I LLC, in its capacity as the beneficial holder of the Pre-Filing Claims of BP Canada Energy Group ULC and BP Energy Company ("**CBHT**");

(e) the undersigned financial institutions as lenders under the Credit Agreement (as defined below), in each case solely in its capacity as a holder of Claims under the Credit Agreement (such lenders in such capacity, the "**Supporting Secured CF Lenders**"), and National Bank of Canada, as administrative agent under the Credit Agreement (in such capacity, the "**Credit Facility Agent**"); and

(f) the undersigned holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold Claims arising under that certain the First Amended and Restated Loan Agreement, dated as of September 28, 2020, among (i) Just Energy, as borrower, (ii) Computershare Trust Company of Canada, as agent, and (iii) Sagard Credit Partners, LP and the other lenders party thereto

(the "**Term Loan Claims**" and the undersigned holders of Term Loan Claims, excluding the Plan Sponsor, the "**Supporting Unsecured Creditors**").

The Just Energy Entities, the Plan Sponsor, Shell after the PSA Shell Effective Date, CBHT after the PSA CBHT Effective Date, the Supporting Secured CF Lenders after the PSA Secured CF Effective Date, the Supporting Unsecured Creditors after the PSA TL Effective Date, and any other Person (as defined in the Bankruptcy Code (as defined below)) that becomes a party hereto in accordance with the terms hereof are referred to herein collectively, as the "**Parties**" and individually, as a "**Party**." Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in **Exhibit A**.

RECITALS

WHEREAS, on March 9, 2021 (the "**Filing Date**"), (a) Just Energy and certain of the Just Energy Entities commenced proceedings (the "**CCAA Proceedings**") under the Companies' Creditors Arrangement Act (as amended, the "**CCAA**") in the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**"); and (b) the foreign representative for certain of the Just Energy Entities commenced cases (the "**Chapter 15 Cases**") under chapter 15 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**US Bankruptcy Court**");

WHEREAS, also on March 9, 2021, (a) the CCAA Court entered an order granting certain relief to Just Energy, including, but not limited to, approval of debtor-in-possession financing (the "**DIP Financing**") pursuant to that certain *CCAA Interim Debtor-in-Possession Financing Term Sheet* (as amended from time to time, the "**DIP Term Sheet**"); and (b) the US Bankruptcy Court entered an order [Docket No. 23] granting certain relief to the Just Energy Entities, including, but not limited to, authorizing the Just Energy Entities to comply with the terms and conditions of the DIP Financing;

WHEREAS, the Parties have engaged in good faith, arm's-length negotiations regarding a recapitalization and restructuring and certain related transactions concerning the Company, the terms of which shall be established in a plan of compromise and arrangement in the CCAA Proceedings, which shall be in the form attached hereto as **Exhibit B** (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and this Agreement, the "**Plan**"), and consistent in all material respects with the restructuring term sheet attached hereto as **Exhibit C** (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with this Agreement, the "**Restructuring Term Sheet**") (the foregoing, the "**Restructuring**");

WHEREAS, contemporaneously with entry into this Agreement, the Company and the Plan Sponsor have entered into the backstop commitment letter attached hereto as **Exhibit D** (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms and this Agreement, the "**Backstop Commitment Letter**"); and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. **PSA Effective Date**.

(a) This Agreement shall become effective, and the obligations contained herein shall become binding upon the Company and the Plan Sponsor upon the first date that this Agreement and the Backstop Commitment Letter each has been executed and delivered by (x) the Company and (y) the Plan Sponsor (such date, the "**PSA Effective Date**"); *provided, however*, that until the Authorization Order is granted, the Company's sole obligations under this Agreement are those set forth in Sections 6(a), (b), (c), (d), (g), (h), (i), and (j) and 11, and in the event the Authorization Order is not granted on or before the applicable Milestone, the Company shall have no obligations hereunder.

(b) This Agreement shall become effective, and the obligations contained herein shall become binding on Shell (and the reciprocal obligations will become binding on the Company, the Plan Sponsor, and the other Parties), upon the first date (such date, the "**PSA Shell Effective Date**") that this Agreement (x) has met the conditions set forth in Section 1(a) and (y) has been executed and delivered by Shell, the Plan Sponsor, CBHT and the Company. For the avoidance of doubt, Shell shall have no obligations under Sections 5, 6, 7, 8, or 10. In the event that the Authorization Order is not granted on or before the applicable Milestone, Shell shall have no obligations hereunder.

(c) This Agreement shall become effective, and the obligations contained herein shall become binding on CBHT (and the reciprocal obligations will become binding on the Company, the Plan Sponsor, and the other Parties), upon the first date (such date, the "**PSA CBHT Effective Date**") that this Agreement (x) has met the conditions set forth in Section 1(a) and (y) has been executed and delivered by CBHT.

(d) This Agreement shall become effective, and the obligations contained herein shall become binding on a Supporting Secured CF Lender (and the reciprocal obligations will become binding on the Company, the Plan Sponsor, and the other Parties), upon the first date (such date, the "**PSA Secured CF Effective Date**") that this Agreement (x) has met the conditions set forth in Section 1(a) and (y) has been executed and delivered by such Supporting Secured CF Lender, the Company, the Plan Sponsor, Shell and CBHT. In the event that the Authorization Order is not granted on or before the applicable Milestone (without regard to any extension of such Milestone after the date hereof, unless the Requisite Supporting Secured CF Lenders have consented thereto), the Supporting Secured CF Lenders shall have no obligations hereunder.

(e) This Agreement shall become effective, and the obligations contained herein shall become binding on a Supporting Unsecured Creditor (and the reciprocal obligations will become binding on the Company, the Plan Sponsor, and the other Parties), upon the first date (such date, the "**PSA TL Effective Date**") that this Agreement (x) has met the conditions set forth in Section 1(a) and (y) has been executed and delivered by such Supporting Unsecured Creditor.

2. **<u>Exhibits and Schedules Incorporated by Reference</u>**. The Restructuring Term Sheet, the Backstop Commitment Letter, and any other exhibits attached to the Restructuring Term Sheet, the Backstop Commitment Letter or hereto (and any schedules to such exhibits) (collectively, the "**Exhibits and Schedules**") are expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall be deemed to include the Restructuring Term Sheet, the Backstop Commitment Letter, and any other Exhibits and Schedules. In the event of any inconsistency between this Agreement (without reference to the Exhibits and Schedules) and the Exhibits and Schedules (excluding the Plan), this Agreement (without reference to the Exhibits and Schedules) shall govern. In the case of a conflict of the provisions contained in the text of this Agreement and the Restructuring Term Sheet, the text of this Agreement shall govern. In the case of a conflict of the provisions contained in the text of this Agreement and the Plan (when sanctioned by the CCAA Court), the terms of the Plan (when sanctioned by the CCAA Court) shall govern.

3. **<u>Definitive Documents</u>**.

(a) The definitive documents and agreements governing the Restructuring (the "**Definitive Documents**") shall consist of: (i) the Restructuring Term Sheet (and all exhibits thereto); (ii) the Plan (and all supplements, including any restructuring steps supplement, and all exhibits thereto); (iii) all solicitation materials in respect of the Plan (the "**Solicitation Materials**"); (iv) the Authorization Order; (v) the Meetings Order; (vi) the Sanction Order; (vii) the Authorization Recognition Order; (viii) the Meetings Recognition Order; (ix) the Sanction Recognition Order; (x) the corporate governance documents for the reorganized Just Energy Entities, including, but not limited to, any documents concerning preferred or common equity in any of the reorganized Just Energy Entities, which shall be consistent with the governance term sheet attached to the Restructuring Term Sheet; (xi) the New Credit Agreement and any documents related thereto; (xii) the New Intercreditor Agreement; (xiii) the Backstop Commitment Letter and any documents related thereto; (xiv) any new agreements between Shell and any of the Just Energy Entities that are required for the continuation of the provision of products and services by Shell to the applicable Just Energy Entities and any documents related thereto; (xv) such other definitive documentation relating to the Restructuring as is necessary or desirable to consummate the Restructuring and the Plan; and (xvi) solely with respect to the Plan Sponsor, any officer's employment or consulting agreements, any documents related to the management incentive plan (each of which shall be consistent with the term sheet attached to the Restructuring Term Sheet), and any other key employee retention plan or key employee incentive plan.

(b) The Definitive Documents not executed or in a form attached to this Agreement, remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter, or instrument related to the Restructuring shall contain terms, conditions, representations, warranties, and covenants consistent in all material respects with the terms of this Agreement, as they may be modified, amended, or supplemented in accordance with this Agreement, and shall be subject to the approval requirements set forth herein.

(i) Any document that is included within the definition of "**Definitive Documents**," including any amendment, supplement, or modification thereof, shall be in form and substance reasonably acceptable to (x) the Just Energy Entities and (y) the Plan Sponsor.

(ii) If the PSA Shell Effective Date has occurred, then any document that is included within the definition of "**Definitive Documents**" to which Shell is a signatory shall be in form and substance reasonably acceptable to Shell.

(iii) If the PSA CBHT Effective Date has occurred, then any document that is included within the definition of "**Definitive Documents**" to which CBHT is a signatory shall be in form and substance reasonably acceptable to CBHT.

(iv) If the PSA Secured CF Effective Date has occurred, then any document that is included within the definition of "**Definitive Documents**" (other than any officer's employment or consulting agreement), including any amendment, supplement, or modification thereof, shall be in form and substance reasonably acceptable to the Requisite Supporting Secured CF Lenders; *provided, however*, that the New Credit Agreement and New Intercreditor Agreement shall also be consistent and comply with the term sheets for each attached as exhibits to the Restructuring Term Sheet.

(v) If the PSA TL Effective Date has occurred, then any document that is included within the definition of "**Definitive Documents**" to which the Supporting Unsecured Creditors are signatories shall be in form and substance reasonably acceptable to such Supporting Unsecured Creditors that are signatories.

4. **Milestones**. The Restructuring shall be implemented on the following timeline (each deadline, as may be extended in accordance with this Agreement, a "**Milestone**"):

(a) In connection with the CCAA Proceedings,

(i) On or before May 26, 2022, the Just Energy Entities shall obtain the Authorization Order and the Meetings Order;

(ii) On or before June 1, 2022, the Just Energy Entities shall cause the service of the Solicitation Materials;

(iii) Meetings of the creditors that are eligible to vote on the Plan shall be held no later than August 2, 2022;

(iv) On or before August 12, 2022, the Just Energy Entities shall obtain the Sanction Order; and

(v) No later than September 30, 2022 (the "**Initial Outside Date**"), or such later date or dates as may be determined by the Plan Sponsor on written notice to the other Parties (the "**Outside Date**"), the Effective Date of the Plan shall occur; *provided, however*, in the event the Initial Outside Date is not extended, the Initial Outside Date shall be the Outside Date; *provided, further*, to the extent the only condition to the Effective Date of the Plan that remains outstanding is the receipt of regulatory approval(s), the Outside Date shall be automatically extended for another sixty (60) days, and thereafter, the Plan Sponsor shall have the right to further extend the Outside Date in its sole discretion on written notice to the other Parties.

(b) In connection with the Chapter 15 Cases,

(i) The Just Energy Entities shall obtain the Authorization Recognition Order, the Claims Procedure Recognition Order and the Meetings Recognition Order by no later than June 22, 2022 recognizing the Authorization Order and the Meetings Order;

(ii) Within two (2) business days after the entry of the Sanction Order, the Just Energy Entities shall file a motion for entry of an order recognizing and enforcing the Sanction Order (the "**Recognition and Enforcement Motion**");

(iii) The Just Energy Entities shall facilitate the setting of a hearing before the US Bankruptcy Court on the Recognition and Enforcement Motion to be no later than September 9, 2022; *provided, however,* all documents required to be served in connection with such hearing shall be served by no later than August 16, 2022 and such hearing shall be set at the earliest date agreed to by the US Bankruptcy Court; and

(iv) The Just Energy Entities shall obtain the Sanction Recognition Order by no later than September 15, 2022 granting the Recognition and Enforcement Motion.

The Plan Sponsor may extend a Milestone on written notice to the Just Energy Entities and the other Parties (which may be delivered by email), acting reasonably.

5. **Commitments of the Plan Sponsor**. Unless inconsistent with the Plan Sponsor's obligations or rights under the DIP Financing, which obligations and rights shall control in the event of a conflict, and subject to the terms and conditions hereof, the Plan Sponsor shall, from the PSA Effective Date until the occurrence of the PSA Termination Date (as defined below):

(a) vote or cause to be voted all of its Term Loan Claims against the Just Energy Entities to accept the Plan by delivering duly executed and completed ballots accepting the Plan on a timely basis;

(b) support the Restructuring and vote and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring; *provided, however*, the foregoing shall not require the Plan Sponsor to take or refrain from taking any action that would materially change or impair the terms of the Restructuring or its rights under this Agreement;

(c) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities' other stakeholders; *provided, however*, the foregoing shall not require the Plan Sponsor to take or refrain from taking any action that would materially change or impair the terms of the Restructuring or its rights under this Agreement;

(d) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and consummation of all transactions and implementation steps provided for or contemplated in the Restructuring;

(e) not object to, delay, impede, or take any other action to interfere with sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Restructuring, the Plan, or this Agreement;

(f) not directly or indirectly (i) solicit approval or acceptance of, encourage, propose, file, support, participate in the formulation of, or vote for, any restructuring, sale of assets, merger, workout, or plan for the Just Energy Entities other than the Plan, or (ii) otherwise take any action that could reasonably be expected to or would interfere with, delay, impede, or postpone the solicitation of acceptances, sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Restructuring, the Plan, or this Agreement;

(g) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Restructuring;

(h) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the CCAA Proceedings, the Chapter 15 Cases, this Agreement, or the Restructuring contemplated herein against the Just Energy Entities or the other Parties hereto to the extent such litigation or proceeding is inconsistent with the transactions contemplated by this Agreement, other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement; *provided, however*, for the avoidance of doubt, as set forth above in this Section, the foregoing shall not affect the Plan Sponsor's ability to take any action permitted under the DIP Term Sheet or in connection with the DIP Financing;

(i) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or interests in the Just Energy Entities; *provided, however*, for the avoidance of doubt, as set forth above in this Section, the foregoing shall not affect the Plan Sponsor's ability to take any action permitted under the DIP Term Sheet or in connection with the DIP Financing;

(j) not initiate, or have initiated on its behalf, not object to, delay, impede, or take any other action to interfere with the Just Energy Entities' ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court; *provided, however*, for the avoidance of doubt, as set forth above in this Section, the foregoing shall not affect the Plan Sponsor's ability to take any action permitted under the DIP Term Sheet or in connection with the DIP Financing;

(k) not change or withdraw (or cause to be changed or withdrawn) any vote cast pursuant to Section 5(a) above, other than as expressly permitted by this Agreement; and

(l) between the date hereof and the PSA Termination Date, provide prompt written notice to the Just Energy Entities and the other Parties, to the extent known by the Plan Sponsor, of (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of the Plan Sponsor contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of the Plan Sponsor contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in the Plan or this Agreement not to occur or

become impossible to satisfy; or (ii) the receipt of written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Restructuring.

Notwithstanding the foregoing, nothing in this Agreement shall (i) be construed to prohibit the Plan Sponsor from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as, from the PSA Effective Date until the occurrence of the applicable PSA Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring; (ii) prevent the Plan Sponsor from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; (iii) affect, modify, or change in any way any right of the Plan Sponsor under the DIP Term Sheet and any related documents; (iv) except as otherwise expressly provided in this Agreement, be construed to limit the Plan Sponsor's rights under any applicable credit agreement, including the DIP Term Sheet, other loan document, instrument, and/or applicable law; (v) affect the rights of the Plan Sponsor to consult with the Just Energy Entities, Shell, CBHT, the Supporting Secured CF Lenders, the Credit Facility Agent, the Supporting Unsecured Creditors, or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings or the Chapter 15 Cases; *provided* that, without the written consent (which may be delivered via email) of the Just Energy Entities, the Plan Sponsor shall not consult with any party whom the Just Energy Entities have informed the Plan Sponsor has made an Alternative Restructuring Proposal; (vi) impair or waive the rights of the Plan Sponsor to assert or raise any objection permitted under this Agreement in connection with any hearing on sanctioning of the Plan or in the CCAA Court or the US Bankruptcy Court or prevent the Plan Sponsor from enforcing this Agreement against the Just Energy Entities, Shell, CBHT, the Supporting Secured CF Lenders, the Credit Facility Agent, the Supporting Unsecured Creditors; (vii) based on advice of counsel (which may be in-house counsel), prevent the Plan Sponsor from taking any action that is required by applicable law (*provided, however*, that if the Plan Sponsor proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, the Plan Sponsor shall provide advance notice to the extent permissible under applicable law to the other Parties at that time to the extent the provision of notice is practicable under the circumstances); *provided, further*, that, as of the date hereof, the Plan Sponsor represents and warrants to each other Party that the Plan Sponsor is unaware of any such action; (viii) based on advice of counsel (which may be in-house counsel), require the Plan Sponsor to take any action that is prohibited by applicable law or to waive or forego the benefit of any applicable legal privilege (*provided*, *however*, that if the Plan Sponsor proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, the Plan Sponsor shall provide advance notice to the extent permissible under applicable law to the other Parties at that time to the extent the provision of notice is practicable under the circumstances); *provided, further*, that, as of the date hereof, the Plan Sponsor represents and warrants to each other Party that the Plan Sponsor is unaware of any such matter; or (ix) except as otherwise provided in, or envisioned by, this Agreement as of the PSA Effective Date, require the Plan Sponsor to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations.

6. **Commitments of the Company**. Subject to the terms and conditions hereof, and except as the Plan Sponsor may expressly release the Just Energy Entities in writing (which writing may be via email) from any of the following obligations (which release may be withheld, conditioned, or delayed by the Plan Sponsor in its sole discretion) (each such release, a "**Section 6 Waiver**"):

(a) each of the Just Energy Entities (i) agrees to (x) support and use commercially reasonable efforts to complete the Restructuring as set forth in the Plan and this Agreement; (y) negotiate in good faith and execute and deliver the Definitive Documents and take any and all steps reasonably necessary and appropriate in furtherance of the Restructuring, the Plan, and this Agreement; and (z) take commercially reasonable efforts to complete the Restructuring in accordance with each Milestone set forth in Section 4; and (ii) shall not (x) file any motion, pleading, or Definitive Documents with the CCAA Court, the US Bankruptcy Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, are inconsistent with this Agreement (including the consent rights of the other Parties set forth herein as to the form and substance of such motion, pleading, or Definitive Document) or the Plan; or (y) undertake any action that is inconsistent with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Restructuring described in, this Agreement, the Restructuring Term Sheet, or the Plan;

(b) each of the Just Energy Entities agrees to use commercially reasonable efforts to cure, vacate, reverse, set aside, or have overruled any ruling or order of the CCAA Court, the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction (including any appellate court) enjoining or rendering impossible the substantial consummation of the Restructuring;

(c) each of the Just Energy Entities agrees to provide prompt written notice to the other Parties between the date hereof and the PSA Termination Date of (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (x) any representation or warranty of the Just Energy Entities contained in this Agreement to be untrue or inaccurate in any material respect, (y) any covenant of the Just Energy Entities contained in this Agreement not to be satisfied in any material respect, or (z) any condition precedent contained in the Plan or this Agreement not to occur or become impossible to satisfy, (ii) receipt of any written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Restructuring, (iii) receipt of any written notice from any governmental body that is material to the consummation of the transactions contemplated by the Restructuring, and (iv) to the extent involving the Company, any material governmental or third party complaints, litigations, investigations, or hearings (or communications indicating that the same is contemplated or threatened);

(d) the Just Energy Entities agree to take commercially reasonable efforts to ensure that all consents and approvals necessary for the implementation of the Restructuring (including, without limitation, regulatory, court, and other approvals) shall have been obtained to the satisfaction of the Plan Sponsor, the Credit Facility Agent, and the Just Energy Entities, and that all necessary filings and notifications and similar actions shall have been taken to the satisfaction of the Plan Sponsor, the Credit Facility Agent, and the Just Energy Entities, including

without limitation all Regulatory Matters set forth in Section 7 of the Backstop Commitment Letter, prior to the Effective Date provided that in no event would a Just Energy Entity be required to dispose of any assets or agree to any behavioral remedies in connection with obtaining regulatory approvals, unless agreed to by the Plan Sponsor, the Requisite Supporting Secured CF Lenders, Shell, and the Company; *provided, further* that in connection with obtaining the Transaction Regulatory Approvals (as defined in the Backstop Commitment Letter), no Just Energy Entity shall agree to any of the foregoing items without the prior written consent of the Initial Backstop Parties (as defined in the Backstop Commitment Letter);

(e) Just Energy agrees to apply for and obtain an order from the applicable Canadian Securities Regulatory Authorities which provides that, as and from the Effective Date of the Plan, Just Energy will have ceased to be a reporting issuer under Canadian securities laws and that no Just Energy Entity will become a reporting issuer under Canadian securities laws as a result of the completion of the Restructuring;

(f) the Just Energy Entities shall pay the reasonable and documented fees and expenses of the Supporting Creditors (as defined below) incurred in connection with the Restructuring, including, without limitation, the reasonable and documented fees and expenses of such parties' legal, financial, and other advisors, as and when they come due after receipt of applicable invoices and in accordance with the arrangements in place as of the date of this Agreement, including, without limitation, as set forth in the DIP Term Sheet, or, with respect to any additional fees and expenses, as otherwise agreed to by the Plan Sponsor;

(g) the Just Energy Entities shall: (i) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with this Agreement, and use commercially reasonable efforts to preserve intact the Just Energy Entities' business organization and relationships with third parties and, subject to (ii) below, its employees (which shall not prohibit the Just Energy Entities from taking actions outside of the ordinary course of business to the extent approved by the CCAA Court and the US Bankruptcy Court, as applicable and with the consent of the Plan Sponsor), (ii) not have disclaimed or terminated any employment or consulting agreement with an officer, director, or member of senior management, other than "for cause," without the written consent of the Plan Sponsor, (iii) keep the Plan Sponsor, the Supporting Secured CF Lenders, the Credit Facility Agent, and the Supporting Unsecured Creditors informed about the operations of the Just Energy Entities, and (iv) provide each of the other Parties any material information reasonably requested regarding the Just Energy Entities (on a confidential basis) and provide, and direct the Just Energy Entities' employees, officers, advisors, and other representatives to provide, to the Plan Sponsor's legal, financial, and other advisors, (x) reasonable access during normal business hours to the Just Energy Entities' books, records, and facilities (on a confidential basis), and (y) reasonable access to the management and advisors of the Just Energy Entities for the purposes of evaluating the Just Energy Entities' assets, liabilities, operations, businesses, finances, strategies, prospects, and affairs;

(h) the Just Energy Entities agree (i) to prepare or cause to be prepared the applicable Definitive Documents within the Just Energy Entities' control (including all relevant motions, applications, orders, and agreements), (ii) to provide draft copies of all documents, including the Definitive Documents within the Just Energy Entities' control, that the Just Energy Entities intend to file with the CCAA Court or the US Bankruptcy Court, in each case, to counsel

to the Plan Sponsor and Credit Facility Agent at least three (3) days before such documents are to be filed with the CCAA Court and/or the US Bankruptcy Court or as soon as practicable thereafter; *provided*, that each such pleading or document shall be acceptable to the Plan Sponsor, acting reasonably, and consistent with, and shall otherwise contain, the terms and conditions set forth in this Agreement (including the consent rights of any Party, as may be applicable, set forth herein as to the form and substance of such pleading or document), and (iii) without limiting any approval rights set forth herein, consult in good faith with the advisors to the Plan Sponsor and Credit Facility Agent regarding the form and substance and timing of service and filing of any of the foregoing documents in advance of the filing, execution, distribution, or use (as applicable) thereof;

(i) the Just Energy Entities agree to file timely a formal objection to any motion filed with the CCAA Court or the US Bankruptcy Court, as applicable, seeking an order that would undermine the Restructuring or any relief sought in connection therewith; and

(j) the Just Energy Entities agree to file timely a formal objection to any motion filed with the CCAA Court or the US Bankruptcy Court, as applicable, by any Person seeking the entry of an order (i) lifting the stay of proceedings in the CCAA Proceedings; (ii) terminating the CCAA Proceedings or converting the CCAA Proceedings to proceedings under the Bankruptcy and Insolvency Act (Canada); (iii) directing the appointment of an examiner or a trustee; (iv) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code; or (v) dismissing any of the Chapter 15 Cases.

7. **Commitments of the Supporting Secured CF Lenders**. Subject to the terms and conditions hereof, each Supporting Secured CF Lender and the Credit Facility Agent shall (severally, and not jointly and severally), solely as it remains the legal owner of Credit Facility Claims and Credit Facility LC Claims, from the PSA Secured CF Effective Date until the occurrence of the PSA Termination Date (as defined below):

(a) vote or cause to be voted all of its Claims against the Just Energy Entities to accept the Plan by delivering duly executed and completed ballots accepting the Plan on a timely basis;

(b) support the Restructuring and vote and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring; *provided, however*, the foregoing shall not require the Supporting Secured CF Lenders or the Credit Facility Agent to take or refrain from taking any action that would materially change or impair (i) the terms of the Restructuring, (ii) their rights under this Agreement or (iii) their recovery under the Plan;

(c) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities' other stakeholders; provided, however, the foregoing shall not require the Supporting Secured CF Lenders or the Credit Facility Agent to take or refrain from taking any action that would materially change or impair the terms of the Restructuring or their rights under this Agreement;

(d) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and consummation of all transactions and implementation steps provided for or contemplated in the Restructuring or the Plan;

(e) not object to, delay, impede, or take any other action to interfere with sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Restructuring, the Plan, or this Agreement;

(f) not directly or indirectly (i) solicit approval or acceptance of, encourage, propose, file, support, participate in the formulation of, or vote for, any restructuring, sale of assets, merger, workout, or plan for the Just Energy Entities other than the Plan, or (ii) otherwise take any action that would interfere with, delay, impede, or postpone the solicitation of acceptances, sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Plan or this Agreement;

(g) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Restructuring;

(h) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 15 Cases, this Agreement, or the Restructuring contemplated herein against the Just Energy Entities or the other Parties hereto other than to enforce this Agreement, that certain accommodation and support agreement dated March 18, 2021 between the Just Energy Entities, the Credit Facility Agent, and the Supporting Secured CF Lenders (the "**Accommodation Agreement**"), or any Definitive Document or as otherwise permitted under this Agreement;

(i) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or interests in the Just Energy Entities, other than in accordance with the Accommodation Agreement or in a manner consistent with this Agreement;

(j) not object to, delay, impede, or take any other action to interfere with the Just Energy Entities' ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court, other than in accordance with the Accommodation Agreement;

(k) not change or withdraw (or cause to be changed or withdrawn) any vote cast pursuant to Section 7(a) above, other than as expressly permitted by this Agreement;

(l) participate in the New Credit Facility (subject to the terms and conditions of the New Credit Agreement) and enter into the New Intercreditor Agreement on substantially similar terms as the Intercreditor Agreement but subject to the changes set forth in **Exhibit F** hereto, subject to the implementation of the Plan resulting in, among other things, the transactions contemplated in the Restructuring Term Sheet; and

(m) between the date hereof and the PSA Termination Date, provide prompt written notice to the other Parties, to the extent known by such Supporting Secured CF Lender or Credit Facility Agent, as the case may be, of (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of the Supporting Secured CF Lender or Credit Facility Agent (as the case may be) be contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of the Supporting Secured CF Lender or Credit Facility Agent (as the case may be) contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in the Plan or this Agreement not to occur or become impossible to satisfy; or (ii) the receipt of written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Restructuring.

Notwithstanding the foregoing, nothing in this Agreement shall (i) be construed to prohibit any Supporting Secured CF Lender or the Credit Facility Agent from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as until the occurrence of the PSA Termination Date applicable to such Supporting Creditor (as defined below), such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring; (ii) prevent any Supporting Secured CF Lender or the Credit Facility Agent from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; (iii) direct, modify, or change in any way any right of the Supporting Secured CF Lenders and Credit Facility Agent under the Accommodation Agreement and any related documents; (iv) except as otherwise expressly provided in this Agreement, be construed to limit the rights of any Supporting Secured CF Lender or the Credit Facility Agent under any applicable credit agreement, other loan document, instrument, and/or applicable law; (v) affect the rights of any Supporting Secured CF Lender or the Credit Facility Agent to consult with the other Supporting Secured CF Lenders, the Just Energy Entities, the Plan Sponsor, Shell, CBHT, the Supporting Unsecured Creditors, or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings or the Chapter 15 Cases; *provided* that, without the written consent (which may be delivered via email) of the Just Energy Entities, the Supporting Secured CF Lenders shall not consult with any party whom the Just Energy Entities have informed the Supporting Secured CF Lenders has made an Alternative Restructuring Proposal; (vi) impair or waive the rights of any Supporting Secured CF Lender or the Credit Facility Agent to assert or raise any objection permitted under this Agreement in connection with any hearing on sanctioning of the Plan or in the CCAA Court or the US Bankruptcy Court or prevent such Supporting Secured CF Lender or the Credit Facility Agent from enforcing this Agreement against the other Parties; (vii) based on advice of counsel (which may be in-house counsel), prevent any Supporting Secured CF Lender or the Credit Facility Agent from taking any action that is required by applicable law (*provided, however*, that if any Supporting Secured CF Lender or the Credit Facility Agent proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, such Supporting Secured CF Lender or the Credit Facility Agent shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances; *provided, further*, that, as of the date hereof, each Supporting Secured CF Lender represents and warrants to each other Party that it is unaware of any such action); (viii) based on advice of counsel (which may be in-house counsel), require any Supporting Secured CF Lender or the Credit Facility Agent to take any action that is prohibited by applicable law or to waive or

forego the benefit of any applicable legal privilege (*provided*, *however*, that if any Supporting Secured CF Lender or the Credit Facility Agent proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, such Supporting Secured CF Lender or the Credit Facility Agent, as the case may be, shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances; *provided, further*, that, as of the date hereof, such Supporting Secured CF Lender represents and warrants to each other Party that it is unaware of any such matter); or (ix) except as otherwise provided in, or envisioned by, this Agreement as of the PSA Secured CF Effective Date require any Supporting Secured CF Lender or the Credit Facility Agent to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations (other than customary expenses that may be incurred in connection with the New Credit Facility).

8. **Commitments of the Supporting Unsecured Creditors**. Subject to the terms and conditions hereof, each Supporting Unsecured Creditor shall (severally, and not jointly and severally), solely as it remains the legal owner, beneficial owner, and/or investment advisor or manager of or with power and/or authority to bind any Claims against the Just Energy Entities held by it, from the PSA TL Effective Date until the occurrence of the PSA Termination Date (as defined below):

(a) vote or cause to be voted all of its Claims against the Just Energy Entities to accept the Plan by delivering duly executed and completed ballots accepting the Plan on a timely basis;

(b) support the Restructuring and vote and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring; *provided, however*, the foregoing shall not require the Supporting Unsecured Creditors to take or refrain from taking any action that would materially change or impair the terms of the Restructuring or their rights under this Agreement;

(c) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities' other stakeholders; *provided, however*, the foregoing shall not require the Supporting Unsecured Creditors to take or refrain from taking any action that would materially change or impair the terms of the Restructuring or their rights under this Agreement;

(d) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and consummation of all transactions and implementation steps provided for or contemplated in the Restructuring or the Plan;

(e) not object to, delay, impede, or take any other action to interfere with sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Restructuring, the Plan, or this Agreement;

(f) not directly or indirectly (i) solicit approval or acceptance of, encourage, propose, file, support, participate in the formulation of, or vote for, any restructuring, sale of assets, merger, workout, or plan for the Just Energy Entities other than the Plan, or (ii) otherwise take any action that would interfere with, delay, impede, or postpone the solicitation of acceptances, sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Plan or this Agreement;

(g) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Restructuring;

(h) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 15 Cases, this Agreement, or the Restructuring contemplated herein against the Just Energy Entities or the other Parties hereto other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement;

(i) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or interests in the Just Energy Entities;

(j) not object to, delay, impede, or take any other action to interfere with the Just Energy Entities' ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court;

(k) not change or withdraw (or cause to be changed or withdrawn) any vote cast pursuant to Section 8(a) above, other than as expressly permitted by this Agreement; and

(l) provide prompt written notice to the other Parties, to the extent known by such Supporting Unsecured Creditor, of (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of the Supporting Unsecured Creditors contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of the Supporting Unsecured Creditors contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in the Plan or this Agreement not to occur or become impossible to satisfy; or (ii) the receipt of written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Restructuring.

Notwithstanding the foregoing, nothing in this Agreement shall (i) be construed to prohibit any Supporting Unsecured Creditor from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as, from the PSA TL Effective Date until the occurrence of the applicable PSA Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring; (ii) prevent any Supporting Unsecured Creditor from enforcing this Agreement or contesting

whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; (iii) except as otherwise expressly provided in this Agreement, be construed to limit any Supporting Unsecured Creditor's rights under any applicable credit agreement, other loan document, instrument, and/or applicable law; (iv) affect the rights of any Supporting Unsecured Creditor to consult with other Supporting Unsecured Creditors, the Just Energy Entities, the Plan Sponsor, Shell, CBHT, the Supporting Secured CF Lenders, the Credit Facility Agent or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings or the Chapter 15 Cases; *provided* that, without the written consent (which may be delivered via email) of the Just Energy Entities, the Supporting Unsecured Creditors shall not consult with any party whom the Just Energy Entities have informed the Supporting Unsecured Creditors has made an Alternative Restructuring Proposal; (v) impair or waive the rights of any Supporting Unsecured Creditor to assert or raise any objection permitted under this Agreement in connection with any hearing on sanctioning of the Plan or in the CCAA Court or the US Bankruptcy Court or prevent such Supporting Unsecured Creditor from enforcing this Agreement against the other Parties; (vi) based on advice of counsel (which may be in-house counsel), prevent any Supporting Unsecured Creditor from taking any action that is required by applicable law (*provided, however*, that if any Supporting Unsecured Creditor proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, such Supporting Unsecured Creditor shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided, further*, that, as of the date hereof, the Supporting Unsecured Creditors represent and warrant to each other Party that the Supporting Unsecured Creditors are unaware of any such action); (vii) based on advice of counsel (which may be in-house counsel), require any Supporting Unsecured Creditor to take any action that is prohibited by applicable law or to waive or forego the benefit of any applicable legal privilege (*provided*, *however*, that if any Supporting Unsecured Creditor proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, such Supporting Unsecured Creditor shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided, further*, that, as of the date hereof, the Supporting Unsecured Creditors represent and warrant to each other Party that the Supporting Unsecured Creditors are unaware of any such matter); or (viii) except as otherwise provided in, or envisioned by, this Agreement, require any Supporting Unsecured Creditor to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations.

9. **Commitments of Shell**. Subject to the terms and conditions hereof, Shell shall, from the PSA Shell Effective Date until the occurrence of the PSA Termination Date (as defined below):

(a) support the Restructuring and vote and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring; *provided, however*, the foregoing shall not require Shell to take or refrain from taking any action that would materially change or impair (i) the terms of the Restructuring, (ii) its rights under this Agreement or (iii) its recovery under the Plan;

(b) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and consummation of all transactions and implementation steps provided for or contemplated in the Restructuring;

(c) not object to, delay, impede, or take any other action to interfere with sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Plan or this Agreement;

(d) not directly or indirectly (i) solicit approval or acceptance of, encourage, propose, file, support, participate in the formulation of, or vote for, any restructuring, sale of assets, merger, workout, or plan for the Just Energy Entities other than the Plan, or (ii) otherwise take any action that would interfere with, delay, impede, or postpone the solicitation of acceptances, sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Plan or this Agreement;

(e) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Restructuring;

(f) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 15 Cases, this Agreement, or the Restructuring contemplated herein against the Just Energy Entities or the other Parties hereto other than to enforce this Agreement, the Support Agreement dated March 9, 2021 among Shell Energy North America (US), L.P., Shell Energy North America (Canada) Inc., Just Energy Ontario L.P., Just Energy (U.S.) Corp., Just Energy New York Corp., Just Energy Alberta L.P., Fulcrum Retail Holdings LLC, Just Energy Texas LP, Just Energy Solutions Inc., Just Energy Illinois Corp., Just Energy Corp. and Just Green L.P. (the "**Shell Commodity Support Agreement**"), or any Definitive Document or as otherwise permitted under this Agreement;

(g) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or Interests in the Just Energy Entities, other than in accordance with the Shell Commodity Support Agreement;

(h) not object to, delay, impede, or take any other action to interfere with the Just Energy Entities' ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court;

(i) between the date hereof and the PSA Termination Date, provide prompt written notice to the other Parties, to the extent known by Shell, of (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of Shell contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of Shell contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in the Plan or this Agreement not to occur or become impossible to satisfy; or (ii) the receipt of written notice from any third party

alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Restructuring; and

(j) effective as of the Effective Date of the Plan, (i) to continue to provide commodity supply in accordance with the existing Shell agreements, as may be amended, restated, supplemented and/or replaced by agreement between Shell and the applicable Just Energy Entity to the appropriate Just Energy Entities or additional Just Energy Entities, and (ii) to enter into the New Intercreditor Agreement on substantially similar terms as the Intercreditor Agreement but subject to the changes set forth in **Exhibit F** hereto; *provided* that notwithstanding the foregoing, nothing herein shall obligate Shell to continue providing services under the Third Amended and Restated Scheduling Coordinator Agreement dated December 1, 2014 between Shell Energy North America (US), L.P., Just Energy New York Corp., Just Energy (U.S.) Corp. and Just Energy Solutions Inc. (formerly Commerce Energy, Inc.) or any other agreement whereby Shell performs ISO or scheduling services on behalf of any Just Energy Entity whereby a Just Energy Entity has reimbursement obligations to Shell for payments made by Shell on behalf of a Just Energy Entity to an ISO.

Notwithstanding the foregoing, nothing in this Agreement shall (i) be construed to prohibit Shell from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as, from the PSA Shell Effective Date until the occurrence of the applicable PSA Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring; (ii) prevent Shell from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; (iii) direct, modify, or change in any way any right of Shell under the Shell Commodity Support Agreement; (iv) except as otherwise expressly provided in this Agreement, be construed to limit Shell's rights under any applicable credit agreement, other loan document, instrument, other commercial agreement with a Just Energy Entity, and/or applicable law; (v) affect the rights of Shell to consult with the Just Energy Entities, the Plan Sponsor, CBHT, the Supporting Secured CF Lenders, the Credit Facility Agent, the Supporting Unsecured Creditors, or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings or the Chapter 15 Cases; *provided* that, without the written consent (which may be delivered via email) of the Just Energy Entities, Shell shall not consult with any party whom the Just Energy Entities have informed Shell has made an Alternative Restructuring Proposal; (vi) impair or waive the rights of Shell to assert or raise any objection permitted under this Agreement in connection with any hearing on sanctioning of the Plan or in the CCAA Court or the US Bankruptcy Court or prevent Shell from enforcing this Agreement against the other Parties; (vii) based on advice of counsel (which may be in-house counsel), prevent Shell from taking any action that is required by applicable law *(provided, however*, that if Shell proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, Shell shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided, however*, that, as of the date hereof, Shell represents and warrants to each other Party that Shell is unaware of any such action); (viii) based on advice of counsel (which may be in-house counsel), require Shell to take any action that is prohibited by applicable law or to waive or forego the benefit of any applicable legal privilege (*provided*, *however*, that if Shell proposes to take any action that is otherwise inconsistent with this Agreement in order to comply

with applicable law, Shell shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided, further*, that, as of the date hereof, Shell represents and warrants to each other Party that Shell is unaware of any such matter); or (ix) except as otherwise provided in, or envisioned by, this Agreement as of the PSA Shell Effective Date, require Shell to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations (other than customary expenses that may be incurred in connection with the New Intercreditor Agreement).

10. **Commitments of CBHT**. Subject to the terms and conditions hereof, CBHT shall, from the PSA CBHT Effective Date until the occurrence of the PSA Termination Date (as defined below):

(a) vote or cause to be voted, if applicable, all of its Claims against the Just Energy Entities to accept the Plan by delivering duly executed and completed ballots accepting the Plan on a timely basis;

(b) support the Restructuring and vote, if applicable, and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring; *provided, however*, the foregoing shall not require CBHT to take or refrain from taking any action that would materially change or impair the terms of the Restructuring or its rights under this Agreement; *provided, further*, that, for the avoidance of doubt, subject to the terms of this Agreement, CBHT agrees to the terms of the Restructuring regardless of whether or not CBHT is given voting rights under the Meetings Order with respect to the same;

(c) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities' other stakeholders; *provided, however*, the foregoing shall not require CBHT to take or refrain from taking any action that would materially change or impair the terms of the Restructuring or its rights under this Agreement;

(d) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and consummation of all transactions and implementation steps provided for or contemplated in the Restructuring;

(e) not object to, delay, impede, or take any other action to interfere with sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Plan or this Agreement;

(f) not directly or indirectly (i) solicit approval or acceptance of, encourage, propose, file, support, participate in the formulation of, or vote for, any restructuring, sale of assets, merger, workout, or plan for the Just Energy Entities other than the Plan, or (ii) otherwise take any action that would interfere with, delay, impede, or postpone the solicitation of acceptances,

sanctioning, consummation, or implementation of the Plan or the transactions contemplated by the Plan or this Agreement;

(g) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 15 Cases, this Agreement, or the Restructuring contemplated herein against the Just Energy Entities or the other Parties hereto other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement;

(h) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or interests in the Just Energy Entities;

(i) not object to, delay, impede, or take any other action to interfere with the Just Energy Entities' ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court;

(j) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Restructuring;

(k) not change or withdraw (or cause to be changed or withdrawn) any vote cast pursuant to Section 9(a) above, other than as expressly permitted by this Agreement;

(l) request that BP Canada Energy Group ULC and/or BP Energy Company promptly turnover to Hudson Energy Services, LLC, any and all applicable proceeds received by BP Canada Energy Group ULC and/or BP Energy Company under Texas House Bill 4492 and shall comply in all respects with the final orders signed on October 13, 2021 by the Public Utility Commission of Texas;

(m) between the date hereof and the PSA Termination Date, provide prompt written notice to the other Parties, to the extent known by CBHT, of (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of CBHT contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of CBHT contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in the Plan or this Agreement not to occur or become impossible to satisfy; or (ii) the receipt of written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Restructuring.

Notwithstanding the foregoing, nothing in this Agreement shall (i) be construed to prohibit CBHT from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as, from the PSA CBHT Effective Date until the occurrence of the applicable PSA Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring; (ii) prevent CBHT from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; (iii) except as otherwise expressly provided in this Agreement, be construed to limit CBHT's rights under any applicable credit agreement, other loan document, instrument, and/or applicable law; (iv) affect the rights of CBHT to consult with the Just Energy

Entities, the Plan Sponsor, Shell, the Supporting Secured CF Lenders, the Credit Facility Agent, the Supporting Unsecured Creditors or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings or the Chapter 15 Cases; *provided* that, without the written consent (which may be delivered via email) of the Just Energy Entities, CBHT shall not consult with any party whom the Just Energy Entities have informed CBHT has made an Alternative Restructuring Proposal; (v) impair or waive the rights of CBHT to assert or raise any objection permitted under this Agreement in connection with any hearing on sanctioning of the Plan or in the CCAA Court or the US Bankruptcy Court or prevent CBHT from enforcing this Agreement against the other Parties; (vi) based on advice of counsel (which may be in-house counsel), prevent CBHT from taking any action that is required by applicable law (*provided, however*, that if CBHT proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, CBHT shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided, further*, that, as of the date hereof CBHT represents and warrants to each other Party that CBHT is unaware of any such action; (vii) based on advice of counsel (which may be in-house counsel), require CBHT to take any action that is prohibited by applicable law or to waive or forego the benefit of any applicable legal privilege (*provided*, *however*, that if CBHT proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, CBHT shall provide at advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided, further*, that, as of the date hereof, CBHT represents and warrants to each other Party that CBHT is unaware of any such matter); or (viii) except as otherwise provided in, or envisioned by, this Agreement as of the PSA CBHT Effective Date, require CBHT to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations.

11. **Additional Provisions Regarding the Just Energy Entities**.

(a) Without the prior written consent of the Plan Sponsor, from and after the PSA Effective Date, Just Energy shall not, and shall not cause or allow any of its subsidiaries or affiliates, or its or their directors, officers, employees, investment bankers, attorneys, accountants, consultants, or other advisors or representatives to, directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal.

(b) Except as set forth in Section 11(c), notwithstanding anything to the contrary in this Agreement, each Just Energy Entity and its respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (i) consider and respond to any Alternative Restructuring Proposals; (ii) provide access to non-public information concerning the Company pursuant to a confidentiality or nondisclosure agreement to any Person or enter into confidentiality agreements or nondisclosure agreements with any Person that has made an Alternative Restructuring Proposal, provided that such confidentiality or nondisclosure agreements entered into after the date of this Agreement do not restrict the Just Energy Entities' ability to comply with their obligations under this Section 11; (iii) engage in, maintain, or continue discussions or negotiations with respect to Alternative Restructuring Proposals including facilitate the due diligence process in connection

with any Alternative Restructuring Proposal consistent with the terms of clause (ii) above; (iv) otherwise cooperate with, assist, or participate in any unsolicited inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals; (v) enter into or continue discussions or negotiations with holders of claims against, or interests in, a Just Energy Entity (including any Supporting Creditor), any other party in interest in the CCAA Proceedings or the Chapter 15 Cases, or any other entity regarding the Restructuring or Alternative Restructuring Proposals; and (vi) enter into an agreement with respect to an Alternative Restructuring Proposal if, following receipt of legal and financial advice, and having regard to the approvals that would be required to implement such transaction, the board of directors of Just Energy determines that the terms of such Alternative Restructuring Proposal are more favourable to the Just Energy Entities and their stakeholders than the Restructuring (a "**Superior Proposal**"). The Just Energy Entities shall provide on a confidential basis to the legal counsel and financial advisors of the Plan Sponsor and the Supporting Secured CF Lenders (A) copies (or if not provided to the Just Energy Entities in writing, a detailed description) of any Alternative Restructuring Proposal no later than one (1) calendar day following receipt thereof by the Just Energy Entities or their advisors and (B) such other information as reasonably requested by the Plan Sponsor's or the Supporting Secured CF Lenders' legal counsel and financial advisors or as necessary to keep the Plan Sponsor and the Supporting Secured CF Lenders informed no later than one (1) calendar day after any such request or any material change to the proposed terms of any Alternative Restructuring Proposal as to the terms of any Alternative Restructuring Proposal (including any changes to the proposed terms thereof) and the status and substance of discussions related thereto.

(c) Notwithstanding anything to the contrary in this Agreement, no Just Energy Entity or any of its respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives may, from and after the PSA Effective Date, solicit an Alternative Restructuring Proposal and compliance with this Agreement requires that any action taken pursuant to Section 11(b) by any Just Energy Entity or any of its respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall be taken with respect solely to any Alternative Restructuring Proposal that the Just Energy Entities do not solicit from and after the PSA Effective Date. Actions permitted by Section 11(b) shall not, by themselves, constitute a default under the DIP Financing.

12. **Termination**.

(a) Plan Sponsor Termination Events. The Plan Sponsor shall have the right, but not the obligation, to terminate this Agreement with respect to the Plan Sponsor upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events, unless waived in writing on a prospective or retroactive basis by the Plan Sponsor:

(i) upon termination of the Backstop Commitment Letter;

(ii) the failure to meet any of the Milestones in Section 4 (as they may be extended in accordance with Section 4) unless such failure is the result of any act, omission, or delay on the part of the Plan Sponsor;

(iii) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(iv) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(v) if the Just Energy Entities file any motion or any request for relief seeking to (x) dismiss any of the Chapter 15 Cases, (y) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (z) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(vi) upon the Just Energy Entities' withdrawal, waiver, amendment, or modification of, or the filing of (or announced intention to file) a pleading seeking to withdraw, waive, amend, or modify any of the Definitive Documents, including motions, notices, exhibits, appendices and orders, that is both not consistent in all material respects with this Agreement and not done with the consent of the Plan Sponsor;

(vii) any condition precedent contained in the Plan becomes incapable of being satisfied;

(viii) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any ruling or order the effect of which would be materially inconsistent with the purpose or intention of this Agreement, the Restructuring, or the Plan or enjoining or otherwise impeding the substantial consummation of the Restructuring on the terms and conditions set forth in this Agreement, or the Plan; *provided*, *however*, that the Plan Sponsor shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such ruling or order to obtain relief that would allow consummation of the Restructuring in a manner that (x) does not prevent or diminish in a material way compliance with the terms of this Agreement or the Plan and (y) is acceptable to the Plan Sponsor;

(ix) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(x) the Just Energy Entities file, propose, or otherwise support any plan of liquidation, share or asset sale of all or any material portion of any of the Just Energy Entities' material assets, or plan other than as contemplated by this Agreement or with the consent of the Plan Sponsor;

(xi) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or

any assets that would materially and adversely affect the Just Energy Entities' ability to operate their business in the ordinary course;

(xii) a failure by the Just Energy Entities to pay the fees and expenses of the Plan Sponsor or the DIP Lenders, including but not limited to the Plan Sponsor's or the DIP Lenders' legal, financial, and any other advisors, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(xiii) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(xiv) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing;

(xv) the occurrence of an Event of Default under Sections 25(a), 25(b)(ii) (provided that the failure to deliver any Cash Flow Statement by the date set out in Section 18 of the DIP Term Sheet continues for three (3) Business Days), 25(b)(iii) (solely with respect to Section 35 of the DIP Term Sheet), 25(e) (solely with respect to: (y) the affirmative covenants in clauses (1) and/or (21) on Schedule H of the DIP Term Sheet (and in the case of covenant (21) excluding any Material Contract or Material License terminated (A) with the prior written consent of (I) the Monitor and the Plan Sponsor or (II) the CCAA Court or (B) solely as a result of entering into this Agreement and/or the Backstop Commitment Letter); and/or (z) the negative covenants in Schedule I of the DIP Term Sheet), 25(f), 25(j), 25(k), 25(l), 25(m), and/or 25(p) of the DIP Term Sheet, in each case that has not been cured (if susceptible to cure) or waived by the applicable percentage of the lenders thereunder in accordance with the terms of the DIP Term Sheet, and the obligations under the DIP Term Sheet have been accelerated;

(xvi) upon (a) a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of the Plan Sponsor's or any of its affiliates' claims against any of the Just Energy Entities, and/or the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, the Plan Sponsor, or the agent under any of the relevant facilities (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary

proceeding commenced by any third party) or (b) the entry of an order by the CCAA Court or the US Bankruptcy Court (other than with respect to any action commenced by the Just Energy Entities against ERCOT) providing relief adverse to the interests of the Plan Sponsor or any of its affiliates or the agent under any relevant facilities with respect to any of the foregoing claims, causes of action, or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action or proceeding;

(xvii) if the board of directors, board of managers, or such similar governing body of any Just Energy Entity makes the determination to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal; or

(xviii) any other Party terminates its obligations under this Agreement.

(b) Company Termination Events. The Just Energy Entities may terminate this Agreement, in each case, upon delivery of written notice to the other Parties upon the occurrence of any of the following events:

(i) a material breach by the Plan Sponsor of any representation, warranty, or covenant set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Plan Sponsor of written notice detailing such breach;

(ii) the termination of the Backstop Commitment Letter;

(iii) the failure to meet any of the Milestones in Section 4 unless (x) such failure is the result of any act, omission, or delay on the part of the Just Energy Entities or (y) such Milestone is extended in accordance with Section 4;

(iv) the board of directors, board of managers, or such similar governing body of any Just Energy Entity determines, upon the advice of outside legal counsel and financial advisors, that (A) proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law or (B) in the exercise of its fiduciary duties, to pursue a Superior Proposal in accordance with Section 11;

(v) (A) any condition precedent contained in the Plan that cannot be waived becomes incapable of being satisfied (including, for the avoidance of doubt, if approval by the Required Majorities is not obtained at the Meeting); and (B)(x) any condition precedent contained in the Plan that can be waived by a party other than the Company becomes incapable of being satisfied, and (y) the Company has requested a waiver of such condition precedent and such waiver has been denied;

(vi) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order enjoining or otherwise impeding the substantial consummation of the Restructuring on the terms and conditions set forth in this Agreement, or the Plan; *provided*, *however*, that the Just Energy Entities have made commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such final ruling or Final Order prior to terminating this Agreement; or

(vii) any other Party terminates its obligations under this Agreement and such termination either (A) renders the Restructuring incapable of consummation or (B) materially changes the overall economic terms of the Restructuring in a manner that is adverse to the Just Energy Entities (which would include Shell failing to confirm, in writing, to the Just Energy Entities and the Plan Sponsor that (x) it will not exercise any termination rights under Continuing Contracts (as defined in the Plan) solely as a result of the Restructuring, and (y) all existing and future trades will be provided for under the Continuing Contracts (as may be amended, restated, supplemented, and/or replaced by the Just Energy Entities and Shell from time to time following the Effective Date) or new arrangements, in each case, in accordance with the terms thereof and subject to the terms of the New Intercreditor Agreement, or the New Credit Agreement not being entered into)**;**

(c) Supporting Secured CF Lender Termination Events. The Requisite Supporting Secured CF Lenders[1] shall have the right, but not the obligation, to terminate this Agreement upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events (each, a "**Credit Facility Lender Termination Event**"), unless waived in writing on a prospective or retroactive basis by the applicable Requisite Supporting Secured CF Lenders (*provided, however*, that any such termination shall only be with respect to the applicable Supporting Secured CF Lenders and the Credit Facility Agent, and this Agreement shall remain in full force and effect as to the other Parties hereto at such time, and the term "**Parties**" shall thereafter exclude the applicable Supporting Secured CF Lenders and the Credit Facility Agent):

(i) upon termination of the Backstop Commitment Letter;

(ii) if the Effective Date of the Plan has not occurred by November 15, 2022 (the "**Initial Secured CF Lenders Outside Date**"); provided that, if the Effective Date of the Plan will not occur by the Initial Secured CF Lenders Outside Date solely as a result of a failure to satisfy the condition set forth in Section 10.1(q) of the Plan (other than those conditions that by their nature can only be satisfied at the Effective Date, but are capable of being satisfied at such time) then the Initial Secured CF Lenders Outside Date shall automatically be extended until December 31, 2022 upon written notice given on or before the Initial Secured CF Lenders Outside Date (which notice may be by email) to the Credit Facility Agent or its counsel that there is a reasonable expectation that the condition will be satisfied by December 31, 2022, which notice may be from either the Company or the Plan Sponsor (or their respective counsel);

(iii) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(iv) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the

[1] The holders of in excess of 66 2/3% of the Credit Facility Claims shall be the "**Requisite Supporting Secured CF Lenders**."

Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(v) the Just Energy Entities file any motion or any request for relief seeking to (x) dismiss any of the Chapter 15 Cases, (y) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (z) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(vi) upon the Just Energy Entities' withdrawal, waiver, amendment, or modification, or the filing of (or announced intention to file) a pleading seeking to withdraw, waive, amend, or modify any of the Definitive Documents, including motions, notices, exhibits, appendices and orders, that is both not consistent in all material respects with this Agreement and not done with the consent of the Requisite Supporting Secured CF Lenders;

(vii) any condition precedent contained in the Plan or the New Credit Agreement becomes incapable of being satisfied or any condition precedent contained in the Plan is waived without the consent of the Requisite Supporting Secured CF Lenders;

(viii) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order, the effect of which would be materially inconsistent with the purpose or intention of this Agreement, the Restructuring, or the Plan, or enjoining or otherwise impeding the substantial consummation of the Restructuring on the terms and conditions set forth in this Agreement, or the Plan; *provided, however*, that the Supporting Secured CF Lenders shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such final ruling or Final Order to obtain relief that would allow consummation of the Restructuring in a manner that (x) does not prevent or diminish in a material way compliance with the terms of this Agreement or the Plan and (y) is acceptable to the Requisite Supporting Secured CF Lenders;

(ix) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(x) the Just Energy Entities file, propose, or otherwise support any plan of liquidation, share or asset sale of all or any material portion of any of the Just Energy Entities' material assets, or plan other than as contemplated by this Agreement (A) that materially and adversely affects the treatment, rights or interests of the Supporting Secured CF Lenders as compared to the treatment, rights or interests of the Supporting Secured CF Lenders hereunder and under the Plan and (B) without the consent of the Requisite Supporting Secured CF Lenders;

(xi) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or any assets that would materially and adversely affect the Just Energy Entities' ability to operate their business in the ordinary course;

(xii) a failure by the Just Energy Entities to pay the fees and expenses of the Supporting Secured CF Lenders and Credit Facility Agent, including but not limited to the legal, financial, and any other advisors of the Supporting Secured CF Lenders and Credit Facility Agent, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(xiii) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(xiv) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing;

(xv) the obligations of the Company under the DIP Term Sheet are accelerated or the commitments under the DIP Term Sheet are terminated;

(xvi) upon (a) a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of the Supporting Secured CF Lenders' or any of their affiliates' claims against any of the Just Energy Entities, and/or the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, the Supporting Secured CF Lenders or the Credit Facility Agent (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary proceeding commenced by any third party); or (b) the entry of an order by the CCAA Court or the US Bankruptcy Court (other than with respect to any action commenced by the Just Energy Entities against ERCOT) providing relief adverse to the interests of the Supporting Secured CF Lenders or the Credit Facility Agent with respect to any of the foregoing claims, causes of action, or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action or proceeding;

(xvii) if the board of directors, board of managers, or such similar governing body of any Just Energy Entity makes the determination to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal;

(xviii) the Plan Sponsor, Shell or CBHT terminates its obligations under this Agreement; or

(xix) Just Energy Entities' failure to obtain the Authorization Order on or before May 26, 2022, hold the meetings of creditors eligible to vote on the Plan on or before August 2, 2022, obtain the Sanction Order on or before August 12, 2022, or obtain the Sanction Recognition Order on or before September 15, 2022 (without regard to any extension after the date hereof, unless the Requisite Supporting Secured CF Lenders have consented thereto); or

(xx) a Section 6 Waiver is given by the Plan Sponsor without the consent of the Requisite Supporting Secured CF Lenders, unless such Section 6 Waiver relates exclusively to an obligation of the Just Energy Entities to the Plan Sponsor and such waiver has no direct or indirect materially adverse effect on the Supporting Secured CF Lenders or the Credit Facility Agent.

(d) Supporting Unsecured Creditor Termination Events. The Requisite Supporting Unsecured Creditors[2] shall have the right, but not the obligation, to terminate this Agreement upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events, unless waived in writing on a prospective or retroactive basis by the applicable Requisite Supporting Unsecured Creditors (*provided*, *however*, that any such termination shall only be with respect to the applicable Supporting Unsecured Creditors, and this Agreement shall remain in full force and effect as to the other Parties hereto at such time, and the term "**Parties**" shall thereafter exclude the applicable Supporting Unsecured Creditors):

(i) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(ii) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iii) the Just Energy Entities file any motion or any request for relief seeking to (x) dismiss any of the Chapter 15 Cases, (y) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (z) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iv) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order enjoining or otherwise impeding the substantial consummation of the Restructuring on the terms and conditions set forth in this Agreement, or the Plan; *provided, however*, that the Supporting Unsecured Creditors shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such final ruling or Final Order to obtain relief that would allow consummation of the Restructuring in a manner that

[2] The holders of in excess of 50% of the Term Loan Claims shall be the "**Requisite Supporting Unsecured Creditors**."

(x) does not prevent or diminish in a material way compliance with the terms of this Agreement or the Plan and (y) is acceptable to the Requisite Supporting Unsecured Creditors;

(v) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(vi) the Just Energy Entities file, propose, or otherwise support any plan of liquidation, asset sale of all or any material portion of the Just Energy Entities' assets, or plan other than as contemplated by this Agreement that (A) materially and adversely affects the treatment or rights of the Supporting Unsecured Creditors as compared to the treatment and rights set forth herein and (B) without the consent of the Requisite Supporting Unsecured Creditors;

(vii) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or any assets that would materially and adversely affect the Just Energy Entities' ability to operate their business in the ordinary course;

(viii) a failure by the Just Energy Entities to pay the fees and expenses of the Supporting Unsecured Creditors, including but not limited to the Supporting Unsecured Creditors' legal, financial, and any other advisors, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(ix) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(x) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing; or

(e) upon a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of the Supporting Unsecured Creditors' or any of its affiliates' claims against any of the Just Energy Entities, and/or

the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, the Supporting Unsecured Creditors, or the agent under any of the relevant facilities (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary proceeding commenced by any third party).

(f) Shell Termination Events. Shell, in each case, with respect solely to Shell, shall have the right, but not the obligation, to terminate this Agreement upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events, unless hereafter waived in writing on a prospective or retroactive basis by Shell (*provided*, *however*, that any such termination shall only be with respect to Shell, this Agreement shall remain in full force and effect as to the other Parties hereto at such time, and the term "**Parties**" shall thereafter exclude Shell):

(i) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(ii) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iii) the Just Energy Entities file any motion or any request for relief seeking to (x) dismiss any of the Chapter 15 Cases, (y) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (z) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iv) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order enjoining or otherwise impeding the substantial consummation of the Restructuring on the terms and conditions set forth in this Agreement, or the Plan; *provided, however*, that Shell shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such final ruling or Final Order to obtain relief that would allow consummation of the Restructuring in a manner that (x) does not prevent or diminish in a material way compliance with the terms of this Agreement or the Plan and (y) is acceptable to Shell;

(v) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(vi) the Just Energy Entities file, propose, or otherwise support any plan of liquidation, asset sale of all or any material portion of the Just Energy Entities' assets, or plan other than as contemplated by this Agreement that (A) materially and adversely affects the

treatment or rights of Shell as compared to the treatment and rights set forth herein and (B) without the consent of Shell;

(vii) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or any assets that would materially and adversely affect the Just Energy Entities' ability to operate their business in the ordinary course;

(viii) a failure by the Just Energy Entities to pay the fees and expenses of the Shell, including but not limited to Shell's legal, financial, and any other advisors, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(ix) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(x) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing; or

(xi) upon a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of Shell's or any of its affiliates' claims against any of the Just Energy Entities, and/or the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, Shell, or the agent under any of the relevant facilities (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary proceeding commenced by any third party).

(xii) The termination of this Agreement by any Party, other than a Supporting Secured CF Lender;

(xiii) any default by a Just Energy Entity in the payment of any undisputed post-Filing Date invoice owing to Shell when due and payable, provided that such amount remains unpaid for a period of three (3) days after receipt (or deemed receipt under the applicable underlying agreement) by the Just Energy Entities of written notice detailing such default (the

"**Cure Period**"), which Cure Period is for one-time use only and shall only apply in the case of one such default;

(xiv) the Effective Date of the Plan shall not occur by January 31, 2023 unless further extended by Shell;

(xv) upon termination of the Backstop Commitment Letter;

(xvi) upon the Just Energy Entities' withdrawal, waiver, amendment, or modification, or the filing of (or announced intention to file) a pleading seeking to withdraw, waive, amend, or modify any of the Definitive Documents, including motions, notices, exhibits, appendices and orders, that is both not consistent in all material respects with this Agreement and not done with the consent of Shell;

(xvii) the obligations of the Company under the DIP Term Sheet are accelerated or the commitments under the DIP Term Sheet are terminated;

(xviii) upon the entry of an order by the CCAA Court or the US Bankruptcy Court (other than with respect to any action commenced by the Just Energy Entities against ERCOT) providing relief adverse to the interests of Shell with respect to any of the foregoing claims, causes of action, or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action or proceeding;

(xix) if the board of directors, board of managers, or such similar governing body of any Just Energy Entity makes the determination to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal;

(xx) the Plan Sponsor or CBHT terminates its obligations under this Agreement; or

(xxi) a Section 6 Waiver is given by the Plan Sponsor without the consent of Shell, unless such Section 6 Waiver relates exclusively to an obligation of the Just Energy Entities to the Plan Sponsor and such waiver has no direct or indirect materially adverse effect on Shell.

(g) CBHT Termination Events. CBHT, in each case, with respect solely to CBHT, shall have the right, but not the obligation, to terminate this Agreement upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events, unless waived in writing on a prospective or retroactive basis by CBHT (*provided*, *however*, that any such termination shall only be with respect to CBHT, this Agreement shall remain in full force and effect as to the other Parties hereto at such time, and the term "**Parties**" shall thereafter exclude CBHT):

(i) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(ii) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iii) the Just Energy Entities file any motion or any request for relief seeking to (x) dismiss any of the Chapter 15 Cases, (y) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (z) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iv) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order enjoining or otherwise impeding the substantial consummation of the Restructuring on the terms and conditions set forth in this Agreement, or the Plan; *provided, however*, that CBHT shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such final ruling or Final Order to obtain relief that would allow consummation of the Restructuring in a manner that (x) does not prevent or diminish in a material way compliance with the terms of this Agreement or the Plan and (y) is acceptable to CBHT;

(v) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(vi) the Just Energy Entities file, propose, or otherwise support any plan of liquidation, asset sale of all or any material portion of the Just Energy Entities' assets, or plan other than as contemplated by this Agreement that (A) materially and adversely affects the treatment or rights of CBHT as compared to the treatment and rights set forth herein and (B) without the consent of CBHT;

(vii) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or any assets that would materially and adversely affect the Just Energy Entities' ability to operate their business in the ordinary course;

(viii) a failure by the Just Energy Entities to pay the fees and expenses of CBHT, including but not limited to CBHT's legal, financial, and any other advisors, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(ix) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any

federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(x) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing; or

(xi) upon a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of CBHT's or any of its affiliates' claims against any of the Just Energy Entities, and/or the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, CBHT, or the agent under any of the relevant facilities (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary proceeding commenced by any third party).

(h) Mutual Termination/Automatic Termination. This Agreement and the obligations of the Parties hereunder may be terminated by mutual written agreement by the Just Energy Entities and the Plan Sponsor. Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate automatically in respect of all Parties upon termination by the Company under Section 12(b) or upon the occurrence of the Effective Date of the Plan.

(i) Termination Generally. The earliest date on which termination of this Agreement as to a Party is effective in accordance with this Section 12 or Section 16 shall be referred to, with respect to such Party, as a "**PSA Termination Date**." Upon the occurrence of a PSA Termination Date, the applicable Party's obligations (as set forth herein) under this Agreement shall be terminated effective immediately, and such Parties or Party hereto shall be released from all commitments, undertakings, and agreements hereunder, and any vote in favor of the Plan delivered by such Party or Parties shall not be applicable to, or counted for purposes of, the Plan or any other plan or transaction without the consent of the applicable voting Party or Parties; *provided*, any claim for breach of this Agreement that occurs prior to such PSA Termination Date shall survive such termination, and all rights and remedies with respect to such claims shall not be prejudiced in any way. For the avoidance of doubt, the automatic stay arising pursuant to Bankruptcy Code section 362 or the stay of proceedings provided for in the Initial Order in the CCAA Proceedings or in other applicable Canadian laws shall be deemed waived or modified for purposes of providing notice or exercising rights hereunder.

13. **Transfers**.

(a) Each of the Parties other than the Just Energy Entities (the "**Supporting Creditors**"), solely with respect to itself (as expressly identified and limited on its signature page

Tab 6

BACKSTOP COMMITMENT LETTER

May 12, 2022

PRIVATE & CONFIDENTIAL

Just Energy (U.S.) Corp.
5251 Westheimer Road, Suite 1000
Houston, Texas 77056

Dear Sirs/Mesdames:

Just Energy (U.S.) Corp. ("**Just Energy**" or the "**Company**") has advised each of the signatories to this backstop commitment letter (together with all schedules hereto, the "**Backstop Commitment Letter**") on the date hereof (the "**Initial Backstop Parties**" and each an "**Initial Backstop Party**"; and collectively, the Initial Backstop Parties, the Additional Backstop Parties (as defined herein) and the Assignee Backstop Parties (as defined herein), collectively, the "**Backstop Parties**" and each a "**Backstop Party**") that the Company intends to effect a recapitalization and restructuring and related transactions involving the Company and its Affiliates (as defined herein) (collectively, the "**Just Energy Entities**" and each a "**Just Energy Entity**"), the terms of which shall be implemented pursuant to a plan of compromise and arrangement under the *Companies' Creditors Arrangement Act* (the "**CCAA**") (as the same may be amended, restated, supplemented, or otherwise modified and in effect from time to time in accordance with its terms and which shall be in form and substance reasonably acceptable to the Company and the Initial Backstop Parties and in accordance with the terms of the Plan Support Agreement (defined below), the "**Plan**"), pursuant to which, among other things, New Equity Offering Eligible Participants, including certain Backstop Parties, will have an opportunity to subscribe for and receive common equity of New Just Energy Parent (as defined in the Plan) (the "**New Equity Offering Shares**") issuable pursuant to the Plan for aggregate consideration of US$192,550,000 (the "**New Equity Offering**"), on the terms described herein and in the Plan Support Agreement attached as Schedule "A" to this Backstop Commitment Letter (as the same may be amended and in effect from time to time, the "**Plan Support Agreement**"), including the restructuring term sheet attached thereto (as the same may be amended and in effect from time to time in accordance with the terms of the Plan Support Agreement, the "**Restructuring Term Sheet**").

Just Energy and the Backstop Parties are collectively referred to herein as the "**Parties**" and each (including each Backstop Party, individually) is a "**Party**". All references herein to "**Restructuring**" shall collectively refer to those transactions contemplated herein, and by the Plan, by the Plan Support Agreement and the Restructuring Term Sheet and in all documents and agreements contemplated by any of the foregoing (collectively, the "**Transaction Documents**").

This Backstop Commitment Letter confirms the understanding and agreement among the Parties with respect to the matters addressed herein.

1. <u>Definitions</u>

In this Backstop Commitment Letter, capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in Schedule "B".

2. <u>Commitments</u>

(a) Within five (5) Business Days following the date the Authorization Order is granted, the Company shall send, or shall cause to be sent, a notice (the "**Additional Backstop Notice**") to each holder of a Term Loan Claim as of the Term Loan Record Date (that is not an Initial Backstop Party). The Additional Backstop Notice will notify such Term Loan Claim holders that they may enter into this Backstop Commitment Letter for an Additional Backstop Commitment Allocation up to their Maximum Backstop Amount, provide wire transfer instructions for the New Equity Offering Escrow Account, and will append an Additional Backstop Party Joinder, the New Equity Offering Participation Form and this Backstop Commitment Letter. All such holders of Term Loan Claims may, subject to compliance with all applicable Securities Laws to the satisfaction of the Company, enter into this Backstop Commitment Letter by executing and delivering an Additional Backstop Party Joinder and New Equity Offering Participation Form to the Company within fifteen (15) Business Days of the date of the Additional Backstop Notice and wiring their New Equity Commitment and Additional Backstop Commitment Allocation to the New Equity Offering Escrow Account within three (3) Business Days of the Company providing it with notice of its Additional Backstop Commitment Allocation (any such Term Loan Claim holder that so executes and delivers an Additional Backstop Party Joinder, New Equity Offering Participation Form and funds its New Equity Commitment and Additional Backstop Commitment Allocation, an "**Additional Backstop Party**").

(b) If there are any Additional Backstop Parties, the Initial Backstop Commitment Allocation (and Backstop Commitment Allocation) for the Initial Backstop Parties will be reduced by the aggregate of the Additional Backstop Commitment Allocations, with the Initial Backstop Parties having sole discretion to allocate such reduction amongst the Initial Backstop Parties by providing written notice of the reallocations to the Company (provided that the Company may make such reallocations pro rata based on the Initial Backstop Party's Initial Backstop Commitment Allocation if such notice is not received from the Initial Backstop Parties within twenty-five (25) Business Days of the date of the Additional Backstop Notice).

(c) Each Backstop Party confirms by this Backstop Commitment Letter its several and not joint commitment to the Company to, pursuant to the Plan and the Plan Support Agreement (without duplication):

(i) subscribe for and receive its New Equity Offering Shares in accordance with the terms of the New Equity Offering and the New Equity Offering Documentation;

(ii) subscribe for and receive its Backstop Commitment Pro Rata Share of the Unsubscribed New Equity (the commitments under this subsection (b), the "**Primary Commitments**");

(iii) subscribe for and receive its Backstop Commitment Pro Rata Share of New Equity Offering Shares arising from any event where a New Equity Offering Eligible Participant subscribes for any portion of the New Equity Offering Shares and fails to fulfill its subscription obligations by the New Equity Participation Deadline (the "**Defaulted Subscription Shares**", and together with the Unsubscribed New Equity, the "**Backstopped Shares**") (the commitments under this subsection (c)(iii), the "**Secondary Commitments**" and, together with the Primary Commitments, the "**Commitments**"); and

(iv) to the extent a Backstop Party is an Affiliate of the Plan Sponsor but is not also party to the Plan Support Agreement, such Backstop Party agrees to vote any Claims (as defined in the Plan) it holds in favor of the Plan,

and, in the case of (i), (ii) and (iii) above, at a price of US$10 per New Common Share (the "**Subscription Price**") and in each case upon the terms and subject to the conditions set forth or referred to in this Backstop Commitment Letter and the New Equity Offering Documentation and, in each case, subject to the terms of the Plan and the Plan Support Agreement, including the issuance of all Orders required thereunder.

(d) The rights and obligations of each Backstop Party under this Backstop Commitment Letter shall be several and not joint, and no failure by any Backstop Party to comply with any of its obligations under this Backstop Commitment Letter shall impose any additional obligations upon or prejudice the rights of any other Backstop Party; provided that, each such Backstop Party shall only be responsible for its specific Commitments as set out herein, unless otherwise agreed in writing by such Backstop Party.

(e) In the event an Initial Backstop Party fails to fund any of its Commitments or its New Equity Commitment in accordance with this Backstop Commitment Letter and the New Equity Offering Documentation (a "**Defaulting Backstop Party**"), then each non-Defaulting Initial Backstop Party shall have the right, but not the obligation, within two (2) Business Day after receipt of written notice from the Company to all Initial Backstop Parties of such default, to assume such Defaulting Backstop Party's Commitments hereunder. If more than one (1) such non-Defaulting Backstop Party elects to assume a Defaulting Backstop Party's Commitments, the New Common Shares underlying such Commitments shall be allocated among such non-Defaulting Backstop Parties based on their respective Initial Backstop Commitment Pro Rata Shares (calculated without including the Initial Backstop Commitment Allocation of the Defaulting Backstop Party). If any Commitments of an Initial Backstop Party have not been funded in full by the Effective Date, (i) all Commitments and New Equity Commitments made hereunder and under the New Equity Offering Documentation, as applicable, shall be null and void and of no further force and effect, (ii) all amounts held in escrow shall be returned to the New Equity Offering Eligible Participants in accordance with the terms of the Escrow Agreement or other escrow arrangements agreed to

by the Company, and (iii) this Backstop Commitment Letter shall automatically terminate. It is further hereby acknowledged and agreed that any Defaulting Backstop Party shall be liable for its breach of the terms contained herein and remain bound by this Backstop Commitment Letter and the Transaction Documents and obligated to perform all of its obligations arising hereunder and thereunder.

(f) Each Backstop Party may, in its sole discretion, designate (x) one (1) or more of its Affiliates to perform its obligations hereunder or assign its rights or obligations under this Backstop Commitment Letter to one or more Affiliates that executes a Assignee Joinder and/or (y) that some or all of the New Common Shares it is entitled to receive pursuant to the Plan and this Backstop Commitment Letter be issued in the name of and delivered to one (1) or more of its Affiliates, subject to compliance with all applicable Securities Laws to the satisfaction of the Company, acting reasonably, and provided that such designation will not relieve such Backstop Party of any of its obligations under this Backstop Commitment Letter and the Transaction Documents.

(g) For the avoidance of doubt, no Backstop Party shall be compelled or required, absent its prior written consent, to purchase the Backstopped Shares and New Equity Offering Shares of any Defaulting Backstop Party that is an Initial Backstop Party or to otherwise increase its Commitments hereunder.

3. Representations and Warranties of the Parties

Each of the Parties hereby represents and warrants, severally and not jointly, to each other Party (and acknowledges that each other Party is relying upon such representations and warranties) that, as of the date hereof (subject to the issuance of the Authorization Order, Meetings Order, Sanction Order, Authorization Recognition Order, Meetings Recognition Order and Sanction Recognition Order, as applicable) and as of the Effective Date:

(a) this Backstop Commitment Letter has been duly authorized, executed and delivered by it, and, assuming the due authorization, execution and delivery by each of the other Parties hereto, this Backstop Commitment Letter constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) it is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Backstop Commitment Letter and to perform its obligations hereunder and consummate the Restructuring and the transactions contemplated thereby;

(c) it: (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Backstop Commitment Letter, (ii) has conducted its own analysis and made its own decision to enter into this Backstop

Commitment Letter and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors;

(d) the execution and delivery of this Backstop Commitment Letter by it and the completion by it of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Law applicable to it, or any of its properties or assets, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents;

(e) the execution and delivery of this Backstop Commitment Letter by it, the completion by it of its obligations hereunder and the consummation by it of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Entity, other than as contemplated by the Plan, the issuance of the Sanction Order, Sanction Recognition Order and the Transaction Regulatory Approvals; and

(f) there is not, as of the date hereof, pending or, to its knowledge, threatened against it or any of its properties, nor has it received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Entity or legislative body that, would prevent it from executing and delivering this Backstop Commitment Letter, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Backstop Commitment Letter.

4. Representations and Warranties of the Company

The Company hereby represents and warrants to each Backstop Party (and the Company acknowledges that each Backstop Party is relying upon such representations and warranties) that as of the date hereof subject to the issuance of the Authorization Order, Meetings Order, Sanction Order, Authorization Recognition Order, Meetings Recognition Order and Sanction Recognition Order, as applicable and as of the Effective Date:

(a) the authorized capital of New Just Energy Parent as of the Effective Date will consist solely of (i) New Common Shares, and as of the Effective Date the only New Common Shares issued and outstanding shall be as contemplated by the Plan and the Plan Support Agreement (including any management incentive plan, as set forth in the Plan Support Agreement), and (ii) New Preferred Shares, and as of the Effective Date the only New Preferred Shares issued and outstanding shall be as contemplated by the Plan and the Plan Support Agreement. Other than as contemplated in the Plan or the Plan Support Agreement, no person has any agreement or option or any right or privilege capable of becoming an agreement or option for the purchase from New Just Energy Parent of any New Common Shares, New Preferred Shares or other securities of New Just Energy Parent;

(b) the New Common Shares shall be, when issued on the Effective Date pursuant to the terms of this Backstop Commitment Letter, duly authorized, fully paid and non-assessable;

(c) the execution, delivery and performance by the Company of this Backstop Commitment Letter does not and will not: (x) violate any provision of law, rule, or regulation applicable to it or any of its subsidiaries or its charter or bylaws (or other similar governing documents) or those of any of its subsidiaries; (y) conflict with, result in a breach of, or constitute (with or without notice or lapse of time or both) a default under any material agreement to which any Just Energy Entity is a party or any debt for borrowed money to which it or any of its subsidiaries is a party that, in any case, is not remedied, cured or waived pursuant to the Sanction Order and/or the Plan, or (z) violate any Order, statute, rule, or regulation;

(d) as of the time of entering into this Backstop Commitment Letter, no order halting or suspending trading in securities of the Just Energy Entities or prohibiting the issuance and distribution of the New Common Shares has been issued to and is outstanding against any of the Just Energy Entities, and, to the Company's knowledge, no investigations or proceedings for such purpose are pending or threatened;

(e) the representations and warranties of the Company in the Plan Support Agreement are true and correct; provided that, this representation is made solely to the Initial Backstop Parties who are parties to this Backstop Commitment Letter on the date hereof;

(f) none of the Just Energy Entities, nor any of their respective officers, directors, employees or agents, is a Sanctioned Person;

(g) none of the Just Energy Entities has (i) assets located in, or otherwise directly or, to the Company's knowledge, indirectly, derives revenues from or engages in, investments, dealings, activities, or transactions in or with, any Sanctioned Country in violation of Sanctions Laws; or (ii) directly or, to the Company's knowledge, indirectly, derives revenues from or engages in investments, dealings, activities, or transactions with, any Sanctioned Person in violation of Sanctions Laws;

(h) the operations of the Just Energy Entities are and have been at all times conducted in all respects with (i) the U.S. Currency and Foreign Transactions Reporting Act of 1970, the PCMLTFA (as defined below), the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the PATRIOT Act (as defined below), the Bank Secrecy Act (31 U.S.C. §§5311-5332), and any other applicable laws related to money laundering or terrorism financing ("**Anti-Money Laundering Laws**"), (ii) the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder, and any other applicable laws or regulations concerning or relating to bribery or corruption ("**Anti-Corruption Laws**") and (iii) Sanctions Laws;

(i) no action, suit, investigation or legal proceeding by or before any Governmental Entity or any arbitrator involving the Just Energy Entities or any officer, director, employee or agent thereof, or any informal or formal investigation by any Just Energy Entity or its legal or other representatives involving the foregoing, with respect to Anti-Money Laundering Laws, Anti-Corruption Laws or Sanctions Laws is pending, or to the Company's knowledge, threatened; and

(j) each Just Energy Entity has instituted and maintains policies and procedures designed to ensure compliance by each Just Energy Entity and its directors, officers, employees, and agents with Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions Laws.

5. Representations, Warranties and Covenants of the Backstop Parties

Each Backstop Party hereby represents, warrants and covenants, severally and not jointly, to the Company (and acknowledges that the Company is relying upon such representations and warranties) that as of the date hereof and as of the Effective Date:

(a) in respect of the Initial Backstop Parties, it is the sole beneficial owner of the portion of the Term Loan in the principal amount(s) set forth on Exhibit "A" to its signature page hereto (together with all obligations owing in respect thereof, including accrued and unpaid interest and any other amount entitled to be claimed in respect of thereof), and no other portion of the Term Loan;

(b) in respect of the Additional Backstop Parties, it is the sole beneficial owner of the portion of the Term Loan in the principal amount(s) set forth on Exhibit "A" to its Additional Backstop Party Joinder (together with all obligations owing in respect thereof, including accrued and unpaid interest and any other amount entitled to be claimed in respect of thereof), and no other portion of the Term Loan;

(c) its claims under the Term Loan are free and clear of any lien (statutory, judicial or other), adverse claim, charge, option, right of first refusal, servitude, interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, deed of trust, easement, right of way, encumbrance, charge, restriction on transfer, conditional sale or other title retention agreement, defect in title, or other security interest of any kind whatsoever, that would adversely affect in any way such Backstop Party's performance of its obligations contained in this Backstop Commitment Letter at the time such obligations are required to be performed and will not be subject to any preemptive rights, subscriptions rights or similar rights;

(d) it is an "accredited investor", as such term is defined in NI 45-106 and it was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106 and acknowledges that the New Common Shares will be subject to resale restrictions under applicable Canadian Securities Laws;

(e) it and any Affiliate to which it assigns its rights to receive New Common Shares or directs the delivery of New Common Shares: (i) is an "accredited investor" as

defined in Rule 501 of Regulation D under the Securities Act, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the New Common Shares, it is able to bear the economic risk of loss of its entire investment, and it has had access to all information and materials it has requested about the Company in order to make its investment decision, (ii) will be acquiring the New Common Shares pursuant to this Backstop Commitment Letter as principal for its own account and not with a view to distributing, reselling or otherwise disposing of such New Common Shares, (iii) understands that the New Common Shares it acquires pursuant to this Backstop Commitment Letter will be "restricted securities" within the meaning of Rule 144 under the U.S. Securities Act and have not been and will not be registered under the U.S. Securities Act, or the securities laws of any state of the United States and that the sale of New Common Shares contemplated by this Backstop Commitment Letter will be made in reliance on an exemption from such registration requirements, and (iv) if in the future it decides to offer, resell, pledge or otherwise transfer any of the New Common Shares acquired pursuant to this Backstop Commitment Letter, such New Common Shares may be offered, sold, pledged or otherwise transferred only: (A) to the Company, (B) outside the United States in accordance with Rule 903 or 904 of Regulation S, (C) in the United States in accordance with Rule 144 or Rule 144A under the U.S. Securities Act, if available, and in compliance with any applicable state securities laws, or (D) in another transaction that does not require registration under the U.S. Securities Act or any applicable state securities laws of the United States, and that the New Common Shares may bear a restrictive legend to that effect;

(f) it is located and resident in the jurisdiction indicated on its signature page hereto (or the Assignee Joinder or Additional Backstop Party Joinder, as applicable);

(g) if it is domiciled, located, or a resident of a jurisdiction other than Canada or the United States, it is entitled to participate in the New Equity Offering and enter into the Backstop Commitment Letter in accordance with the laws of such jurisdiction without obliging New Just Energy Parent to register or qualify for distribution and/or issuance of the New Common Shares or file or deliver a registration statement, prospectus or other similar disclosure document, cause New Just Energy Parent to become a reporting issuer, registrant or equivalent entity in any jurisdiction or to make any other filings that New Just Energy Parent is not already obligated to make under applicable law in the United States and Canada; and, it agrees that its right to participate in the New Equity Offering and enter into this Backstop Commitment Letter are conditional on demonstrating to the Company, and providing evidence satisfactory to the Company in its sole discretion (which evidence may include an opinion of counsel of recognized standing to the effect of the matters set forth above), that it is qualified to participate in the New Equity Offering and enter into this Backstop Commitment Letter in accordance with the laws of its domicile or jurisdiction of residence;

(h) it has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Backstop Commitment Letter, including

the ability to acquire the New Common Shares it is required to acquire under this Backstop Commitment Letter, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing;

(i) neither it nor any of its subsidiaries nor any of their respective directors or officers or, to its knowledge, employees acting on behalf of it or any of its subsidiaries, (i) is a Person identified in any sanctions-related list of designated Persons maintained by the Government of Canada, or (ii) is greater than 50% owned or controlled by any Person described under clause (i) to the extent the owned or controlled Person is itself subject to the restrictions or prohibitions as the Person described in clause (i); and

(j) to its knowledge, the funds representing the aggregate Subscription Price for the New Common Shares purchased by it pursuant to this Backstop Commitment Letter and the aggregate amounts which will be paid by it to the Company hereunder: (i) do not represent proceeds of crime for the purposes of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (the "**PCMLTFA**"), and (ii) have not been and will not be derived directly or indirectly from or related to any activity that is deemed criminal under the laws of Canada, the United States of America, or any other jurisdiction, in each case, with respect to each of clause (i) and (ii), in violation thereof. It acknowledges and agrees that the Company may be required by Law to provide disclosure pursuant to the PCMLTFA. The funds representing payment of the amounts to be advanced by it hereunder will not represent proceeds of crime for the purposes of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (the "**PATRIOT Act**") in violation of the PATRIOT Act, and it acknowledges that the Company may in the future be required by law to disclose its name and other information relating to this Backstop Commitment Letter and the amounts payable by it to the Company hereunder, on a confidential basis, pursuant to the PATRIOT Act. No portion of the funds representing payment of the amounts to be advanced by it hereunder (A) has been or will be, to its knowledge, derived from or related to any activity that is deemed criminal under the laws of the United States of America, or any other jurisdiction, or (B) is being tendered on behalf of a Person or entity who has not been identified to or by it, and it shall promptly notify the Company if it discovers that any of such representations ceases to be true and provide the Company with appropriate information which is reasonably available in connection therewith.

6. Covenants

In consideration of each Backstop Party making its Commitments and purchasing its New Equity Offering Shares as set forth in this Backstop Commitment Letter, but subject in all respects to the Plan Support Agreement (including, without limitation, Section 11 and Section 12(b)(iv) thereof), the Company hereby covenants and agrees:

(a) to (i) consult with and agree (such agreement not to be unreasonably withheld, conditioned or delayed) with the Initial Backstop Parties with respect to all material steps required in connection with the New Equity Offering, (ii) prepare and, as soon as reasonably possible following the applicable record date(s) for the New Equity Offering, file with the applicable Canadian Securities Commissions the information statement related to the Plan and the New Equity Offering, (iii) permit the Initial Backstop Parties to review and comment on all material drafts of the information statement, which document shall be filed in a form acceptable to the Initial Backstop Parties, acting reasonably, and (iv) permit the Initial Backstop Parties to conduct all diligence activities they may reasonably request from time to time;

(b) to take any and all commercially reasonable and appropriate actions in furtherance of the New Equity Offering, as contemplated under this Backstop Commitment Letter, and not take any action (or inaction) that is materially inconsistent with the terms of this Backstop Commitment Letter;

(c) to negotiate in good faith all New Equity Offering Documentation with the Initial Backstop Parties on terms consistent with this Backstop Commitment Letter;

(d) from the date hereof through the earlier of the Effective Date and termination of this Backstop Commitment Letter, to promptly notify the Initial Backstop Parties, in writing, of receipt of any notice, demand, request or inquiry by any Governmental Entity concerning the New Equity Offering or the transactions contemplated hereby or the issuance by any Governmental Entity of any cease trading or similar Order or ruling relating to any securities of the Just Energy Entities;

(e) to take all action as may be necessary so that the New Equity Offering and the other transactions contemplated in this Backstop Commitment Letter will be effected in accordance with applicable Laws including applicable Canadian Securities Laws and U.S. Securities Laws;

(f) to execute any and all documents and perform (or cause its agents and advisors to perform) any and all commercially reasonable acts required in connection with this Backstop Commitment Letter;

(g) to use commercially reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain all required regulatory approvals, and material third-party consents and approvals as may be required in connection with the New Equity Offering and the transactions contemplated hereby; and

(h) to promptly notify the Initial Backstop Parties of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Backstop Commitment Letter, or (ii) any Material Adverse Effect occurring from and after the date hereof.

7. **Regulatory Matters**

(a) Just Energy and the Initial Backstop Parties, each acting reasonably, shall work together in good faith to determine, on a date that is not later than ten (10) Business Days following the date of this Backstop Commitment Letter (the "**Determination Date**"), whether it is necessary or advisable that a filing be made to obtain Competition Act Approval and/or Investment Canada Act Approval in connection with the entering into and performance of transactions contemplated by this Backstop Commitment Letter. In the event that Just Energy and the Initial Backstop Parties jointly determine that Competition Act Approval and/or Investment Canada Act Approval is required or should be obtained, as applicable:

(i) the Parties shall, as soon as reasonably practicable, and in no event more than ten (10) Business Days after the Determination Date, submit a request to the Commissioner for an Advance Ruling Certificate or, in the alternative, a No Action Letter in respect of the transactions contemplated by this Backstop Commitment Letter;

(ii) the Parties shall submit, at the Parties' joint election and within ten (10) Business Days of such mutually agreed election, notification filings in accordance with Part IX of the Competition Act in respect of the transactions contemplated by this Backstop Commitment Letter; and

(iii) the Initial Backstop Parties shall, as soon as reasonably practicable and in no event more than ten (10) Business Days after the Determination Date, submit the notification for the Investment Canada Act Approval.

(b) On a date that is on or prior to the Determination Date, Just Energy and the Initial Backstop Parties, each acting reasonably, shall also work together in good faith to determine whether any Antitrust Approvals are required or advisable and if so, shall proceed to make any such filings on an expeditious basis. Just Energy shall be responsible for the payment of any filing fees required to be paid in connection with any filing made in respect of the Competition Act Approval and the Antitrust Approvals, as applicable.

(c) Just Energy and the Initial Backstop Parties shall, from and after the date hereof, work together to determine whether any material licenses, permits or approvals required from any Governmental Entity or under any Applicable Laws relating to the business and operations of the Just Energy Entities that would be required to be obtained in order to permit Just Energy, New Just Energy Parent and the Initial Backstop Parties to perform their obligations hereunder and the issuing, acquisition and holding of the New Common Shares, other than the Competition Act Approval and the Investment Canada Act Approval (the "**Regulatory Approvals**"). In the event any such determination is made, Just Energy and the Initial Backstop Parties shall use commercially reasonable efforts to apply for an obtain any such Regulatory Approvals as soon as reasonably practicable, in accordance with Section 7.7(d), in each case at the sole cost and expense of the Just Energy.

(d) Just Energy and the Initial Backstop Parties shall use commercially reasonable efforts to apply for and obtain the Transaction Regulatory Approvals and shall co-operate with one another in connection with obtaining such approvals. Without limiting the generality of the foregoing, Just Energy and the Initial Backstop Parties shall: (i) give each other reasonable advance notice of all meetings or other oral communications with any Governmental Entity relating to the Transaction Regulatory Approvals, as applicable, and provide as soon as practicable but in any case, if any, within the required time, any additional submissions, information and/or documents requested by any Governmental Entity necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (ii) not participate independently in any such meeting or other oral communication without first giving Just Energy or the Initial Backstop Parties, as applicable (or their outside counsel) an opportunity to attend and participate in such meeting or other oral communication, unless otherwise required or requested by such Governmental Entity; (iii) if any Governmental Entity initiates an oral communication regarding the Transaction Regulatory Approvals as applicable, promptly notify Just Energy or the Initial Backstop Parties, as applicable, of the substance of such communication; (iv) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of a Just Energy or an Initial Backstop Party, as applicable) with a Governmental Entity regarding the Transaction Regulatory Approvals as applicable; and (v) promptly provide each other with copies of all written communications to or from any Governmental Entity relating to the Transaction Regulatory Approvals as applicable.

(e) Each of the Just Energy Entities and the Initial Backstop Parties may, as advisable and necessary, reasonably designate any competitively or commercially sensitive material provided to the other under this Section 7 as "Outside Counsel Only Material", provided that the disclosing Party also provides a redacted version to the receiving Party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Just Energy Entities and the Initial Backstop Parties, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.

(f) The obligation of any Just Energy Entity or an Initial Backstop Party to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require Just Energy or the Initial Backstop Parties (or any Affiliate thereof) to undertake any divestiture of any business or business segment of Just Energy or the Initial Backstop Parties, to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Initial Backstop Parties and the Company. In connection with obtaining the

Transaction Regulatory Approvals, no Just Energy Entity shall agree to any of the foregoing items without the prior written consent of the Initial Backstop Parties.

8. <u>Conditions to Backstop Parties' Commitments</u>

Notwithstanding anything to the contrary contained in this Backstop Commitment Letter and without limiting any other rights of the Backstop Parties hereunder, each Backstop Party's obligation to fulfill its Commitments and New Equity Commitments and consummate the transactions contemplated hereby shall be subject to the satisfaction of the following conditions (provided that, for greater certainty, nothing in this Section 8 changes the applicable deadlines under Section 2(a) and Section 10 by which each Additional Backstop Party and Initial Backstop Party, respectively, must fund its New Equity Commitment and Commitments into escrow in accordance with the terms hereof), each of which is for the benefit of the Backstop Parties and may be waived, in whole or in part, by the Initial Backstop Parties (provided that such conditions shall not be enforceable by a Backstop Party if any failure to satisfy such conditions results from a breach of this Backstop Commitment Letter by such Backstop Party):

(a) the Company shall have executed this Backstop Commitment Letter and delivered its signature page to each Backstop Party;

(b) (i) the representations and warranties of the Company set forth in this Backstop Commitment Letter (other than the Company Fundamental Representations) shall be true and correct as of the Effective Date, except that representations and warranties given as of another specified date shall be true and correct as of such date, as though then made (without giving effect to any materiality, Material Adverse Effect, or similar qualification in the representations and warranties), except where the failure of such representations and warranties to be so true and correct would not, in the aggregate, have a Material Adverse Effect and (ii) the Company Fundamental Representations shall be true and correct in all respects as of the Effective Date (other than *de minimis* failures) as though such representations and warranties had been made on and as of the Effective Date;

(c) since the date of this Backstop Commitment Letter, no change, effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would be reasonably expected to result in, a Material Adverse Effect;

(d) the Company shall have complied in all material respects with each covenant and obligation in this Backstop Commitment Letter and the New Equity Offering Documentation;

(e) each of the Company and New Just Energy Parent shall not have issued any New Common shares, New Preferred Shares or other securities of the Company or New Just Energy Parent, or incurred any new debt obligations, except in each case as provided for in the Plan and the Plan Support Agreement;

(f) no proceeding shall have been commenced that could reasonably be expected to result in an injunction or other Order to, or no injunction or other Order shall have

been issued to, enjoin, restrict or prohibit any of the transactions contemplated by the Plan, the Support Agreement or this Backstop Commitment Letter;

(g) all required Transaction Regulatory Approvals shall have been obtained and shall be in full force and effect, except for such Transaction Regulatory Approvals that need not be obtained or in full force and effect prior to the implementation of the Plan;

(h) the Company shall have provided the Initial Backstop Parties with: (i) on the Escrow Deadline, a certificate signed by an officer of the Company certifying compliance with the terms of this Section 8 as of the Escrow Deadline (to the extent such conditions are capable of being satisfied on or before the Escrow Deadline), and (ii) on the Effective Date, a certificate signed by an officer of the Company certifying compliance with the terms of this Section 8 as of the Effective Date;

(i) all conditions to effectiveness of the Plan and all conditions set forth in the Plan Support Agreement shall have been satisfied or waived in accordance with the terms thereof, or will be satisfied or waived concurrently with the closing of the transactions contemplated therein and herein, the Plan shall be effective as of the closing of the New Equity Offering and the Effective Date shall have occurred or shall be deemed to occur concurrently with the closing of the transactions contemplated therein and herein;

(j) the New Equity Offering shall have been conducted, in all material respects, in accordance with the Plan Support Agreement and the Plan, and the expiration of the New Equity Offering shall have occurred;

(k) the Plan Support Agreement shall not have been amended, restated, modified, changed, supplemented or altered without obtaining the requisite approvals pursuant to the Plan Support Agreement in writing; and

(l) the Plan Support Agreement shall be in full force and effect as it relates to each of the Company and the Plan Sponsor.

If the transactions contemplated hereby are consummated, all conditions set forth in this Section 8 which have not been fully satisfied as of the Effective Date shall be deemed to have been waived by the Backstop Parties.

9. Fees

In consideration of the execution and delivery of this Backstop Commitment Letter:

(a) The Company agrees that New Just Energy Parent shall issue and deliver to the Initial Backstop Parties and the Additional Backstop Parties, in the aggregate, New Common Shares representing ten (10) percent of the outstanding New Common Shares on the Effective Date (subject to dilution in accordance with any management incentive plan), which shall constitute the Backstop Commitment Fee Shares and which shall be fully earned upon entry of the Authorization Order, and

shall be issuable and deliverable to each Initial Backstop Party and the Additional Backstop Party on the Effective Date; *provided* that, such Initial Backstop Party and Additional Backstop Party has funded its New Equity Commitment and its Commitments in accordance with the terms hereof. The Backstop Commitment Fee Shares shall be delivered to the Initial Backstop Parties and Additional Backstop Parties in book-entry form by New Just Energy Parent or its transfer agent. The Initial Backstop Parties and the Additional Backstop Parties that have funded their New Equity Commitments and Commitments in accordance with the terms hereof shall each be entitled to their respective Initial Backstop and Additional Backstop Commitment Pro Rata Share (calculated without including the Backstop Commitment Allocation of any Defaulting Backstop Party) of the Backstop Commitment Fee Shares. For the avoidance of doubt, the Backstop Commitment Fee Shares shall not be issuable or deliverable in the event the Just Energy Entities consummate an Alternative Restructuring Proposal (as defined in the Plan Support Agreement).

(b) The Company agrees that a Just Energy Entity organized in the United States (which may be the Company) (the identity of which shall be subject to the approval of the Initial Backstop Parties (not to be unreasonably withheld, conditioned, or delayed)) shall pay to the Initial Backstop Parties and Additional Backstop Parties, in the aggregate, a cash fee in an amount equal to US$15 million (the "**Termination Fee**"), which shall be, subject to entry of the Authorization Order, (i) fully earned upon entry of the Authorization Order and (ii) payable solely after the Company's termination of the Plan Support Agreement pursuant to Section 12(b)(iv) thereof or the Plan Sponsor's termination of the Plan Support Agreement pursuant to Section 12(a)(xvii) thereof, and concurrently with the consummation of an Alternative Restructuring Proposal (as defined in the Plan Support Agreement) after any such termination; provided, however, that the Company shall obtain within the Authorization Order a court-ordered charge in favor of the Initial Backstop Parties in the amount of the Termination Fee to secure the payment of the Termination Fee, which charge shall have the priority given to it pursuant to the Authorization Order. The Initial Backstop Parties and Additional Backstop Parties shall each be entitled to their respective Initial Backstop and Additional Backstop Commitment Pro Rata Share of the Termination Fee.

The Termination Fee shall be deemed automatically waived by the Initial Backstop Parties and the Additional Backstop Parties upon the consummation of the transactions contemplated by the Backstop Commitment Letter or if the Plan Support Agreement is terminated (other than pursuant to Section 12(b)(iv) or Section 12(a)(xvii) thereof).

(c) The Parties hereto and New Just Energy Parent agree to treat, for U.S. federal income tax purposes, the payment of the Backstop Commitment Fee Shares pursuant to this Backstop Commitment Letter as the consideration paid in exchange for the issuance of a put option by the Initial Backstop Parties and the Additional Backstop Parties to New Just Energy Parent with respect to the Backstopped Shares. The Backstop Parties, the Just Energy Entities and New Just Energy Parent

shall not take any tax position or tax action inconsistent with such tax treatment and/or tax characterization unless otherwise required by applicable law.

10. Funding Procedures

(a) As soon as practicable, and in any event within five (5) Business Days following the New Equity Participation Deadline, the Company shall provide written notice to each Initial Backstop Party (or its Assignee Backstop Party) setting forth the Company's calculation of: (i) the number of Backstopped Shares, (ii) the New Equity Offering Shares subscribed for and funded by New Equity Offering Eligible Participants in the New Equity Offering, (iii) such Backstop Party's Commitments, and (iv) wire transfer instructions for an escrow account in accordance with the Escrow Agreement or other escrow arrangements to be agreed by the Company and the Initial Backstop Parties, each acting reasonably (the "**New Equity Offering Escrow Account**").

(b) By no later than the Escrow Deadline, each Initial Backstop Party (or its Assignee Backstop Party) shall deposit cash in an aggregate amount equal to its New Equity Commitments and Commitments in immediately available funds in the New Equity Offering Escrow Account based on the Subscription Price, in accordance with the terms hereof and the New Equity Offering Documentation. The maximum amount of the New Equity Commitments and Commitments hereunder by the Backstop Parties shall not exceed US$192,550,000, subject to reduction as set forth in this Section 10(b) and Section 2(b).

(c) To the extent Non-Backstop Parties subscribe for New Equity Offering Shares, the Company shall direct the escrow agent under the Escrow Agreement to, as soon as reasonably practicable following the Effective Date, release the amount of the Additional Backstop Commitment Allocations to the Additional Backstop Parties which amounts are not required to be used to acquire any Backstopped Shares.

11. Expiration of Commitments

Each Backstop Party hereby agrees to hold its Commitments available for the Company until, and this Backstop Commitment Letter shall (subject to Section 16) terminate on, the earliest of (a) the Effective Date, (b) the termination of this Backstop Commitment Letter in accordance with Section 13 upon the occurrence of any of the events contained Section 13, (c) the termination of this Backstop Commitment Letter pursuant to Section 2, and (d) the Outside Date.

12. Approval, Consent, Waiver, Amendment of or by Backstop Parties

Except as may be otherwise specifically provided for under this Backstop Commitment Letter, where this Backstop Commitment Letter provides that a matter shall have been approved, agreed to, consented to, waived or amended by the Initial Backstop Parties or the Backstop Parties, or that a matter must be satisfactory or acceptable to the Initial Backstop Parties or the Backstop Parties, such approval, agreement, consent, waiver, amendment, satisfaction, acceptance or other action shall be effective or shall have been obtained or satisfied, as the case may be, for the purposes of this Backstop Commitment Letter, where the Backstop Parties which have subscribed for a

majority of the Commitments shall have confirmed their approval, consent, waiver, amendment, satisfaction or acceptance, as the case may be, to the Company. The Company shall be entitled to rely on any such confirmation of approval, agreement, consent, waiver, amendment, satisfaction, acceptance, or other action communicated to the Company by the Initial Backstop Parties, and such communication shall be effective for all purposes of this Backstop Commitment Letter and the terms and conditions hereof. For the avoidance of doubt, this Section 12 shall apply to the Initial Backstop Parties' right to terminate this Backstop Commitment Letter pursuant to Section 13 hereof. Any amendment to this Section 12, to the definition of the terms "Initial Backstop Party", "Backstop Party" or "Outside Date" used in this Backstop Commitment Letter, or to the last sentence of Section 2, shall require the prior written consent of each Initial Backstop Party; and provided, further, that any amendment to this Backstop Commitment Letter that would materially and adversely affect any Backstop Party compared to any other Backstop Party shall require the prior written consent of the adversely affected Backstop Party.

13. Termination Events

(a) Consensual Termination. This Backstop Commitment Letter may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Effective Date by mutual written consent of the Company and the Initial Backstop Parties.

(b) Termination of the Plan Support Agreement. This Backstop Commitment Letter may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Effective Date by either Just Energy or the Initial Backstop Parties upon the termination of the Plan Support Agreement as to the Just Energy Entities or the Plan Sponsor for any reason.

(c) Backstop Party Termination. This Backstop Commitment Letter may be terminated by the Initial Backstop Parties by the delivery to the Company of a written notice in accordance with Section 20(n) hereof, upon the occurrence and during the continuation of any material breach of any representation, warranty or covenant of the Company made in this Backstop Commitment Letter such that the conditions set forth in Section 8 would not be satisfied, and such material breach has not been waived in writing by the Initial Backstop Parties or remains uncured within ten (10) Business Days after the receipt by the Company of written notice of such breach; provided, however, that the right to terminate this Backstop Commitment Letter pursuant to this Section 13(c) shall not be available to the Initial Backstop Parties if any Initial Backstop Party is in breach of any of its representations, warranties, covenants, obligations or agreements set forth in this Backstop Commitment Letter.

(d) Company Termination. This Backstop Commitment Letter may be terminated by the Company by the delivery to the Initial Backstop Parties of a written notice in accordance with Section 20(n) hereof, upon the occurrence and during the continuation of any material breach of any representation or warranty of the Backstop Parties made in this Backstop Commitment Letter and such material breach has not been waived in writing by the Company or remains uncured within ten (10) Business Days after the receipt by the Initial Backstop Parties of written

notice of such breach; provided, however, that the right to terminate this Backstop Commitment Letter pursuant to this Section 13(d) shall not be available to the Company if the Company is in breach of any of its representations, warranties, covenants, obligations or agreements set forth in this Backstop Commitment Letter.

(e) Effect of Termination. Upon termination of this Backstop Commitment Letter pursuant to this Section 13, this Backstop Commitment Letter shall forthwith become void and there shall be no further obligations or liabilities on the part of the Parties, other than with respect to payment of the Termination Fee pursuant to Section 9(b), to the extent applicable, provided, that (i) the provisions set forth in Section 17, this Section 13(e) and Section 20 shall survive the termination of this Backstop Commitment Letter in accordance with their terms and subject to any Order of the U.S. Bankruptcy Court or the CCAA Court and (ii) nothing in this Section 13 shall relieve any Party from liability for its gross negligence or any willful or intentional breach of this Backstop Commitment Letter.

14. Public Disclosure

(a) All public announcements made in respect of the Restructuring shall be made solely by the Company, provided that such public announcements shall be in form and substance acceptable to the Initial Backstop Parties and the Company, each acting reasonably. Notwithstanding the foregoing, nothing herein shall prevent a party from making public disclosure in respect of the Restructuring to the extent required by applicable Law.

(b) Subject to the above, each of the Company and the Backstop Parties agree to the existence and factual details of this Backstop Commitment Letter being set out in any public disclosure made by the Company or a Backstop Party, including, without limitation, press releases and court materials, and to the filing of this Backstop Commitment Letter on SEDAR and/or EDGAR and with the CCAA Court in connection with the CCAA Proceedings or the U.S. Bankruptcy Court in the U.S. Bankruptcy Proceedings, provided that the foregoing shall be subject to redactions as may be necessary to protect the commercial interests of the applicable parties.

(c) Except as required by applicable Law, the Company shall not without the prior written consent of the Initial Backstop Parties (not to be unreasonably withheld, conditioned or delayed), specifically name the Initial Backstop Parties in any press release or other public announcement or statement or commentary or make any representation in relation thereto.

15. Assignment

Other than as expressly set forth herein including Section 2 hereof, the Parties shall have no right to sell, transfer, negotiate or assign their rights and obligations hereunder and any such sale, transfer, negotiation or assignment shall be void *ab initio*.

Tab 7

Just Energy Announces Proposed Plan of Compromise and Arrangement and Execution of Support Agreement and Backstop Commitment Letter for Going Concern Restructuring

TORONTO, May 12, 2022 -- Just Energy Group Inc. ("**Just Energy**" or the "**Company**") (TSXV:JE; OTC:JENGQ), a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions and renewable energy options to customers, today announced that it has entered into a Support Agreement and a Backstop Commitment Letter (each as defined below) with certain of its principal stakeholders, which provides for a comprehensive restructuring and recapitalization transaction that will be implemented pursuant to a plan of compromise and arrangement (the "**Plan**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The proposed Plan is the culmination of extensive negotiations among the Company, its DIP Lenders (as defined below), its credit facility lenders, certain of its secured commodity suppliers and unsecured term loan lenders. If approved, the Plan will result in Just Energy's emergence from CCAA proceedings and cases commenced under Chapter 15 of the United States Bankruptcy Code ("**Chapter 15**") pending in the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Court**"), preserve the going concern value of the business, maintain customer relationships and retain employment and critical vendor and regulator relationships. The Plan provides that certain creditors will receive cash payments and/or equity in exchange for their debt, and existing equityholders' interests will be cancelled for no consideration.

Just Energy and certain of its affiliates (collectively, the "**Just Energy Entities**") intend to bring motions before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on May 26, 2022 for: (i) an Order (the "**Meetings Order**") that, among other things, approves of the holding of meetings (the "**Meetings**") of certain secured creditors (the "**Secured Creditor Class**") and unsecured creditors (the "**Unsecured Creditor Class**") to consider and vote on a resolution approving the Plan, and (ii) an Order (the "**Authorization Order**") that, among other things, approves of the execution by the applicable Just Energy Entities of a plan support agreement (the "**Support Agreement**") and backstop commitment letter (the "**Backstop Commitment Letter**"), each of which are described further below. The Just Energy Entities also intend to seek recognition in the U.S. of the Meetings Order and the Authorization Order in their Chapter 15 cases.

Additional information with respect to the Support Agreement, the Backstop Commitment Letter, the Plan and the Meetings, including instructions on how to vote at the Meetings, will be set forth in an information statement of the Just Energy Entities (the "**Information Statement**"), which is expected to be sent within seven days of the granting of the proposed Meetings Order or otherwise made available to creditors entitled to vote at the Meetings as of the applicable record dates. A copy of the Information Statement, Plan, Support Agreement and Backstop Commitment Letter will also be made available on the SEDAR website at www.sedar.com, on the U.S. Securities and Exchange Commission's website at www.sec.gov and on Just Energy's website at www.investors.justenergy.com.

As previously reported, FTI Consulting Canada Inc. (the "**Monitor**") is overseeing the Company's CCAA proceedings as court-appointed Monitor. Copies of the Information Statement, the Plan, certain related material documents and further information regarding the CCAA proceedings is available at the Monitor's website at http://cfcanada.fticonsulting.com/justenergy and at the Omni Agent Solutions case website at https://cases.omniagentsolutions.com/?clientId=3600.

Information about the CCAA proceedings generally can also be obtained by contacting the Monitor by phone at 416-649-8127 or 1-844-669-6340, or by email at justenergy@fticonsulting.com.

RESTRUCTURING & RECAPITALIZATION TRANSACTION

The Plan includes the following key elements:

- A US$192.55 million new equity offering (the "**Equity Offering**") for the purchase of 80% of the new common equity of New Just Energy Parent (as defined below), subject to dilution resulting from equity issued under New Just Energy Parent's new management incentive plan (the "**MIP**") the terms of which are attached to the Support Agreement.

- The repayment in full of amounts owing under the Company's first lien credit facility, other than up to CAD$20 million, which may remain outstanding under an amended and restated credit agreement following implementation of the Plan. The amended and restated credit agreement will provide for a CAD$250 million facility.

- Secured commodity supply claims will be unaffected.

- The pre-filing secured claims of BP Canada Energy Group ULC and BP Energy Company in the aggregate principal amounts of approximately US$229.5 million and CAD$0.2 million, plus accrued and unpaid interest thereon up to the implementation of the Plan (the "**BP Claim**"), which claims have been assigned to an affiliate of the Plan Sponsor (as defined below) will be exchanged for preferred equity of New Just Energy Parent having a redemption amount equal to the BP Claim, and entitling the holder to a 12.50% accreting yield for the first four years, increasing 1% annually thereafter and providing for such other terms as set forth in the term sheet appended to the Support Agreement.

- The claims of creditors ("**Term Loan Claim Holders**") in respect of approximately US$208.6 million principal amount outstanding under the Company's existing unsecured term loan agreement, plus accrued and outstanding pre-filing fees, costs, interest and other amounts owing thereunder, will be settled in exchange for 10% of the new common equity of New Just Energy Parent (subject to dilution from equity issued under the MIP).

- The opportunity for eligible Term Loan Claim Holders to participate in the Equity Offering and the backstop thereof.

- Applicable general unsecured creditors with accepted claims less than or equal to CAD$1,500 ("**Convenience Creditors**"), and other applicable general unsecured creditors who make an election to be treated as Convenience Creditors, will be paid in full up to CAD$1,500.

- Other general unsecured creditors will be entitled to payment in respect of their accepted claims based on their pro rata share of a general unsecured creditor cash pool in the amount of CAD$10 million, less amounts required to fund payments to Convenience Creditors and applicable fees and expenses, including with respect to the administration of the claims process within the CCAA proceedings and resolution of disputed claims.

- A modified corporate structure in which Just Energy (U.S.) Corp. or such other entity organized in the United States and determined in accordance with the Plan ("**New Just Energy Parent**") becomes the new parent company of the Just Energy Entities.

- Just Energy will cease to be a reporting issuer and New Just Energy Parent will be a private company.

The trust indenture dated September 28, 2020 (the "**Subordinated Note Indenture**") governing the subordinated notes issued by the Company (the "**Subordinated Notes**") provides that the Subordinated Notes have been subordinated and postponed and are subject in right of payment to the full and final payment of all existing and future senior indebtedness. Accordingly, the Plan restricts the Monitor from

making any distribution to beneficial holders ("**Beneficial Subordinated Note Claim Holders**") of Subordinated Notes until all persons entitled to turnover of such distributions pursuant to the terms of the Subordinated Note Indenture and the Plan have been paid in full. As a result, Beneficial Subordinated Note Claim Holders are not anticipated to receive any recovery under the Plan and their claims will be cancelled and extinguished without any entitlement to payment.

Further, as the Company's creditors will not be paid in full under the Plan, no value will accrue to the Company's existing equityholders as a result of implementation of the Plan, and the outstanding shares, options and other equity of the Company immediately prior to implementation of the Plan will be transferred to the New Just Energy Parent or cancelled for no consideration and without any vote of the existing shareholders.

Additionally, holders of accepted claims that are less than CAD$10 will not receive any recovery under the Plan and their claims will be cancelled and extinguished without any entitlement to payment.

The implementation of the Plan is conditional upon, among other things: (i) the approval by the required majorities of the Secured Creditor Class and the Unsecured Creditor Class at the Meetings, which Meetings are to be held by August 2, 2022; and (ii) if the Plan is approved at the Meetings, the Court granting an Order that sanctions and approves of the Plan by August 12, 2022 and the recognition of such Order by the U.S. Court under Chapter 15 by September 15, 2022. The Company expects to implement the Plan as soon as reasonably practicable following entry of such Order by the U.S. Court, subject to the satisfaction or waiver of all condition precedent set forth in the Plan.

SUPPORT AGREEMENT

In connection with the Plan, the Just Energy Entities have entered into the Support Agreement with: (a) the lenders under the Company's debtor-in-possession financing facility (the "**DIP Lenders**") and one of their affiliates (collectively, the "**Plan Sponsor**") that are also significant Term Loan Claim Holders, (b) the Company's credit facility lenders, (c) the Company's largest commodity supplier and (d) the holder of the BP Claim. Pursuant to the Support Agreement, among other things, the Just Energy Entities have agreed to use commercially reasonable efforts to complete the transactions as set forth in the Plan, and the Plan Sponsor and other counterparties have agreed to vote in favour of, and take actions to support, the Plan, in each case on the terms and conditions set forth in the Support Agreement.

While the Support Agreement provides that Just Energy shall not solicit the submission of any transaction that is an alternative to or otherwise inconsistent with the restructuring and recapitalization transactions contemplated by the Plan (an "**Alternative Restructuring Proposal**", as such term is defined in the Support Agreement), Just Energy is permitted to consider, respond to and negotiate unsolicited Alternative Restructuring Proposals. The terms of the Support Agreement do not contain a contractual right for any party to match or top any Alternative Restructuring Proposal or Superior Proposal (as defined below).

The Support Agreement may be terminated in certain circumstances, including by any of the Just Energy Entities in the event that the board of directors or similar governing body of such entity (the "**Board**") determines, upon the advice of outside legal counsel and financial advisors, that proceeding with the restructuring contemplated by the Plan would be inconsistent with the exercise of its fiduciary duties or applicable law, or to pursue an Alternative Restructuring Proposal the terms of which are determined by the Board to be more favorable to the Just Energy Entities and their stakeholders (a "**Superior Proposal**", as such term is defined in the Support Agreement) in accordance with the terms of the Support Agreement.

The Plan Sponsor may also terminate the Support Agreement if the Board determines to proceed with and accept a definitive Alternative Restructuring Proposal or a definitive Superior Proposal. In either of the foregoing termination scenarios, the Just Energy Entities would be required to pay a termination fee to the Backstop Parties (as defined below) in the amount of US$15 million under the terms of the Backstop Commitment Letter, subject to the granting of the Authorization Order, which fee would be payable concurrent with the consummation of an Alternative Restructuring Proposal after any such termination.

BACKSTOP COMMITMENT LETTER

Pursuant to the Backstop Commitment Letter, the Equity Offering will be backstopped by the Plan Sponsor and other eligible Term Loan Claim Holders who elect to participate in the backstop (collectively, the "**Backstop Parties**") by providing an executed joinder to the Backstop Commitment Letter and participation form to Just Energy by June 23, 2022. Such forms, together with additional details regarding participation in the backstop, will be provided to applicable Term Loan Claim Holders after the granting of the proposed Meetings Order.

The Backstop Commitment Letter provides for the issuance of 10% of the new common equity of New Just Energy Parent (subject to dilution resulting from equity issued under the MIP) to the Backstop Parties as a fee for their agreement to backstop the Equity Offering.

FURTHER INFORMATION

The Company has been advised by OC II VS XIV LP ("**OC II**"), a Delaware limited partnership, and certain other funds under common management with OC II (collectively, the "**Funds**"), who own approximately 29% of the issued and outstanding common shares of the Company, that OC II has filed an amended early warning report pursuant to Canadian securities laws to provide updated disclosure relating to the Funds' participation in the Plan, which is available at www.sedar.com under the Company's issuer profile.

The above descriptions are summaries only and are subject to the terms of the Plan, the Support Agreement and the Backstop Commitment Letter, copies of which are available on the Monitor's website and will be made available on the SEDAR website at www.sedar.com, on the U.S. Securities and Exchange Commission's website at www.sec.gov and on Just Energy's website at https://investors.justenergy.com/.

Just Energy's legal advisors in connection with the proposed Plan are Osler, Hoskin & Harcourt LLP and Kirkland & Ellis LLP. The Company's financial advisor is BMO Capital Markets.

About Just Energy Group Inc.

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Currently operating in the United States and Canada, Just Energy serves residential and commercial customers. Just Energy is the parent company of Amigo Energy, Filter Group, Hudson Energy, Interactive Energy Group, Tara Energy, and Terrapass. Visit https://investors.justenergy.com/ to learn more.

FORWARD-LOOKING STATEMENTS

*This press release may contain forward-looking statements, including, without limitation, expectations regarding the implementation of the Plan and the anticipated results thereof; timing for applications to the Court for required approvals; timing for mailing or other delivery of the Information Statement; timing of the Meetings; and required approvals for the Plan. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but are not limited to, risks with respect to: satisfaction of the conditions to implementation of the Plan and the transactions contemplated by the Support Agreement and the Backstop Commitment Letter, including approval of the Plan by the required majorities at the Meetings and by the Court and the U.S. Court and receipt of all required regulatory approvals; the risk that more capital may be required in order for the Just Energy Entities to be able to implement the Plan; the ability of the Company to continue as a going concern; the outcome of proceedings under the CCAA and similar legislation in the United States; the outcome of any potential litigation with respect to the February 2021 extreme weather event in Texas (the "**Weather Event**"), the final amount received by the Company with respect to the financing mechanisms to recover certain costs incurred during the Weather Event, the outcome of any invoice dispute with the Electric Reliability Council of Texas; the impact of the evolving COVID-19 pandemic*

on the Company's business, operations and sales; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com and on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at investors.justenergy.com.

Neither the TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

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Source: Just Energy Group Inc

Tab 8

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

Just Energy Group Inc. et al.

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

May 18, 2022

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Appendix "E" Fee Affidavit of John Higgins sworn May 11, 2022

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

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**")

TENTH 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**"); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the "**Monitor**"); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US$125 million subject to the terms and conditions set forth in the financing term sheet (the "**DIP Term Sheet**") between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the "**DIP Lenders**") dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and May 26, 2021 (the "**Second A&R Initial Order**").

4. On March 9, 2021, Just Energy, in its capacity as foreign representative (in such capacity, the "**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. By order dated February 9, 2022, the Court denied, with reasons to follow, certain relief requested by Canadian counsel to U.S. counsel to 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**"). The Court's reasons for the dismissal are set out in the written reasons of Justice McEwen dated February 23, 2022 (the "**McEwen Endorsement**"), which is available on the Monitor's Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement to the Court of Appeal for Ontario on February 24, 2022 (the "**Motion for Leave to Appeal**"). The Just Energy Entities filed their response to the Motion for Leave to Appeal on April 29, 2022.

7. On March 3, 2022, the Court granted an Order extending the Stay Period until March 25, 2022 and appointing the Honourable Justice Dennis O'Connor as Claims Officer (the "**Claims Officer**") with respect to the adjudication of the Donin/Jordet Actions.

8. On March 24, 2022 and April 21, 2022, the Court granted Orders extending the Stay Period until April 22, 2022 and May 26, 2022, respectively, to provide additional time for the Just Energy Entities to file a recapitalization plan.

9. On May 5, 2022, the Court granted an Order authorizing the Foreign Representative to pursue claims under section 36.1 of the CCAA in the U.S. Court subject to the supervision of the Monitor.

10. All references to monetary amounts in this Tenth Report of the Monitor (the "**Tenth Report**") are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Plan.

11. 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**").

12. 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 (the "**Noticing Agent's Case Website**").

13. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan. A copy of the Plan is attached as **Appendix "A"** hereto.

PURPOSE

14. The purpose of this Tenth Report is to provide information to the Court with respect to the following:

(a) the Monitor's activities since the Monitor's Ninth Report to the Court dated April 18, 2022 (the "**Ninth Report**");

(b) the relief sought by the Applicants in their proposed Order (the "**Meetings Order**"), including the following relief:

(i) accepting the filing of the Just Energy Entities' Plan of Compromise and Arrangement dated May 26, 2022 (as may be amended from time to time, the "**Plan**");

(ii) authorizing the Just Energy Entities to establish two classes of creditors for the purpose of considering and voting on the Plan: (A) the Secured Creditor Class; and (B) the Unsecured Creditor Class;

(iii) authorizing the Just Energy Entities to call, hold and conduct virtual meetings (the "**Creditors' Meetings**") of the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on resolutions to approve the Plan, and approving the voting and other procedures to be followed with respect to the Creditors' Meetings;

(c) the relief sought by the Applicants in their proposed Order (the "**Authorization Order**"), including the following relief:

(i) approving the Support Agreement and the Backstop Commitment Letter (as such terms are defined herein) and related relief with respect to such agreements;

(ii) approving the Termination Fee (as defined herein) and granting a Court-ordered charge as security for payment of the Termination Fee;

(iii) amending the Claims Procedure Order to permit the Just Energy Entities to elect, in consultation with the Monitor, that any Claim that arises from or relates primarily to the winter storm that occurred in Texas in February 2021 and that was submitted by a Claimant who lives in the U.S. (or lived in the U.S. at the time of such winter storm) (collectively, the "**Winter Storm Claims**") be adjudicated and determined by the U.S. Court, at its discretion;

(iv) extending the Stay Period to August 19, 2022;

(v) approving the activities, conduct and Tenth Report of the Monitor; and

(vi) approving the fees and disbursements of the Monitor and its Canadian and U.S. counsel incurred in the CCAA Proceedings for the period from October 30, 2021 to May 6, 2022 and May 7, 2022, as applicable;

(d) a contract disclaimer issued by Just Energy (U.S.) Corp. with the consent of the Monitor pursuant to the CCAA;

(e) an update on the Claims Procedure and the resolution of Claims pursuant to the Claims Procedure Order;

(f) the Just Energy Entities' actual cash receipts and disbursements for the 4-week period ending May 7, 2022, a comparison to the cash flow forecast attached as Appendix "A" to the Monitor's Ninth Report, along with an updated cash flow forecast for the period ending August 20, 2022; and

(g) the Monitor's recommendations in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

15. In preparing this Tenth 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**").

16. Except as otherwise described in this Tenth 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 Tenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.

17. The Monitor has prepared this Tenth Report to provide information to the Court in connection with the relief requested by the Applicants. This Tenth Report should not be relied on for any other purpose.

MONITOR'S ACTIVITIES SINCE THE NINTH REPORT

18. 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 Ninth Report have included the following:

    (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;

    (b) participating in regular and frequent 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 including with respect to the Plan, the Claims Procedure, and the structure of the Creditors' Meetings;

    (c) participating in regular discussions with the DIP Lenders and other key stakeholders, and their respective legal counsel and other advisors regarding,

among other things, the Just Energy Entities' restructuring initiatives and the Plan;

(d) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order), and notifying creditors of accepted Claims where applicable;

(e) discussions with the Just Energy Entities relating to the settlement of certain state taxes;

(f) monitoring the cash receipts and disbursements of the Just Energy Entities;

(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, analysis, 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 stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;

(j) observing the developments and steps taken by the parties to the adjudication of the Donin/Jordet Actions, and providing assistance to the Claims Officer where requested;

(k) 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;

(l) maintaining the service list for the CCAA Proceedings (the "**Service List**") with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and

(m) preparing this Tenth Report.

THE PROPOSED RESTRUCTURING PLAN AND MEETINGS ORDER

19. As noted in the Monitor's prior reports to the Court, the Plan has been the subject of months-long negotiations among the Just Energy Entities, in consultation with the Monitor, and key stakeholders including:

(a) the entities that are DIP Lenders and, together with an affiliated limited partner, are holders of substantially all of the debt issued under the First Amended and Restated Loan Agreement dated as of September 28, 2020 (as amended from time to time, the "**Term Loan Agreement**", the registered lenders thereunder, the "**Term Loan Lenders**" and each beneficial holder thereof, a "**Beneficial Term Loan Claim Holder**");

(b) the Plan Sponsor, which is comprised of the same investment funds that constitute the DIP Lenders;

(c) the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy U.S. Corp. ("**Just Energy U.S.**"), dated as of September 28, 2020 (as amended from time to time, the "**Credit Agreement**", the lenders thereunder, the "**Credit Facility Lenders**", and National Bank of Canada as the administrative agent thereunder, the "**Credit Facility Agent**");

(d) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, "**Shell**") as secured commodity suppliers; and

(e) CBHT Energy I LLC ("**CBHT**"), an affiliate of the DIP Lenders and the holder and assignee of all secured pre-filing claims (the "**BP Commodity / ISO Services Claims**") previously held by BP Canada Energy Group ULC and BP Energy Company (together, "**BP**").

20. Consensus has been reached among the Just Energy Entities and key stakeholders with respect to the Plan, in consultation with the Monitor, as demonstrated by the Support Agreement dated May 12, 2022 (the "**Support Agreement**") entered into among the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Credit Facility Lenders, and certain Term Loan Lenders that are signatories thereto. The stakeholder parties to the Support Agreement account for more than $1 billion of the Just Energy Entities' secured and unsecured debt.

21. The Applicants now seek the Court's acceptance of the filing of the Plan, and authorization and direction to call, hold and conduct the Creditors' Meetings for the purposes of having the Affected Creditors vote on the Plan.

Overview of the Plan

22. The Plan, if implemented, will permit the Just Energy Entities to exit both the CCAA Proceedings and the Chapter 15 Proceedings without any material disruption to normal business operations and with a significantly deleveraged balance sheet. Specifically, the Plan's implementation would eliminate the Just Energy Entities' funded debt in amounts totaling,[1] less any Credit Facility Remaining Debt, US$252.0 million and $109.6 million plus applicable fees, interest, or other amounts owing and provide a minimum $75 million of new liquidity.

23. A high-level overview of the Plan follows:

[1] Funded debt eliminated would include: (i) the Credit Facility Claim of approximately US$43.4 million and $96.4 million plus accrued default interest through the Effective Date less the Credit Facility Remaining Debt (if any) of up to $20 million excluding letters of credit that are issued but undrawn at the Effective Date; (ii) the Term Loan Claim of approximately US$208.6 million plus applicable pre-filing accrued and outstanding fees, interest, or other amounts owing; and, iii) the Subordinated Note Claim of approximately $13.2 million plus applicable accrued and outstanding fees, interest, or other amounts owing.

(a) *Reorganized Corporate Structure*: the Just Energy Entities will be reorganized such that upon implementation of the Plan, Just Energy U.S. or another company organized in the U.S. will be the ultimate parent of the Just Energy Entities (the "**New Just Energy Parent**"). The New Just Energy Parent will be a private company with two classes of shares – newly issued common shares (the "**New Common Shares**") and newly issued preferred shares (the "**New Preferred Shares**").

(i) *New Preferred Shares*: on the Effective Date[2], CBHT, as the holder and assignee of all pre-filing secured claims previously held by BP, will receive 100% of the New Preferred Shares of the New Just Energy Parent; and

(ii) *New Common Shares*: on the Effective Date, the New Just Energy Parent will complete an equity offering in the aggregate amount of US$192.55 million for 80% of the New Common Shares (the "**New Equity Offering**"), subject to dilution by the equity issued or issuable pursuant to the management incentive plan contemplated by the Support Agreement ("**MIP**"). The New Equity Offering will be backstopped in accordance with the Backstop Commitment Letter (as defined herein), and will be open for participation to each Backstop Party and Beneficial Term Loan Claim Holder (as such terms are defined herein), subject to applicable securities laws;

(b) *New Credit Agreement and Intercreditor Agreement*: on the Effective Date, applicable Just Energy Entities will enter into: (i) an amended and restated credit agreement (the "**New Credit Agreement**") with the Credit Facility Lenders which will provide for a $250 million first lien revolving credit

[2] The day on which the conditions precedent to the implementation of the Plan are satisfied or otherwise waived in accordance with the Plan and the Monitor delivers the required certificates to the Just Energy Entities' counsel and the Plan Sponsor's counsel.

facility[3], and (ii) a new intercreditor agreement with the Credit Facility Lenders, Shell, and other applicable Commodity Suppliers;

(c) *Two Classes of Creditors*: two classes of creditors will be established for purposes of voting on and receiving a distribution as provided for in the Plan – the Secured Creditor Class and the Unsecured Creditor Class (as such terms are defined herein);

(d) *Administrative Expense Reserve and Unsecured Creditor Cash Pool*: the Just Energy Entities will deliver or cause to be delivered to the Monitor the aggregate amount of: (i) $1.9 million (the "**Administrative Expense Reserve**"); and (ii) $10 million (the "**General Unsecured Creditor Cash Pool**", and together with the Administrative Expense Reserve, the "**Plan Implementation Fund**"). The fees and disbursements of the Monitor, its counsel and any other person retained by it, in connection with administrative and estate matters (the "**Monitor Administration Expenses**") will be paid from the Administrative Expense Reserve. Any unused portion of the Administrative Expense Reserve will be transferred by the Monitor to the New Just Energy Parent;

(e) *Secured Creditor Recoveries*: the Credit Facility Claim will be paid in full in cash on the effective date of the Plan, less up to $20 million of the Credit Facility Remaining Debt (if any), which will remain outstanding under the New Credit Agreement;

(f) *Unsecured Creditor Recoveries*: within the Unsecured Creditor Class:

(i) the Term Loan Lenders will receive their *pro rata* share of 10% of the New Common Shares (subject to dilution by the MIP) and the ability to participate in the New Equity Offering;

[3] Pursuant to the Plan, the Credit Facility Remaining Debt (if any) of up to $20 million will remain as an initial outstanding principal amount under the New Credit Agreement.

(ii) Convenience Claim (as defined herein) holders will be paid in full up to $1,500[4] from the General Unsecured Creditor Cash Pool and are deemed to vote in favour of the Plan;

(iii) General Unsecured Creditors with Accepted Claims will be paid their *pro rata* share of the balance of the General Unsecured Creditor Cash Pool after deducting for the following amounts that shall be paid in priority from the General Unsecured Creditor Cash Pool: (A) the amount required to be paid under (ii) above; and (B) the reasonable fees and disbursements of the Just Energy Entities' legal and financial advisors, the Monitor and its counsel, and any other person retained by the Just Energy Entities or the Monitor in connection with post-Effective Date matters (other than the Monitor Administration Expenses), including all costs to resolve undetermined claims such as the Contingent Litigation Claims (as defined below);

(g) *BP Commodity/ISO Services Claimholder*: on the Effective Date, in full and final satisfaction of the BP Commodity / ISO Services Claims, New Just Energy Parent shall issue the New Preferred Shares to the BP Commodity / ISO Services Claimholder.

(h) *De Minimis Claim*: Claims less than $10 will not receive a distribution under the Plan ("**De Minimis Claims**"). Given that such Claims form part of the Convenience Class, Creditors holding a De Minimis Claim are deemed to vote in favour of the Plan;

(i) *Unaffected Claims*: numerous claims are unaffected under the Plan and are not entitled to vote on, or receive any distributions under, the Plan including Post-Filing Claims, any claims secured by the CCAA Charges (which shall all be fully satisfied), Commodity Supplier Claims (as described further below), certain regulatory claims, and claims that are not capable of compromise under the CCAA;

[4] Other than De Minimis Claims, as described below.

(j) *Commodity Supplier Claims*: the pre-filing secured claims of Commodity Suppliers[5] shall be paid in full in cash and are treated as "unaffected" under the Plan; and

(k) *Equity Claims*: Equity Claims will not receive any distributions under the Plan, will be extinguished, and are not entitled to vote on the Plan.

24. The Plan relies on various assumptions and projections regarding, among other things, the financial performance of the Just Energy Entities over the coming months, including forecasted commodity prices for natural gas and electricity. If there is a material deviation from the projections, there is a risk that more capital may be required in order for the Just Energy Entities to be able to implement the Plan. The Monitor understands that the Just Energy Entities have no certainty that such capital will be available, the terms on which it may be provided, or the impact it will have on other stakeholders.

25. The proposed Meetings Order provides that the Plan may be amended (a "**Plan Modification**") in accordance with its terms, which in-turn requires (a) the prior consent of the Monitor, the Credit Facility Lenders, Shell and the Plan Sponsor (which consent shall not be unreasonably withheld, conditioned or delayed), and (b) that any Plan Modification shall be posted on the Monitor's Website, distributed to the Service List and provided to the Affected Creditors during the Creditors' Meetings.

Plan Releases

26. The proposed Plan provides full and final releases from the Released Claims (as defined below) in favour of the following persons, among others (collectively, the "**Released Parties**"): the present and former affiliates, directors, officers, advisors, legal counsel and agents of such Released Parties; the Just Energy Entities, the Monitor, the parties that have executed the Support Agreement, the Backstop Parties (as defined herein), the DIP Agent, the DIP Lenders and the Plan Sponsor; the Credit Facility Agent, the Term Loan Agent, and the Subordinated Note Trustee.

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[5] This includes Shell's Commodity Supplier Claim but not the BP Commodity / ISO Services Claims that are being satisfied pursuant to the issuance of the New Preferred Shares.

27. The “**Released Claims**” include any and all claims, demands, causes of action, dealings, occurrences that existed or took place prior to the Effective Date, or that relate to implementation of the Plan, including distributions pursuant to the Plan following the Effective Date, that constitute or are in any way related to, arise out of or in connection with, among other things:

    (a) any Claims and D&O Claims (as such terms are defined in the Claims Procedure Order);

    (b) the business and affairs of the Just Energy Entities whenever or however conducted;

    (c) the Support Agreement, the Backstop Commitment Letter, the CCAA Proceedings and Chapter 15 Proceedings, or any document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing; and

    (d) any contract that has been restructured, terminated, repudiated, disclaimed, or resiliated in accordance with the CCAA.

28. The releases provided in the Plan do not release or discharge:

    (a) Insured Claims, provided that from and after the Effective Date, any person having an Insured Claim will be irrevocably limited to recovery from the proceeds of the applicable Insurance Policies;

    (b) any obligations of any of the Released Parties under or in connection with the Plan, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the New Credit Facility Documents, the New Intercreditor Agreement, the New Common Shares, the New Preferred Shares, the MIP or the New Corporate Governance Documents;

    (c) any Unaffected Claim that has not been paid in full under the Plan, or any claim that is not permitted to be released pursuant to section 19(2) of the CCAA; or

    (d) any Director from any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

29. The Plan also includes various exculpations. Specifically, the Plan provides that the Exculpated Parties (which includes certain of the Released Parties) shall be released to the fullest extent possible under applicable laws from any cause of action for any act or omission in connection with, relating to, or arising out of the restructuring proceedings.

Conditions Precedent

30. The Plan is conditional on the following being satisfied or waived prior to or at the Effective Date, among other things:

 (a) the Plan shall have been approved by the Required Majorities in conformity with the CCAA;

 (b) the Meetings Order, the Authorization Order, and the Sanction Order shall have been issued by the Court and related recognition orders shall have been entered by the U.S. Court;

 (c) the commitments of each of the parties to the Support Agreement shall have been satisfied in all material respects or waived;

 (d) all conditions to the Backstop Parties' commitments under the Backstop Commitment Letter shall have been satisfied or waived;

 (e) the Monitor shall have received from the Just Energy Entities the funds necessary to establish, and shall have established, the Plan Implementation Fund;

 (f) no proceeding shall have been commenced that could reasonably be expected to result in an injunction, and no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by the Plan, the Support Agreement or the Backstop Commitment Letter;

 (g) Just Energy shall have satisfied all conditions or requirements necessary to cease to be a reporting issuer under the U.S. Exchange Act (or any other U.S. securities laws), and applicable Canadian Securities Laws, and no Just Energy Entity shall be deemed to have become a reporting issuer under applicable Canadian Securities Laws;

(h) the aggregate amount of proceeds from the New Equity Offering and Cash on Hand shall be equal to or greater than the total amount to be paid, distributed, or reserved for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan;

(i) the total amounts to be paid, distributed or reserved in Canadian and US dollars for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan shall not exceed $170 million and US$337 million, respectively, plus any accrued and outstanding interest with respect to such amounts;

(j) all applicable required regulatory approvals shall have been obtained and be in full force and effect; and

(k) the Effective Date shall have occurred on or prior to the Outside Date (as defined below).

Classification of Creditors

31. The proposed Meetings Order establishes two classes of Affected Creditors for the purposes of considering and voting on the Plan:

(a) the "**Secured Creditor Class**", consisting of the Credit Facility Lenders in respect of all amounts owing under the current Credit Agreement as of the Effective Date, excluding any Cash Management Obligations (as defined in the Second ARIO), any Commodity Supplier Claims, or any letters of credit issued but undrawn under the Credit Agreement;

(b) the "**Unsecured Creditor Class**", consisting of both:

(i) *Term Loan Claimholders*: in respect of the aggregate principal amount of US$208.6 million owing by the Just Energy Entities under the Term Loan Agreement plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement, as determined in accordance with the Claims Procedure Order; and

(ii) *General Unsecured Claimholders*: in respect of all Affected Claims which are not a Term Loan Claim, an Equity Claim, a Credit Facility

Claim, a Commodity Supplier Claim or a BP Commodity / ISO Services Claim.

32. The general unsecured claimholders category of the Unsecured Creditor Class includes the following claims:

(a) one certified and two uncertified class actions (collectively, the "**Subject Class Action Claims**") in respect of which Proofs of Claim were filed in accordance with the Claims Procedure Order:

(i) *Haidar Omarali v. Just Energy Group Inc. et al.*, Ontario Superior Court of Justice Court File No. CV-15-527493-00CP, a certified class action proceeding filed in Ontario alleging improper classification of employees and claiming $105.9 million. In consultation with the Monitor, the representative plaintiff's claims against the applicable Just Energy Entities and certain directors and officers of the Just Energy Entities have been denied in their entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff has filed corresponding Notices of Dispute of Revision or Disallowance;

(ii) The Jordet Action: *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB, a proposed and uncertified class action proceeding filed solely against Just Energy Solutions Inc. ("**Solutions**") in the U.S. District Court in the Western District of New York alleging improper pricing for residential gas services and claiming US$3.7 billion (this number represents a joint damages calculation with the *Donin* claim below). In consultation with the Monitor, the representative plaintiff's claim against Solutions has been denied in its entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff law firm has filed a corresponding Notice of Dispute of Revision or Disallowance, and this matter is now before the Honourable

Justice Dennis O'Connor as Claims Officer pursuant to the order of the Court dated March 3, 2022;

(iii) The Donin Action: *Fira Donin and Inna Golovan v. Just Energy Group Inc.* et al., Case No. 1:17-cv-05787-WFK-SJB, a proposed and uncertified class action proceeding filed against certain Just Energy Entities in the U.S. District Court in the Eastern District of New York alleging improper pricing for energy services and claiming US$3.7 billion (this number represents a joint damages calculation with the *Jordet* claim above). In consultation with the Monitor, the representative plaintiff's claims against the applicable Just Energy Entities has been denied in its entirety through the delivery of Notice of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff law firm has filed a corresponding Notice of Dispute of Revision or Disallowance, and this matter is now before the Honourable Justice Dennis O'Connor as Claims Officer pursuant to the order of the Court dated March 3, 2022;

(b) 364 claims filed on behalf of Texas customers (or alleged Texas customers) relating to the Texas winter storm weather event in February 2021 (the "**Texas Power Interruption Claim**" and together with the Class Action Claims, the "**Contingent Litigation Claims**"). In consultation with the Monitor, all such claims have been denied in their entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order, which led to the withdrawal of 92 of the 364 submitted claims. The representative plaintiff law firms have filed corresponding Notices of Dispute of Revision or Disallowance in respect of the balance of claims;

(c) the claim with respect to the amount of $13.2 million owing by Just Energy under the Subordinated Note Indenture dated September 28, 2020 (the "**Subordinated Note Indenture**"), plus all accrued and outstanding fees, costs, interest, and other amounts owing pursuant to the Subordinated Note Indenture, as determined in accordance with the Claims Procedure Order (the "**Subordinated Note Claim**"); and

(d) "**Convenience Claims**", being any Accepted Claim of a General Unsecured Creditor in an amount that is either (a) less than or equal to $1,500; or (b) greater than $1,500, if the relevant General Unsecured Creditor has made a valid Distribution Election in accordance with the Meetings Order, provided that in no case shall a "Convenience Claim" include any Contingent Litigation Claim or the Subordinated Note Claim.

Voting Entitlements

33. The voting entitlement on the Plan is determined and calculated as follows:

(a) *Secured Creditor Class*: each Credit Facility Lender will be entitled to one (1) vote in the amount equal to such Credit Facility Lender's *pro rata* share of the Credit Facility Claim that is an Accepted Claim;

(b) *Unsecured Creditor Class*:

(i) each Term Loan Lender will be entitled to one (1) vote in the amount equal to such Term Loan Lender's *pro rata* share of the Term Loan Claim;

(ii) each Convenience Creditor will be deemed to vote in favour of the Plan in the amount of such Convenience Creditor's Accepted Claim;

(iii) each General Unsecured Creditor will be entitled to one (1) vote in the amount equal to such General Unsecured Creditor's Accepted Claim, provided, however, that:

(1) the Subordinated Noteholder will be entitled to one (1) vote in the amount equal to the Subordinated Note Claim;

(2) with respect to the Subject Class Action Claims, each representative plaintiff in any certified Subject Class Action Claim or each proposed representative plaintiffs in any uncertified Subject Class Action Claim will be entitled to one (1) vote in the amount equal to its voting claim (valued by the Just Energy Entities for voting purposes at $1); and

(3) with respect to the Texas Power Interruption Claim, each of the plaintiff law firms will be entitled to one (1) vote in an amount equal to its voting claim (valued by the Just Energy Entities for voting purposes at $1).

34. In addition, each Affected Creditor with a Disputed Claim against the Just Energy Entities (other than the Subject Class Action Plaintiffs and the Texas Power Interruption Claimants' Counsel) will be entitled to attend the applicable Creditors' Meeting and will have one (1) vote at the Creditors' Meeting in the dollar value of such Disputed Claim as set out in the Negative Notice Claims Package or the Disputed Claim acceptance value for voting and distribution purposes, prepared in consultation with the Monitor (the "**Acceptance Value**"), as applicable, sent to the holder of the Disputed Claim or, if no Negative Notice Claims Package or Acceptance Value was sent, the value set forth in the corresponding Proof of Claim.

The Creditors' Meetings

Date, Time and Location

35. The proposed Meetings Order authorizes the Just Energy Entities to convene separate meetings on August 2, 2022 for the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on the Plan at 10:00 a.m. (EDT) and 10:30 a.m. (EDT), respectively. The Creditors' Meetings are intended to be held virtually using a third-party service provider given the ongoing uncertainty posed by the COVID-19 pandemic.

Notice to Creditors

36. The proposed Meetings Order provides for comprehensive notification of the Creditors' Meetings to the Affected Creditors including by delivery of the applicable portion of the Secured Creditor Class Meeting Materials[6] and Unsecured Creditor Class Meeting

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[6] The Secured Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, and the Secured Creditor Proxy (the "**Secured Creditor Class Meeting Materials**").

Materials[7] to the respective creditor groups. Specifically, the proposed Meetings Order provides that:

(a) the Monitor shall:

(i) not later than the fourth (4th) day following the date of the Meetings Order, post copies of the Secured Creditor Class Meeting Materials and the Unsecured Creditor Class Meeting Materials on the Monitor's Website and the Noticing Agent's Case Website;

(ii) not later than the fourth (4th) day following receipt of the Unsecured Creditor Class Meeting Materials and the contact information for each Term Loan Claim Holder, send to Computershare Trust Company of Canada as Agent under the Term Loan Agreement and to each Term Loan Claim Holder, by mail, courier, personal delivery, or email, certain prescribed Unsecured Creditor Class Meeting Materials, as well as an Additional Backstop Notice (as defined in the Backstop Commitment Letter);

(iii) not later than the seventh (7th) day following the date of the Meetings Order, send the Secured Creditor Class Meeting Materials to the Credit Facility Agent;

(iv) not later than the seventh (7th) day following the date of the Meetings Order, send certain prescribed Unsecured Creditor Class Meeting Materials by mail, courier, personal delivery or email to each General Unsecured Creditor (other than holders of the Subordinated Note Claim);

(b) the Just Energy Entities shall:

[7] The Unsecured Creditor Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, the Unsecured Creditor Proxy, the Subordinated Noteholder VIF, the Distribution Election Notice, the New Equity Offering Participation Form, and the New Shareholder Information Form (the "**Unsecured Creditor Class Meeting Materials**").

(i) not later than the fourth (4th) day following the date of the Meetings Order, provide to the Subordinated Note Trustee certain prescribed Unsecured Creditor Class Meeting Materials;

(ii) provide to the Beneficial Subordinated Note Claim Holders, certain prescribed Unsecured Creditor Class Meeting Materials; and

(iii) cause CDS Clearing and Depositary Services Inc. ("**CDS**") to publish a bulletin to each institution that is a CDS participant holding Subordinated Notes outlining the particulars of the Unsecured Creditors' Meeting.

Conduct of the Creditors' Meetings

37. The proposed Meetings Order provides that a representative of the Monitor will preside as the Chairperson of the Creditors' Meetings, a person designated by the Monitor will act as secretary of the Creditors' Meetings, and that the Monitor may appoint vote scrutineers. The Chairperson will, subject to any further Order of this Court, decide all matters relating to the conduct of the Creditors' Meetings.

38. The proposed Creditors' Meetings will be held entirely by electronic means using the platform, technology and services of Lumi Holdings Ltd. ("**Lumi**"). Lumi's software is free to meeting participants and allows any person with an internet connection, wherever situated, to observe the meeting, ask questions, and to submit votes in real-time. The Monitor and its Canadian counsel have participated in discussions with representatives from Lumi regarding its platform and services, and the Monitor expects it will be able to complete the tasks charged to the Monitor by the proposed Meetings Order.

39. The only persons entitled to attend the Creditors' Meetings are:

(a) the Affected Creditors entitled to vote at that Creditors' Meeting or, if applicable, persons holding a valid proxy and their advisors;

(b) the Monitor, its counsel, the Chairperson, any scrutineers and the secretary;

(c) one or more representatives of the board and/or senior management of the Just Energy Entities, and the Just Energy Entities' counsel and financial advisor;

(d) the Plan Sponsor, and its legal counsel and financial advisor;

(e) the Subordinated Noteholder on behalf of all beneficial holders of the Subordinated Note Claim; and

(f) any other person admitted on invitation of the Just Energy Entities in consultation with the Monitor.

40. The proposed voting procedures were designed by the Just Energy Entities in consultation with the Monitor, and provide, among other things, that:

(a) the Chairperson will direct a vote on a resolution to approve the Plan and any amendments thereto as well as any other resolutions that the Just Energy Entities consider appropriate in the circumstances with the consent of the Plan Sponsor, the Credit Facility Agent (with respect to the Secured Creditors' meeting) and the Monitor; and

(b) the Monitor is required to keep a separate record of votes cast by Affected Creditors with Disputed Claims and report to the Court with respect thereto at the Plan Sanction Hearing. If approval or non-approval of the Plan by Affected Creditors would be affected by the votes cast in respect of Disputed Claims, such result must be reported to the Court as soon as reasonably practicable after the Creditors' Meetings.

Plan Sanction

41. If the Plan is approved by the Required Majorities of Affected Creditors at the Creditors' Meetings, the Just Energy Entities will bring a motion seeking a Sanction Order sanctioning the Plan under the CCAA on August 12, 2022, or such later date as shall be acceptable to the Just Energy Entities, the Monitor, and the Plan Sponsor.

42. The Monitor will provide a report to the Court as soon as practicable after the Creditors' Meetings with respect to: (a) the results of voting at the Creditors' Meetings; (b) whether the Required Majorities have approved the Plan; (c) the separate tabulation for Disputed Claims; and (d) in its discretion, any other matters relating to the requested Sanction Order (the "**Monitor's Meetings Report**"). The Monitor's Meetings Report will be

served on the Service List, and posted on the Monitor's Website and the Noticing Agent's Website prior to the Plan Sanction Hearing.

Monitor's Recommendations in Respect of the Meetings Order

43. As set forth in the proposed Meetings Order, the Monitor will provide a report on the Plan by no later than seven business days before the date of the Creditors' Meetings in accordance with the CCAA.

44. As described in greater detail in the Affidavit of Michael Carter sworn May 12, 2022, the business of the Just Energy Entities has been marketed broadly and extensively over the past approximately two and half years, including prior to these CCAA Proceedings. These efforts were unsuccessful with no binding or executable offers being put forth. Due to the capital-intensive and highly specialized nature of the Just Energy Entities' business, the Monitor understands the potential pool of purchasers is limited.

45. During the CCAA Proceedings, the Just Energy Entities and/or the Financial Advisor have been approached on a confidential basis by interested parties with respect to potential acquisition opportunities for all or some of the Just Energy Entities' business. The Just Energy Entities entered into non-disclosure agreements with three of the interested parties and engaged in extensive discussions with two of the interested parties. The Monitor understands the discussions were unsuccessful as they did not identify any potential proposals that are superior to the Plan.

46. Consequently, the transaction contemplated by the Plan is the only viable option at this time that would allow the Just Energy Entities to emerge from these CCAA Proceedings in a timely fashion and as a going concern. The terms of the Plan have been extensively negotiated, with the involvement of the Monitor, and represent the best alternative available at this time for the Just Energy Entities' various stakeholders.

47. Importantly, and as further described herein under the heading "Alternate Restructuring Proposal and Fiduciary Out", the Support Agreement also expressly permits any interested parties to put forth alternate restructuring proposals during the more than two-month period between now and the Creditors' Meetings, and for Just Energy's board of

directors to consider and accept any such alternate restructuring proposal if it is superior to the transaction contemplated by the Plan.

48. The Monitor has been consulted with respect to the development of the alternate restructuring proposal structure and believes it permits adequate time and opportunity for an interested party to put forth a viable alternative offer that may be found to be a superior offer. Accordingly, the Monitor is of the view that the alternate restructuring proposal and "fiduciary out" structure can produce a viable superior offer if one exists, and given the extensive marketing of the Just Energy Entities' business over the past few years, a formal sales process is not necessary in the circumstances.

49. For the purposes of voting on the Plan, section 22 of the CCAA provides that a debtor company may divide creditors into classes, and that creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest.

50. Subsection 22(2) of the CCAA provides that creditors may be included in the same class taking into account:

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

51. The Monitor has considered the above factors and the jurisprudence that predates the enactment of section 22 of the CCAA. The Monitor is of the view that the Applicants' classification of Affected Creditors based on the rights and remedies of the class of creditors (i.e. whether those creditors hold security for their claims) is appropriate in the circumstances. The Monitor further believes that any fragmentation of the contemplated classes could jeopardize a viable restructuring.

52. The proposed Meetings Order provides that the representative plaintiff, proposed representative plaintiff or plaintiff law firms in respect of the Contingent Litigation Claims shall each be entitled to one vote valued at $1.00. The Monitor agrees with the Applicants that this is the only feasible approach in the circumstances particularly given the unliquidated nature of the Contingent Litigation Claims.

53. All of the Contingent Litigation Claims have been disallowed by the Just Energy Entities in consultation with the Monitor. Moreover, the complexity of the unresolved Contingent Litigation Claims is such that it is not possible to carry out a summary process in relation to these claims before the Creditors' Meetings are held nor is it possible to delay the Creditors' Meetings until the resolution of the Contingent Litigation Claims without jeopardizing the entire restructuring.

54. The Monitor is of the view that granting the Contingent Litigation Claims a vote based on the preliminary and inadequate legal and evidentiary grounds put forward in support of same to date would confer on these claimants outsize influence in the form of an effective veto, and would jeopardize a successful going concern restructuring for all other stakeholders, including employees, regulators, suppliers and customers.

55. Valuing the Contingent Litigation Claims at $1.00 is similarly the only feasible option in the absence of sufficient information and evidence to properly assess and determine the value of such claims. Again, to allow a vote in the amount of the unproven claimed damages of the Contingent Litigation Claims would grant the claimholders an effective veto and diminish if not eliminate the prospects of a viable restructuring.

56. Further, this approach is consistent with the approach taken in several other CCAA proceedings, wherein unliquidated and unresolved contingent claims have been similarly valued at $1.00 for voting purposes, with the distribution value of those claims calculated later.

57. For all of the foregoing reasons, the Monitor supports the Just Energy Entities' request to present the Plan to the Affected Creditors at the Creditors' Meetings. The Monitor is of the view that any issues of fairness should be considered at the Sanction Hearing, if the Plan is approved by the Required Majorities.

SUPPORT AGREEMENT

58. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Support Agreement.

59. The Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Credit Facility Lenders, and certain Term Loan Lenders are parties to the Support Agreement. At a high level, pursuant to the terms of the Support Agreement:

(a) the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors have each agreed to, among other things:

(i) support the transactions contemplated by the Support Agreement, the Backstop Commitment Letter and the Plan (the "**Restructuring**") and vote and exercise any powers or rights available to it to the extent necessary to implement the Restructuring;

(ii) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities' other stakeholders;

(iii) act in good faith and take all actions that are reasonably necessary or appropriate, and all actions required by the Court and/or the U.S. Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and all transactions and implementation steps provided for or contemplated in the Restructuring; and

(iv) not to exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims against the Just Energy Entities;

(b) the Just Energy Entities have agreed to, among other things:

(i) support and use commercially reasonable efforts to complete the Restructuring, including making commercially reasonable efforts to complete the Restructuring in accordance with each Milestone (as defined below) provided in the Support Agreement;

(ii) not file any motion, pleading, or Definitive Documents (as defined and described in the Support Agreement) with the Court, the U.S. Court, or any other court that, in whole or in part, is inconsistent with the Support Agreement or the Plan or undertake any action that is inconsistent with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Restructuring;

(iii) pay the reasonable and documented fees and expenses of all parties to the Support Agreement incurred in connection with the Restructuring and in accordance with the arrangements in place as of the date of the Support Agreement, including as set forth in the DIP Term Sheet or, with respect to any additional fees and expenses, as otherwise agreed to by the Plan Sponsor;

(iv) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with the Support Agreement, and use commercially reasonable efforts to preserve intact the Just Energy Entities' business, organization, and relationships with third parties and employees (including not disclaiming or terminating any employment or consulting agreement with an officer, director, or member of senior management other than "for cause" without the prior written consent of the Plan Sponsor); and

(v) not to, directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal. Importantly, the foregoing commitment is expressly subject to two material caveats, as discussed below, to provide the opportunity for interested parties that may wish to advance an Alternative Restructuring Proposal within the CCAA process to do so for the benefit of the Just Energy Entities' stakeholders.

60. The Support Agreement may be terminated by the Plan Sponsor, the Just Energy Entities, or any of the parties thereto upon the occurrence of certain specified events unless waived or cured by the applicable party. In the case of the Plan Sponsor, such

termination events include: (a) any failure by the Just Energy Entities to meet any of the Milestones, unless such failure is the result of any act, omission, or delay on the part of the Plan Sponsor; and (b) any determination by the Just Energy Entities to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal in accordance with the Support Agreement.

61. In the case of Shell and the Credit Facility Lenders such termination events include if the Effective Date of the Plan has not occurred by:

(a) November 15, 2022 with respect to the Credit Facility Lenders, subject to certain exceptions with respect to obtaining regulatory approvals; and

(b) January 31, 2023 with respect to Shell, unless further extended in accordance with the Support Agreement.

Alternate Restructuring Proposals and the "Fiduciary Out"

62. The Support Agreement provides for a 62-day period between the milestone date for serving the Meeting Materials (June 1, 2022) and the milestone date for the Creditors' Meetings (August 2, 2022) (the "**Voting Period**") in addition to the 20 days between the date the proposed Meeting Materials were served on the Service List and June 1, 2022.

63. Any interested parties that wish to propose a viable restructuring transaction more favourable than the Plan, or otherwise submit a bid for all or some of the Just Energy Entities' property, are permitted to complete their due diligence and submit an Alternative Restructuring Proposal.[8]

64. Pursuant to the Support Agreement, the Just Energy Entities are permitted to, with respect to any Alternative Restructuring Proposals:

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[8] Pursuant to the Support Agreement, "**Alternative Restructuring Proposal**" means any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity's material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the Restructuring.

(a) consider and respond to such Alternative Restructuring Proposals;

(b) provide any person with access to non-public information concerning the Just Energy Entities pursuant to a non-disclosure agreement;

(c) engage in, maintain, or continue discussions or negotiations with respect to Alternative Restructuring Proposals, including facilitating any due diligence;

(d) cooperate with, assist, or participate in any unsolicited inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals;

(e) enter into or continue discussions or negotiations with holders of Claims against, or interests in, a Just Energy Entity (including any party to the Support Agreement), any other party in interest in the CCAA Proceedings or Chapter 15 Proceedings, or any other entity regarding the Restructuring or an Alternative Restructuring Proposal; and

(f) enter into an agreement with respect to an Alternative Restructuring Proposal if, following receipt of legal and financial advice, and having regard to the approvals that would be required to implement such transaction, the board of directors of Just Energy (the "**Just Energy Board**") determines that the terms of such Alternative Restructuring Proposal are more favourable to the Just Energy Entities and their stakeholders than the Restructuring (a "**Superior Proposal**").

65. The Monitor notes that, under the terms of the Support Agreement, there is no contractual right for any party to match or top any Alternative Restructuring Proposal or Superior Proposal.

66. The Support Agreement includes a "fiduciary out" provision which permits the Just Energy Board to terminate the Support Agreement (subject to the Termination Fee discussed below) if it determines, following receipt of advice from outside legal counsel and financial advisors, (a) that proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law or (b) in the exercise of its fiduciary duties, to pursue a Superior Proposal. The "fiduciary out" continues until termination of the Support Agreement or sanctioning of the Plan.

67. The Monitor notes that BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the "**Financial Advisor**"), has stated that the 62-day Voting Period provided under the Support Agreement is sufficient for interested parties to complete the necessary due diligence and submit an Alternative Restructuring Proposal.

68. The Monitor understands that the Credit Facility Lenders have informed the Just Energy Entities that, unless the Credit Facility Lenders agree otherwise: (a) the exit financing contemplated by the New Credit Agreement will not be available in relation to any restructuring proposal other than the Restructuring contemplated by the Plan; and (b) the Credit Facility Lenders have agreed to provide exit financing and support the Restructuring on the basis that an Alternative Restructuring Proposal must repay in full in cash all indebtedness and obligations of the Just Energy Entities to the Credit Facility Lenders on closing of such Alternative Restructuring Proposal to be acceptable.

Other Milestones under the Support Agreement

69. In addition to the Voting Period milestones and subject to Court approval as applicable, the Support Agreement establishes the following milestones (as may be extended in accordance with the Support Agreement, the "**Milestones**"). The milestones under the DIP Term Sheet have been amended by the DIP Lenders and the Just Energy Entities to align with the aforementioned Milestones.

Milestone	Date
Authorization Order and Meetings Order granted	May 26, 2022
Solicitation Materials mailed with respect to the Creditors' Meetings	June 1, 2022
Order(s) of the U.S. Bankruptcy Court granted recognizing the Authorization Order (the "**Authorization Recognition Order**"), the Meetings Order (the "**Meetings Recognition Order**") and the Claims Procedure Order ("**Claims Procedure Recognition Order**")	June 22, 2022
Creditors' Meetings held	August 2, 2022
Sanction Order granted	August 12, 2022

Milestone	Date
Motion filed for an Order of the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order ("**Recognition and Enforcement Motion**")	~ August 16, 2022 (2 business days after Sanction Order)
Hearing set before the U.S. Bankruptcy Court on the Recognition and Enforcement Motion	no later than September 9, 2022
Recognition and Enforcement Motion granted by the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (the "**Sanction Recognition Order**")	September 15, 2022
Outside date for the Effective Date of the Plan to occur, unless extended by the Plan Sponsor (or, if the only outstanding condition is receipt of regulatory approval(s), as automatically extended by an additional 60 days) (the "**Outside Date**")	September 30, 2022

70. The Monitor was kept apprised during the negotiations that led to the execution of the extensively negotiated Support Agreement and considers its terms to be fair and reasonable in the circumstances, and critical to ensuring that the best possible outcome is achieved for the benefit of the Just Energy Entities and their stakeholders.

BACKSTOP COMMITMENT LETTER

71. The Backstop Commitment Letter's purpose is to ensure that the Just Energy Entities are able to secure the necessary funds under the New Equity Offering that are required to implement the Plan, subject to various assumptions. Participation in the Backstop Commitment Letter is open to all Term Loan Claim holders as of the day before service of the Meetings Order motion record (the "**Term Loan Record Date**"). The same four funds that comprise the DIP Lenders, the Plan Sponsor and significant Term Loan Lenders (collectively, the "**Initial Backstop Parties**") and Just Energy U.S. are party to the Backstop Commitment Letter.

72. At a high level, the Backstop Commitment Letter permits:

(a) each holder of a Term Loan Claim as of the Term Loan Record Date (that is not an Initial Backstop Party) to become party to the Backstop Commitment Letter, subject to applicable securities laws, delivery of prescribed documents and

notices, and funding of all required commitments (each such holder of the Term Loan Claim that satisfies the foregoing conditions, an "**Additional Backstop Party**"); and

(b) each Initial Backstop Party and Additional Backstop Party may designate one or more of its Affiliates to (i) perform its obligations or assign its rights and obligations under the Backstop Commitment Letter and/or (ii) receive some or all of the New Common Shares it is entitled to receive pursuant to the Plan, upon the execution by such Affiliate of a joinder and compliance with applicable securities laws (each such Affiliate that satisfies the foregoing conditions, an "**Assignee Backstop Party**", and together with the Initial Backstop Parties and the Additional Backstop Parties, the "**Backstop Parties**").

73. The New Equity Offering is open for participation to each person that is, as of the Term Loan Record Date: (a) a Beneficial Term Loan Claim Holder, or permitted designee thereof; and (b) a Backstop Party, which in each case is permitted to participate under applicable securities laws (each a "**New Equity Offering Eligible Participant**").

74. Pursuant to the Backstop Commitment Letter, each Backstop Party has agreed to subscribe for and receive: (a) its *pro rata* share of the New Equity Offering available to it; (b) its *pro rata* share of any unsubscribed New Common Shares issued under the New Equity Offering; and (c) its *pro rata* share of any New Common Shares for which a New Equity Offering Eligible Participant subscribes but otherwise fails to fulfill its subscription obligations by the New Equity Participation Deadline on August 23 , 2022, or such other date agreed to by the Just Energy Entities and the Plan Sponsor.

75. The commitments of the Backstop Parties under the Backstop Commitment Letter terminate on the earlier of: (a) the Effective Date; (b) the termination of the Backstop Commitment Letter by Just Energy U.S. and/or the Backstop Parties in accordance with the terms thereof; or (c) the Outside Date.

Backstop Commitment Fee & Termination Fee

76. In consideration of the Initial Backstop Parties executing and delivering the Backstop Commitment Letter, Just Energy U.S. agreed that:

(a) the New Just Energy Parent will issue and deliver to the Backstop Parties New Common Shares representing 10% of the outstanding New Common Shares on the Effective Date, subject to dilution by the equity issued or issuable pursuant to the MIP (the "**Backstop Commitment Fee Shares**"); and

(b) a Just Energy Entity organized in the United States (which may be Just Energy U.S.) will pay to the Initial Backstop Parties and any Additional Backstop Parties a cash fee in an aggregate amount equal to US$15 million (the "**Termination Fee**") if: (i) the Just Energy Entities terminate the Support Agreement on the basis that the Restructuring would be inconsistent with the exercise of the Just Energy Board's fiduciary duties or applicable law or to pursue a Superior Proposal; or (ii) the Plan Sponsor terminates the Support Agreement based on the Just Energy Board making the determination to proceed with a definitive Alternative Restructuring Proposal or a definitive Superior Proposal. The Termination Fee is payable concurrently with the consummation of an Alternative Restructuring Proposal.

77. The quantum of the Termination Fee was derived by the Just Energy Entities taking into account (i) the aggregate subscription amount for the New Common Shares to be issued by the New Just Energy Parent (US$192.55 million), plus (ii) the New Preferred Shares being issued to CBHT (such shares being issued in full satisfaction of a secured claim in the amount of US$229.5 million and C$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date).

78. The New Equity Offering represents additional liquidity being made available to the Just Energy Entities, while the New Preferred Shares being issued to CBHT represent the conversion of a secured claim to preferred equity which would otherwise be payable in cash as part of the Plan. Both comprise the new value contribution by the Plan Sponsor and CBHT to the Restructuring.

79. The US$15 million Termination Fee equates to 3.4% of the additional value contribution of the Plan Sponsor and CBHT.

80. The Termination Fee is proposed to be secured by a Court-ordered charge (the "**Termination Fee Charge**") in favour of the Initial Backstop Parties on all of the Property (as defined in the Second ARIO) of the Just Energy Entities. The Termination Fee Charge will have priority over all other security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings.

81. The Monitor considers the terms of the Backstop Commitment Letter to be fair and reasonable in the circumstances. The Monitor has reviewed the affidavit of Mark Caiger sworn May 12, 2022 and considered the Termination Fee, and is of the view that the quantum of the Termination Fee is not unreasonable in the circumstances based on its knowledge, experience, and having regard to the terms of backstop commitments and termination fees in similar matters.

Amendment to the Claims Procedure Order

82. The Claims Procedure Order provides that the Just Energy Entities, in their discretion and in consultation with the Monitor, may refer any dispute raised in a Notice of Dispute of Revision or Disallowance to either a Claims Officer or the Court for adjudication.

83. Within the Claims Process, the Just Energy Entities have received one or more claims that relate to the utility regulatory regime in Texas, including the *Texas Public Utility Regulatory Act*. These particular claims raise issues of U.S. law that are specific to Texas and, as such, appear to be appropriate for determination by the U.S. Court based in Texas, which has carriage of the Applicants' restructuring in the United States.

84. Accordingly, the Just Energy Entities are seeking to amend the Claims Procedure Order to permit them, in consultation with the Monitor, to have the Winter Storm Claims adjudicated by the U.S. Court, in its discretion, rather than by a Claims Officer or the Court.

85. The Monitor supports the requested amendment, which it believes will provide for an efficient and orderly resolution of such claims.

CONTRACT DISCLAIMER UPDATE

86. On February 17, 2022, Just Energy (U.S.) Corp. disclaimed a service agreement dated May 5, 2016 between it and WNS North America Inc. as contract counterparty (the "**WNS Agreement**") for certain subscription-based services relating to debt collections for residential customer accounts.

87. The WNS Agreement disclaimer was carried out in accordance with the provisions of the CCAA and with the consent of the Monitor. The Monitor found the disclaimer to be fair and reasonable in the circumstances, as it benefited the Just Energy Entities and enhanced the prospect of a viable restructuring. The counterparty to the disclaimed contract did not file an objection with the Court within the 15-day objection period specified under the CCAA.

88. The Just Energy Entities have advised the Monitor that they are continuing to consider the viability of other agreements and may seek to disclaim additional agreements subject to the Monitor's review and approval.

UPDATE ON CLAIMS PROCEDURE

89. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Claims Procedure Order.

90. The Monitor last reported on the Claims Procedure in the Seventh Report of the Monitor dated March 22, 2022 (the “**Seventh Report**”). Since the date of the Seventh Report, the Monitor, with assistance of the Claims Agent and the Just Energy Entities, has taken the following steps with respect to the Claims received:

    (a) reviewed, recorded, and categorized all Claims including any additional Claims which were received after the date of the Seventh Report;

    (b) worked with the Just Energy Entities to review and attempt to determine and/or resolve Claims;

(c) issued several Notices of Revision or Disallowance, as prepared by the Just Energy Entities in consultation with the Monitor, in respect of disallowed Claims;

(d) notified creditors of certain Claims accepted by the Just Energy Entities;

(e) engaged in numerous discussions and correspondence with various creditors who filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant where appropriate; and

(f) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.

Additional Noticing

91. As part of their review of potential unclaimed property to be reported to various state governmental bodies in 2022, the Just Energy Entities identified a group of approximately 57,000 inactive customers who may be eligible for a customer credit and were inadvertently excluded from the initial noticing process for the Claims Process. To ensure awareness of the Claims Process, the Just Energy Entities, in consultation with the Monitor, instructed the Claims Agent to send notice to these potential Claimants advising them of the existence of the Claims Process, including instructions on how to access a General Claims Package and a dedicated phone number to contact the Just Energy Entities should they have any questions.

92. The Just Energy Entities also identified certain long-outstanding customer refunds that were not captured during the initial noticing process for the Claims Process. These customer refunds meet the dormancy requirements for the state in which the applicable inactive customer resided – generally a period of two years or more. Consistent with the Just Energy Entities' prior treatment of unclaimed property Claims in the Claims Process, the Monitor is in the process of issuing approximately 40 negative notices totalling approximately $0.9 million of unsecured claims to the applicable state governmental body.

93. As part of the Chapter 15 Proceedings, the U.S. Court opened a claims portal (the "**U.S. Bankruptcy Portal**") to accept proofs of claim despite the Claims Process in the CCAA Proceedings not having been initiated or approved at that time. The U.S. noticing agent for the Just Energy Entities recently became aware of approximately 15 Claims totalling approximately US$3.0 million that were submitted to the U.S. Bankruptcy Portal using generic U.S.-based proof of claim templates (each, a "**U.S. Claim**"). In consultation with the Just Energy Entities, the Monitor sent notice to each party who submitted a U.S. Claim to advise them that, for a claim to be considered and adjudicated as part of the Claims Process, it must be submitted in accordance with the Claims Procedure Order to either the Monitor or the Claims Agent using the approved forms.

Overview of Claims

94. A summary of the Claims submitted in the Claims Procedure segregated by priority and category is presented in the table below. Amounts presented are inclusive of potential duplicate and/or erroneous Claims, and represent the total Claims received by the Just Energy Entities and recorded by the Monitor. Claims denominated in U.S. dollars have been converted at a rate of $1.26 to US$1.00 for purposes of this summary.

Category	Total Claims		
	Secured	Unsecured	TOTAL
(amounts stated in millions of CAD)			
Funded Debt	$ 331	$ 1,168	**$ 1,499**
Commodity & Financial	852	119	**970**
Litigation	-	10,024	**10,024**
Tax & Unclaimed Property	0	95	**95**
Trade & Other	26	512	**539**
D&O	-	1,554	**1,554**
Total Claims Received	**$ 1,209**	**$ 13,473**	**$ 14,682**

95. Since the date of the Seventh Report, the Monitor has received and recorded an additional $2 million in Claims. Based on the preliminary review of such claims by the Just Energy Entities and the Monitor, the Claims received since the date of the Seventh Report generally fall into the following categories: (i) Late-Filed Claims (as defined in the Fifth Report); (ii) a Restructuring Claim filed in relation to the WNS Agreement disclaimed by the Just Energy Entities; and (iii) claims amended to lower amounts or a

reallocation of secured claims and unsecured claims as a result of additional review and resolution of Claims.

Resolution Status of Claims

96. The Just Energy Entities, with assistance from and in consultation with the Monitor, continue to review the Negative Notice Claims, Notices of Dispute of Claim, Proofs of Claim, and Disputes of Notices of Revision or Disallowance received in accordance with the Claims Procedure Order, and are actively working to investigate, and/or resolve the Claims as applicable.

97. A summary of the current resolution status of the Claims is presented in the table below:

Category	Accepted or Deemed Accepted	Under Review	Dispute Resolution in Process	Sub-total Claims Pool	Duplicative Claims or Claim Value Reductions	Total Claims Pool	Disallowed	Rescinded Negative Notices / Withdrawn	Total Claims
(amounts stated in millions of CAD)	A	B	C	D= A+ B+ C	E	F= D+ E	G	H	= F+ G+ H
Funded Debt	$ 620	$ 13	$ -	**$ 633**	$ -	**$ 633**	$ -	$ 866	**$ 1,499**
Commodity & Financial	484	57	-	**541**	305	**846**	9	115	**970**
Litigation	-	1	4,835	**4,836**	4,828	**9,664**	360	0	**10,024**
Tax & Unclaimed Property	5	70	-	**75**	20	**95**	0	0	**95**
Trade & Other	12	49	1	**62**	432	**494**	5	40	**539**
D&O	-	0	118	**118**	0	**118**	1,436	-	**1,554**
Total Claims Received	**$ 1,121**	**$ 190**	**$ 4,954**	**$ 6,265**	**$ 5,586**	**$ 11,851**	**$ 1,810**	**$ 1,021**	**$ 14,682**
by Claim Priority									
Secured Claims	813	57	-	**870**	305	1,175	8	26	**1,209**
Unsecured Claims	308	133	4,954	**5,395**	5,281	10,676	1,802	995	**13,473**
Total Received	**$ 1,121**	**$ 190**	**$ 4,954**	**$ 6,265**	**$ 5,586**	$ 11,851	**$ 1,810**	**$ 1,021**	**$ 14,682**

98. For a description of the categories utilized in the table above describing the status of the Claims, please refer to paragraph 28 of the Seventh Report.

99. The Monitor will continue to provide further updates regarding the Claims Procedure to the Court as the CCAA Proceedings progress.

RECEIPTS AND DISBURSEMENTS FOR THE 4-WEEK PERIOD ENDED MAY 7, 2022

100. The Just Energy Entities' actual net cash flow for the 4-week period from April 10, 2022 to May 7, 2022, was approximately $11.1 million better than the Cash Flow Forecast appended to the Ninth Report (the "**May Cash Flow Forecast**") as summarized below:

(CAD$ in millions)	Forecast	Actuals	Variance
RECEIPTS			
Sales Receipts	$215.2	$214.5	($0.7)
Miscellaneous Receipts	-	-	-
Total Receipts	$215.2	$214.5	($0.7)
DISBURSEMENTS			
Operating Disbursements			
Energy and Delivery Costs	($185.5)	($180.2)	$5.4
Payroll	(10.2)	(8.5)	1.7
Taxes	(12.3)	(10.9)	1.4
Commissions	(6.9)	(8.4)	(1.5)
Selling and Other Costs	(13.5)	(8.2)	5.3
Total Operating Disbursements	($228.4)	($216.2)	$12.3
OPERATING CASH FLOWS	($13.2)	($1.7)	$11.5
Financing Disbursements			
Credit Facility - Borrowings / (Repayments)	$ -	$ -	$ -
Interest Expense & Fees	(3.3)	(3.4)	(0.1)
Restructuring Disbursements			
Professional Fees	(5.4)	(5.8)	(0.3)
NET CASH FLOWS	**($22.0)**	**($10.8)**	**$11.1**
CASH			
Beginning Balance	$171.3	$171.3	$ -
Net Cash Inflows / (Outflows)	(22.0)	(10.8)	11.1
Other (FX)	-	(1.1)	(1.1)
ENDING CASH	**$149.3**	**$159.3**	**$10.0**

101. Explanations for the main variances in actual receipts and disbursements as compared to the May Cash Flow Forecast are as follows:

(a) the favourable variance of approximately $5.4 million in respect of Energy and Delivery Costs is primarily driven by the following:

(i) a favourable timing variance of approximately $8.6 million due to timing of cash collateral payments and the collection of commodity receivables during the 4-week forecast period; and

(ii) a permanent unfavourable variance of approximately $3.3 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;

(b) the favourable variance of approximately $1.7 million for Payroll is primarily due to normal course fluctuations for various payroll tax remittances and sales incentive payment timing;

(c) the favourable temporary variance of approximately $1.4 million for Taxes is primary due to normal course fluctuations in the timing of tax payments;

(d) the permanent unfavourable variance of approximately $1.5 million for Commissions is primarily due to normal course fluctuations related to customer signups and associated commissions; and

(e) the favourable timing variance of $5.3 million in respect of Selling and Other Costs is 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

102. The variances shown and described herein compare the May Cash Flow Forecast, as appended to the Ninth Report, with the actual performance of the Just Energy Entities over the 4-week period noted.

103. 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 Report(s)**"). 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 report for the four-week period ended April 30, 2022. All variances reported were within the permitted variances.

104. 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 Forecast(s)**"). The Just Energy Entities provided the required DIP Cash Flow Forecast, which was approved by the DIP Lenders, for the 13-week period beginning May 1, 2022.

105. As the DIP Variance Report utilizes updated underlying cash flow forecasts vis-à-vis the May Cash Flow Forecast for the same period, the DIP Variance Report differed from the variance analysis above that compares actual results to the May 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.

106. Since the Ninth 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 15-WEEK PERIOD ENDING AUGUST 20, 2022

107. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 15-week period ending August 20, 2022 (the "**Summer 2022 Cash Flow Forecast**"), which encompasses the requested stay extension to August 19, 2022. The Summer 2022 Cash Flow Forecast is attached hereto as **Appendix "B"**, and is summarized below:

(CAD$ in millions)	15-Week Period Ending August 20, 2022
Forecast Week	**Total**
RECEIPTS	
Sales Receipts	$791.2
Miscellaneous Receipts	-
Total Receipts	$791.2
DISBURSEMENTS	
Operating Disbursements	
Energy and Delivery Costs	($580.7)
Payroll	(27.5)
Taxes	(29.5)
Commissions	(29.3)
Selling and Other Costs	(45.7)
Total Operating Disbursements	($712.7)
OPERATING CASH FLOWS	$78.5
Financing Disbursements	
Credit Facility - Borrowings / (Repayments)	$ -
Interest Expense & Fees	(11.5)
Restructuring Disbursements	
Professional Fees	(15.3)
NET CASH FLOWS	**$51.7**
CASH	
Beginning Balance	$159.3
Net Cash Inflows / (Outflows)	51.7
Other (FX)	-
ENDING CASH	**$211.0**

108. The Summer 2022 Cash Flow Forecast indicates that during the 15-week period ending August 20, 2022, the Just Energy Entities will have operating cash inflows of approximately $78.5 million with total receipts of approximately $791.2 million and total operating disbursements of approximately $712.7 million, before interest expense and fees of approximately $11.5 million and professional fees of approximately $15.3 million, such that total net cash inflows are forecast to be approximately $51.7 million.

109. Generally, the underlying assumptions and methodology utilized in the May Cash Flow Forecast have remained the same for this Summer 2022 Cash Flow Forecast; however, the Monitor notes the following:

(a) The forecast period was extended from the week ending June 4, 2022 to the week ending August 20, 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 Summer 2022 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 disbursements 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.

110. The Summer 2022 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 August 20, 2022.

STAY PERIOD EXTENSION

111. The Stay Period will expire on May 26, 2022, and the Applicants are seeking an extension to the Stay Period up to and including August 19, 2022.

112. The Monitor supports extending the Stay Period to August 19, 2022 for the following reasons:

    (a) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with time to:

        (i) satisfy the Milestones under the Support Agreement and allow the 62-day Voting Period to occur;

        (ii) call, hold and conduct the Creditors' Meetings;

        (iii) if approved by the Required Majorities of Creditors at the Creditors' Meetings, seek the Sanction Order;

        (iv) if granted, implement the Plan and emerge from the CCAA Proceedings and Chapter 15 Proceedings;

    (b) as indicated by the Summer 2022 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;

    (c) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and

    (d) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the inception of the CCAA Proceedings.

APPROVAL OF THE FEES AND ACTIVITIES OF THE MONITOR

113. The proposed Authorization Order seeks approval of (i) the activities and conduct of the Monitor since the date of Ninth Report; (ii) this Tenth Report; and (iii) the fees and disbursements of the Monitor and its counsel from October 30, 2021 to May 6, 2022 and May 7, 2022, as applicable.

114. 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 Ninth Report have

been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.

115. Pursuant to paragraphs 42 and 43 of the Second A&R Initial Order, the Monitor, its Canadian and U.S. counsel shall: (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of the Initial Order, by the Just Energy Entities as part of the costs of the CCAA Proceedings; and (ii) pass their accounts from time to time before this Court.

116. Since the Fourth Report to the Court dated November 5, 2021 (when the Monitor and its counsel's fees were last approved), the Monitor and its counsel have maintained detailed records of their professional time and costs. The total fees and disbursements of the Monitor for the period from October 30, 2021 to May 6, 2022 total $3,115,514.14, including fees in the amount of $2,755,673.50, disbursements in the amount of $1,418.63, and Harmonized Sales Tax ("**HST**") in the amount of $358,422.01, as more particularly described in the Affidavit of Paul Bishop sworn May 17, 2022 (the "**Bishop Affidavit**"), a copy of which is attached hereto as **Appendix "C"**.

117. The total fees and disbursements of the Monitor's Canadian counsel, from October 30, 2021 to May 6, 2022 total $1,721,348.65, including fees in the amount of $1,512,202.50, disbursements in the amount of $12,157.62, and HST in the amount of $196,988.53, as more particularly described in the Affidavit of Rachel Nicholson sworn May 16, 2022 (the "**Nicholson Affidavit**"), a copy of which is attached hereto as **Appendix "D"**.

118. The total fees and disbursements of the Monitor's U.S. counsel from October 30, 2021 to May 7, 2022 total US$115,505.30, including fees in the amount of US$113,909.50 and disbursements in the amount of US$1,595.80, as more particularly described in the Affidavit of John Higgins sworn May 11, 2022 (the "**Higgins Affidavit**", together with the Bishop Affidavit and Nicholson Affidavit, the "**Fee Affidavits**"), a copy of which is attached hereto as **Appendix "E"**.

119. The Monitor respectfully submits that the fees and disbursements incurred by the Monitor and its counsel, as described in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the

Second A&R Initial Order. Accordingly, the Monitor respectfully requests the approval of the fees and disbursements of the Monitor and its counsel as set out in the Fee Affidavits.

CONCLUSION

120. The Monitor is of the view that the relief requested by the Applicants is reasonable and justified in the circumstances.

121. Accordingly, the Monitor respectfully supports the requested relief and recommends that the Meetings Order and the Authorization Order be granted.

The Monitor respectfully submits to this Honourable Court this Tenth Report dated this 18th day of May, 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

Tab 9

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

Just Energy Group Inc. et al.

SUPPLEMENT TO THE TENTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT-APPOINTED MONITOR

June 1, 2022

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

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**")

SUPPLEMENT TO THE TENTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (as amended and restated, 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 (together with Just Energy, the "**Applicants**") and certain partnerships listed on Schedule "A" of the Initial Order (collectively, the "**Just Energy Entities**") 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**"). Under the Initial

Order, FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the "**Monitor**").

2. Upon application by Just Energy, in its capacity as foreign representative (in such capacity, the "**Foreign Representative**"), the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Court**") granted the Final Recognition Order on April 2, 2021 under Chapter 15 of the United States Bankruptcy Code, which, among other things, gave full force and effect to the Initial Order in the United States.

3. 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**").

4. This report is supplementary to and should be read in conjunction with the Tenth Report of the Monitor dated May 18, 2022 (the "**Tenth Report**").

5. All references to monetary amounts in this report are in Canadian dollars unless otherwise noted. Any capitalized terms used but not defined herein shall have the meanings given to them in the Tenth Report.

6. Pursuant to the motion returnable on June 7, 2022 (the "**Meetings Order Motion**"), the Just Energy Entities are seeking the Meetings Order and the Authorization Order. In response to the Meetings Order Motion, responding motion records were filed by (i) Haidar Omarali, in his capacity as representative plaintiff on behalf of a certified class (the "**Class Members**") in *Haidar Omarali v. Just Energy Group et al*, Court File No. CV-15-52748300CP (the "**Omarali Action**") (the "**Omarali Motion Record**"), and (ii) Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP, in their capacity as counsel to the proposed representative plaintiffs in *Donin v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB and *Trevor Jordet v. Just Energy Solutions Inc.*, Case No. 2:18-cv-01496-MMB (together, the "**Donin/Jordet Actions**").

PURPOSE

7. The purpose of this Supplement to the Tenth Report (the "**Supplemental Report**") is to provide information to the Court in response to issues raised in the Omarali Motion Record and in respect of the Claims.

TERMS OF REFERENCE AND DISCLAIMER

8. In preparing this Supplemental 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**").

9. Except as otherwise described in this Supplemental 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 Supplemental Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.

10. The Monitor has prepared this Supplemental Report to provide information to the Court in response to certain issues raised in the Omarali Motion Record and in support of the relief sought by the Applicants in the Meetings Order and Authorization Order. This Supplemental Report should not be relied on for any other purpose.

RESPONSES TO ISSUES RAISED IN OMARALI MOTION RECORD

11. The Omarali Motion Record includes the Affidavit of Vlad Andrei Calina affirmed May 26, 2022 (the "**Calina Affidavit**"). The Calina Affidavit suggests that inadequate disclosures were made by the Monitor in respect of (i) Texas House Bill 4492 ("**HB**

4492") and anticipated recoveries by the Just Energy Entities, (ii) the timing of the ERCOT Litigation (as defined below) and anticipated recoveries, and (iii) certain insurance policies for Just Energy's directors as requested.

HB 4492

12. The Monitor provided an initial update to the Court and stakeholders in respect of HB 4492 in the Monitor's Third Report to the Court dated September 8, 2021. The Monitor noted that the Governor of Texas signed HB 4492 on June 16, 2021, which provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including the Just Energy Entities, during the Texas weather event in February 2021. The Monitor also noted that the total amount that the Just Energy Entities might recover through HB 4492 was dependant on several factors.

13. In the Monitor's Fourth Report to the Court dated November 5, 2021, the Monitor noted that the Just Energy Entities anticipated recovering at least US$100 million of the costs from Electric Reliability Council of Texas, Inc. ("**ERCOT**"), however, such amount was dependent on several factors noted therein.

14. In the Monitor's Fifth Report to the Court dated February 4, 2022, the Monitor noted that the Just Energy Entities' expected recovery under HB 4492 had increased to approximately US$147.5 million.

15. The Monitor understands that ERCOT has not provided a definitive timeline for the payment of HB 4492 recoveries; however, based on discussions with the Just Energy Entities, the Monitor understands that HB 4492 recoveries are anticipated to be received by the Just Energy Entities during Summer 2022 prior to implementation of the proposed Plan of Compromise and Arrangement dated May 26, 2022 (as may be amended from time to time, the "**Plan**"), subject to any unforeseen delays.

16. The HB 4492 recoveries to the Just Energy Entities will constitute Cash on Hand under the Plan and will provide some of the funds necessary to make the cash distributions provided for under the Plan. One of the conditions precedent to implementation of the Plan (as described in the Tenth Report) is that the New Equity Offering Proceeds and

Cash on Hand shall be sufficient to pay the amounts to be distributed and reserved for under the Plan.

17. In summary, the recoveries under HB 4492 have been disclosed on a timely basis and are anticipated to be fully used under the Plan.

ERCOT Litigation

18. In the Monitor's Second Report to the Court dated May 21, 2021 (the "**Second Report**"), the Monitor noted that the Just Energy Entities had disputed the resettlement payments that the Just Energy Entities were required to pay to ERCOT as a result of the inflated prices during the Texas weather event. The Monitor also noted that ERCOT had dismissed one of the disputes filed by the Just Energy Entities, which triggered an alternative dispute resolution process.

19. In the Monitor's Eighth Report to the Court dated April 7, 2022, the Monitor noted that the Just Energy Entities had commenced litigation against ERCOT and the Public Utility Commission of Texas (the "**PUCT**") on November 12, 2021, in an effort to recover payments made by various Just Energy Entities to ERCOT for certain invoices relating to the Texas weather event in February 2021 (the "**ERCOT Litigation**"). The claim against the PUCT was dismissed by the U.S. Court. Further, the Monitor noted that it intends to be actively involved in supporting the ERCOT Litigation.

20. The ERCOT Litigation was the subject of the Applicants' recent motion to the Court, in which the Applicants sought and obtained an order authorizing the Foreign Representative to pursue the claims against ERCOT in the ERCOT Litigation pursuant to section 36.1 of the CCAA. Stakeholders were provided with notice of such motion and could have raised any questions or concerns regarding the ERCOT Litigation at such time.

21. In the Monitor's Ninth Report to the Court dated April 18, 2022, the Monitor noted that, in consultation with its Canadian and U.S. legal counsel, it is of the view that the Plaintiffs' claim has merit and that potential recoveries to the Just Energy Entities may result from the ERCOT Litigation, which justify the steps taken.

22. As with all litigation, the timeline to resolution and likelihood of success is unknown. At this juncture, ERCOT has moved to dismiss the ERCOT Litigation, and the continuation of such dismissal motion has been scheduled for June 8, 2022. Recoveries from such litigation, if any, could take years to realize. Accordingly, it is anticipated that the Plan will be implemented prior to the resolution of the ERCOT Litigation. The costs, risks and recovery, if any, in respect of the ERCOT Litigation following Plan implementation (which cannot be quantified at present and could be significant) will be borne by the restructured Just Energy Entities.

Insurance Policies

23. The Calina Affidavit also states that despite a request by counsel to the Class Members for copies of any applicable insurance policies for Just Energy's directors responsive to a claim by Class Members, no such policies were provided.

24. As set out in Exhibit "CC" to the Calina Affidavit, the Just Energy Entities took the position that (i) such request amounted to discovery, which was not in effect at such time, and (ii) the claim against Just Energy's directors was not valid given that the directors were not named in the initial action commenced by the Class Members, and the directors could not be found personally liable for the claims pled. Accordingly, the Just Energy Entities advised counsel to the Class Members that they were not prepared to produce the requested insurance policies.

25. Pursuant to section 40 of the Initial Order, the Monitor is prohibited from providing information to creditors that the Just Energy Entities advise is confidential, unless otherwise directed by the Court or on such terms as the Monitor and Applicants may agree. Just Energy advised the Monitor that the policies were confidential. Accordingly, such information was not provided to counsel to the Class Members.

INFORMATION ON THE CLAIMS AND VOTING

26. The Plan and Meetings Order provide that the representative plaintiff in the Omarali Action is entitled to one vote in the amount of $1 as such Claims are too remote and speculative to be assessed and admitted for voting purposes. The Plan and Meetings

Order provide similar treatment for the proposed representative plaintiffs in the Donin/Jordet Actions.

27. The Calina Affidavit provides that there are approximately 7,723 Class Members. Not including those Claimants that have filed contingent litigation claims, less than 2,200 unique claimants have filed a Proof of Claim or received a Statement of Negative Notice Claim in the Claims Procedure (which, for greater certainty, includes the Term Loan Lenders).[1] Further, based on the Proofs of Claim filed to date, less than 35 claimants have a De Minimis Claim (i.e., Claims less than $10).[2]

28. While the quantum of general unsecured claims that will be Accepted Claims is unknown at this time, the Just Energy Entities estimate that this will range from $66 million to $108 million in aggregate value.

29. Although the Monitor notes that the actual number of Class Members will not be established until the Claim is fully and finally adjudicated, granting each of the Class Members with their own vote would effectively provide a "veto" over the Plan, assuming such Class Members would vote against the Plan. The same issue and effective "veto" arises in respect of the Donin/Jordet Actions.

CONCLUSION

30. The foregoing information is provided to assist the Court in its determination of the Applicants' motion for the Meetings Order and Authorizations Order.

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[1] This amount represents the Just Energy Entities' best estimate, in consultation with the Monitor, as at the date of the Tenth Report and includes unique claimants against one or more of the Just Energy Entities, but excludes potentially duplicative Claims and Claims that have been disallowed or withdrawn.

[2] This amount represents the Just Energy Entities' best estimate, in consultation with the Monitor, as at the date of the Tenth Report and is subject to change.

The Monitor respectfully submits to this Honourable Court this Supplement to the Tenth Report dated this 1st day of June, 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

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

SUPPLEMENT TO THE TENTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT-APPOINTED MONITOR

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Tab 10

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

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")**

NOTICE OF MOTION

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 representative plaintiffs and class members in two U.S. Class Actions[1] (the "**U.S.**

[1] The U.S. Class Actions are *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**" or the "**U.S. Class Actions**").

Customers"), will make a Motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on Tuesday, June 7, 2022 at 10:00 a.m., or as soon after that time as the Motion can be heard by judicial videoconference via Zoom at Toronto, Ontario. The videoconference details will be circulated when provided by the Court.

PROPOSED METHOD OF HEARING: The Motion is to be heard by videoconference.

THE MOTION IS FOR:

(a) an order declaring that each U.S. Customer is a creditor in their own right and entitled to a vote on any plan of compromise and/or arrangement filed in these proceedings;

(b) an order declaring that, in these proceedings, the plaintiffs in the U.S. Class Actions (the "**U.S. Plaintiffs**") are representatives of the U.S. Customers and are entitled to vote on any plan of compromise and/or arrangement filed in these proceedings on behalf of the U.S. Customers, and/or, if necessary, formally appointing the U.S. Plaintiffs as representatives for the U.S. Customers and Paliare Roland Rosenberg Rothstein LLP as their lawyers in these proceedings;

(c) The advice and direction of the court regarding a hearing for the summary valuation (estimation) of the U.S. Customers' claims, solely for voting purposes, in advance of the meeting of creditors, including, if appropriate, an order referring the summary valuation (estimation) of the U.S. Customers' claims to the Claims Officer (defined below) for determination prior to the meeting of creditors;

(d) the costs of this motion; and

(e) such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

The U.S. Litigation

(a) 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 (the Donin Action) 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.

(b) 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).

(c) The U.S. Class Actions allege that the Just Energy Defendants:

(i) target consumers and businesses hoping to save on energy supply costs and lure them in with a teaser or fixed rate for a limited time period that is initially below its competitors' rates; and

(ii) once the initial rate expires, exploit their pricing discretion and information asymmetry with customers to artificially inflate the rate, without regard to their obligation under the contracts to set the rate

according to “business and market conditions” and having regard to their duty of good faith and fair dealing.

(d) The U.S. Class Actions are straightforward and serious claims—the Just Energy Defendants moved unsuccessfully to dismiss the U.S. Class Actions and both actions remain pending in the United States.

(e) The U.S. Litigation is only one of many challenges that have been brought against the predatory business practices of the Just Energy Defendants.

(f) More particularly, the Just Energy Defendants have attracted the sanction of both regulators and the media, and have a demonstrated history of misleading and unfair practices in the Canadian and U.S. retail energy markets

(g) 417,162 U.S Customers comprise the New York State class in the Donin Action, and each of these U.S. Customers has an individual claim against the Applicants.

(h) The group of U.S. Customers captured by the Jordet Action is likely even larger.

The CCAA Proceeding

(i) On March 9, 2021, the Court issued an Initial Order granting CCAA protection to the Applicants.

(j) On September 15, 2021, 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).

(k) On November 1, 2021, prior to the expiry of the Claims Bar Date, Class Counsel filed Proofs 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).

(l) For both cases, U.S. Class Counsel provided over 40 pages of Claim Documentation setting out the relevant background and merits of the respective U.S. Class Actions, including:

(i) a detailed analysis of the breach of contract and breach of duty of good faith claims, including significant case law and statutory support;

(ii) reference to four (and as of February 2022, five) similar U.S. class actions that were certified following a contested class-certification motion (all five cases are in respect of Energy Service Companies' customers who were overcharged under the terms of their customer agreements);

(iii) evidence of denunciation of the Just Energy Defendants' pricing practices by relevant regulators as further demonstration of the strength of the Class Claimants' claims; and

(iv) a supporting expert report.

(m) The U.S. Class Actions are perfectly suited for certification. There is substantial precedent for certification of this type of class action.

(n) U.S. Class Counsel subsequently retained Paliare Roland Rosenberg Rothstein LLP as insolvency counsel to represent the U.S. Customers in these proceedings. Paliare Roland is an experienced and qualified firm with expertise representing large numbers of stakeholders who are often commercially unsophisticated and vulnerable in a wide variety of insolvency and/or class proceedings.

(o) On January 11, 2022, the Applicants served a Notice of Revision or Disallowance with respect to both the Donin/Golovan and Jordet Proofs of Claim (the "**Notice of Disallowance**").

(p) 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.

(q) On February 10, 2022, U.S. Class Counsel disputed the disallowance.

The February 9 Motion and the Appointment of Justice O'Connor

(r) On February 9, 2022, U.S. Class Counsel brought a motion for advice and direction requesting, among other things, that the Court order an Expedited Adjudication Framework so that the U.S. Customer Claims could be adjudicated prior to a vote on the Plan.

(s) Although U.S. Class Counsel had intended to propose a 3-month adjudication process resulting in a decision on the merits in May 2022, they modified their proposal according to information in the Monitor's Fifth Report that the delivery of the Plan was imminent and that the DIP Lenders had indicated a deadline of March 30, 2022 for a meeting of the creditors, and proposed, among other things, that all substantive and procedural issues in connection with the U.S. Customer Claims be determined (subject to a court-imposed outside deadline for the release of a decision on the merits) on the earlier of three days prior to the meeting of creditors or March 27, 2022.

(t) At the end of the hearing, the Court advised the parties that the motion was dismissed with reasons to follow. His Honour delivered his reasons on February 23, 2022.

(u) Despite the Applicants' (and the DIP Lenders') insistence that a Plan was imminent and that the Court did not have time to order an expedited adjudication framework, the Applicants' sought stay extension orders on

March 3, March 24, and April 21, 2022, and did not deliver the Plan until May 12, 2022.

(v) On February 24, 2022, U.S. Class Counsel filed a Notice of Motion for Leave to Appeal the February 9 Order to the Ontario Court of Appeal on an expedited basis. U.S. Class Counsel and the Respondents to the motion for leave have submitted their respective materials and factums. The parties are currently waiting for the Court's determination.

(w) On March 3, 2022, the Court appointed the Honourable Justice Dennis O'Connor as Claims Officer (the "**Claims Officer**"), for the purposes of adjudicating the U.S. Customer claims (the "**O'Connor Adjudication**").

(x) Justice O'Connor has made a number of preliminary rulings in the O'Connor Adjudication in respect of, among other things, class size and discovery rights, thereby streamlining the U.S. Class Action Claims.

THE DELIVERY OF THE PLAN AND THE MEETINGS ORDER

(y) 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 initially returnable May 26, 2022 (the "**Meetings Motion**").

(z) The Applicants are seeking the Court's authority to file the Plan and to call, hold and conduct creditors' meetings to allow the affected creditors to vote on the Plan.

(aa) The Plan should not be accepted for filing and put to a vote in its present form because it is a blatant attempt to gerrymander the vote:

(i) the Plan puts the Term Loan Lenders (as defined in the motion materials) in the same class as other unsecured creditors for the purpose of voting on the Plan, despite the fact that the consideration being provided to the Term Loan Lenders pursuant to the Plan is fundamentally different in kind from the consideration that is being provided to other unsecured creditors;

(ii) the Plan unjustly prefers certain unsecured creditors by giving them the option of accepting $1,500 (or the full amount of their claim if less than $1,500) in full and final satisfaction of their claim, while arbitrarily denying that option to other unsecured creditors, including the U.S. Customers;

(iii) the Applicants propose that creditors who are actually receiving no consideration shall be deemed to have voted in favour of the Plan;

(iv) the Applicants propose to limit (at least) hundreds of thousands of U.S. Customers to a single vote; and

(v) the Applicants propose to arbitrarily limit the U.S. Customers' claims to one dollar without any meaningful attempt at independently valuing this claim for voting purposes.

The Applicants are Stable and there is time to decide and address the issues raised on this motion

(bb) All of the objections raised in this motion can be addressed prior to the proposed August 2, 2022 meeting date, but even if that were not the case:

(i) the Applicants have adequate liquidity to continue their operations in the near and far future, including the ability to pay the Monitor, vendors, taxes, interest expenses and fees, and its restructuring professional's fees; and,

(ii) absent arbitrary deadlines set by the Plan sponsors, there is no reason why the Meetings must occur by August 2, 2022.

(cc) Sections 4, 11, 11.02, 18.6, 20, 22 of the CCAA;

(dd) Rules 1.04, 1.05, 2.03, 3.02, 10.01, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended and section 106 of the *Courts of Justice Act*, R.S.O 1990, c. C. 43 as amended; and

(ee) Such further and other grounds as the lawyers may advise.

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

(a) The Affidavit of Robert Tannor sworn January 17, 2022;

(b) The Affidavit of Robert Tannor sworn May 26, 2022; and

(c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 26, 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.*

TO: **SERVICE LIST**

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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Tab 11

Electronically issued : 04-Apr-2022
Délivré par voie électronique
Toronto

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 9th
	)	
JUSTICE MCEWEN	)	DAY OF FEBRUARY, 2022

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**")

ORDER
(Class Counsel's Motion for Advice and Direction)

THIS MOTION, brought by Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**Class Counsel**"), in their capacity as counsel to the proposed plaintiff classes (the "**Class Claimants**") in *Donin v. Just Energy Group*

Inc. et al.[1] (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions Inc.* [2] (the "**Jordet Action**", together with the Donin Action the "**U.S. Litigation**"), seeking advice and directions of the Court in respect of the Class Claimants' role in these proceedings and the availability of due process, including:

(a) an order, if necessary, validating the method of service, dispensing with further service, and abridging the time for filing of this motion, such that the motion is properly returnable on the date indicated above;

(b) an order declaring that the Class Claimants are to be unaffected by this CCAA Proceeding;

(c) in the alternative to the relief sought in paragraph (b), in the event the Class Claimants are to be affected by this CCAA Proceeding:

(i) an order directing the implementation of a timely schedule and process leading to the final adjudication of the Class Claims, prior to any consideration by this Court of the Applicants' Plan or other event to exit this CCAA proceeding (the "**Claims Adjudication Process**") in substantially the following form:

(A) three arbitrators from JAMS (US) with consumer class action experience shall be appointed to sit as Claims Officers in this CCAA Proceeding;

(B) the Claims Adjudication Process shall employ the "Expedited Procedures" in the JAMS Comprehensive Arbitration Rules;

(C) the Claims Adjudication process shall employ a process for exchanging documents and conducting any necessary depositions, subject to the oversight of the Claims Officers; and

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[1] No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.).

[2] No. 18 Civ. 953 (WMS) (W.D.N.Y.).

(D) the Class Claims shall be finally adjudicated at a hearing lasting five to seven days in February 2022;

(ii) an order, substantially in the form attached to Class Counsel's notice of motion as Schedule "A", directing the Applicants to provide the Class Claimants with access to any data room established by them in respect of these proceedings, and appointing a mediator/arbitrator to resolve all matters pertaining to the production of documents and access to information for restructuring purposes (as distinct from production for the purpose of the Claims Adjudication Process) together with such other procedural or substantive matters as the parties may agree or the Court may direct;

(iii) in the alternative to the relief sought in paragraph (c)(ii), above, an order:

(A) directing the specific production of the following documents and information within seven (7) days of the date of the order:

(1) a listing of creditors, the amount claimed by each creditor, whether security or other priority is claimed, and the status of the claim (i.e., allowed/contested/subject to ongoing review/etc.) and the aggregate number of creditors and claims;

(2) the DIP Term Sheet, each of its revisions, the latest current form, a conformed copy of the DIP term sheet with all revisions, any future updates, signature pages, DIP loan amount exhibits by DIP Loan participant, and definitive documents, and any other related non-privileged documents;

(3) copies of all of the Applicants' insurance policies that might respond to the Class Claims, the coverage status, the total amount drawn against the policy to date, and a list of competing claims made against the policies;

(4) a list and the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval;

(5) the restructuring, realization and/or sale or investment process related to any and all exit plans under consideration by the Applicants;

(6) any debt capacity analyses by the company and/or its investment bank;

(7) an updated business plan showing updates of actual results to projected results, an update showing the range of recoveries as per Texas House Bill 4492, the proceeds from

the sale of ecobee Shares, and all other updates included in the business plan since it was published in May 2021; and

(8) a statement of the enterprise value of the company with supporting documents showing methodology, multiples, discount rates used, and comparables relied upon;

(B) directing the Applicants and their necessary advisors to meet with Class Counsel and their advisors within seven (7) days of the completion of production of the foregoing information, to review the information and answer questions; and

(C) scheduling a further case conference within 21 days of the date of the order to report on the status of its implementation and to schedule such further case conferences or hearings as may be necessary for the effective management and supervision of these proceedings;

(d) the costs of this motion; and

(e) such further and other relief as to this Honourable Court may seem just, including, without limitation, if and as necessary for the purpose of giving effect to the new information exchange regime contemplated at paragraphs (c)(ii) and (c)(iii) above, the variation of any prior orders made in these proceedings.

was heard on February 9, 2022 by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic, with reasons released on February 23, 2022.

ON READING the Motion Record of Class Counsel dated January 19, 2022, the Factum and Book of Authorities of Class Counsel dated February 4, 2022, the Compendium of Class Counsel dated February 8, 2022, the Motion Record of the Applicants dated February 2, 2022, the Responding Factum of the Applicants dated February 7, 2022, the Factum and Book of Authorities of the DIP Lenders dated February 7, 2022, the Compendium of the Applicants and the DIP Lenders dated February 7, 2022, and the Fifth Report of FTI Consulting Canada Inc., in its capacity as Court Appointed Monitor, dated February 4, 2022, and on hearing the submissions of respective

counsel for the Applicants, Class Counsel, the DIP Lenders, the Monitor, and such other counsel as were present, no one else appearing although duly served, filed:

1. **THIS COURT ORDERS** that this motion is dismissed.

McE J.

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

9 Feb 22

Order to go as per the draft filed and signed. Counsel have agreed to the form and content.

McE— T.

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(Class Counsel's Motion for Advice and Direction)

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Counsel for the Applicants

Court File Number: CV-21-00658423-00CL

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 J

Counsel	Telephone No:	Facsimile No:
see counsel slip		

☐ 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 Donin v. Just Energy Group Inc et al and the Jordet 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 J
Judge's Signature

☑ Additional Pages 16

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Superior Court of Justice
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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 Claims") 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 given the time sensitive nature of this matter.

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

 Judges Initials TM

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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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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 JAMS (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 on certification, possible summary judgment, outstanding discovery (to date there has been no discovery in the Jordet Action) preparation of experts reports, procedural motions, PTC and trial.[1]

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

Judges Initials [initials]

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 Claim, 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 oppose 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.

General, 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 caselaw 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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Judges Endorsment Continued

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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Judges Endorsment Continued

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 cases[2]; 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.

Judges Initials TM

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

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I do not agree for a number of reasons:

i) I do not accept that the Applicants have "sandbagged" 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 on

Judges Initials DM

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Judges Endorsment Continued

liability and quantum) ought to adjudicated before other claims and prior to the next contemplated steps in the CCAA Proceeding - in this regard the cases relied upon (Essar and Covia) 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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2a. See also the Applicant's factum at para 69.

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Judges Endorsment Continued

CCAA cases in which significant stakeholders were given access to data rooms / documentation[3].

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

Judges Initials TM

3. As per para 84 of U.S. Class Counsel's Factum.

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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-Forest or Nortel.[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

 Judges Initials DM

4. See para 84 of the Applicants' Factum.

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preferrable 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.

[signature]

Judges Initials TM

Tab 12

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

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.

Applicants

AFFIDAVIT OF MICHAEL CARTER

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. I have been Just Energy Group Inc.'s ("**JEGI**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of JEGI and its subsidiaries in the CCAA proceedings (collectively, the "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as defined below) to which the protections and authorizations of the Initial Order were extended (collectively with the Applicants, the "**Just Energy Entities**"). As such, I have personal knowledge of the

matters deposed to in this affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Just Energy Group's senior management team and their financial and legal advisors, and in particular U.S. counsel who has carriage of the Putative Class Actions (as defined below) on behalf of the Just Energy Group.

2. I make this affidavit in support of the Applicants' motion for a short extension of the Stay Period (as defined below) to, and including, March 4, 2022, and in response to the Motion for Advice and Directions brought by Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**Plaintiffs' Counsel**"), in their capacity as counsel to the proposed representative plaintiffs in *Donin v. Just Energy Group Inc. et al.*[1] (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions Inc.*[2] (the "**Jordet Action**", together with the Donin Action the "**Putative Class Actions**"), seeking (among other things):

(a) an order declaring that the plaintiff classes in the Putative Class Actions are to be unaffected by this CCAA Proceeding;

(b) in the alternative to the relief sought in paragraph 2(a), above, an order implementing a schedule and process (the "**Claims Adjudication Process**") for the final adjudication of the claims arising from the Putative Class Actions (the "**Putative Class Claims**") prior to any consideration by the Court of the

[1] No. 17 Civ.5787 (WFK) (SJB)(E.D.N.Y.).

[2] No. 18 Civ. 953 (WMS) (W.D.N.Y.).

Applicants' proposed plan of compromise or arrangement (the "**Plan**") or other event to exit this CCAA Proceeding;

(c) an order directing the Applicants to provide the plaintiffs with access to any data room established by the Applicants in respect of these proceedings, and appointing a mediator/arbitrator (the "**Mediator/Arbitrator**") to resolve all matters pertaining to the production of documents and access to information for restructuring purposes (as distinct from production for the purpose of the Claims Adjudication Process);

(d) in the alternative to the relief sought in paragraph 2(c), above, an order:

(i) directing the specific production of the following documents and information within seven (7) days of the date of the order:

(A) a listing of creditors, the amount claimed by each creditor, whether security or other priority is claimed, and the status of the claim (i.e., allowed/contested/subject to ongoing review/etc.) and the aggregate number of creditors and claims;

(B) the DIP Term Sheet, each of its revisions, the latest current form, a conformed copy of the DIP term sheet with all revisions, any future updates, signature pages, DIP loan amount exhibits by DIP Loan participant, and definitive documents, and any other related non-privileged documents;

(C) copies of all of the Applicants' insurance policies that might respond to the Putative Class Claims, the coverage status, the total amount drawn against the policy to date, and a list of competing claims made against the policies;

(D) a list and the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval;

(E) the restructuring, realization and/or sale or investment process related to any and all exit plans under consideration by the Applicants;

(F) any debt capacity analyses by the company and/or its investment bank;

(G) an updated business plan showing updates of actual results to projected results, an update showing the range of recoveries as per Texas House Bill 4492, the proceeds from the sale of ecobee Shares, and all other updates included in the business plan since it was published in May 2021; and

(H) a statement of the enterprise value of the company with supporting documents showing methodology, multiples, discount rates used, and comparables relied upon;

(ii) directing the Applicants and their necessary advisors to meet with Plaintiffs' Counsel and their advisors within seven (7) days of the completion of production of the foregoing information, to review the information and answer questions; and

(iii) scheduling a further case conference within 21 days of the date of the order to report on the status of its implementation and to schedule such further case conferences or hearings as may be necessary for the effective management and supervision of these proceedings;

3. The Applicants are seeking to have the plaintiff's motion dismissed in its entirety. Among other things:

(a) The Applicants have already provided Plaintiffs' Counsel with confidential information pursuant to an NDA (defined below) in addition to the information available in JEGI's public company filings and the extensive documentation filed in the CCAA Proceedings. The Applicants and the Monitor have also answered questions posed by Plaintiffs' Counsel and attended numerous calls with them. The Applicants have diligently responded to reasonable information requests.

(b) The Applicants are addressing the plaintiffs' claims pursuant to the Claims Procedure Order and are prepared to engage with Plaintiffs' Counsel and the Monitor to appoint a Claims Officer to efficiently determine the claims. To that

end, the Applicants have proposed a fair and reasonable schedule for the adjudication of the claims, subject to the discretion of the Claims Officer; and

(c) The Applicants are currently negotiating a restructuring solution with their funded debt holders to preserve the Just Energy Entities' business as a going concern. Once that process is complete, the Applicants will seek court approval of any restructuring solution. All stakeholders will have an opportunity to make submissions to the Court with respect to the proposed restructuring at the appropriate time.

4. The Applicants and their advisors are spending an inordinate amount of time dealing with two contingent, uncertified, unsecured creditors whose claims have been disallowed in full. The Applicants require breathing space to focus on their restructuring discussions with the stakeholders that have funded the Just Energy Entities and should not be required to expend additional resources responding to extensive information requests at this time.

5. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

A. HISTORY OF THE CCAA PROCEEDINGS

6. On March 9, 2021 (the "**Filing Date**"), the Applicants obtained protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**"). The Applicants' filing for protection under the CCAA was precipitated by the

acute and unforeseen liquidity challenge caused by the unprecedented winter storm in Texas and the Texas regulators' response to same.

7. The Initial Order has twice been amended and restated. The CCAA Court granted an Amended and Restated Initial Order (the "**ARIO**") and a Second Amended and Restated Initial Order (the "**Second ARIO"**) on March 19, 2021, and May 26, 2021, respectively.

8. On April 2, 2021, the United States Bankruptcy Court for the Southern District of Texas granted a Final Recognition Order (the "**Final Recognition Order**") which, among other things, granted the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the CCAA Court, with full force and effect on a final basis with respect to the Just Energy Entities' property located within the United States.[3]

9. On September 15, 2021, the CCAA Court granted the Claims Procedure Order establishing a process (the "**Claims Process**") to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their respective Directors and Officers. The Claims Procedure Order established a Claims Bar Date of November 1, 2021. A copy of the Claims Procedure Order is attached hereto as **Exhibit "A".** Since the Claims Bar Date, the Just Energy Entities have been working diligently with the Monitor to review, record, dispute and, where appropriate, finally determine the amount and characterization of Claims against the Just Energy Entities and their respective Directors and Officers.

10. On November 10, 2021, the CCAA Court granted an Order which, among other things, approved an amendment to the CCAA Interim Debtor-in-Possession Financing Term Sheet, dated

[3] The Final Recognition Order also provided that, "All parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding."

as of March 9, 2021 (the "**DIP Term Sheet**") to, among other things, extend the maturity date thereunder from December 31, 2021 to September 30, 2022, and extend the Stay Period (as defined in the Second ARIO) to February 17, 2022.

B. EXTENSION TO THE STAY PERIOD

11. Since the Stay Period was last extended on November 10, 2021, the Just Energy Entities, with the assistance of their legal and financial advisors, and in close consultation with the Monitor, have been working in earnest to advance their restructuring. Throughout the past number of months, the Just Energy Entities have continued their extensive engagement with their most significant stakeholders who are financially participating in the restructuring, including the lenders under the DIP Term Sheet (the "**DIP Lenders**") (who are also lenders under the non-revolving term loan established pursuant to the Term Loan Agreement as part of the 2020 balance sheet recapitalization transaction, the assignees of a significant secured supplier claim from BP, and the Plan sponsor under the company's Plan), the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy (U.S.) Corp., dated as of September 28, 2020 (the "**Credit Facility Lenders**"), and Shell[4] (a significant secured supplier), regarding a framework for the recapitalization of the Just Energy Entities and their respective businesses.

12. The Plan is intended to preserve the going concern value of the Just Energy Entities' businesses for the benefit of stakeholders (including the company's approximately 950,000 customers and significant trading partners), maintain the employment of the Just Energy Entities'

[4] Collectively, Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC.

more than 1000 employees, and support the long-term viability of the business upon emergence from these CCAA and Chapter 15 proceedings.

13. The discussions regarding the Plan include renegotiation of the complex intercreditor arrangement which governs the secured debt portion of the Just Energy Entities' capital structure, defining the relative priorities of the various parties' security interests and specifying the priority of such interests in accordance with the waterfall defined therein.[5] The company has enjoyed the financial support of its most significant stakeholders to date, including multiple extensions of milestones by the DIP Lender to facilitate the Applicants' going-concern restructuring.

14. Given the nature of the business, the length of time the Applicants have been in the CCAA proceedings, the complexities and time consuming nature of the multiparty negotiations, and the volatility of the energy market, any significant delays in the conclusion of the restructuring could have damaging effects on the outcome for stakeholders and the support of the financial participants for the proposed restructuring. It is therefore imperative that the parties are able to conclude negotiations for the Plan and emerge from these CCAA proceedings as soon as possible. The parties' discussions are in advanced stages and are expected to conclude in the coming weeks.

15. In addition to operating a complicated business and negotiating a series of complex restructuring documents, management of the Just Energy Entities has been preparing since late last week for harsh winter weather that is forecast to significantly impact Texas later this week, which has required many hours of meetings and calls to review the Applicants' commodity supply

[5] A copy of the intercreditor agreement can be found at Exhibit "P" to my affidavit sworn March 9, 2021 which can be accessed at the following link: http://cfcanada.fticonsulting.com/justenergy/docs/Re%20Just%20Energy%20Inc%20et%20al%20-%20Application%20Record.pdf

positions, hedging strategies and liquidity positions. While the Applicants believe they are prepared to manage through this event, it is prudent that management's time and resources continue be focused on the business' operations. Similar adverse weather events are always a risk and may continue to require significant management attention.

16. The Just Energy Entities are seeking a short, two-week extension to the Stay Period from February 17, 2022 to and including March 4, 2022 to permit them to (i) conclude their discussions with key stakeholders that have financially supported this company during these CCAA proceedings regarding the terms of a proposed Plan, (ii) finalize the Plan, and (iii) file a further motion with this Honourable Court for, among other things, an Order accepting the Plan for filing and authorizing the Just Energy Entities to call, hold and conduct virtual meetings of creditors to consider and vote on resolutions to approve the Plan. The Just Energy Entities currently have March 3, 2022 scheduled for the hearing of such motion.

17. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Since the Stay Period was last extended on November 10, 2021, the Just Energy Entities have, among other things:

(a) continued their extensive and ongoing engagement with the DIP Lenders, the Credit Facility Lenders and Shell regarding the terms of the Plan;

(b) continued reviewing and, in consultation with the Monitor, determining claims received within the Claims Process in accordance with the Claims Procedure Order including, but not limited to, (i) preparing and issuing Notices of Revision or Disallowance and notices of claim acceptance, where appropriate, (ii) engaging with certain claimants to discuss resolution and settlement of ongoing disputes

regarding their claims; and (iii) attending discussions with, and responding to inquiries from, multiple stakeholders and/or the Monitor regarding the Claims Process and Proofs of Claim/D&O Proofs of Claim received within the Claims Process;

(c) commenced litigation against the Electric Reliability Council of Texas ("**ERCOT**") and the Public Utility Commission of Texas (the "**PUCT**") in the US Court on November 12, 2021, seeking to recover payments that were made by various of the Just Energy Entities to ERCOT for certain invoices in February 2021 relating to the unprecedented winter storm in Texas in February 2021. A copy of Just Energy's Press Release announcing commencement of the litigation is attached hereto as **Exhibit "B"**;

(d) received and undertook a review of ERCOT's calculations of recoveries of certain costs to be securitized under House Bill 4492 which ERCOT filed with the PUCT on December 9, 2021 and according to which the Just Energy Entities expect to recover funds of approximately US$147.5 million. A copy of Just Energy's Press Release announcing release of ERCOT's calculations is attached hereto as **Exhibit "C"**;

(e) completed the windup and dissolution of Just Energy Finance Holding Inc. ("**JE Finance**"), and amended the style of cause in these CCAA proceedings to remove JE Finance as an Applicant, all in accordance with the Order of the CCAA Court, granted November 10, 2021. A copy of the Certificate of Dissolution is attached hereto as **Exhibit "D"**.

(f) continued to maintain regular communications with various regulators across Canada and the United States and satisfy all obligations to regulators that license one or more of the Just Energy Entities in the ordinary course. All licenses and registrations that the Just Energy Entities held as of the Filing Date remain valid and in full force and effect;

(g) continued to provide all required reporting to the DIP Lenders, Credit Facility Lenders and the Qualified Commodity/ISO Suppliers in accordance with the ARIO, the DIP Term Sheet, and all Qualified Support Agreements, as applicable, and negotiated changes to certain milestone dates under the DIP Term Sheet, as necessary, to facilitate restructuring discussions; and

(h) 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.

18. I understand that the Monitor will file a report (the "**Monitor's Fifth Report**") that will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Just Energy Entities will have sufficient funds to continue their operations and fund these CCAA proceedings until March 4, 2022. I further understand that the Monitor's Fifth Report will recommend that the Stay Period be extended.

C. BACKGROUND TO THE PUTATIVE CLASS ACTIONS

19. The information in this section is based on my review of court documents, the involvement of the senior management team in the litigation, and information received from Jason Cyrulnik of Cyrulnik Fattaruso LLP, US counsel for the defendants in the Putative Class Actions.

(a) Jordet Action

20. On April 6, 2018, Trevor Jordet filed the Jordet Action solely against Just Energy Solutions, Inc. ("**Just Energy Solutions**") on behalf of a putative class of all "Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present". The plaintiff alleged, among other things, that the defendant violated Pennsylvania Unfair Trade Practices and Consumer Protection Law ("**PUTPCP**"), breached contractual provisions and an implied covenant of good faith requiring Just Energy Solutions to consider "business and market conditions" when it charged rates that were more than the local utility rate for natural gas, and was unjustly enriched as a result of the alleged misconduct.

21. Importantly, the Jordet Action does not purport to deal with any electricity customers of Just Energy Solutions. A copy of the plaintiff's complaint in the Jordet Action is attached as Exhibit "D" to the affidavit of Robert Tannor sworn January 17, 2022 (the "**Tannor Affidavit**") filed in support of the plaintiffs' Motion for Advice and Directions.

22. The Tannor Affidavit at paragraphs 7 and 38 mischaracterizes the result of the motion to dismiss that was brought by the defendant. In fact, the defendant achieved significant success on this motion that restricted the causes of action that may be alleged in the proposed class action. The US District Court in the Western District of New York (the "**WDNY Court**") dismissed the PUTPCP and unjust enrichment claims, such that only the alleged breach of contract claim remains.[6] Moreover, the WDNY Court held that claims for breach of contract prior to April 6,

[6] As the WDNY Court noted in its decision on the motion to dismiss, a breach of the implied covenant of good faith is not a distinct cause of action from breach of contract under Pennsylvania law. *Jordet v. Just Energy Solutions Inc.,* Decision and Order 18-CV-953S regarding Motion to Dismiss dated December 7, 2020 ("**Jordet Motion to Dismiss Decision**"), Dkt. 43, at 4.

2014, are time-barred. A copy of the WDNY Court's decision on the motion to dismiss dated December 7, 2020 is attached as Exhibit "E" to the Tannor Affidavit.

23. The WDNY Court's decision was based solely on the pleadings being taken as true. Indeed, the WDNY Court noted in its decision that it "cannot dismiss a Complaint unless it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"[7] The lone remaining claim therefore turns on whether Just Energy Solutions breached contractual commitments to use its discretion to set rates consistent with "business and market conditions" (defined to include a host of factors), and the WDNY Court found that whether Just Energy Solutions' pricing adhered to that discretionary standard could not readily be resolved solely on the pleadings.[8] In other words, there was no determination by the Court on the merits of the remaining breach of contract claims asserted by the plaintiff.

24. As a result, the WDNY Court's decision materially narrows the scope of the Jordet Action.

(b) Donin Action

25. On October 3, 2017, Fira Donin and Inna Golovan filed the Donin Action against JEGI, Just Energy New York Corp. ("**Just Energy NY**"), and John Does 1-100, which the plaintiffs alleged were "shell companies and affiliates" through which JEGI did business in New York and elsewhere, as well as "Just Energy management and employees who perpetrated the unlawful acts." The action was brought on behalf of a putative class of "all Just Energy customers in the

[7] Jordet Motion to Dismiss Decision, at 6.

[8] Jordet Motion to Dismiss Decision, at 17-18.

United States […] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment".

26. The plaintiffs alleged, among other things, that the defendants engaged in fraudulent conduct, violated New York statutes by engaging in deceptive acts and practices, breached contractual provisions to consider "business and market conditions", and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and electricity in New York. A copy of the plaintiffs' complaint in the Donin Action is attached as Exhibit "B" to the Tannor Affidavit.

27. Again, the defendants were largely successful on the motion to dismiss, which significantly narrowed the scope of claims in the Donin Action. The US District Court in the Eastern District of New York (the "**EDNY Court**") dismissed all the plaintiffs' claims except for the breach of contract and implied covenant of good faith claims. A copy of the EDNY Court's decision on the motion to dismiss dated September 24, 2021 is attached as Exhibit "C" to the Tannor Affidavit.

28. As noted by the EDNY Court, the plaintiff in a motion to dismiss must only "state a claim of relief that is plausible on its face", accepting for the purposes of the motion that the factual allegations contained in the complaint are true.[9] The EDNY Court did not make a judicial determination that Just Energy NY had improperly exercised its contractually agreed discretion to set rates, or even that Just Energy NY did not consider the many different business and market conditions in setting its rates. These were all matters which could not be resolved solely on the pleadings.

[9] *Donin et al v. Just Energy Group Inc. et al,* Decision and Order 17-CV-5787(WFK)(SJB) regarding Motion to Dismiss dated September 24, 2021, Dkt. 111, at 4.

29. The EDNY Court also found that it did not have jurisdiction over John Does 1-100. All claims against these defendants were dismissed. This decision effectively limits the Donin class, should it be certified, to New York customers, as JEGI is a holding company that does not contract with any customers and Just Energy NY only contracts with customers based in New York.

30. On January 10, 2020, over Plaintiffs' Counsel's objection, the EDNY Court ordered that factual discovery in this matter was closed and that all pending discovery requests and disputes before that Court were terminated. This ruling came after years of discovery, including the production of documents by the defendants in response to numerous requests by the plaintiffs. All discovery to date has been limited to the defendants' New York business, consistent with the limited scope of the remaining claim.

(c) Proofs of Claim

31. On November 1, 2021, Plaintiffs' Counsel filed two Proofs of Claim in respect of the Donin and Jordet Actions, each in the unsecured amount of approximately USD$3.66 billion.[10] Copies of the Donin Proof of Claim, the Jordet Proof of Claim and the Claim Documentation included in both Proofs of Claim (excluding Exhibits 2-5, which are copies of the pleadings and motions to dismiss for both Putative Class Actions) are attached to the Tannor Affidavit as Exhibits "F", "G" and "H", respectively.

[10] The damages calculation purports to be a joint, composite damages claim encompassing both lawsuits, notwithstanding the fundamental differences in terms of the defendants, scope of the claim and potential class members in the two actions.

(d) Notices of Disallowance

32. On January 11, 2022, the Monitor sent the proposed representative plaintiffs in the Putative Class Actions Notices of Disallowance in accordance with the Claims Procedure Order (the "**Notices of Disallowance**"). Copies of the Donin Notice of Disallowance and the Jordet Notice of Disallowance are appended to the Tannor Affidavit as Exhibits "Q" and "R", respectively.

33. The Notices of Disallowance disallowed the claims advanced in both Proofs of Claim in full as, among other things, contingent, uncertified, speculative, and remote.

34. The Notices of Disallowance specifically address the plaintiffs' attempts to expand the scope of their claims to add new defendants, new customer groups, and extended class periods. The Proofs of Claim purport to advance claims against all "Just Energy Entities" on behalf of both gas and electricity customers, notwithstanding the fact that:

(a) the Jordet Action only names Just Energy Solutions as defendant and is only brought on behalf of natural gas customers;

(b) the only named defendants in the Donin Action are JEGI and Just Energy NY and the EDNY Court dismissed all claims against JEGI's other affiliates; and

(c) the WDNY Court found claims prior to April 6, 2014 were time-barred in the Jordet Action.

35. The attempted expansion of the plaintiffs' claims is illustrated in the below chart:

	Donin Complaint/ Motion to Dismiss	Donin POC	Jordet Complaint/ Motion to Dismiss	Jordet POC
Defendants	JEGI, Just Energy NY EDNY Court dismissed claims against other JEGI affiliates.	All "Just Energy Entities"	Just Energy Solutions	All "Just Energy Entities"
Defendants' Customer Base[11]	New York	California Delaware Georgia Illinois Indiana Maryland Massachusetts, Michigan Nevada New Jersey New York Ohio Pennsylvania Texas	California Georgia Illinois Maryland Nevada Ohio Pennsylvania Virginia	California Delaware Georgia Illinois Indiana Maryland Massachusetts, Michigan Nevada New Jersey New York Ohio Pennsylvania Texas
Defendants' Customer Type	Largely Residential	Residential and Commercial	Largely Residential	Residential and Commercial
Product Type	Electricity and Natural Gas	Electricity and Natural Gas	Natural Gas Only	Electricity and Natural Gas
Class Period	Pleadings refer to "applicable Statute of Limitations Period"[12]	2011-2020	WDNY Court held claims prior to April 6, 2014 are time-barred.	2011-2020

[11] The customer base in the "Jordet Complaint/ Motion to Dismiss" column reflects the states where natural gas was marketed by Just Energy Solutions. Just Energy Solutions marketed natural gas in these various states for different lengths of time.

[12] I am informed by Mr. Cyrulnik and believe that a six-year statute of limitations period applies to New York contract claims, which would render claims accruing prior to October 3, 2011, time-barred.

36. It is notable that the plaintiffs have not attempted to add any additional defendants (or in the case of Jordet Action, to add electricity customers) to the Putative Class Actions in the approximately four years since they were commenced.

37. Additionally, the Notices of Disallowance state that:

(a) **Contractual Language:** The applicable contracts put customers (including the plaintiffs) on clear notice of the variable rates that the defendants would set and explicitly state that "This Agreement does not guarantee financial savings";

(b) **Comparison to Local Utilities is Flawed:** The plaintiffs' allegation that the defendants breached the parties' contracts by failing to set rates "according to business and market conditions" is premised on the erroneous assumption that local public utilities (not other energy service companies ("**ESCOs**")) are the defendants' main competitors, and as such the defendants overcharged when their rates were higher than that of the local utility. Local utility rates are not an appropriate barometer by which to measure the rates of ESCOs as: (i) local utilities and ESCOs offer different products and services and have different business models; and (ii) local utility commodity prices do not reflect wholesale energy prices and do not include reasonable profit margins; and

(c) **Damages Calculations are Inflated:** The calculation of the quantum of damages in the plaintiffs' purported expert report is speculative, highly inflated and based on a number of flawed assumptions. For instance, the report assumes that 50% of residential and commercial natural gas and electricity usage of the Just Energy Group's customer base is attributable to customers that are parties to variable rate

contracts that would be included in the proposed class. However, currently only 2.1% and 0.04%, respectively, of natural gas and electricity usage is attributable to customers who are parties to variable rate contracts with the Just Energy Entities.

38. The Tannor Affidavit (para. 50) improperly suggests that the Notices of Disallowance "rejected the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report." To the contrary, the substantive flaws in the expert report are outlined in detail on pages 6-10 of both Notices of Disallowance.

39. The Notices of Disallowance also outlined a number of reasons as to why the Putative Class Actions are not amenable to certification pursuant to the relevant US law.

D. Communication with, and Information Provided to, Plaintiffs' Counsel

40. The Tannor Affidavit suggests that the Applicants and the Monitor have not been responsive to information requests over the last twelve weeks. This is simply not the case.

41. The Just Energy Group and the Monitor have engaged with Plaintiffs' Counsel since they first contacted the Monitor's legal counsel by email on November 11, 2021. This process included signing a Confidentiality, Non-Disclosure and Non-Use Agreement (the "**NDA**"), providing Plaintiffs' Counsel with confidential information and documents, answering numerous written questions, and arranging multiple meetings with Plaintiffs' Counsel and its financial advisor, Tannor Capital Advisors ("**Tannor Capital**") that have included, at various times, counsel for the Just Energy Group ("**Osler**"), the Monitor, counsel to the Monitor, and the financial advisor to the Just Energy Group.

42. The Tannor Affidavit (para. 14) notes that "Mr. Wittels also alleged [on November 10, 2021] that the Applicants had not been forthcoming in providing Class Counsel with any information as to the Applicants' financial status." However, this statement is misleading, as Plaintiffs' Counsel made no requests for any information until November 11, 2021 – eight months after the Applicants filed for CCAA protection on March 9, 2021. In fact, the first time that Osler had any interaction with Mr. Wittels was when Mr. Wittels appeared at the November 10, 2021 court hearing to oppose certain relief being sought, without previously advising the Monitor or Osler that he intended to do so.

43. The following is a chronology outlining the communications with, and information provided to, Plaintiffs' Counsel and the plaintiffs' Canadian counsel, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), over the last twelve weeks, based on my discussions with Osler:

Date	Event
November 10, 2021	Plaintiffs' Counsel appeared on a motion before Justice Koehnen and objected to the second Key Employee Retention Plan. Plaintiffs' Counsel did not reach out to the Just Energy Group or the Monitor in advance of this Court appearance to advise of his intended opposition.
November 11, 2021	Plaintiffs' Counsel emailed counsel for the Monitor for the first time to request a meeting to discuss being granted access to "certain financial information". On Friday, November 12, 2021, Counsel for the Monitor responded by email to Plaintiffs' Counsel indicating that their information request was best directed to the Just Energy Entities and copied Osler. The following Monday, November 15, 2021, Osler responded by email to Plaintiffs' Counsel and indicated they would be contacting them to discuss the requests.
November 19, 2021	Osler, Monitor's counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital attended a call to discuss Plaintiffs' Counsel's request for information.

November 22, 2021	Osler provided the draft NDA to Plaintiffs' Counsel.
November 24, 2021	Plaintiffs' Counsel and Paliare Roland attended a call with Osler, the Monitor and counsel to the Monitor to discuss comments received from Plaintiffs' Counsel and Paliare Roland on the draft NDA.
November 30, 2021	After various revisions from the parties, JEGI, Plaintiffs' Counsel, Tannor Capital and Paliare Roland entered into the NDA. The NDA explicitly states that it does not create any obligation to share documents with Plaintiffs' Counsel.
December 2, 2021	Plaintiffs' Counsel provided a list of questions to Osler (the "**December 2nd Questions**").
December 8, 2021	Osler provided comments on the December 2nd Questions as well as copies of the Business Plan, DIP Term Sheet, and two Amendments to the DIP Term Sheet. The DIP Term Sheet and two Amendments were previously disclosed in Court filings. A copy of the answers to the December Second Questions and the Business Plan are attached as confidential **Exhibits "E" and Exhibit "F"**, respectively, to this affidavit, as they contain confidential information and were provided pursuant to the terms of the NDA. Osler attended a call with Plaintiffs' Counsel, Tannor Capital, the Monitor, counsel to the Monitor, and the Just Energy Group's financial advisor to discuss the December 2nd Questions as well as the restructuring more generally.
December 13, 2021	Plaintiffs' Counsel emailed an additional list of questions (the "**December 13th Questions**") along with a proposed adjudication schedule to Osler.
December 15, 2021	Osler responded to Plaintiffs' Counsel, noting that: • The Just Energy Group and its advisors were working hard to develop a going concern restructuring solution for the Just Energy Entities and were not in a position to devote additional resources at that time to answer an unreasonable number of questions and inquiries from Plaintiffs' Counsel; • Sufficient information was already available to Plaintiffs' Counsel between JEGI's public company filings, the extensive documentation filed in the CCAA Proceedings, the information that had already been provided pursuant to the terms of the NDA, and the multiple discussions Plaintiffs' Counsel and their advisors had with representatives from Osler, the Monitor and its counsel and the Just Energy Group's financial advisor; and

	• The Just Energy Group would deal with the plaintiffs' claims in the framework of the Claims Procedure Order, the plaintiffs would have 30 days from the receipt of any Notice of Revision or Disallowance to file a Notice of Dispute, and the Just Energy Group anticipated further discussions with Plaintiffs' Counsel concerning a fair and reasonable method of adjudicating the Putative Class Claims at the appropriate time.
December 17, 2021	Plaintiffs' Counsel emailed the Monitor requesting a call regarding its information requests and its proposed adjudication timetable. Copies of the correspondence from December 13-17 is attached to the Tannor Affidavit as Exhibit "O".
December 22, 2021	I understand that the Monitor attended a call with Plaintiffs' Counsel to discuss their requests and to confirm that responses to the December 13th Questions would be forthcoming.
December 23, 2021	The Monitor responded to the December 13th Questions with the assistance of the Just Energy Entities. Among other things, the Monitor noted that in numerous instances, Plaintiffs' Counsel was asking discovery questions that were not relevant to developing an understanding of the restructuring process. A copy of the December 23rd response is attached as confidential **Exhibit "G"** to this affidavit, as this contains confidential information and was provided pursuant to the terms of the NDA.
December 28, 2021	Paliare Roland emailed the Monitor requesting assistance in setting a case conference with the presiding Judge for the first week of January in order to schedule a date for a motion.
December 30, 2021	The Monitor responded with a proposal to email the Court for a case conference in the first two weeks of January. The following day, Osler indicated that it requested that any case conference be heard in the second week of January.
January 4, 2022	Paliare Roland responded that it did not consent to seeking the case conference in the second week of January. I understand that counsel for the Monitor and the Monitor attended a call with Plaintiffs' Counsel to hear directly from them about the nature and background to their purported claims and also provide an anticipated delivery date for the Notices of Revision or Disallowance to be issued. The Monitor responded that same day, confirming that no plan would be presented by January 6, noting that all deadline dates under the DIP Term Sheet were extended by one week and suggesting a call to discuss the timetable for the plaintiffs' motion. A complete copy of the correspondence from December 28-January 4 is attached to this affidavit as **Exhibit "H"**.

January 5, 2022	Osler, the Monitor and its counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital attended another call and discussed, among other things, the timetable for the plaintiffs' motion and the anticipated delivery of Notices of Revision or Disallowance with respect to the Putative Class Actions in accordance with the Claims Procedure Order.

44. With respect to the above chronology, I note that the Tannor Affidavit omitted to reference the following calls and correspondence, which results in an incomplete record:

(a) The November 19, 2021 call amongst Osler, Monitor's counsel, Plaintiffs' Counsel, and Tannor Capital;

(b) The fact that the Applicants' financial advisor attended the December 8th call with Plaintiffs' Counsel, Tannor Capital, Osler, the Monitor, and counsel to the Monitor;

(c) The Monitor's response, with the assistance of the Applicants, to the December 13th Questions on December 23, 2021;

(d) The Monitor's response to Paliare Roland's email on January 4, 2022; and

(e) The January 5, 2022 call amongst Osler, the Monitor and its counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital.

45. The Tannor Affidavit (para. 45) notes that JEGI's September 30, 2021 financial statements indicate that it had approximately $12.6 million in equity on its balance sheet. The plaintiffs extrapolate from this fact that they have a "significant stake in the CCAA Proceedings" and are therefore entitled to extensive information from the Applicants. This assumption is based on a

fundamental misunderstanding of the September 30, 2021 financial statements, a complete copy of which is attached to this affidavit as **Exhibit "I"**.

46. JEGI's balance sheet is prepared in accordance with international financial reporting standards ("**IFRS** ") and does not necessarily represent the fair value of all the assets and liabilities of the Applicants. In particular, JEGI's balance sheet includes approximately $545 million of net derivative financial assets resulting from approximately $580 million of unrealized gains on its derivative instruments in the six months ended September 30, 2021. These derivative instruments are mostly fixed supply contracts which JEGI uses to hedge the future price of electricity and natural gas associated with its fixed price contracts with its customers.[13] These asset values are highly volatile, as they fluctuate depending on current market price for the commodity supply. This approximately $545 million net derivative financial asset was an approximately $40 million net financial derivative liability as at March 31, 2021. IFRS considers the commodity supply contracts to be financial derivatives and therefore these contracts are required to be marked-to-market resulting in unrealized gains (or losses) being recorded in Just Energy's financial statements even though these supply contracts are entered into to lock in the future gross margin of JEGI under its fixed price customer contracts. It is for these reasons that JEGI has historically and consistently excluded these unrealized gains/losses from its calculation of EBITDA, as noted at page 6 of Management's Discussion and Analysis for the three and six months ended September 30, 2021:

> Just Energy ensures that customer margins are protected by entering into fixed-price supply contracts. Under IFRS, the customer contracts are not marked to market; however, there is a requirement to mark to market the future supply

[13] Just Energy enters into derivative instruments in order to manage exposures to changes in commodity prices associated with its fixed price customer contracts. The derivative instruments that are used are designed to fix the price of supply for estimated customer commodity demand and thereby fix gross margins.

> contracts. This creates unrealized and realized gains (losses) depending upon current supply pricing. Management believes that the unrealized mark to market gains (losses) do not impact the long-term financial performance of Just Energy and has excluded them from the Base EBITDA calculation.

47. Given the fact that these unrealized gains/losses are not included in the Base EBITDA calculation, the net financial derivative assets/liabilities must also be excluded when considering the true value of the equity of the company. Absent these net financial derivative assets, JEGI's balance sheet equity would have been approximately negative $540 million as of September 30, 2021. Given the drop in commodity prices during the 3 months ended December 31, 2021, I anticipate that there will be substantial unrealized losses from JEGI's derivative instruments as at December 31, 2021 resulting in significantly lower net financial derivative assets, which will result in a substantial negative balance sheet equity value when JEGI files its financial statements as at December 31, 2021.

48. Additionally, the September 30, 2021 financial statements referred to in the Tannor Affidavit contain a Going Concern note:

> **Going Concern**
>
> Due to the Weather Event and associated CCAA filing, the Company's ability to continue as a going concern for the next 12 months is dependent on the Company emerging from CCAA protection, maintain liquidity, complying with DIP Facility covenants and extending the DIP Facility maturity. The material uncertainties arising from the CCAA filings cast substantial doubt upon the Company's ability to continue as a going concern and, accordingly the ultimate appropriateness of the use of accounting principles applicable to a going concern. These Interim Condensed Consolidated Financial Statements do not reflect the adjustments to carrying values of assets and liabilities and the reported expenses and Interim Condensed Consolidated Statements of Financial Position classifications that would be necessary if the going concern assumption was deemed inappropriate. These adjustments could be material. There can be no assurance that the Company will be successful in emerging from CCAA as a going concern.

49. Similar going concern notes were included in JEGI's audited financial statements for the year ended March 31, 2021 as well as the June 30, 2021 quarterly report. Full copies of these

financial statements are attached to this affidavit as **Exhibits "J" and "K"**, respectively. Additionally, various of JEGI's news releases have contained statements regarding the potential impact of the Texas storm on the company's ability to continue as a going concern since as early as February 22, 2021. A copy of the news release dated February 22, 2021 is attached to this affidavit as **Exhibit "L"**.

50. The information and documents relating to any proposed transaction must, out of necessity, be confidential to ensure a constructive dialogue with financial participants. It is not feasible to have other stakeholders "at the table" to second guess the Applicants or distract management from the task at hand. The Applicants, with the assistance of the Monitor, must exercise their business judgment to frame the negotiations and parties involved to achieve the desired outcome of a going concern transaction.

51. The Applicants and the Monitor have answered the reasonable and appropriate requests for information they have received to date. It is the Applicants' view that Plaintiffs' Counsel's remaining information requests are overbroad, relate to confidential information about the business and restructuring, and/or are more akin to discovery questions that are not relevant to developing an understanding of the restructuring process. The Applicants continue to be willing to, in consultation with the Monitor, engage with Plaintiffs' Counsel to address reasonable and appropriate requests for information.

E. Proposed Adjudication Schedule

52. Plaintiffs' Counsel sent a proposed schedule to Osler on December 13, 2021 (the "**December Proposed Schedule**"), attached as Exhibit S to the Tannor Affidavit. The December Proposed Schedule suggested:

(a) The appointment of a tripartite panel from JAMS (U.S.);

(b) The application of the expedited procedures of the JAMS Comprehensive Arbitration Rules and Procedures governing binding Arbitrations of claims to pre-hearing discovery and the hearing;

(c) "[S]ufficient disclosure" from the Just Energy Group;

(d) "Circumscribed" depositions; and

(e) A hearing lasting approximately 5-7 days to be scheduled for the first week of February 2022.

53. This proposal would have required the parties to start and complete documentary discovery, conduct depositions, prepare and exchange expert reports, and proceed to a hearing on the merits within a two-month period that included the December holiday break. The December Proposed Schedule was not a remotely achievable schedule, especially as the Applicants are in the midst of a critical time in their attempts to reorganize.

54. The December Proposed Schedule omits significant and substantive steps in the adjudication of any proposed class action. For instance, the schedule ignores the need to certify the proposed class actions in advance of any hearing on the merits. It is my understanding, including based on advice from U.S. counsel Mr. Cyrulnik, that, in the case of a class action, the court first needs to certify a class prior to any trial, including by making a determination as to whether the case satisfies the many requirements for proceeding as a class action and, if so, defining the precise scope of the permissible class based on consideration of the questions of law and fact that are common to the proposed class members. Without certifying the classes (the scope

of which are very much in contention given the plaintiffs' attempts to broaden the Putative Class Actions), it will be impossible to conduct a trial or give notice to potential class members to allow them to opt out if either of the Putative Class Actions is certified.

55. Plaintiffs' Counsel notes in their proposed schedule that they require disclosure of "information such as (i) the rates charged and usage data for Just Energy's customers in the various U.S. markets where the company supplies electricity and gas, (ii) JE's costing methodology, (iii) customer agreements utilized, and (iv) marketing materials" and that they are "prepared to furnish a more detailed list of what is needed pre-hearing." These statements conveniently gloss over the EDNY Court's ruling that discovery has been concluded in the Donin Action, as well as the fact that the named defendants in the Putative Class Actions only operated in certain jurisdictions. Similarly, Plaintiffs' Counsel ignores the fact that the time for submitting an expert report in the Donin Action has long passed.

56. The Notices of Disallowance delivered to the plaintiffs on January 11, 2022, both specified the significant steps that are required to be addressed in order to fairly and properly adjudicate the Putative Class Actions – most of which were missing from the plaintiffs' proposed adjudication schedule. In addition to the discovery that must be commenced and concluded in the Jordet Action, both actions require the completion of:

- dispositive motion practice (i.e., motion for summary judgment), which would involve the disclosure of any expert reports and supporting evidence from fact witnesses, depositions, potential preliminary motions, written briefs, and oral argument;
- a contested class certification process, which would include written briefing, presentation of supporting evidence from any fact and expert witnesses, and oral argument;

- a trial on the issue of liability, including pretrial submissions and motion practice to resolve evidentiary issues, voir dire, direct testimony and cross-examination of any fact and expert witnesses, and legal argument from counsel; and
- resolution of damages of the plaintiff or certified class(es), which may require bifurcation from the trial on liability (especially if the plaintiffs continue to allege damages on behalf of a national class, which the defendants argue is impermissible).

57. The plaintiffs' current proposed schedule, as set out in their notice of motion, is largely the same as the December Proposed Schedule. Notably, they are still seeking a hearing on the merits in February 2022 without accounting for the need to address discovery in the Jordet Action and motions for summary judgment and class certification in both Putative Class Actions.

58. On February 1, 2022, the Applicants provided the Applicants' proposed adjudication schedule to Plaintiffs' Counsel (the "**Applicants' Proposed Schedule**"). A copy of the communication to Plaintiffs' Counsel, including the Applicants' Proposed Schedule is attached to this affidavit as **Exhibit "M"**. The Applicants noted that they are willing to discuss the appointment of an arbitrator from Arbitration Place or similar forum as Claims Officer. I am advised by Osler that Arbitration Place has a roster that includes former Supreme Court of Canada and Ontario Court of Appeal judges. The Applicants' Proposed Schedule would be subject to the discretion of the Claims Officer.

59. The proposed expedited schedule for addressing both Putative Class Action Claims, along with the comparable schedule to adjudicate these Putative Class Actions in the ordinary course, is set out below:

Step	Applicants' Proposed Expedited Schedule	Potential Donin Schedule in the Ordinary Course	Potential Jordet Schedule in the Ordinary Course
Fact Discovery	After conducting a meet and confer among counsel, appropriately tailored document production by June 30, 2022 consistent with the status of the Donin and Jordet cases.	Completed/Deadline Passed	April 1, 2023
Expert Discovery	Opening Expert Disclosures: July 29, 2022 Rebuttal Expert Disclosures: August 19, 2022 Expert Depositions: August 29, 2022	Completed/Deadline Passed	Plaintiffs' Expert Disclosures: May 15, 2023 Defendants' Expert Disclosures: July 1, 2023 Expert Depositions: August 1, 2023
Dispositive Motions Hearing	November 10, 2022	September 3, 2022 (assuming pre-motion letters filed by March 3, 2022)	March 7, 2024 (assuming pre-motion letters filed September 7, 2023)
Class Certification Hearing	November 17, 2022	September 30, 2022 (assuming pre-motion letters filed March 31, 2022)	April 5, 2024 (assuming pre-motion letters October 5, 2023)
Joint Pretrial Order/Pretrial Conference	December 9, 2022	June 8, 2023	December 5, 2024
Trial	February 10, 2023	September 11, 2023	January 6, 2025

60. It is my understanding, including based on advice from Mr. Cyrulnik, that the schedules listed in the last two columns of the above chart may well be ambitious estimations of the "ordinary

course" schedules for hearing the Putative Class Actions, based on the assumptions set out in the relevant footnotes in the Applicants' Proposed Schedule.

61. As a reference point, the Applicants' compressed schedule provides for the hearing of the certification and summary judgment motions in November 2022, almost a year and a half before such motions would be heard in the Jordet Action in the ordinary course. If the plaintiffs are successful on both of these motions, a trial with respect to any certified common issues would commence by February 10, 2023 – approximately three years before any such trial would have been heard in the Jordet Action and seven months before any trial would have been heard in the Donin Action.

62. Management of the Applicants will be directly engaged in document production, attending depositions, and supervising and supporting litigation efforts in the Putative Class Actions at a time when they are focused on implementing a going concern restructuring for the business. The first step in the proposed schedule – document production – will be a burdensome step for management, as there has been no discovery in the Jordet Action to date. By way of illustration, document production in the Donin Action took nearly two years to complete. The preliminary list of disclosure requests sought by the plaintiffs is broad and confirms that the discovery process will not be a simple or quick exercise.

63. The Applicants' Proposed Schedule was advanced in an effort to strike a balance between available management resources to both successfully conclude a restructuring transaction and the need to finalize creditor claims in a timely fashion. The complexity of developing a plan for the Applicants was recognized by this Court in granting the Applicants' last request for a stay extension:

> The company has been moving in good faith towards a plan, but the business is of such a complexity that it has taken longer than initially anticipated. This is not surprising. The company is subject to a myriad of regulatory regimes across the United States and Canada. It has complex commercial arrangements with suppliers and a number of secured and unsecured lenders, the integrity of which in turn depends on Just Energy's compliance with regulatory requirements.

64. If anything, the time pressure imposed on management to negotiate a restructuring plan while operating the business has become even more intense and all consuming.

65. In the circumstances, the Applicants could not justify a more abridged timetable for adjudicating the Putative Class Actions. The restructuring negotiations of this billion-dollar company must continue to be the focus of management for the benefit of its stakeholders, including any potential class members. Management simply does not have the "bandwidth" to further accelerate the Applicants' Proposed Schedule, as this would undoubtedly be a distraction and strain on management resources during a critical phase of the restructuring. It is also imperative that any schedule allow for a full and fair consideration of the merits of the Putative Class Claims to ensure the integrity of the process and to avoid prejudice to unsecured creditors with competing claims.

SWORN BEFORE ME over video teleconference this 2nd day of February, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.	
Commissioner for Taking Affidavits Karin Sachar (LSO No. 59944E)	Michael Carter

Tab 13

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

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.

Applicants

AFFIDAVIT OF MICHAEL CARTER

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. I have been Just Energy Group Inc.'s ("**Just Energy**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of Just Energy and its subsidiaries in these CCAA proceedings (collectively, the "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as defined below) to which the protections and authorizations of the Initial Order were

extended (collectively with the Applicants, the "**Just Energy Entities**"). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Just Energy Entities. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Just Energy Group's senior management team and their financial and legal advisors.

2. This affidavit should be read in conjunction with my affidavit sworn on May 12, 2022 (the "**Meeting Order Affidavit**") in support of the Applicants' motion for the Authorization Order and Meetings Order (the "**Meeting Order Motion**") and is sworn in response to (i) a motion brought by Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**US Plaintiffs' Counsel**"), in their capacity as counsel to the proposed representative plaintiffs in *Donin v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions Inc*., Case No. 2:18-cv-01496-MMB (the "**Jordet Action**", together with the Donin Action the "**Putative US Class Actions**") and (ii) the responding motion record delivered by Haidar Omarali, in his capacity as representative plaintiff in *Haidar Omarali v. Just Energy Group et al*, Court File No. CV-15-52748300CP (the "**Omarali Motion Record**").

3. Capitalized terms used in this affidavit but not defined have the meaning given to them in the Meeting Order Affidavit.

Extension of Milestones and Waiver of DIP Budget Line Item Variance

4. As discussed in the Meeting Order Affidavit, the Support Agreement establishes various Milestones for the remainder of the CCAA and Chapter 15 proceedings, including that the

Authorization Order and the Meetings Order must be granted by May 26, 2022, and that the Solicitation Materials with respect to the Creditors' Meetings must be mailed by June 1, 2022. The milestones under the DIP Term Sheet were amended to align with the Milestones under the Support Agreement.

5. In light of the adjournment of the Applicants' motion for the Authorization Order and Meetings Order to June 7, 2022, the Just Energy Entities, the Plan Sponsor and the Supporting Secured CF Lenders agreed to extend the Milestones under the Support Agreement for the granting of the Authorization Order and the Meetings Order to June 7, 2022, and for the mailing of the Solicitation Materials with respect to the Creditors' Meetings to June 13, 2022. The DIP Lenders agreed to a corresponding extension of these milestone dates under the DIP Term Sheet. Both the Plan Sponsor/DIP Lenders and the Supporting Secured CF Lenders advised the Applicants that they consented to such extensions on the basis that none of the other Milestones were extended as it was critical that the timeline leading to emergence from these CCAA and Chapter 15 proceedings be preserved given market conditions and risk.

6. On May 26, 2022, the Applicants requested a waiver of the Energy and Delivery Costs line item variance for the DIP Budget dated May 5th, in order to permit the Applicants to post additional collateral with ERCOT. In response to Texas market fluctuations and above normal temperatures in Texas, among other things, ERCOT has significantly increased the Applicants' short-term collateral-posting requirements through the latter-half of May. Failure to post such collateral would risk the Applicants being shut out from participation in the day ahead energy markets, which participation is often critical to permit the Applicants to balance their customers' energy demands. On May 27, 2022, the DIP Lender approved the waiver and allowed the Applicants to amend the DIP Budget.

Adjudication of Putative US Class Actions Before Justice O'Connor

7. On March 3, 2022, the CCAA Court granted an Order on consent which, among other things, appointed the Honourable Justice Dennis O'Connor as Claims Officer for purposes of adjudicating the Claims submitted by Plaintiffs' Counsel in respect of the Putative US Class Actions in accordance with the Claims Procedure Order.

8. The following is a chronology of the proceedings before the Claims Officer in connection with the adjudication of the Putative US Class Actions:

Proceedings Before the Claims Officer	Date
A. Initial Case Conference	
Initial Case Conference held to consider, among other things, scheduling and procedural issues. A copy of the minutes of the Case Conference prepared by the Monitor is attached as Exhibit "A".	March 16, 2022
B. Plaintiffs' Request for the Appointment of Additional Claims Officers	
Plaintiffs' Counsel makes written submissions in support of appointing two additional Claims Officers in the adjudication of the Putative US Class Actions, a copy of which is attached as Exhibit "B".	March 23, 2022
Defendants' counsel makes written submissions in opposition to Plaintiffs' request for the appointment of additional Claims Officers, a copy of which is attached as Exhibit "C".	March 30, 2022
Plaintiffs' Counsel makes reply submissions, a copy of which is attached as Exhibit "D".	April 1, 2022
Hearing held to consider the parties' submissions and address scheduling issues. A copy of the minutes prepared by the Monitor is attached as Exhibit "E".	April 4, 2022
Decision rendered dismissing Plaintiffs' Counsel's request to appoint additional Claims Officers. A copy of the decision is attached as Exhibit "F".	April 5, 2022

Proceedings Before the Claims Officer	Date
Justice O'Connor held that: (i) it was premature to appoint additional Claims Officers before determining what disputes there are about the applicable US procedural and substantive law; (ii) the Claimants failed to establish that alternatives to appointing US adjudicators – including expert evidence regarding US law – would not be more effective and efficient; and (iii) he agreed with the concerns set out in Justice McEwen's ruling in the CCAA Proceedings dismissing a similar request by Plaintiffs' Counsel.	
C. Sequencing of Scope and Discovery	
Plaintiffs' Counsel makes written submissions in support of, among other things, resolving disputes regarding discovery requests before considering the scope of the remaining claims. A copy of these submissions is attached as Exhibit "G".	March 30, 2022
Defendants' counsel makes written submissions in support of deciding the scope of the Plaintiffs' remaining claims, prior to resolving disputes regarding discovery requests. A copy of these submissions is attached as Exhibit "H".	April 13, 2022
Plaintiffs' Counsel makes reply submissions, a copy of which is attached as Exhibit "I".	April 14, 2022
Hearing held to consider the parties' submissions and agree upon a schedule. A copy of the minutes prepared by the Monitor is attached as Exhibit "J".	April 14, 2022
D. Motion to Compel Discovery	
Plaintiffs' Counsel submits motion to compel the Just Energy Entities to produce certain documents. A copy of the submissions is attached as Exhibit "K".	April 29, 2022
Defendants' counsel makes written submissions in opposition to the motion to compel, a copy of which is attached as Exhibit "L".	May 10, 2022
Plaintiffs' Counsel makes reply submissions, a copy of which is attached as Exhibit "M".	May 17, 2022
Hearing held to consider the parties' submissions.	May 19, 2022
Plaintiffs' Counsel submits memorandum with respect to, among other things, the Claims Officer's procedural	May 20, 2022

Proceedings Before the Claims Officer	Date
authority. A copy of the memorandum is attached as Exhibit "N".	
Defendants' counsel submits letter in response to Plaintiffs' Counsel memorandum, a copy of which is attached as Exhibit "O".	May 20, 2022
Defendants' counsel submits letter outlining certain Canadian case law as requested by the Claims Officer. A copy of the letter is attached as Exhibit "P".	May 20, 2022
Plaintiffs' Counsel submits memorandum in response to Just Energy Entities' counsel letter, a copy of which is attached as Exhibit "Q".	May 20, 2022
Decision rendered, dismissing substantially all of the Plaintiffs' motion to compel. A copy of the decision is attached as Exhibit "R". Justice O'Connor held (among other things) that: (i) he had broad discretion with respect to the procedure in this claims process, with the objective being to "conduct a timely summary process that is fair and expeditious" including "by avoiding re-litigating issues that could cause delay, expense and potentially inconsistent results." (ii) discovery had already been closed by Judge Kuntz of the New York Court in the Donin case and that he should give effect to Judge Kuntz's order; (iii) the scope of the Donin Action was limited to New York State customers only, in light of Judge Kuntz's decision to dismiss the claims against John Does 1-100; (iv) the class period in the Jordet Action starts in 2014, given Judge Skretny's ruling in the New York Court that class claims prior to April 6, 2014 are time barred; (v) the class in Jordet is limited to residential customers because the Complaint explicitly limits the class to residential customers; and (vi) production of documents in the Jordet Action is limited to the states where Just Energy Solutions Inc. contracted with customers for the sale of natural gas.	May 24, 2022

Omarali Action

9. The Omarali Motion Record consists of the affidavit of Vlad Andrei Calina affirmed May 26, 2022 (the "**Calina Affidavit**"), delivered in response to the Meeting Order Motion. Mr. Omarali has not brought a cross-motion seeking any particularized relief.

10. To ensure the record with respect to the Omarali Action is substantially complete for the purposes of arguments that may be advanced at the Meeting Order Motion, attached hereto is the following:

(a) Exhibit " S": Just Energy's responding motion record filed in response to the representative plaintiff's motion for summary judgment heard in June 2019 (the "**Summary Judgment Motion**")[1];

(b) Exhibit "T": Just Energy's supplementary responding motion record filed in response to the Summary Judgment Motion[2]; and

(c) Exhibits "U": Just Energy's factum in respect of the Summary Judgment Motion.

11. The Summary Judgment Motion was dismissed in June 2019 by the Honourable Justice Belobaba on the basis that a full trial was necessary for all 13 common issues.

[1] Just Energy's Responding Motion Record consists of the following affidavits: (i) Affidavit of Richard Teixera sworn January 11, 2019 (the "**Teixera Affidavit**"); (ii) Affidavit of Brian Marsellus sworn January 11, 2019 (the "**Marsellus Affidavit**"); and (iii) Affidavit of Daniel Gadoua sworn January 11, 2019 (the "**Gadoua Affidavit**"). For the purpose of this motion, I have not attached any of the exhibits to the Teixera Affidavit, Marsellus Affidavit or Gadoua Affidavit.

[2] Just Energy's Supplementary Responding Motion Record consists of two cross-examination transcipts, and the Affidavit of Jody Kelly sworn January 25, 2016. For the purpose of this motion, I have only attached the Kelly Affidavit at Exhibit "T".

12. The Calina Affidavit notes that the Omarali Action had been scheduled for a 20-day trial starting on November 15, 2021. That is correct. However, I am advised by Jonah Davids, Executive Vice President and General Counsel of Just Energy, and believe that, notwithstanding that trial dates had been scheduled, several important litigation steps had not been completed as at the time the Omarali Action was stayed as a result of the Initial Order. For example, I am advised by Mr. Davids and believe that the examination for discovery of the representative plaintiff had not been scheduled let alone completed, the examination for discovery of other potential class members had not been scheduled, undertakings had only been completed in respect of the Just Energy representative, and expert reports had not been exchanged. In addition, the parties had not attended a pre-trial hearing.

13. As part of the claims process in this proceeding, the representative plaintiff has submitted proof of claims forms against both the Just Energy Entities (the "**Omarali Claim**") and their directors (the "**D&O Claim**"). Just Energy's Notices of Revision or Disallowance, delivered in response to the representative plaintiff's proof of claims forms, are attached as Exhibits "K" and "L" to the Meeting Order Affidavit. The Notice of Revision or Disallowance delivered in response to the Omarali Claim summarizes the basis for the denial of the representative plaintiffs' claims, and states the following:

(a) *Class Members are Not Employees:* The Class Members are in both form and substance independent contractors and not employees. The Class Members had a significant degree of control in the performance of their work, including by setting their own days of work, hours of work, time off work, work location, and sales methods.

(b) *Class Members Fall within "Salesperson" Exemption:* In the alternative, even if the Class Members are "employees" pursuant to the ESA, they fall within the "salesperson" exemption in section (2)(h) of Ontario Regulation 285/01 and are therefore ineligible for minimum wage, overtime, public holiday pay and vacation pay.

(c) *Class Members are Not Route Salespersons:* The Class Members' sales function was integral, rather than ancillary to their function which was directed toward non-established customers and undertaken by the Class Members on their own scheduled in the location(s) of their choice.

(d) *Parts of Claim are Barred by Operation of the Limitations Act:* The Class Action was commenced on May 4, 2015. All claims for amounts to be paid prior to May 4, 2013 are precluded by the two-year limitation period prescribed in the *Limitations Act*, 2002.

14. The Notice of Revision or Disallowance delivered in response to the D&O Claim summarizes the basis for the denial of the representative plaintiffs' claims against the directors, and states the following:

(a) *D&O Claim is Entirely Contingent on Omarali Claim*: The D&O Claim is not independent, but rather entirely contingent on the success of the Omarali Claim.

(b) *D&O Claim is Untimely and Statute Barred:* The D&O Claim was filed over six years after the Omarali Action was filed and does not assert any "new knowledge" relating to the facts giving rise to the Omarali Claim that was not otherwise known

to the representative plaintiff at the time the Omarali Action was commenced. Further, the delay in advancing a claim against the directors has caused material prejudice to the Just Energy Entities and the directors.

(c) *D&O Claim Constitutes an Improper Attempt to Expand the Class Action:* The Omarali Action was certified as against only certain specified Just Energy Entities and only in relation to the specified common issues and the damages sought in the class action. The representative plaintiff cannot now, six years later, seek to add the directors as defendants to the Omarali Action and seek to recover a "wages" claim as opposed to a "damages" claim.

(d) *D&O Claim is an Abuse of Process and Brought in Bad Faith:* The D&O Claim is a tactical attempt to obtain more favourable treatment of a pre-filing claim to the detriment of other creditors and the estate,

(e) *Directors are Not Liable for the Amounts Claimed:* The amounts claimed in the Omarali Action are not for unpaid "wages" pursuant to the ESA or "debts for services performed" pursuant to the CBCA and OBCA for which directors can be per se personally liable in certain circumstances by virtue of holding office at the relevant time. Rather, the Omarali Action seeks damages resulting from alleged misclassification.

15. Further, even if the plaintiffs in the Omarali Action were successful in establishing liability in respect of any common issue, individualized hearings in respect of each individual class member would be required to establish the quantum, if any, of alleged damages. For example, individualized evidence regarding hours of work in each week would be required in respect of

claims for overtime and/or minimum wage claims and individualized evidence regarding specific work days would be required in respect of claims for public holiday pay.

SWORN BEFORE ME over video teleconference this 29th day of May, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.	
Tiffany Sun Commissioner for Taking Affidavits Tiffany Sun	Michael Carter

Miao Sun, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires March 6, 2023.

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

AFFIDAVIT OF MICHAEL CARTER

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)
Michael De Lellis (LSO# 48038U)
Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111
Fax: (416) 862-6666

Counsel for the Applicants

Tab 14

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED, and WITH RESPECT TO JUST ENERGY GROUP INC. et al.
and IN THE MATTER OF THE CLAIMS OF FIRA DONIN AND TREVOR JORDET

RULING

1. The US Class Action Claimants (Donin and Jordet) request that I appoint two additional claims officers from the US-based Judicial Arbitration and Mediation Services ("JAMS") to adjudicate these claims. They propose that each party appoint one of the additional adjudicators and that I would be Chair of the panel.

2. The Claimants argue that the appointment of two US adjudicators, who would be well-versed in US energy supply contract law and class actions claim procedures in the USA, could facilitate a more expeditious, efficient and effective adjudication.

3. The Claimants raise a number of arguments in support of their request. They submit that the additional adjudicators would be familiar with the procedural and substantive law that applies to the US class actions and that their expertise would enable me to make a more informed analysis of the opposing positions. They also argue that the additional adjudicators would be familiar with the US energy deregulation landscape and will have previously been involved with issues similar to those in the present claims.

4. In addition, the Claimants submit that the addition of the two adjudicators would assist in expediting the claims process and that the additional costs would be minimal in the context of this CCAA proceeding.

5. Just Energy opposes this request. However, it does not do so on the basis that I lack jurisdiction to grant it. Just Energy argues that if accede to the request, the parties will seek an order from Justice McEwen to give effect to any such order.

6. In my view, the request is premature. The parties appear to disagree on the scope, complexity and the applicable jurisdictions applicable to the claims asserted in the US class actions. As a result of motions to dismiss the class actions, Judges Kuntz ("Donin claim") and Skretny ("Jordet claim") dismissed some of the claims asserted. The parties disagree about the scope and complexity of the remaining claims. Just Energy argues that the remaining claims are relatively straightforward claims for breach of contract and that the issues remaining to be determined pursuant to US law will be discrete and manageable without the need of the additional adjudicators.

7. On the other hand, the Claimants argue that Just Energy takes an unduly narrow view of what will have to be addressed and that when adjudicating these claims, I would benefit from an understanding of the US Federal Rules of Civil Procedure authorizing class actions (notably Rule 23), the court's fiduciary role in effecting a fair resolution on behalf of class members and the US law relating to the scope of pre-class certification discovery

proceedings. They also submit it will be necessary to understand the substantive state law in eleven different US states.

8. In my view, it would be premature to appoint two US adjudicators without first ascertaining what in fact the issues in these claims are and what disputes there are about the applicable US procedural and substantive law.

9. In addition, the Claimants have not satisfied me that alternatives to appointing US adjudicators would not be more effective and efficient. The most obvious alternative, it seems to me, is the use of expert evidence with respect to those areas of the US law about which the parties disagree. I will be in a better position to fashion a process to address US legal issues and to determine whether it will be best to appoint two US adjudicators when I have a better understanding of the US legal issues, if any, that are in dispute.

10. Finally I note that on February 22, 2022, Justice McEwen dismissed a similar request to the one now made by the Claimants. The Claimants have sought leave to appeal Justice McEwen's ruling. While Just Energy does not object to my jurisdiction to deal with the present request, I nonetheless agree with the concerns set out in Justice McEwen's ruling as the basis for his dismissal of the request at this stage of the CCAA process.

11. In the result, I dismiss the Claimants request to appoint additional adjudicators without prejudicing their right to renew the request at a later stage.

Dated at Toronto this 5th day of April 2022.

Dennis O'Connor

Tab 15

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED, AND WITH RESPECT TO JUST ENERGY GROUP INC. ET AL. AND IN THE MATTER OF THE CLAIMS OF FIRA DONIN AND TREVOR JORDET

RULING

1. This is my ruling on the Plaintiffs' motion to produce documents in the Donin and Jordet class actions. At the request of the parties I have abbreviated the ruling in order to have it released as quickly as possible. The parties are familiar with the background of the proceedings that underlie the motion and the issues and arguments of the other side.

2. The Plaintiffs in each action request eight categories of documents that are described in the letter of March 22, 2022.

3. There are six issues in dispute (two in Donin and four in Jordet) that need to be resolved in order to determine the scope of the requests.

Donin

4. The first issue is whether the Plaintiffs are entitled to additional documents by way of fact discovery. Just Energy has already produced many of the documents requested.

5. United States District Judge William F. Kuntz, II has been the supervising judge in the Donin class action. At a hearing in January 2020, Judge Kuntz directed that the discovery in the case was over. When asked if he meant "stayed" he said "I am saying discovery is over. Done. Kaput. It's over. No more discovery".

6. When asked whether he was overturning Magistrate Judge Bulsara (who was dealing with discovery issues in the case) he said "I am overruling Judge Bulsara in that regard".

7. I am satisfied that Judge Kuntz's direction was clear and that he meant what he said. The Plaintiffs did not seek to have the decision reviewed. Judge Kuntz had the authority to overrule Magistrate Judge Bulsara and that is what he did.

8. It is not appropriate for me, as a claims officer in this CCAA proceeding, to go behind Judge Kuntz's ruling and to question whether he reached it for a proper purpose and through an appropriate process. Judge Kuntz ruled and I proceed keeping that ruling in mind.

9. In response to a request from me, counsel provided me with authorities on whether rulings, such as the one referred to above, are binding on this claims process. I thank them for their timely responses.

10. I do not find it necessary to decide this legal issue. For the reasons that follow, I conclude I should attach weight to Judge Kuntz's ruling and I attach significant weight to it.

11. I have a broad discretion with respect to the procedure in this claims process. The objective should be to conduct a timely summary process that is fair and expeditious. This objective can be furthered by avoiding re-litigating issues that could cause delay, expense and potentially inconsistent results.

12. In this case there had been at least ten discovery motions by the time when Judge Kuntz ruled discoveries were closed. I see no reason to second guess Judge Kuntz. Whether issue estoppel or similar principles strictly apply to his ruling, attaching weight to it is consistent with those principles as well as the objectives of the CCAA claims process.

13. It is worth noting that after the motion to dismiss was decided in September 2021, the Court issued an order setting a deadline of November 22, 2021 for the first steps with respect to dispositive motions. This order was premised on the notion that discoveries were complete.

14. I conclude that I should give effect to Judge Kuntz's order that discoveries are complete. The motion requesting that the Defendants produce further documents in the Donin Action is dismissed.

15. The second issue in the Donin case is whether the action is limited to claims by customers in the State of New York. While it is not necessary to decide this issue, I think it useful to briefly set out my conclusion that even if discoveries were re-opened, the Plaintiffs would not be entitled to discovery outside of New York.

16. The only claims that remain after the dismissal ruling are for breach of contract and an implied duty of good faith and fair dealing. The Complaint had alleged that Just Energy entered into contracts outside of New York through 100 John Does.

17. Judge Kuntz dismissed the claim against the John Does because of a lack of personal jurisdiction. The remaining claims in the action can only succeed for customers that contracted with the remaining Defendants in the action. The Complaint does not allege that either of the remaining Defendants contracted with customers outside of New York

Jordet

18. The first issue is whether the class period begins in 2014. For purposes of this analysis, I proceed on the assumption that in addition to Pennsylvania, the Jordet claim includes contracts with customers in California, Georgia, Maryland, New Jersey and Ohio.

19. On December 7, 2020 United States District Judge William M. Skretny granted the Defendant's motion to dismiss several parts of the claim. He ruled that the Plaintiffs' claims prior to April 6, 2014 were time barred. He went on to say "Similarly, the purported class claims prior to that date are also barred" The purported class included customers in states other than Pennsylvania where the Defendant entered into contracts.

20. The limitation period in Pennsylvania was four years. The limitation periods in some of the other states were longer. The Plaintiffs argue that Judge Skretny did not intend to rule that the Pennsylvania limitation period applied to customers in states with longer limitation periods.

21. While the Plaintiffs' Complaint referred to a class period beginning on April 12, 2012, Judge Skretny pointed out that the Plaintiffs did not argue the timeliness of the April 12, 2012 to April 6, 2014 breach of contract claims. Obviously, he was alive to the issue of pre-April 2014 limitation periods.

22. Judge Skretny's order is clear. Class claims prior to April 16, 2014 are barred. The Plaintiffs do not argue that the judge did not have jurisdiction to make that order. For similar reasons to those discussed in paragraphs 8 to 11 above, I do not consider it

appropriate for me to delve into the process or the reasons that led to Judge Skretny's order. I decline to order production of documents for the period prior to April 6, 2014.

23. The second issue in Jordet is whether the class action includes non-residential customers. I conclude that it does not. In the Complaint, the Plaintiffs define the class as "Just Energy's customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present." [Emphasis added.] It defines the Pennsylvania sub-class as "residential natural gas customers" [Emphasis added.] The Complaint does not assert claims for non-residential or commercial customers.

24. The Plaintiffs point out that Just Energy uses certain contracts for both residential and commercial customers and argue commercial customers should be included in the class. Be that as it may, the Complaint limits the class to residential customers and that is the class to which certification, if granted, would apply.

25. Moreover, I note that the Plaintiffs' requests for documents in the March 22, 2022 letter specifically limit the requests to documents relating to residential customers.

26. I conclude that I should not, in the context of this CCAA claims process, expand the class of claimants beyond that plead by the Plaintiffs in the Complaint or to documents not sought in the letter requesting production.

27. The third issue in Jordet is whether production should be limited to only those states where the Defendant, Just Energy Solutions, Inc. contracted with customers. I am satisfied that it should. Just Energy's counsel asserted that the Defendant did not contract with customers in Michigan, New York and Illinois. Plaintiffs' counsel questions whether that is the case.

28. I direct the Defendant to produce an affidavit of an officer with knowledge of the facts indicating whether or not the Defendant contracted with customers in the three states in issue during the relevant time period. If the affidavit indicates that the Defendant did not do so, I dismiss the request for documents relating to those three states.

29. The fourth issue in Jordet arises from the language in the Complaint claiming on behalf of Just Energy customers for the period from April 2012 "to the present".

30. The issue is whether the reference "to the present" refers to the date of the Complaint (April 6, 2018) or to the present time, that is the month of May 2022.

31. The parties referred me to a number of American authorities where a representative plaintiff in a class action has sought to include claims occurring after the commencement of the class action and up to the present time. The results in the cases vary and often turned on the circumstances in the particular case.

32. I direct the parties to meet and confer on or before May 30, 2022 to attempt to resolve this issue. If they are unable to do so, they may contact me.

33. I am inclined to allow this request if it is not unduly burdensome for the Defendant. It strikes me that the documents necessary to provide the Plaintiffs with information sufficient to determine the amount of the claims for the four year period from April 2018 to the present should be readily available. This type of information will be provided to the Plaintiffs for the previous four years and it does not seem unreasonable to extend the order for production to the present time.

34. During the motion, counsel for the Defendants in Jordet and Donin raised concerns about the amount of work required to satisfy all of the requests being made at the same time as they were dealing with the CCAA process. In addressing the request for documents for the period from 2018 to the present, counsel should bear in mind my rulings above that should alleviate many of their workload concerns.

The Specific Requests in the March 22, 2022 Letter

35. In Donin, the Defendants have produced documents relating only to customers in New York State and as mentioned above, the District Court has ruled discovery is complete. I am not ordering any further production for the Donin action.

36. In Jordet, the Defendant has agreed to produce documents with respect to the five additional states mentioned above on a without prejudice basis. The Defendant has also agreed to produce documents for categories one to six in the March 22, 2022 request, subject to the limits I have ruled upon above. The Defendant takes issue with the need for

production of some of the documents in requests one to six and the availability of some of the others. It takes the position that the production of the documents it has agreed to produce will satisfy the reasons underlying requests one to six.

37. In my view the most efficient way to proceed with requests one to six is to have the Defendant complete the production of documents that it has agreed to and for the parties to meet and confer about what further production, if any, needs to be made. I will be available on short notice to settle any disputes.

38. Request seven relates to communications with regulators. This is a burdensome request. I am not persuaded that the relevance of these communications is sufficient to warrant production. The only remaining claim in the Jordet action relates to breach of contract. The fraud-related claims have all been dismissed. I decline to order production with respect to request seven.

39. Request eight relates to the names of personnel involved in fixing variable rates. Having heard counsel it seems to me that this issue can be nicely sorted out by a meet and confer.

DATED at Toronto this 24th day of May, 2022.

____
Dennis O'Connor

Tab 16

PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES[1]

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

1. Name of Just Energy Entity or Entities (the "Debtor(s)") the Claim is being made against[2]:

Debtor(s): Just Energy Entities

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: Trevor Jordet as Representative Plaintiff

Name of Contact: Greg Blankinship

Address: FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

One North Broadway, Suite 900

Title: Attorney for the Representative Plaintiffs

Phone #: 914-298-3290

Fax #:

City: White Plains

Prov /State: NY

Email: gblankinship@fbfglaw.com

Postal/Zip Code: 10601

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[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

[2] List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "Claims Procedure Order"), a copy of which is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: n/a

Name of Contact: ____________

Address ____________

____

Title ____________

Phone # ____________

Fax # ____________

City ____________ Prov /State ____________

Email ____________

Postal/Zip Code ____________

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of Pre-Filing Claim (including interest up to and including March 9, 2021)[3]:	Whether Claim is Secured:	Value of Security Held, if any[4]:
Just Energy Entities	USD	$3,662,444,442	Yes ☐ No ☒	n/a
			Yes ☐ No ☐	
			Yes ☐ No ☐	

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Restructuring Period Claims

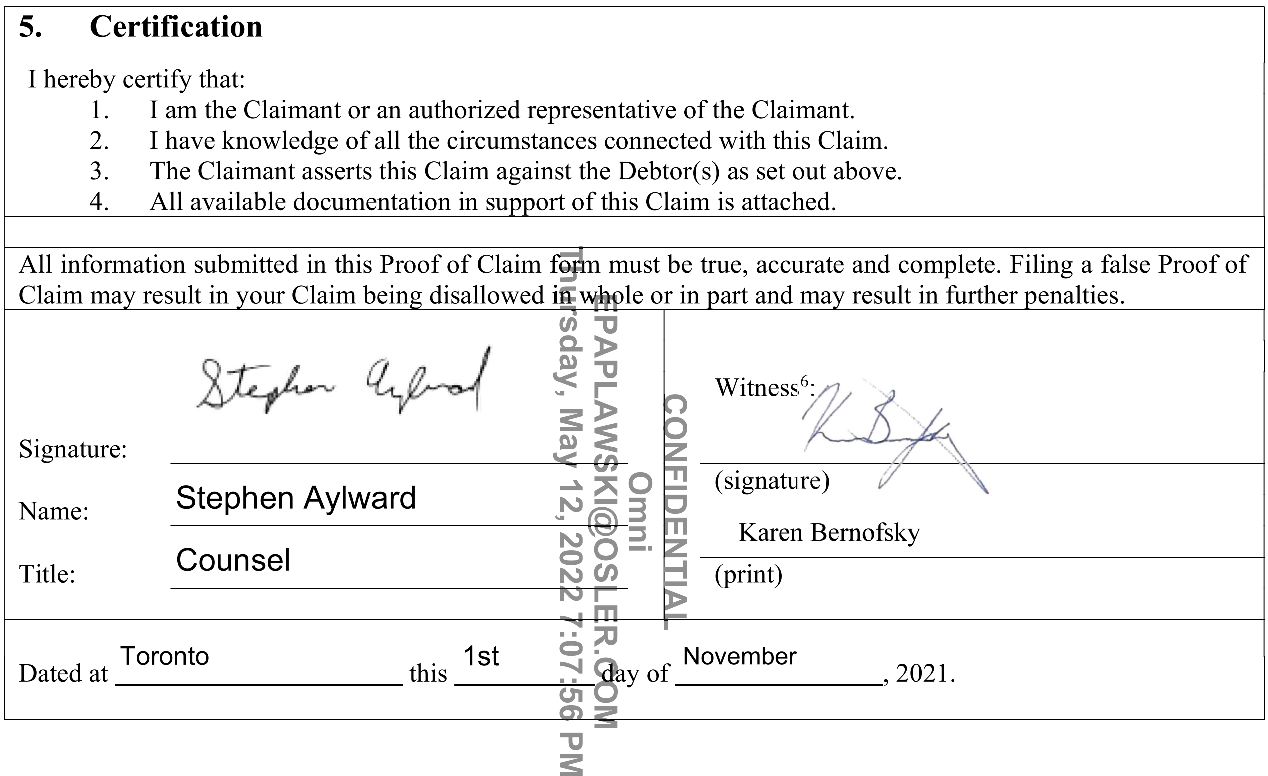
Debtor Name:	Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

[3] Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

[4] If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation[5]

Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.



5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature:	[signature]	Witness[6]: [signature] (signature)
Name:	Stephen Aylward	Karen Bernofsky (print)
Title:	Counsel	

Dated at Toronto this 1st day of November, 2021.

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6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

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[5] If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

[6] Witnesses are required if an individual is submitting this Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

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In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

CLAIM DOCUMENTATION

I. Relevant Background and Summary of Claim Documentation

Claimants Fira Donin, Inna Golovan, and Trevor Jordet have pending proposed class action lawsuits against the Just Energy Entities in two United States Federal District Courts. Claimants Donin's and Golovan's case is captioned *Donin et al. v. Just Energy Group Inc. et al.*, No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.) (hereafter "*Donin* Dkt.") and Claimant Jordet's case is captioned *Jordet v. Just Energy Solutions, Inc.*, No. 18 Civ. 953 (WMS) (W.D.N.Y.) (hereafter "*Jordet* Dkt"). Fira Donin, Inna Golovan, and Trevor Jordet, as well as the other individuals who have retained undersigned Class Counsel to sue the Just Energy Entities on a class-wide basis are referred to hereafter as the "Representative Plaintiffs."[1, 2]

Pursuant to the expert Affidavit of Dr. Serhan Ogur (the "Expert Report"), the Representative Plaintiffs hereby submit a general unsecured claim of **US$3,662,444,442**, which reflects the Just Energy Entities' liability to their U.S. customers for *inter alia* breaching the pricing terms of their residential and commercial contracts to supply electricity and gas. The Representative Plaintiffs' damages calculations are derived from the difference between the prices the Just Energy Entities were contractually bound to charge U.S. customers as compared to the prices ultimately charged. A true and correct copy of the Expert Report is attached hereto as **Exhibit 1**. In support of their calculations, the Representative Plaintiffs provide the following chart summarizing their class-wide damages calculations.

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Class-Wide Damages Calculations	
U.S. Residential Electric Damages	$1,144,609,092
U.S. Residential Gas Damages	$717,711,010
U.S. Commercial Electric Damages	$449,392,725
U.S. Commercial Gas Damages	$68,624,767
Total:	**$2,380,337,594**

In addition to damages of US$2,380,337,594, the Representative Plaintiffs calculate that US$**1,282,106,848** is owed to them as pre-judgment interest, which amount has been added to their damages calculation to make up the remainder of their claim.[3]

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[1] Those other individuals are: New York resident Todd Orsi; California residents Danielle Greer, Hannad Naveed, and Naveed Yamin; Michigan residents Nicholas Aldridge, Ariel Meserva, Jessica Smith Mixon, and Vernon Van Halm; and Texas residents Kadidja Fofana and Lisa Widner.

[2] Please note that while the Representative Plaintiffs are submitting proofs of claim for each of the two pending proposed class actions (*Donin* and *Jordet*), they are submitting identical claim documentation and amounts for each case.

[3] U.S. state law governs statutory pre-judgment interest. *Schipani v. McLeod*, 541 F.3d 158, 164 (2d Cir. 2008). The class actions challenge the Just Energy Entities' conduct in 11 jurisdictions— California,

Footnote continued on next page.

By way of brief background, on October 3, 2017, Fira Donin and Inna Golovan filed proposed class action lawsuits on behalf of themselves and all other U.S. customers alleging *inter alia* that the Just Energy Entities breached their contractual obligations to base their variable gas and electricity rates on "business and market conditions," breached their contractual obligation to charge a specified energy rate, and breached the implied covenant of duty of good faith and fair dealing. *See, e.g.*, *Donin* Complaint ¶¶ 26-35, attached hereto as **Exhibit 2**. On September 24, 2021, Judge William F. Kuntz of the U.S. District Court for the Eastern District of New York denied the Just Energy Entities' motion to dismiss all of the aforementioned class action claims on behalf of all U.S. customers, ruling *inter alia* that Plaintiffs Donin and Golovan had adequately alleged that the Just Energy Entities breached their contractual obligation to charge market-based rates, breached their contractual obligation to charge a specified energy rate, and breached the implied covenant of good faith and fair dealing. Decision & Order at 3, 12–15, *Donin* Dkt. No. 111 attached hereto as **Exhibit 3.**

Similarly, on April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers alleging *inter alia* that the Just Energy Entities breached their contractual obligations to base their variable gas rates on "business and market conditions." *See, e.g.*, *Jordet* Complaint ¶¶ 19-37 attached hereto as **Exhibit 4**. On December 7, 2020, Judge William M. Skrenty of the U.S. District Court for the Western District of New York denied the Just Energy Entities' motion to dismiss the aforementioned class action breach of contract claim on behalf of all U.S. customers, holding that "'business and market conditions' has some standard that [the Just Energy Entities] had to apply in setting [their] variable pricing but apparently failed to adhere to in [their] pricing." *See* Decision & Order at 18, *Jordet* Dkt. No. 43, attached hereto as **Exhibit 5.**

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As set forth on pp. 18-19 below, the Representative Plaintiffs' claims encompass the damages of **millions** of U.S. Just Energy customers. These claims are founded in well-established principals of contract, are buttressed by a legion of U.S. case law, regulation, and statue. The claims also represent paradigmatic class action claims that are readily certifiable (and have been certified on four separate occasions), are pleaded in tandem with increasing regulatory scrutiny (including outright bans) of the exact practices the Just Energy Entities employed throughout the U.S., and follow in the footsteps of at least **six** regulatory actions against the Just Energy Entities.

Delaware, Illinois, Massachusetts, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas. Each of these jurisdictions award pre-judgment interest as a matter of right. *See generally Allapattah Servs., Inc. v. Exxon Corp.*, 157 F. Supp. 2d 1291, 1311–12 (S.D. Fla. 2001), *aff'd*, 333 F.3d 1248 (11th Cir. 2003). The Representative Plaintiffs here have applied the forum state's (New York) pre-judgment interest rate (9% per annum) as well as the forum law on the date from which to calculate interest. New York courts usually pick the midpoint of the class period as the period from which to calculate pre-judgment interest, or any other reasonable date as "[t]he choice of the date from which to compute prejudgment interest is left to the discretion of the court." *Chuchuca v. Creative Customs Cabinets Inc.*, No. 13 Civ. 2506 (RLM), 2014 WL 6674583, at *16 (E.D.N.Y. Nov. 25, 2014)(collecting cases); *see also Marfia v. T.C. Ziraat Bankasi*, 147 F.3d 83, 91 (2d Cir. 1998) ("New York law leaves to the discretion of the court the choice of whether to calculate prejudgment interest based upon the date when damages were incurred or 'a single reasonable intermediate date,' which can be used to simplify the calculation.").

II. The Class Action Claims Are Strong and Supported by Ample Precedent

A. U.S. Courts Regularly Hold That ESCOs like Just Energy Are Liable When They Promise to Charge Market-Based Rates but Actually Charge Rates That Are Much Higher

As a result of deregulation in states across the United States, consumers and businesses can purchase natural gas and electricity through third-party suppliers while continuing to receive delivery of the energy from their existing public utilities. These third-party energy suppliers are known as energy service companies, or "ESCOs."

ESCOs like the Just Energy Entities play a middleman role: they purchase energy directly or indirectly from energy producers and then sell that energy to end-user consumers. However, ESCOs do not deliver energy to consumers. Rather, the companies that produce energy deliver it to consumers' utility companies, which in turn deliver it to the end-user. ESCOs merely buy gas and electricity and then sell that energy to end-users with a mark-up. Thus, ESCOs are essentially brokers and traders: they neither make nor deliver gas or electricity, but merely buy energy from a producer and re-sell it.

If a customer switches to an ESCO, the customer's existing utility continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is whether the customer's energy supply rate is set by the ESCO or the utility.

Numerous courts have held that consumers may recover against ESCOs like Just Energy who promise to base their rates on business and market conditions when plaintiffs show that the defendant ESCO's rate is higher than that of public utilities or where they show that rates do not otherwise change in a manner commensurate with market conditions. *See, e.g.*, *Burger v. Spark Energy Gas, LLC*, 507 F. Supp. 3d 982, 990 (N.D. Ill. 2020) ("Burger[] . . . alleg[es] that the Terms of Service provided that the variable rate 'may vary based on market conditions' and that [the ESCO] exercised its discretion contrary to consumers' reasonable expectations by setting a variable rate that did not fluctuate in connection with market conditions. Therefore . . . Burger can proceed on her contract claim concerning the variable rate based on a breach of the implied duty of good faith and fair dealing."); *Mirkin v. Viridian Energy, Inc.*, No. 15-1057, 2016 WL 3661106, at *8 (D. Conn. July 5, 2016) (holding that the plaintiffs plausibly alleged breach of contract where the contract provided that variable rates will be "based on wholesale market conditions" and variable rate failed to track wholesale market rates) (citing *Sanborn v. Viridian Energy, Inc.*, No. 14-1731, and *Steketee v. Viridian Energy, Inc.*, No. 15-585); *Melville v. Spark Energy, Inc.*, No. 15-8706 (RBK/JS), 2016 WL 6775635, at *3 (D.N.J. Nov. 15, 2016) ("Here, the [contract] states that the flex-rate plan uses a rate that 'may vary according to market conditions.' Plaintiffs argue that rates charged . . . were not market-based and, in support, list the rates charged by Spark in comparison to [the utility] during several months from 2013 to 2014. . . . [T]he Court finds that Plaintiffs have proffered sufficient evidence to state a claim for relief . . . Plaintiffs provided comparisons of rates offered by Spark to those of a competing energy provider. Such evidence supports the allegation that Spark's prices were untethered to those of the market at large."); *Oladapo v. Smart One Energy, LLC*, No. 14-7117, 2016 WL 344976, at

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*4 (S.D.N.Y. Jan. 27, 2016) (holding that "the fact that Smart One's rates consistently rose over time, while those set by [the local utility] fluctuated, indicates that Smart One was not setting its rates in response to 'changing gas market conditions,' as it represented[.]"); *Landau v. Viridian Energy PA LLC*, 223 F. Supp. 3d 401, 408-09 (E.D. Pa. 2016) (holding that where a plaintiff introduces evidence demonstrating that "[an ESCO's] rates increased or stayed the same even when the average wholesale market price for the region decreased[,]" the plaintiff has sufficiently alleged a breach of contract claim); *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 426 (S.D.N.Y. 2020) (holding that "there is a reasonable contract interpretation that 'Market' meant that Defendant's variable rate would be tethered to some degree to supply costs or to competitors' rates . . . upward variation from local utility rates may also demonstrate how Defendant's consumer rates are materially disconnected from their supply costs."); *Edwards v. N. Am. Power & Gas, LLC*, 120 F. Supp. 3d 132, 42-43 (D. Conn. 2015) (sustaining claim where contract promised "[t]he variable rate may increase or decrease to reflect the changes in the wholesale power market" and the plaintiff alleged that "the rates [the ESCO] charged were significantly higher than the wholesale market rate and did not always increase or decrease when the wholesale market rates did."); *Chen v. Hiko Energy, LLC*, No. 14-1771, 2014 WL 7389011, at *6 (S.D.N.Y. Dec. 29, 2014) (where contract provided that variable rate would be based on wholesale costs and other market-related conditions, plaintiffs plausibly alleged that the ESCO "breached . . . by charging them 'a rate that was not based on the factors upon which the parties agreed the rate would be based'" and noting the same disconnect between the ESCO's rates and utility rates alleged here).

In both pending class actions, the Representative Plaintiffs can prove that Just Energy's rates were substantially higher than utility rates and not commensurate with market conditions. *See* Compl. at 44-47, *Donin* Dkt. No. 17 (showing Just Energy's rate was typically between 30% and 50% higher than the utility rate); Compl. at 6-8, *Jordet* Dkt. No. 1 (showing Just Energy's rate was frequently more than double the utility rate and that its rate increased when wholesale costs declined).

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B. Courts Regularly Certify Classes of Consumers Against ESCOs That Charge <u>Rates Higher Than Allowed under the ESCOs' Customer Contracts</u>

Four courts have addressed a contested motion to certify a class of customers of ESCOs like Just Energy who were overcharged under the terms of their written customer agreements, and each held that certification was appropriate. *See Bell v. Gateway Energy Services Corp.*, No. 31168/2018 (Rockland Cnty. Super. Ct. Jan. 8, 2021), NYSCEF Doc. No. 152; *BLT Steak LLC v. Liberty Power Corp, L.L.C.*, No. 151293/2013 (N.Y. Cnty., Super. Ct Aug. 14, 2020), NYSCEF Doc. No. 376 (a case in which the plaintiff was represented by FBFG, one of the law firms representing the Representative Plaintiffs); *Claridge v. N. Am. Power & Gas, LLC*, No. 15-1261, 2016 WL 7009062 (S.D.N.Y. Nov. 30, 2016) (a case in which the plaintiff was represented by FBFG); *Roberts v. Verde Energy, USA, Inc.*, No. X07HHDCV156060160S, 2017 WL 6601993 (Conn. Super. Ct. Dec. 6, 2017), *aff'd*, 2019 WL 1276501 (Conn. Super. Ct. Feb. 1, 2019).[4]

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[4] Numerous other courts have followed suit in the settlement context. *See, e.g.*, *Edwards v. N. Am. Power & Gas, LLC*, 2018 WL 3715273, at *6–8 (D. Conn. Aug. 3, 2018) (granting final approval of settlement class, finding the requirements for class certification satisfied); *Silvis v. Ambit Energy L.P.*, 326 F.R.D. 419, 428–29 (E.D. Pa. 2018) (same); *Hamlen v. Gateway Energy Services Corp.*, Case No. 16-3526, ECF

Footnote continued on next page.

Indeed, there are few cases better suited for class certification than the instant actions. The Representative Plaintiffs' claims, like those of each Class Member, arise out of uniform misrepresentations regarding the pricing methodology for Just Energy's variable rate made in its standard customer agreements. Additionally, not only are the misrepresentations concerning Just Energy's variable rate uniform, but the resultant injury to Class Members is also uniform because when Just Energy sets its variable rates each month, it uses standardized procedures within each utility region. Thus, the proposed Class is easily amenable to certification.

III. The Increasing Regulatory Denunciation of Just Energy's Pricing Practices <u>Strongly Supports the Class Action Claims</u>

Almost all of the states in the U.S. that deregulated their energy markets did so in the mid-to-late 1990s. This wave of deregulation was pushed by then-corporate superstar Enron. For example, in December 1996 when energy deregulation was being considered in Connecticut, Enron CEO Jeffrey Skilling, dubbed "[t]he most aggressive proponent" of deregulation, said:

> Every day we delay [deregulation], we're costing consumers a lot of money . . . . It can be done quickly. The key is to get the legislation done fast.[5]

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Operating under this concocted sense of urgency, states in the U.S. that deregulated suffered serious consumer harm. For example, in 2001, forty-two states had started the deregulation process or were considering deregulation. Today, the number of full or partially deregulated U.S. states has dwindled to only seventeen and the District of Columbia. Even within those states, several have recognized deregulation's potential harm to everyday consumers and thus only allow large-scale consumers to purchase from ESCOs.

Responding to shocking energy prices, many key players that supported deregulation now regret the role they played. For example, reflecting on Maryland's deregulation experience, a Maryland Senator commented that "[d]eregulation has failed. We are not going to give up on re-regulation till it is done."[6]

A Connecticut leader who participated in that state's foray into energy deregulation was similarly regretful:

No. 141 (S.D.N.Y. Sept. 13, 2019) (same); *In re Hiko Energy LLC Litig*., Case No. 14-1771, ECF No. 93 (S.D.N.Y. May 9, 2016) (same); *Wise v. Energy Plus Holdings, LLC*, Case No. 11-7345, Dkt. No. 75 (S.D.N.Y. Sept. 17, 2013) (same).

[5] Keating, Christopher, "Eight Years Later . . . 'Deregulation Failed,'" *Hartford Courant*, Jan. 21, 2007.

[6] Hill, David, "State Legislators Say Utility Deregulation Has Failed in its Goals," *The Washington Times*, May 4, 2011.

> Probably six out of the 187 legislators understood it at the time, because it is so incredibly complex . . . . If somebody says, no, we didn't screw up, then I don't know what world we are living in. We did.[7]

As a result of the widespread improper pricing practices by ESCOs like Just Energy, more than a decade ago states like New York began enacting remedial legislation meant to "establish[] important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers."[8] As the drafters of this legislation noted, New York's ESCO Consumers Bill of Rights, codified as G.B.L. Section 349-d, in 2010 sought to end the exact type of conduct that harmed the Just Energy Entities' U.S. customers:

> Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process.
>
> * * *
>
> High-pressure and misleading sales tactics, onerous contracts with unfathomable fine print, short-term "teaser" rates followed by skyrocketing variable prices—many of the problems recently seen with subprime mortgages are being repeated in energy competition.[9]

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State regulators have for years also denounced predatory pricing practices like those challenged in the class actions. For example, in 2014 the New York's Public Service Commission (the "NYPSC") declared that New York's retail energy markets were plagued with "marketing behavior that creates and too often relies on customer confusion."[10] The NYPSC further noted "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."[11] The NYPSC concluded as follows:

> [A]s currently structured, the retail energy commodity markets for residential and small nonresidential customers cannot be considered

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[7] Keating, *supra*.

[8] ESCO Consumers Bill of Rights, New York Sponsors Memorandum, 2009 A.B. 1558, at 1 (2009).

[9] *Id*. at 3–4.

[10] CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 4 (Feb. 25, 2014).

[11] *Id*. at 11.

> to be workably competitive. Although there are a large number of suppliers and buyers, and suppliers can readily enter and exit the market, the general absence of information on market conditions, particularly the price charged by competitors, is an impediment to effective competition . . . .[12]

The NYPSC's consumer complaint data confirms this. The number of deceptive marketing allegations against ESCOs far exceed the combined number of complaints submitted regarding all other utilities in New York, including the lightly regulated telecommunications industry.

Many NYPSC complaints concern variable rate pricing like that practiced by the Just Energy Entities. Under this pricing practice, during an initial teaser or fixed rate period, the customer's energy supply costs are more or less as advertised, but after the initial period expires, instead of switching the consumer back to the utility, the ESCO uses customer inaction to substantially increase the price without further notice or explanation as to how the new rate is determined.

The conduct of ESCOs like the Just Energy Entities has been devastating to consumers across the United States. For example, "[a]ccording to the data provided by [New York's] utilities, the approximately two million New York State residential utility customers who took commodity service from an ESCO collectively paid almost $1.2 billion more than they would have paid if they purchased commodity from their distribution utility during the 36-months ending December 31, 2016."[13] "Additionally, small commercial customers paid $136 million more than they would have paid if they instead simply remained with their default utilities for commodity supply for the same 36-month period."[14] Combining these two groups, New York consumers have been "'overcharged' by over $1.3 billion dollars over this time period."[15]

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Based on the flood of consumer complaints, negative media reports, and data demonstrating massive overcharges, the NYPSC announced in December 2016 an evidentiary hearing to consider primarily whether ESCOs should be "completely prohibited from serving their current products" to New York residential consumers.[16] Then, on December 16, 2016, the NYPSC permanently prohibited ESCOs from serving low-income customers, because of "the persistent ESCO failure to address (or even apparently to acknowledge) the problem of overcharges to [low income] customers . . . ."[17]

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[12] *Id*. at 10.

[13] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 2 (Mar. 30, 2018).

[14] *Id.* at 3.

[15] *Id.*

[16] CASE 12-M-0476, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, at 3 (December 2, 2016).

[17] CASE 12-M-0476, Order Adopting a Prohibition On Service To Low-Income Customers By Energy Services Companies, at 3 (Dec. 16, 2016).

Following the first part of the evidentiary hearing announced in December 2016, on March 30, 2018, NYPSC staff announced the following conclusions about ESCOs:

> [A]s the current retail access mass markets are structured, customers simply cannot make fully informed and fact-based choices on price . . . since the terms and pricing of the ESCO product offerings are not transparent to customers. For variable rate products this is due, in large part, to the fact that ESCOs often offer "teaser rates" to start, and after expiration of the teaser rate, the rate is changed to what is called a "market rate" that is not transparent to the customer, and the contract signed by the customer does not provide information on how that "market rate" is calculated.[18]
>
> * * *
>
> ESCOs take advantage of the mass market customers' lack of knowledge and understanding of, among other issues, the electric and gas commodity markets, commodity pricing, and contract terms (which often extend to three full pages), and in particular, the ESCOs' use of teaser rates and "market based rate" mechanisms that customers are charged after the teaser rate expires. In fact, ESCOs appear to be unwilling to provide the necessary product pricing details as to how those "market based rates" are derived to mass market customers in a manner that is transparent so as to enable an open and competitive marketplace where customers can participate fairly and with the necessary knowledge to make rational and fully informed decisions on whether it is in their best interest to take commodity service from their default utility, or from a particular ESCO among competing but equally opaque choices.[19]

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In response to these criticisms, the ESCOs claimed that their marketing and overhead costs explain the overcharges, but NYPSC staff found that these costs do "not justify the significant overcharges."[20] Likewise, when the ESCOs claimed that their provision to consumers of so-called value-added products such as light bulbs and thermostats contributed to their excessive rates, NYPSC staff found that "these sorts of value-added products is at best de minimis and does not explain away the significantly higher commodity costs charged by so many ESCOs."[21]

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[18] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 41–42 (Mar. 30, 2018).

[19] *Id.* at 86 (citations omitted).

[20] *Id.* at 37.

[21] *Id.* at 87.

Similarly, the NYPSC staff found that the "claim that at least a portion of the significant delta between ESCO and utility charges is explained by ESCOs offering renewable energy is disingenuous at best. ESCOs may be charging a premium for green energy, but they are not actually providing a significant amount of added renewable energy to customers in New York."[22]

Instead, NYPSC staff reached the following conclusion:

> The massive $1.3 billion in overcharges is the result of higher, and more often than not, significantly higher, commodity costs imposed by the ESCOs on unsuspecting residential and other mass market customers. These overcharges are simply due to (1) the lack of transparency and greed in the market, which prevents customers from making rational economic choices based on facts rather than the promises of the ESCO representative, and (2) obvious efforts by the ESCOs to prevent, or at least limit, the transparency of the market. These obvious efforts include the lack of a definition for "market rate" in their contracts, resulting in the fattening of ESCOs' retained earnings.[23]

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Following these conclusions, in December 2019 the NYPSC **banned** the exact same variable rate pricing practices the Representative Plaintiffs challenge in the class actions. The NYPSC's press release announcing the ban on variable energy rates does not mince words, stressing that it was intended to "prevent[] bad actors among ESCOs from overcharging New York consumers" and that the regulations only went forward after "the state's highest court definitively halted ESCOs' attempts to use litigation to evade and/or delay consumer-protection regulation."[24] The regulations themselves likewise condemn ESCOs' conduct and declare that "avoiding accountability" has become a "business model" in the deregulated energy market:

> Based upon the number of customer complaints that continue to be made against ESCOs, and the likely need for increased enforcement activities, the large number of ESCO customers that pay significant premiums for products with little or no apparent added benefit, . . . it appears that a material level of misleading marketing practices continues to plague the retail access market.

* * *

[22] *Id.* at 69.

[23] *Id.*

[24] Press Release, "PSC Enacts Significant Reforms to the Retail Energy Market," December 12, 2019, *available at*: http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/Web/51A7902329FEA7B7852584CE005CF88D/$File/pr19110.pdf?OpenElement.

> The persistence of complaints related to ESCO marketing practices is indicative of some ESCOs continuing to skirt rules and attempting to avoid accountability as part of their business model.[25]

The NYPSC's variable rate ban followed a two-year investigation of ESCO practices that culminated in a 10-day evidentiary hearing to examine evidence submitted by 19 parties and to hear the testimony and cross-examination of 22 witnesses and witness panels.[26]

The NYPSC prefaced the ban with the observation that variable energy rates—like those the Just Energy Entities charged the Representative Plaintiffs and the Class—are "[t]he most commonly offered ESCO product" and that this popular product is frequently provided at "a higher price than charged by the utilities."[27] The absurdity of consumers paying ESCOs more for the exact same energy offered by regulated utilities was not lost on the NYPSC:

> If market participants are unwilling, or unable, to provide material benefits to consumers beyond those provided by utilities in exchange for a regulated, just and reasonable rate, the market serves no proper purpose and should be ended.[28]

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In fact, the NYPSC found it "troubling" that even after considering reams of evidence "neither ESCOs nor any other party have shown . . . that ESCO charges above utility rates were generally – or in any specific instances – justified."[29] This fact only highlighted the NYPSC's "long-held concern that many customers may only be taking ESCO service due to their misunderstanding of [ESCOs'] products and/or prices."[30]

Accordingly, and on this record, the NYPSC banned variable energy rates like those the Just Energy Entities charged to the Representative Plaintiffs and the Class.[31] In place of these floating variable rates, the NYPSC required ESCOs to guarantee that their variable rates would save customers money compared to what the utility would have charged.[32] Under the new regulations, if the ESCO charges the consumer more than the utility, the consumer is owed a

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[25] December 12, 2019 Order at 88–90.

[26] *Id.* at 3–4.

[27] *Id.* at 11.

[28] *Id.* at 12.

[29] *Id.* at 30.

[30] *Id.* at 31.

[31] *Id.* at 39.

[32] *Id.*

refund for the difference.[33] In the Representative Plaintiffs' class actions, the difference between what the Just Energy Entities charged consumers for the exact same energy that Class Members' utilities would have charged is more than US$2 billion. The NYPSC's regulations took effect in April 2021. Around the same time, the Just Energy Entities ceased offering service in New York and attempted to reframe the state's ban on the Just Energy Entities' core business practice as "regulatory constraints . . . requiring certain variable rate customers to be dropped to the utility."[34]

IV. Just Energy's Damning Public Dossier Further Supports the Class Actions

The Just Energy Entities have amassed a damning public dossier that includes at least **six** regulatory enforcement actions, reams of investigative journalism exposing Just Energy's deceptive practices, and countless negative customer reviews.

For example, on December 31, 2014, Just Energy agreed to settle claims brought by the Massachusetts Attorney General that are strikingly similar to those of the Representative Plaintiffs', making various concessions related to its deceptive energy sales and billing practices in Massachusetts.[35]

The Massachusetts Attorney General alleged that Just Energy made misleading, false, and unlawful representations and omissions concerning its energy, including that:

> Just Energy represented to consumers that purchasing residential gas and/or electricity from Just Energy will save customers money;
>
> Just Energy failed to disclose complete and accurate pricing information; and
>
> Just Energy failed to disclose to consumers that its rates following any introductory period may be higher than the rates charged by consumers' traditional utilities.[36]

In response to the Massachusetts Attorney General's allegations, Just Energy agreed to refund a total of US$4,000,000 to Massachusetts customers along with implementing several key changes to its marketing and sales practices, as follows:

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[33] *Id.*

[34] Ring, Paul, Energy Choice Matters, Aug. 16, 2021, http://www.energychoicematters.com/stories/20210816a.html

[35] Assurance of Discontinuance, *In the Matter of Just Energy Group, Inc., et al.*, Mass. Sup. Ct., Suffolk, (Dec. 31, 2014).

[36] *Id.* ¶¶ 19(a), 20(a)–(b).

> Just Energy must cease making representations, either directly or by implication, about savings that consumers may realize by switching to Just Energy, unless Just Energy contractually obligates itself to provide such savings to consumers.[37]
>
> Where Just Energy quotes introductory teaser rates in its marketing material or in any verbal representation, the rate quote must be accompanied by a statement informing consumers that the quoted rate is an introductory rate and state when the rate will expire.[38]

Just Energy was banned for three years from enrolling Massachusetts consumers into variable rate energy products unless it complied with the following requirements:

> Within 30 days of a customer enrolling in a variable energy rate product, Just Energy must provide the customer with written notice of the date on which the introductory rate will expire.
>
> Any new contracts for variable rate products shall either (i) include the calculation that will be used to set monthly rates under the contract such that the customer can calculate the cost of Just Energy's residential energy, or (ii) make the rates available 60 days in advance via phone and the internet.[39]

Additionally, for three years Just Energy was banned from charging Massachusetts consumers variable electricity rates in excess of 14.25¢ per kWh.[40, 41] The settlement further provided that:

> For current Just Energy variable rate customers, the company is required to clearly and conspicuously post its current variable rates and post subsequent variable rates with at least 45 days advance notice.[42] Just Energy is also required to mail notice to all existing Massachusetts variable rate customers alerting them to the fact that advance pricing information is now available via phone and on Just

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[37] *Id.* ¶ 26(a).

[38] *Id.* ¶ 26(c).

[39] *Id.* ¶ 28(a)–(b), (d).

[40] *Id.* ¶ 30(a).

[41] Just Energy charged Representative Plaintiff Donin electricity rates higher than this very high rate for 17 months while she was a Just Energy customer. 14 of those 17 months were consecutive. For the 10 months of billing data Representative Plaintiff Golovan possesses, Just Energy charged her more than the 14.25¢ cap **every single month**.

[42] *Id.* ¶ 30(b).

> Energy's website, and that these customers can cancel their Just Energy contracts without paying termination fees.[43]
>
> Just Energy must at its own expense hire an independent monitor for three years to audit *inter alia* Just Energy's Massachusetts marketing materials, billing data, consumer communications, and direct marketing efforts.[44]
>
> Just Energy must distribute a copy of the Assurance of Discontinuance to current and future (for three years) principals, officers, directors, and supervisory personnel responsible for the Massachusetts market.[45] Just Energy must also secure and maintain these individuals' signed acknowledgement of receipt of the Assurance of Discontinuance.

The Massachusetts Attorney General's sweeping action was far from the first time the Just Energy Entities had been targeted by regulators.

For example, in June 2003, the *Toronto Star* reported that Just Energy (then operating under the name Ontario Energy Savings Corp.) was fined for violating the Ontario Energy Board's code of conduct by fraudulently enrolling customers.[46]

In 2008, the Illinois Attorney General sued U.S. Energy Savings Corp. (whose name was changed to Just Energy in 2012), alleging violations of Illinois' consumer fraud laws. The May 2009 Press Release announcing a US$1 million settlement noted that the Illinois Attorney General had "received a nearly unprecedented number of calls from consumers who were deceived by false assurances that they would receive significant savings by switching to this alternative gas supplier."[47] According to the Attorney General's complaint, among other deceptive conduct "consumers were led to believe that they would automatically save money by enrolling in the U.S. Energy Savings program."[48]

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During this same period, the Citizens Utility Board (the "CUB") and AARP filed a formal complaint with the Illinois Commerce Commission (the "ICC") alleging, *inter alia*, that Just Energy told customers they would "save money" by signing up, that consumers would not see

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[43] *Id*. ¶ 30(c).

[44] *Id*. ¶ 44, Attachment 2.

[45] *Id*. ¶ 46.

[46] Spears, John, "*Energy marketers fined over forgeries*," Toronto Star (June 21, 2003).

[47] Press Release, "Madigan Secures $1 Million in Consumer Restitution from Alternative Gas Supplier for Deceptive claims," May 14, 2009.

[48] *Id*.

any gas price increases if they signed up, and that Just Energy presented false and misleading information about its prices.[49] In April 2010, the ICC found that Just Energy's sales and marketing practices were deceptive, fined the company US$90,000, and ordered an independent audit of its practices.[50]

In July 2008, New York's Attorney General announced a US$200,000 settlement with Just Energy (then named U.S. Energy Savings) and noted that the Attorney General's "office received hundreds of consumer complaints that sales contractors promised immediate savings on utility bills, but the price of gas was actually more than the price charged by the local utility because the price was locked in for a multi-year period."[51]

In November 2016, Ohio's Public Utilities Commission (the "PUCO") fined Just Energy **<u>for a second time</u>** for misleading marketing practices. An article in the *Columbus Dispatch* notes that Just Energy is an "energy company with a track record of misleading marketing," that it was fined by the PUCO in 2010 for deceptive marketing, and that it "sells energy contracts that often cost more than customers would pay if they received the standard service price."[52] The article also mentions that some of the complaints that led to the PUCO's action "stemmed from contracts sold on behalf of Just Energy by another company, saveonenergy.com."[53]

There are also thousands of complaints about the Just Energy Entities on the internet. Over the last three years alone, Just Energy has had at least 282 complaints filed against it with the Better Business Bureau (the "BBB").[54] Even though Just Energy is listed on the BBB's website as having been in business for 24 years, the BBB clearly declares that "THIS BUSINESS IS NOT BBB ACCREDITED" and displays the following "Pattern of Complaint" warning to the consuming public:

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> BBB files indicate that this business has a pattern of complaints concerning door to door sales representatives who are using misleading sales tactics, misrepresenting themselves as the consumer's current energy or gas company, and not being transparent about cancellations fees which may be charged by their

[49] Verified Original Complaint ¶19, Illinois Commerce Commission Docket 08-0175 (March 3, 2008).

[50] Press Release, "Illinois Commerce Commission Fines Just Energy for Deceptive Sales and Marketing Practices, Orders Audit," April 15, 2010.

[51] Press Release, "Attorney General Cuomo Stops WNY Natural Gas Provider From Deceiving Consumers by Misrepresenting Service Contracts," (July 4, 2008).

[52] Gearino, Dan, "Electricity marketer Just Energy fined over complaints,'" The Columbus Dispatch, (Nov. 4, 2016).

[53] *Id.*

[54] Business Profile: Just Energy Group, Inc., BBB.org, https://www.bbb.org/us/tx/houston/profile/electric-companies/just-energy-group-inc-0915-16000393.

> current provider for switching their services. Additionally, consumers allege Just Energy's representatives display poor customer service when the business is contacted to resolve billing and contract concerns.
>
> In November 2019, consumers also began filing customer reviews alleging sales representatives stationed at a local warehouse club were not being truthful about the rates for natural gas. We also received a customer review that stated the Just Energy employee was wearing a t-shirt with the warehouse club's logo.

Media reports about Just Energy equally condemn the Just Energy Entities. When the confidential results of the Illinois Commerce Commission's audit referenced above were made public, Chicago's CBS affiliate reported that between 2010 and 2011 Just Energy received over 29,729 customer complaints.[55] "There were so many complaints over so many years with so little company oversight on how they were handled that the audit said, '[a]n adequate compliance culture at the top levels of the organization is not evident.'"[56]

A 2014 exposé by Canada's Global News highlights that the "CUB, the Better Business Bureau (BBB), the Ontario Energy Board, among others, have been inundated with complaints from consumers about the sales methods employed by Just Energy. The most common grievance is Just Energy promises people savings that don't materialize."[57]

The exposé further reported that Just Energy's founder Rebecca MacDonald has "raked in an estimated $150 million from the company since she established it in the 1990s" and is facing accusations "over whether she's misled investors in her company."[58] Those accusations include that MacDonald faked her credentials and the conclusions by "two of Canada's top forensic accounting firms" that Just Energy used "an unregulated form of accounting to paint a much rosier picture of the company's financial situation," which in turn allowed Just Energy to show an "artificial profit."[59]

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The Global News exposé also contains a 22-minute video entitled the "Just Energy Hustle." Below is an excerpt of a Global News journalist's videotaped interview with Just Energy's then-Co-CEO Deborah Merril. Despite having joined Just Energy in 2007, in the 2014 interview the

[55] Zekman, Pam, "Alternative Energy Supplier Has Long Record Of Fraud Complaints," *CBS2*, (Jan. 15, 2013).

[56] *Id.*

[57] Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014). *Available at:* https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/.

[58] *Id.*

[59] *Id.*

Co-CEO denies even knowing about the many criticisms leveled at Just Energy's marketing and sales practices:

> JOURNALIST: "Critics have accused your company of underhanded sales tactics, sleazy tactics to try to get people to sign their name to a contract."
>
> CO-CEO MERRIL: "I have not heard those accusations, so, nobody said that to me, no."
>
> JOURNALIST: "Really, this is news to you?"
>
> CO-CEO MERRIL: "No, nobody's said that to me. I think it's . . . ."
>
> JOURNALIST: "It's your company. I mean, you know . . . ."
>
> CO-CEO MERRIL: "I would disagree with that."
>
> JOURNALIST: "You would disagree that there's a view that your company is doing things at the door that it shouldn't be doing?"
>
> CO-CEO MERRIL: "No, I'm saying that mistakes happen and we take 'em very seriously."

"The Just Energy Hustle," Timestamp 18:35 to 19:18.[60]

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More than a year prior to the Global News exposé, on July 31, 2013, New York-based investment management firm Spruce Point Capital Management released an investment analysis that labeled Just Energy as "a company that U.S. consumers and investors are quickly realizing has become toxic to their wallets through deceptive energy marketing practices, and harmful to their brokerage accounts."[61] The report signaled that Just Energy's "growth appears to be the result of deceptive sales tactics, now at risk of unravelling" which is "evidenced by a large body of consumer fraud complaints."[62] The report also highlights how Just Energy uses a teaser rate to deceive consumers:[63]

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[60] Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014). *Available at:* https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/.

[61] Spruce Point Capital Management, "Just Energy: Another Dividend Cut Poses An Above Average Risk to Investors" at 2 (July 31, 2013), *available at:* http://www.sprucepointcap.com/just-energy/.

[62] *Id*. at 3.

[63] *Id*. at 4–5.

As noted in the table and analysis excerpted below, Just Energy (referred to in the report as "JE") "appears" to offer the lowest price fixed contract, but there's a 'catch:'

	ConEd Solutions	Constellation	Spark Energy	Greenlight Energy	US Gas & Electric	Just Energy	Constellation	Spark Energy	Greenlight Energy	Just Energy
Commodity	Electric	Electric	Electric	Electric	Electric	Electric	Gas	Gas	Gas	Gas
Term (months)	12	12	12	None	5	60	12	12	None	60
Initiation Fee	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Cancellation Fee	-	-	-	-	$50.00	$50.00	-	-	-	$50.00
Monthly Fee	-	-	-	-	-	-	-	4.95	-	
Unit Cost (c/KWh | c/therm)	**10.45c**	**10.99c**	**10.49c**	**10.00c**	**10.50c**	**7.15c**	**67.90c**	**77.50c**	**66.00c**	**62.00c**

Source: ConEdison website and company websites. End of April 2013

JE's gas RateFlex prices are fixed *only for three* months – despite the 5-year term – and after three months, the contract reverts to a *fluctuating* price based on "*business and market conditions*." The Electric RateFlex is fixed for 2 months. JE then gives its customers the option of locking in this new, variable and unknown price. The company tries to reassure consumers that the rate won't fluctuate that much by guaranteeing that the variable rate won't increase by more than *35% per month* (see: section 7). Just Energy also allows consumers to cancel their contract free within 30 days – before the misleadingly low introductory price expires – but charges a $50 "Exit Fee" if cancelled thereafter. Of course, most consumers don't bother to read the fine print, particularly if salesmen are pushing quick cash back incentives with Visa Gift Cards for registering and referring friends.

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A May 8, 2019 article in the *Chicago Reporter* tells a similar story. The article showcased the experience of a 45-year-old carpenter who, over the course of 10 years, paid Just Energy more than US$20,000 more than he would have paid his local utility.[64] This Just Energy customer's experience was used to highlight the then-proposed Illinois Home Energy Affordability & Transparency Act ("HEAT"). On August 27, 2019, Illinois Governor J.B. Pritzker signed HEAT into law. Effective January 1, 2020, HEAT requires *inter alia* ESCOs like Just Energy operating in Illinois to include the utility's comparison price on all marketing materials, during telephone or door-to-door solicitations, and on every consumer's utility bill so consumers can make informed price comparisons.

In addition, on May 9, 2019, *CommonWealth* featured the Massachusetts Attorney General's findings that Massachusetts consumers who switched to ESCOs paid US$177 million more over a two-year period than they would have if they had stayed with the local utility.[65] The *CommonWealth* article references the fact that the Massachusetts Attorney General brought successful lawsuits against ESCOs "including Just Energy" which actions resulted "in almost $10 million in refunds to consumers and forc[ed] the defendant companies to cease their unfair practices." *Id.*

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[64] *Available at:* https://www.chicagoreporter.com/illinois-bill-aims-to-curb-alternative-energy-scams-by-forcing-transparency/.

[65] Harak, Charlie et al., "DPU failing to protect Mass. Consumers," *CommonWealth*, May 9, 2019. *Available at:* https://commonwealthmagazine.org/opinion/dpu-failing-to-protect-mass-consumers/.

V. The Class Actions Encompass Approximately 8,000,000 U.S. Just Energy Customers

Using Just Energy's public 2015 Annual Report (which covers the year ended March 31, 2015), Class Counsel calculated the approximate number of Class Members during the relevant period of 2011 to present:

A. U.S. Residential Electric Class Members – 2,481,640 RCEs[66]

B. U.S. Residential Gas Class Members – 1,096,180 RCEs

C. U.S. Commercial Electric Class Members – 3,702,200 RCEs

D. U.S. Commercial Gas Class Members – 596,040 RCEs

Total U.S. Residential Class Members (Electric and Gas Combined) – 3,577,820 RCEs

Total U.S. Commercial Class Members (Electric and Gas Combined) – 4,298,240 RCEs

Total U.S. Class Members (All Combined) – **7,876,060 RCEs**

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Regarding Class Counsel's methodology for calculating the U.S. class size, Just Energy's 2015 Annual Report discloses (a) the number of worldwide Just Energy gas RCEs by commodity and the number of worldwide Just Energy electric RCEs by commodity for the year ended April 1, 2014, and (b) the "additional" number of worldwide gas and worldwide electric RCEs by commodity added in the one-year period from April 1, 2014, to March 31, 2015. The 2015 Annual Report also identifies the percentage of Just Energy's customer base that takes service in the U.S. and distinguishes between commercial and residential RCEs.

Beginning with the April 1, 2014 current customer data, Class Counsel used the percentage of U.S. Just Energy customers to calculate the number of U.S. residential and commercial gas and electric customers as of April 1, 2014. Class Counsel then took the number of additional gas and electric customers added in the one-year period from April 1, 2014 to March 31, 2015 and multiplied it by the percentage of U.S. Just Energy customers to determine the number of U.S. gas and electric customers added at each service level during this one-year period. For example, Just Energy's 2015 Annual Report states that as of April 1, 2014 Just Energy had 1,198,000 RCEs and that 72% of Just Energy customer base takes service in the U.S. Class Counsel thus calculate that as of the April 1, 2015, the Just Energy Entities had approximately 862,560 U.S. residential electric customers (i.e. 1,198,00 RCEs x .72). The 2015 Annual Report also states that Just Energy added 489,000 residential RCEs in the one-year period from April 1, 2014, to March 31, 2015. Using the same percentage of U.S. based customers (72%), Class Counsel

[66] According to Just Energy's 2021 Annual Report, an "RCE" means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m3 (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada.

calculates that during this one-year period Just Energy added approximately 352,080 U.S. residential electric customers (i.e. 489,000 RCEs x .72).

During each of the reporting years from 2015 to 2021, Just Energy reported figures for the number of additional residential and commercial gas and electric RCEs as well as the percentage of Just Energy's U.S. customer base. Beginning with the 2014 total customer count and using only the "additional" U.S. residential and commercial RCEs added each year, Class Counsel calculated the approximate total class size. The following chart summarizes Class Counsel's class size calculations:

Year	U.S. Residential Electric Customers Added	U.S. Residential Gas Customers Added	U.S. Commercial Electric Customers Added	U.S. Commercial Gas Customers Added
2014[67]	862,560	537,840	1,627,920	146,880
2015	352,080	133,920	503,280	48,240
2016	271,440	105,120	395,280	61,920
2017	237,850	85,200	234,300	38,340
2018	260,000	115,700	274,950	110,500
2019	226,800	87,570	291,690	88,200
2020	142,120	25,160	259,760	59,840
2021	128,790	5,670	115,020	42,120
Total	2,481,640	1,096,180	3,702,200	596,040
Total Customers Across All Four Customer Categories:				**7,876,060**

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Please note that due to missing data from the 2011 to 2014 period, these calculations are **underinclusive**. With discovery, the Representative Plaintiffs' expert will be able to provide the exact class size.

[67] 2014 figures represent current U.S. Just Energy customers as of April 1, 2014.

Dated: November 1, 2021
Armonk, New York

By: /s/ Steven L. Wittels

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Class Counsel for the Representative Plaintiffs and the Class

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Tab 17

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1]

TO: Trevor Jordet as Representative Plaintiff (the "**Claimant**")

Greg Blankinship (attorney for Representative Plaintiff)
gblankinship@fbfglaw.com
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP
One North Broadway, Suite 900
White Plains, NY
10601
United States

RE: Claim Reference Number: PC-11175-1

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0
B. Restructuring Period Claim			$	$	$
C. Total Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 11th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Just Energy Entities, and not in its personal or corporate capacity

Per: ______________________________

Jim Robinson
Senior Managing Director

SCHEDULE A

The Claimant advances a claim against the "Just Energy Entities" in the amount of US$3,662,444,442.00 based on a proposed and uncertified class action filed in the Eastern District of Pennsylvania on April 6, 2018, titled *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB (the "**Jordet Action**"). The Jordet Action was subsequently transferred to the US District Court in the Western District of New York (the "**New York Court**").

The Just Energy Entities, in consultation with the Monitor, disallow the claim in its entirety.

Status of Litigation

The Jordet Action was brought solely against Just Energy Solutions, Inc. ("**Just Energy Solutions**") on behalf of a putative class of all "Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present". The Claimant alleged, among other things, that the defendant violated Pennsylvania Unfair Trade Practices and Consumer Protection Law ("**PUTPCP**"), breached contractual provisions and an implied covenant of good faith requiring Just Energy Solutions to consider "business and market conditions" when it charged rates that were more than the local utility rate for natural gas, and was unjustly enriched as a result of the alleged misconduct. The Jordet Action does not purport to deal with any electricity customers of Just Energy Solutions.

Following a motion to dismiss brought by the defendant, the New York Court dismissed the PUTPCP and unjust enrichment claims, such that only the alleged breach of contract claim remains.[2] Moreover, the New York Court held that claims for breach of contract prior to April 6, 2014, are time-barred. The survival of a claim on a motion to dismiss is not an assessment of its merits but only a determination that, accepting as true all of the allegations in the complaint as required on that motion, the plaintiff has alleged a right to relief that is not entirely speculative. Indeed, the Court noted in its decision that it "cannot dismiss a Complaint unless it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"[3] The lone remaining claim turns on whether Just Energy Solutions breached contractual commitments to use its discretion to set rates consistent with "business and market conditions" (defined to include a host of factors), and the Court found that whether Just Energy Solutions'

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[2] As the New York Court noted in its decision on the motion to dismiss, a breach of the implied covenant of good faith is not a distinct cause of action from breach of contract under Pennsylvania law. *Jordet v. Just Energy Solutions Inc.,* Decision and Order 18-CV-953S regarding Motion to Dismiss dated December 7, 2020 ("**Motion to Dismiss Decision**"), Dkt. 43, at 4.

[3] Motion to Dismiss Decision, at 6.

pricing adhered to that discretionary standard could not readily be resolved solely on the pleadings.[4]

Improper Expansion of Claim

Almost four years after the commencement of the litigation, the Claimant now purports to advance a claim against all "Just Energy Entities" on behalf of both gas and electricity customers, notwithstanding the fact that the Jordet Action is limited to natural gas customers of Just Energy Solutions. Even if the underlying litigation had any merit (it does not), the Claimant cannot use these CCAA Proceedings to improperly expand the scope of his April 2018 claim to now add entirely new customer groups and new defendants who were not included in the Jordet Action.

Claim Is Meritless

The claim is contingent, uncertified, speculative, and remote, especially given that the Claimant's claim has not even proceeded to discovery. Even if discovery had taken place, the Claimant would still have to overcome substantial hurdles to be entitled to any recovery, including:

- dispositive motion practice (i.e. motion for summary judgment) following completion of discovery, which would involve the disclosure of expert reports and supporting evidence from fact witnesses, depositions, potential preliminary motions, written briefs, and oral argument;

- a contested class certification process, which would include written briefing, presentation of supporting evidence from fact and expert witnesses, and oral argument;

- a trial on the issue of liability, including pretrial submissions and motion practice to resolve evidentiary issues, voir dire, direct testimony and cross-examination of fact and expert witnesses, and legal argument from counsel; and

- resolution of damages of the plaintiff or certified class(es), which may require bifurcation from the trial on liability (especially if the Claimant continues to allege damages on behalf of a national class, which the defendant argues is impermissible).

A loss by the Claimant at any one of these phases would either entirely eliminate, or severely restrict, the Claimant's potential damages (and those of any other members of any certified class).

The claim is devoid of merit for numerous reasons, including the fact that the applicable contract contains multiple provisions that put customers (including the Claimant) on clear notice of the variable rates that Just Energy Solutions would set and to which customers (including the Claimant) will be subject:

- "**This Agreement does not guarantee financial savings.** However, at the end of your Term, if the Volume Weighted Average Utility Price is less than the Volume Weighted

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[4] Motion to Dismiss Decision, at 17-18.

Average Just Energy Price, we will credit you $100 for each commodity included in this Agreement."[5] (emphasis added)

- "By signing for the ***Natural Gas and/or Electricity Rate Flex Pro Program***, I agree to an introductory fixed price, the Intro Price, for the first twelve billing cycles and thereafter be a Variable Price for the remainder of the Term. Changes to the Variable Price will be determined by business and market conditions." [6] (emphasis in original)

- "**Variable Price**: The monthly rate that you will be charged per Ccf[7] after the expiration of the 12 month Intro Price. The Variable Price will not change more than once each billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions."[8] (emphasis in original)

- "After the Intro Price period expires, you will be charged a Variable Price per Ccf. The Variable Price during the first billing cycle in which the Variable Price is in the [*sic*] effect will be equal to the Intro Price. The Variable Price will not change more than once each monthly billing cycle. **Changes to the Variable Price will be determined by Just Energy according to business and market conditions, including but not limited to, the wholesale cost of natural gas supply, transportation, distribution and storage**…."[9] (emphasis added)

The parties' agreement thus expressly provides that it does not guarantee the financial savings about which the Claimant now complains. In complaining that his local utility's rates ended up being lower for a portion of the Claimant's contract term, the Claimant simply ignores away the operative agreement. There was no obligation under the agreement for Just Energy Solutions' rates to match or track those charged by the local utility.

Critically, the Claimant's allegation that the defendant breached the parties' contract by failing to set rates "according to business and market conditions" is premised on the erroneous assumption that local public utilities are the main competitors of Just Energy Solutions, and as such the defendant overcharged when its rates were higher than that of the local utility.[10] In reality, local utility rates are not an appropriate barometer by which to measure the rates of energy service companies ("**ESCOs")** like Just Energy Solutions (let alone an appropriate proxy for the long list

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[5] "Essential Agreement Information" which is provided in the "Customer Disclosure Statement," which is incorporated into the Claimant's agreement with the defendant.

[6] "Essential Agreement Information" which is provided in the "Customer Disclosure Statement," which is incorporated into the Claimant's agreement with the defendant.

[7] Ccf is a unit of measurement of natural gas that is the volume of 100 cubic feet.

[8] Paragraph 1 of "Natural Gas Disclosure Statement and Terms of Service" incorporated into the Claimant's agreement with the defendant.

[9] Paragraph 5 of "Natural Gas Disclosure Statement and Terms of Service" incorporated into the Claimant's agreement with the defendant.

[10] The allegation that the defendant breached the covenant of good faith by failing to act reasonably in exercising its discretion to set rates is based on the same erroneous assumption.

of business and market conditions Just Energy Solutions was permitted to consider in exercising its discretion to set its rates) for several reasons, including because:

- **Local utilities and ESCOs do not offer the same products and services.** For instance, ESCOs offer 100% green products, fixed-rate products, energy conservation bundled services and products, dedicated customer service, and affinity rebates or refunds that many consumers prefer. ESCO retail commodity prices are part of a bundle of product and service offerings ESCOs provide their customers, in which products and services interact with each other; comparing the prices charged for those products and services with local utility commodity prices results in erroneous, misleading and distorted conclusions.

- **Local utility commodity prices do not reflect wholesale energy prices.** Local utilities are permitted to defer charges (with the approval of the regulator) to smooth price volatility during periods with particularly high wholesale gas and electricity costs (e.g., 2014 polar vortex price spikes). Such utility regulated deferral activity renders the local utility rates a particularly inappropriate proxy for actual wholesale rate and the actual business and market conditions for the given period and makes an accurate comparison between default service prices and ESCO prices for a particular period impossible. ESCOs do not have the ability to shift the costs of energy service over time, nor can they take advantage of regulated rates that ensure full cost recovery to the provider.

- **Local utilities and ESCOs do not have the same business model.** Just Energy Solutions must compete with other ESCOs to sell energy commodities to consumers. In contrast, local utilities are "default" providers of energy commodities and provide delivery service (gas and electric distribution) regardless of whether the consumer purchases energy commodities from the utility or an ESCO. As a result, local utilities do not face the same costs, risks and market forces that ESCOs face.

- **Local utility commodity prices do not include reasonable profit margins.** Unlike ESCOs, local utility commodity prices are designed to be a pass-through of wholesale costs (sometimes from different periods of time) and not a profit-generating business activity. Moreover, utilities are incentivised to allocate all possible commodity and employee/technology costs to a customer's delivery bill, since that is where the utility has a monopoly and is permitted to receive a return on investment. As a result, no accurate comparison is possible between utility commodity prices and ESCO commodity prices.

- **General energy market conditions affect ESCOs and local utilities differently.** ESCOs incur costs well beyond the costs of energy procurement, which are reflected in their prices. In addition to the costs of the product or service bundled with the commodity cost, ESCO prices may also include consideration of competitors' prices, profit margins, and customer retention policies in addition to overhead costs and marketing efforts. ESCOs account for the costs and values associated with their enhanced products and services, including renewables, and need to structure their businesses to successfully offer fixed-rate guarantees to customers who purchase such products. ESCOs face the business conditions of a competitive market—not at all like the business conditions faced by a regulated utility.

The Claimant's expert has failed to even consider the variable rates charged by other ESCOs during the relevant period in calculating the alleged damages, despite the Claimant's

acknowledgment in the Complaint that "any reasonable consumer" would believe that Just Energy Solutions' variable rates would reflect the market prices *charged by other ESCOs*.[11]

Not only is the Jordet Action devoid of merit, it is not amenable to Rule 23 certification pursuant to the relevant US law, including because:

- Claimant will need to show that the language in the various contracts falling within the class definition are sufficiently similar to present common issues of law, and that those issues predominate over individual issues that different class members face.

- Claimant will need to establish that the proposed representative plaintiff's claims are representative of the experience other customers may have had. The one-size-fits-all approach taken in the Claimant's damages model does not account for the different products and services offered by Just Energy Solutions to its customers and the different providers individual customers had prior to contracting to purchase energy services from Just Energy Solutions, and those differences may be considered at class certification.

- The differences between various contracts and products would be even more pronounced and problematic for purposes of a motion for class certification to the extent the Claimant continues to take the position that they will be seeking to include in the proposed class consumers who are not natural gas customers of Just Energy Solutions whose variable rate contracts fit within the Claimant's class definition. Although such an expansion is impermissible for the reasons described above, the proposed class's failure to satisfy the strict requirements of Rule 23 would be exponentially more pronounced where the proposed class includes customers who contracted with different entities, using different contracts, subject to different regulatory regimes, and for different product offerings.

- The Court will also need to find that the proposed representative plaintiff or other subsets of the proposed class are not subject to unique defenses that would impair the fair and efficient resolution of the action. State specific regulations could present unique claims and defenses to the extent the Claimant's alleged class extended to Just Energy customers outside of Pennsylvania.

Expert Report

The Claimant has submitted a report, that purports to be an expert report, in support of his proof of claim. The quantum of damages set out in the report is speculative and highly inflated, as it is, among other things, based on several flawed assumptions. For example:

- The report includes electricity customers in its calculation of damages, but the proposed class in the Jordet Action is limited to only natural gas customers of Just Energy Solutions.

- The report assumes the correct "comparable" to determine "business and market conditions" is that of the local utility, instead of considering the rates charged by other ESCOs. As noted above, this assumption is deeply flawed. This approach fails for a number

[11] Jordet Complaint, para 20.

of reasons, including by failing to account for any ESCO reasonable profit margin on commodity prices, as local utility commodity prices are not designed to generate any profit.

- The report incorrectly includes commercial customers, whose contracts were materially different from (and subject to different regulatory regimes than) those of residential customers. Moreover, very few of Just Energy Entities' commercial customers are contractual counterparties of the named defendant. Commercial customers currently account for approximately 50% of the Just Energy Entities' customers' electricity and gas usage.

- Calculation of damages for residential and commercial gas customers is derived from a calculation that includes the residential gas load served by all Just Energy Entities. However, only Just Energy Solutions is a named defendant in the Jordet Action, and any damages must be limited to customers who were contractual counterparties with that defendant.

- The report assumes that 50% of residential and commercial natural gas usage of the Just Energy Entities' customer base is attributable to customers that are parties to variable rate contracts that would be included in the proposed class. This assumption is incorrect.

    - Currently, only approximately 34.9% of the Just Energy Entities' non-commercial customers' natural gas usage is being charged out based on variable rates. Of that, only 2.1% of natural gas usage is attributable to customers who are parties to variable rate contracts with the Just Energy Entities – the rest being customers who are parties to fixed-rate contracts with Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts.[12] This latter subset of customers would not be properly included in the proposed class.

- The damages calculation includes time-barred claims. As Judge Skretny held in his decision dated December 7, 2020, regarding the motion to dismiss, all breach of contract claims with respect to alleged overcharges prior to April 6, 2014, are time-barred.

- The expert report erroneously assumes the same rate of damages applies for the period between 2018 and 2020 as applied to the period before 2018. Given that the Just Energy Entities ceased to market variable-rate contracts to new customers by the end of 2017, the quantum of damages, if any, would have continued to decline materially following 2017 as no new variable rate customers were added to the customer pool.[13]

- The damages in the expert report are based on the calculated excess natural gas margin for residential customers, which was derived using two customers' billing data. The Claimant's expert himself acknowledges that the excess natural gas margin "is subject to

[12] In certain jurisdictions, the Just Energy Entities are required by the relevant regulations to roll over fixed rate customers to variable rates where they do not affirmatively renew their fixed term contract.

[13] As noted above, customers who are parties to fixed rate contracts with the Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts would not be properly included in the class.

potentially significant modification". This miniscule sample size means that the estimate of damages is effectively useless in accurately estimating any alleged damages.

- The report assumes, without any evidence, that the differences between the variable rates the Claimant was charged and the local utility rates in Pennsylvania are the same as that in other states.

The speculative nature of the Claimant's damages calculations is further exacerbated to the extent he continues to seek to include in the proposed class consumers who are not natural gas customers of Just Energy Solutions whose variable rate contracts fit within the Claimant's class definition. Although such an expansion is impermissible for the reasons described above, the assumptions underlying the Claimant's proffered damages analysis are even more speculative where different utility rates and regulatory regimes apply in different jurisdictions, with different product offerings and rate structures. These variables are not accounted for at all in the Claimant's rudimentary damages analysis.

Inflated Claim of Prejudgment Interest

For all the reasons outlined above, the inclusion of US$1,282,196,848 in prejudgment interest is also contingent, speculative, remote, and excessive. The prejudgment interest amount calculation is also fundamentally flawed, as it applies New York's prejudgment interest rate of 9% to damages allegedly incurred in California, Delaware, Illinois, Massachusetts, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Texas. Putting aside the fact that there is no basis for the underlying damages figure, the relevant prejudgment interest rates are significantly lower in most of these jurisdictions.

Tab 18

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against the Just Energy Entities[1] and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. **Particulars of Claimant:**

Claims Reference Number: PC-11175-1

Full Legal Name of Claimant (include trade name, if different)

Trevor Jordet (as Representative Plaintiff)

(the "**Claimant**")

Full Mailing Address of the Claimant:

Greg Blankinship (attorney for Representative Plaintiff), Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

One North Broadway, Suite 900, White Plains, NY, 10601, United States

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number:	+1 914-298-3281
Email Address:	gblankinship@fbfglaw.com
Facsimile Number:	+1 914-273-2563
Attention (Contact Person):	Greg Blankinship (attorney for Representative Plaintiff)

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐ No: ☒

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): Trevor Jordet (as Representative Plaintiff)

3. **Dispute of Revision or Disallowance of Claim:**

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated January 11, 2022, and asserts a Claim as follows:

Type of Claim	**Applicable Debtor(s)**	**Amount allowed by the Just Energy Entities**		**Amount claimed by Claimant**	
		Amount allowed as secured:	**Amount allowed as unsecured:**	**Secured:**	**Unsecured:**
A. Pre-Filing Claim	Just Energy Entities	$ 0	$ 0	$	$ USD 3,662,444,442.00
B. Restructuring Period Claim		$	$	$	$
C. Pre-Filing D&O Claim		$	$	$	$
D. Restructuring Period D&O Claim		$	$	$	$
E. Total Claim	Just Energy Entities	$ 0	$ 0	$	$ USD 3,662,444,442.00

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. Reasons for Dispute:

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

See attached Schedule A.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: [signature]	Witness: [signature] (signature)
Name: Greg Blankinship	Debora Solomon (print)
Title: Partner, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP	

Dated at White Plains, New York this 10 day of February, 2022

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Notice of Dispute of Revision or Disallowance

RE: Claim Reference Number: PC-11175-1

Schedule A

INTRODUCTION

Claimant Trevor Jordet ("Claimant") brought a U.S. class action to redress Just Energy Solutions, Inc.'s and the other Just Energy Entities' ("Just Energy") deceptive, bad faith, and unfair pricing practices that have caused millions of consumers and businesses across the U.S. to pay considerably more for their electricity and natural gas than they should have paid.

Mr. Jordet's Claim is joined by and parallel to the Claims of Fira Donin and Inna Golovan and the ten other U.S. consumers represented by Ms. Donin's and Ms. Golovan's counsel (Claim Reference Number: PC-11177-1). Ms. Donin and Ms. Golovan brought a separate and similar U.S. class action that also seeks to recover for the millions of U.S. consumers and businesses harmed by Just Energy's unlawful conduct.

Regarding class actions' status, **two** separate U.S. federal judges concluded that Mr. Jordet and Mses. Donin and Golovan alleged valid class claims against Just Energy. Both Just Energy Notices of Revision or Disallowance (the "Notice of Disallowance") concede this fact (as they must) and both acknowledge that **two** different federal judges ruled that the class actions have viable contract claims, have "alleged a right to relief that is not entirely speculative," and that there are serious liability issues that "could not readily be resolved solely on the pleadings."

These federal judges' conclusions are no surprise to Claimant, Just Energy, or their respective counsel. The class action claims arise from bedrock principals of contract law and are supported by a legion of U.S. case law, regulation, and statute. The claims also represent paradigmatic class action claims that are readily certifiable (and have been certified on five separate occasions), are pleaded in tandem with increasing regulatory scrutiny (including outright bans) of the exact pricing practices Just Energy employed throughout the U.S., and follow in the footsteps of at least **six** regulatory actions against Just Energy.

What is more, the class claims were supported with a preliminary yet detailed report by an expert in competitive wholesale and retail energy markets. This expert advises the U.S. Air Force, the U.S. Army, and the U.S. Department of Energy when they act as purchasers of electricity and natural gas from competitive retail suppliers in the *same* markets where Just Energy operates. This expert, who also supports U.S. state governments and agencies in energy-related formal proceedings, used the *same* breach of contract theories upheld by the two separate federal judges and calculated that Just Energy overcharged its U.S. customers by US$2,380,337,594. Just as the federal judges agreed, the expert's damages were calculated from the difference between the prices Just Energy was contractually bound to charge U.S. customers as compared to the prices ultimately charged. Then, because Just Energy's unlawful pricing practices spanned more than a decade, Claimants' counsel applied the pre-judgment interest rules of the class actions' forum

state (New York) and calculated US$1,282,106,848 in unpaid interest. On November 1, 2021, Claimants submitted a class action claim in this proceeding for US$3,662,444,442.

The claims at issue in the class actions are as straightforward as they are strong. Just Energy targets consumers and businesses hoping to save on energy supply costs. Just Energy lures customers with a teaser or fixed rate for a limited number of months that is initially lower than its competitors' rates. Once that initial rate expires, Just Energy charges what it represents to be a "variable rate," which under Just Energy's contract must be set according to "business and market conditions." As one federal judge has already observed, "'business and market conditions' has some standard that [Just Energy] had to apply in setting [their] variable pricing but apparently failed to adhere to in [their] pricing."

In reality, however, Just Energy exploits its pricing discretion and the dramatic information asymmetry with its customers to artificially inflate it variable rates without regard to its contractual obligations. As a result, Just Energy's variable rates are consistently substantially higher than those otherwise available in the natural gas and electricity supply markets, and its rates do not fluctuate based on any reasonable interpretation of "business market conditions," such as wholesale market energy prices or the rates other competitive market participants (including local utilities and Just Energy's own fixed rates) charge for energy supply.

At bottom, Just Energy faces grim prospects in the class actions: The decisions of two federal judges sustaining straightforward and meritorious claims, a preliminary yet detailed analysis by a qualified expert showing *billions* in damages, a multitude of case law and regulatory action condemning Just Energy's very practices, five highly similar class certification decisions, and a checkered past of at least at least six regulatory actions.

Considering its slim odds on the merits, Just Energy's Notice of Disallowance predictably takes a blunderbuss approach. In fact, it presents an outline of defenses that that either this Court or the persons assigned to adjudicate Claimant's claims can evaluate (and discard) with straightforward discovery and limited testimony—just as other factfinders have done in similar cases. The Notice of Disallowance presents no case law or a shred of actual evidence to support its odd contention that the sustained claims in two U.S. class actions are "meritless." It instead offers smokescreens and paper tigers that have been rejected by courts and regulators alike. Musings of counsel as to why Just Energy may not have breached its customer contract are offered in place of facts, yet such conjecture was already rebuffed by two U.S. federal judges.

Just Energy understands its imminent risk of staggering liability. All five courts that have addressed class certification in cases involving energy supply companies based on the same liability theory Claimant proffers here certified the classes. Nearly every defendant involved in a similar energy class has that has survived a motion to dismiss—as is doubly the case here—settles due to the ease of proving liability and class certification following discovery.[1] No factfinder will look kindly on Just Energy's variable rates that are substantially higher than utility rates or its own fixed rates, even though Just Energy's costs for fixed and variable rate customers

[1] Indeed, nearly every defendant involved in a similar energy class has that has survived a motion to dismiss—as is the case here—ultimately settles due to the ease of proving liability and class certification following discovery.

are the same. Claimant's expert will handily dispose of Just Energy's incredible and counterintuitive claims, including that variable rates are riskier to service than fixed rates and therefore its exorbitant variable rate margins are justified. Just Energy's internal pricing data and analysis will show the real basis for Just Energy's variable rate margins and the factfinder will easily conclude that Just Energy breached its contracts with its U.S. customers. For these and the other reasons below, Claimant disputes the Notice of Disallowance.

BACKGROUND

I. Procedural History

Trevor Jordet filed a class action lawsuit *Jordet v. Just Energy Sols., Inc.* in the U.S. District Court for the Eastern District of Pennsylvania on April 6, 2018. On August 30, 2018, the action was later transferred to the U.S. District Court for the Western District of New York.

Jordet's complaint pleads breach of contract and, alternatively, unjust enrichment individually and on behalf of all Just Energy U.S. customers charged a variable rate for natural gas supply by Just Energy between April 6, 2012 and the present.

On December 7, 2020, Judge William M. Skretny of the U.S. District Court for the Western District of New York denied Just Energy's motion to dismiss the breach of contract claims, ruling that "'business and market conditions' has some standard that [Just Energy] had to apply in setting its variable pricing but apparently failed to adhere to in [their] pricing." *Jordet v. Just Energy Sols., Inc.*, 505 F. Supp. 3d 214, 226-27 (W.D.N.Y. 2020). Judge Skretny distinguished *Jordet* from unsuccessful cases against third party energy companies on the ground that Just Energy's customer contract "provided some definition of what [Just Energy] considered business and market conditions [] from the inclusion of natural gas costs as a factor in rate setting." *Id.* at 225. The Court further held that "Plaintiff also plausibly alleges this breach as natural gas wholesale prices decreased while Defendant's pricing increased." *Id.* at 227.

Regarding the statute of limitations, Judge Skretny ruled that Claimant could pursue a class action for the period April 6, 2014 through the present. *Id.* On August 31, 2021, Just Energy filed notice of these bankruptcy proceedings and the attendant stay. ECF No. 53.

II. Deregulation of State Gas and Electricity Retail Supply Markets

In the 1990s and early-2000s, numerous U.S. states deregulated retail natural gas and electricity supply markets. Retail energy supply deregulation's primary goal was increased competition with an eye to achieving greater consumer choice and lower energy supply rates. The most frequently cited reason for deregulation was lower prices. As a result, in deregulated states across the U.S. consumers and businesses can choose their energy supplier. The new energy suppliers, who compete against local utilities, are known as energy service companies, or "ESCOs."[2] Regardless of the supplier consumers select, the local utility continues to deliver the

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[2] The acronyms for competitive energy supply companies vary from state to state. For example, in Indiana and Illinois, independent natural gas service companies are known as alternative retail natural gas

commodity to consumers' homes. In almost all states, the local utility also bills customers for both the energy supply and delivery costs in a single "consolidated" bill. The only difference to the customer is whether the utility or an ESCO sets the energy supply price.

ARGUMENT

III. Just Energy Breached its Contracts with U.S. Customers

Just Energy's Notice of Disallowance wrongly argues that liability presents a "substantial hurdle" for the classes, namely because Just Energy's customer contract "expressly provides that it does not guarantee the financial savings" and because "local utility rates are not an appropriate barometer by which to measure the rates of energy service companies[.]" As described below, these arguments miss the mark and the classes will prevail on the merits. *See, e.g.*, *Melville v. Spark Energy, Inc.*, No. 15-8706, 2016 WL 6775635, at *5 (D.N.J. Nov. 15, 2016) ("[B]ecause [the local utility] is a supplier in the energy market; its prices thus serve as at least partial indications of the market rate and are relevant despite the lack of a savings guarantee clause.").

A. Default Utility Prices Are a Valid Benchmark

In what is best characterized as a "see what sticks" argument, Just Energy briefly claims (without support) that utility rates cannot serve as proper benchmarks for variable prices based on "business and market conditions." Yet courts and public service commissions throughout the U.S. have repeatedly (and resoundingly) rejected this claim.

By way of background, consumers that do not switch to an ESCO continue to receive supply from their local utility. The utilities charge supply rates consistent with market conditions in the competitive wholesale marketplace, plus other wholesale costs, namely transportation, distribution, and storage costs (*i.e.*, the same costs ESCOs such as Just Energy incur)— without any markup or profit. Because utility supply rates do not include any profits, they are pure reflections of average wholesale market costs and associated costs over time. Additionally, because the utility is the primary supplier and competitor in virtually all utility regions, its rates by definition represent retail electricity and natural gas market pricing.

By contrast, ESCOs like Just Energy have a tactical advantage over the regulated utilities as they can purchase electricity and natural gas from any number of markets using any number of purchasing strategies, and therefore their costs for purchasing electricity and natural gas should at the very least track—if not undercut—utility prices. For example, ESCOs such as Just Energy can employ various energy acquisition strategies including: (i) owning energy production and generation facilities; (ii) purchasing energy from wholesale marketers and brokers at the price available at or near the time it is used by the consumer; (iii) and by purchasing energy ahead of time, either by purchasing energy to be used in the future or by purchasing futures contracts for the delivery at a predetermined price. Deregulation's purpose is to allow ESCOs to use these and other arbitrage opportunities to reduce costs for consumers' benefit.

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suppliers or "AGS." In Pennsylvania, independent natural gas supply companies are known as natural gas suppliers or "NGS."

Additionally, because of deregulation, ESCOs like Just Energy do not need regulatory approval of their rates or the method by which they set their rates. Customers are protected in the competitive market by enforcement of the terms of their contracts. While utility supply is typically procured from the competitive wholesale market, ultimately the utility may charge no more than allowed by the regulator. ESCO customers do not have this safeguard. Consumers must rely on written agreements with the ESCOs to ensure that they receive the promised price.

Considering these realities, ESCOs should be able to offer rates competitive with, or substantially lower than, utilities, and in fact many do. Indeed, Just Energy's fixed rates are competitive with, and in fact almost always lower than, contemporaneous utility rates. Therefore, while utility rates may not precisely match Just Energy's rates, they should be commensurate. But Just Energy's variable rates are not remotely commensurate with utility rates because they are always substantially higher.

In fact, contrary to its contractual obligation, Just Energy's rates are substantially higher than its own fixed rates, other ESCOs' rates, and local utilities' rates, and are wholly disconnected from wholesale electricity and natural gas prices. Instead, Just Energy's variable rates are based on factors other than market conditions.

Further, there is no good faith justification for charging customers a variable rate that is outrageously higher than the rates Just Energy charges its fixed rate customers. Just Energy routinely predicts with reasonable accuracy the energy needs of its variable rate customers, and because it has access to multiple variable rate procurement strategies, its costs for serving variable rate customers and fixed rate customers are not substantially different. The only reason Just Energy's variable rates are so much higher than its fixed rates is that it engages in profiteering and price gouging, a stark demonstration of bad faith pricing practices.

In its Notice of Disallowance, first, Just Energy claims that local utilities are improper benchmarks because ESCOs occasionally offer tangential products or services is meritless. This is balderdash. New York's Public Service Commission (the "NYPSC") recently examined—and incisively rejected—this precise contention from Just Energy and other ESCOs, who were represented by Judge Energy's U.S. counsel at bar. With respect to value-added products, NYPSC staff found that found that "these sorts of value-added products is at best de minimis and **does not explain away the significantly higher commodity costs charged by so many ESCOs**."[3] Similarly, the NYPSC found that the "claim that at least a portion of the significant delta between ESCO and utility charges is explained by ESCOs offering renewable energy is disingenuous at best. ESCOs may be charging a premium for green energy, but they are not actually providing a significant amount of added renewable energy to customers in New York."[4] In fact, the NYPSC found it "troubling" that even after considering reams of evidence "neither

[3] Case No. 12-M-0476, Department of Public Service Staff Unredacted Initial Brief (Mar. 30, 2018), at 87 (Emphasis Added).

[4] Case No. 12-M-0476, Department of Public Service Staff Unredacted Initial Brief (Mar. 30, 2018), at 69.

ESCOs nor any other party have shown . . . that ESCO charges above utility rates were generally – or in any specific instances – justified."[5]

Second, in its Notice of Disallowance, Just Energy claims that "[l]ocal utility commodity prices do not reflect wholesale energy prices" because utilities "are permitted to defer charges (with the approval of the regulator) to smooth price volatility." The NYPSC considered and rejected these precise contentions:

> [S]ome ESCOs complain that out-of-period adjustments made by utilities, with the Commission's approval, make it impossible for ESCOs to be competitive with the utilities, particularly in the context of variable-rate gas commodity service.[] These ESCOs do not acknowledge, however, that out-of-period adjustments by the utilities ultimately are a zero-sum game: for any downward adjustment made to a customer's bill, a corresponding out-of-period increase must be made. This process moderates fluctuations in customer bills that otherwise would result from market activity.[] Thus, out-of-period adjustments do not unfairly provide the utilities a pricing advantage when a price comparison is made on an annual basis.[6]

Third, Just Energy argues that local utilities do not compete with ESCOs because they do not face the same costs, risks, and market forces as ESCOs. To the contrary, as explained above, ESCOs have significant purchasing and pricing advantages over utilities.

Fourth, Just Energy wrongly contends that a comparison is not possible because "utility commodity prices do not include reasonable profit margins" and overhead. The NYPSC staff explained that these costs do "not justify the significant overcharges" ESCOs levied on consumers.[7] The ultimate factfinder might understand that the contract's "business and market conditions" language permits Just Energy a reasonable margin. However, such profits must be consistent with others' profit margins, and that Just Energy's profiteering would not be so extreme that its rate bears no relation to market prices.

Finally, Just Energy asserts that "[g]eneral energy market conditions affect ESCOs and local utilities differently," and that ESCOs might consider competitors' prices, customer retention, subsidizing the fixed rates, and value into consideration when setting their rates. Yet Just Energy's contract does not bear such weight, and these exact defenses have been resoundingly rejected by many courts. *See, e.g.*, *Hamlen v. Gateway Energy Servs. Corp.*, No. 16-3526, 2017 WL 6398729, at *7 (S.D.N.Y. Dec. 8, 2017) (contract breached when ESCO considered, but did not disclose, customer retention and attrition as factors when setting variable rates).

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[5] Case No. 12-M-0476, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, New York Public Service Commission (Dec. 12, 2019) at 30.

[6] Case No. 12-M-0476, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, New York Public Service Commission (Dec. 12, 2019) at 43 (citations in footnotes omitted).

[7] Case No. 12-M-0476, Department of Public Service Staff Unredacted Initial Brief (Mar. 30, 2018), at 37.

Recently, U.S. state regulators have begun to make clear that variable rate schemes like Just Energy's are antithetical deregulation's purpose and provide no value to consumers or the market. For instance, the NYPSC recently stated:

> Because customers receive no value when they pay a premium for variable-rate commodity-only service from ESCOs, ESCOs will be prohibited from offering variable-rate, commodity-only service except where the offering includes generated savings. As has been demonstrated in these proceedings in the context of low-income customer protection, it is possible for some ESCOs to serve customers at a guaranteed savings. Saving customers money was a crucial policy goal articulated by the Commission when the retail access market was initially opened. Thus, rather than prohibit variable-rate, commodity-only offerings, such offerings will be permitted only if the ESCO guarantees to serve the customer at a price below the price charged by the utility on an annually reconciled basis.[8]

Similarly, the Connecticut Public Service Commission that "all Variable Plans for residential and business customers be eliminated, citing the recent significant increases to generation rates under these plans in support of its request.[9]

As discussed below, countless courts throughout the country likewise agree that contemporaneous utility rates serve as a proper barometer for business and market conditions and have sustained claims based on the differentials. *See, e.g.*, *Mirkin v. XOOM Energy, LLC*, 931 F.3d 173, 178 n.2 (2d Cir. 2019) (holding that "[b]ecause utility companies like Con Edison participate on the wholesale energy market, their rates are another reflection of the Market Supply Cost."); *see also id.* (sustaining breach of contract claim where the defendant ESCO deviated from the leading public utility); *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 426 (S.D.N.Y. 2020) ("there is a reasonable contract interpretation that 'Market' meant that Defendant's variable rate would be tethered to some degree to supply costs or to competitors' rates . . . upward variation from local utility rates may also demonstrate how Defendant's consumer rates are materially disconnected from their supply costs."); *Oladapo v. Smart One Energy, LLC*, No. 14-7117, 2016 WL 344976, at *4 (S.D.N.Y. Jan. 27, 2016) ("the fact that [the ESCO's] rates consistently rose over time, while those set by [local utility] fluctuated, indicates that [the ESCO] was not setting its rates in response to 'changing gas market conditions'"); *Melville v. Spark Energy, Inc.*, No. 15-8706, 2016 WL 6775635, at *5 (D.N.J. Nov. 15, 2016) ("because [local utility] is a supplier in the energy market; its prices thus serve as at least partial indications of the market rate and are relevant despite the lack of a savings guarantee clause."); *Landau v. Viridian Energy PA LLC*, 223 F. Supp. 3d 401, 410 (E.D. Pa. 2016) (finding breach of contract where rates were higher than the local utility's rates); *Melville v. Spark Energy, Inc.*, No. 15-8706 (RBK/JS), 2016 WL 6775635, at *3 (D.N.J. Nov. 15, 2016) ("Here, the [contract] states

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[8] Case No. 15-M-0127, Order Adopting Changes To The Retail Access Energy Market And Establishing Further Process, New York Public Service Commission (Dec. 12, 2019) at 39-40.

[9] PURA Establishment of Rules for Electric Suppliers and EDCs Concerning Operations and Marketing in the Electric Retail Market, Connecticut Public Regulatory Authority Docket No. 13-07-18 (November 5, 2014).

that the flex-rate plan uses a rate that 'may vary according to market conditions.' Plaintiffs argue that rates charged . . . were not market-based and, in support, list the rates charged by [the ESCO] in comparison to [the utility] during several months from 2013 to 2014. . . . Such evidence supports the allegation that [the ESCO's] prices were untethered to those of the market at large."); *Chen v. Hiko Energy, LLC*, No. 14-1771, 2014 WL 7389011, at *4 (S.D.N.Y. Dec. 29, 2014) ("Given the dramatic differences in pricing between defendant and [the local utility], it is plausible defendant's rates were not, in fact, reflective of the wholesale cost of electricity or gas, market-related factors, and . . . "costs, expenses and margins.").

B. Breach of Contract

To state a breach of contract claim, the classes need only satisfy three elements: "the existence of a contract, including its essential terms; breach of a duty imposed by the contract; and resultant damages." *Jordet*, 505 F. Supp. 3d at 222 (citations omitted). The classes allege that Just Energy breached its contract with class members, which represented that variable rates were priced based on the "business and market conditions," because Just Energy's variable rates bear no semblance to either wholesale prices or competitors' rates.

The classes will use numerous comparators to demonstrate that Just Energy's prices materially differed from metrics that could be reasonable interpretations of the use of the phrase "business and market conditions" in Just Energy's contracts.

First, the classes will use comparisons to class members' local utility rates, which countless courts have held is a proper comparator. In *Mirkin v. XOOM*, the U.S. Court of Appeals for the Second Circuit concluded that the plaintiffs could plausibly state a claim for breach of contract because the defendant ESCO deviated from the leading public utility by "up to" sixty percent. 931 F.3d at 178. The Second Circuit also plainly held that utilities are a reflection of wholesale market costs that can be used to evaluate whether an ESCOs rates are reflective of such costs. *Id.* at 178 n.2 ("Because utility companies like Con Edison participate on the wholesale energy market, their rates are another reflection of the Market Supply Cost."). As one federal judge held in *Chen v. Hiko Energy, LLC*:

> Plaintiffs' contracts provided that defendant would charge variable monthly rate reflecting the wholesale cost of electricity or gas, as well as various "market-related factors, plus all sales and other applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins." (SAC ¶ 15). But the [complaint] alleges the electricity rate defendant charged Chen in February 2014 was nearly triple [the local utility] . . . **Given the dramatic differences in pricing between defendant and [the utility], it is plausible defendant's rates were not, in fact, reflective of the wholesale cost of electricity or gas, market-related factors, and defendant's "costs, expenses and margins."**

No. 14-1771, 2014 WL 7389011, at *4 (S.D.N.Y. Dec. 29, 2014) (emphasis added); *see also Melville*, 2016 WL 6775635, at *5 ("[B]ecause [the local utility] is a supplier in the energy market; its prices thus serve as at least partial indications of the market rate and are relevant despite the lack of a savings guarantee clause."); *Stanley*, 466 F. Supp. 3d at 427 ("'This

incomplete and confusing explanation for calculating variable market-based rates could lead a reasonable consumer to believe that he or she would receive a variable market rate, i.e., once that was competitive with those charged by other ESCOs.'") (quoting *Claridge v. N. Am. Power & Gas, LLC*, No. 15-CV-1261 PKC, 2015 WL 5155934, *4 (S.D.N.Y. Sept. 2, 2015)).

Second, the classes will use wholesale prices and Just Energy's own costs to demonstrate that Just Energy's variable rate was inconsistent and significantly higher than wholesale costs. *See, e.g.*, *Landau*, 223 F. Supp. 3d at 408-09 (E.D. Pa. 2016) (where "[an ESCO's] rates increased or stayed the same even when the average wholesale market price for the region decreased[,]" breach of contract claim may proceed to trial); *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d at 426 (S.D.N.Y. 2020) ("[T]here is a reasonable contract interpretation that 'Market' meant that Defendant's variable rate would be tethered to some degree to supply costs or to competitors' rates . . . upward variation from local utility rates may also demonstrate how Defendant's consumer rates are materially disconnected from their supply costs."); *Mirkin*, 2016 WL 3661106, at *8 (breach of contract when contract provided that variable rates will be "based on wholesale market conditions" and variable rate failed to track wholesale market rates) (citing *Sanborn v. Viridian Energy, Inc.*, No. 14-1731 (D. Conn.), and *Steketee v. Viridian Energy, Inc.*, No. 15-585 (D. Conn.)); *Edwards v. N. Am. Power & Gas, LLC*, 120 F. Supp. 3d 132, 42-43 (D. Conn. 2015) (sustaining contract claim where contract promised "[t]he variable rate may increase or decrease to reflect the changes in the wholesale power market" and the plaintiff alleged that "the rates [the ESCO] charged were significantly higher than the wholesale market rate and did not always increase or decrease when the wholesale market rates did."). Notably, Just Energy does not take issue with this comparator in its Notice of Disallowance, despite Claimant Jordet's use of wholesale natural gas prices as a comparator in his complaint.

Third, the classes will use comparisons to Just Energy's contemporaneous fixed rates and other ESCOs' contemporaneous rates "to support her allegation that Defendant's variable rates are untethered to wholesale market supply costs" and to show "that Defendant charges higher variable rates than other ESCOs." *Stanley*, 466 F. Supp. 3d at 427. Just Energy likewise does not take issue with Claimant Jordet's use of Just Energy's fixed rates and other ESCOs' rates as comparators; rather, it specifically demands the latter.

Just Energy's claim that its contracts do not guarantee savings is similarly of no moment. Indeed, the same argument has been quickly dispatched by numerous courts.

> Agway's agreement represents that the variable monthly rate "shall each month reflect the cost of electricity acquired by Agway from all sources . . . related transmission and distribution charges and other market-related factors, plus all applicable taxes, fees, charges or other assessments and Agway's costs, expenses and margins." **Defendant argues that it has not been misleading because it never represented that savings were guaranteed. But this is inapposite to whether Defendant in fact charged rates to Plaintiff and putative class members that were based only upon those factors explicitly enumerated in the contract, as required by the contract.** . . . Plaintiff has plausibly alleged that Agway's rates were "not in fact competitive market rates based on the wholesale cost of electricity" or the factors set forth in the agreement.

Gonzales v. Agway Energy Servs., LLC, No. 18-235, 2018 WL 5118509, at *4 (N.D.N.Y. Oct. 22, 2018) (emphasis added).

No factfinder will interpret "business and market conditions" to mean that Just Energy can price gouge—so much so that the rates bear no resemblance to wholesale costs and competitors' rates.

C. Implied Covenant of Good Faith and Fair Dealing

"An implied covenant of good faith and fair dealing is contained in all contracts . . ., and breach of that duty is subsumed in the breach of contract claim." *Jordet*, 505 F. Supp. 3d at 222; *cf. Stanley*, 466 F. Supp. 3d at 428 (all contracts contain an implied covenant of good faith and fair dealing) (citing *Arcadia Bioscis., Inc. v. Vilmorin & Cie*, 356 F. Supp. 3d 379, 399 (S.D.N.Y. 2019)). "The implied covenant is "breached when a party acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement.'" *Stanley*, 466 F. Supp. 3d at 428 (quoting *Skillgames, LLC v. Brody*, 767 N.Y.S.2d 418, 423 (2003); citing *Moran v. Erk*, 11 N.Y.3d 452 (2008) ("The implied covenant . . . embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.")). "'In order to find a breach of the implied covenant, a party's action must directly violate an obligation that may be presumed to have been intended by the parties.'" *Id.* at 428-29 (quoting *Gaia House Mezz LLC v. State Street Bank & Tr. Co.*, 720 F.3d 84, 93 (2d Cir. 2013)).

Just Energy "'violated the covenant by exercising [any price-setting] discretion [it may have had] in bad faith and in a manner inconsistent with [Claimant's] reasonable expectations.'" *Stanley*, 466 F. Supp. 3d at 429 (quoting *Claridge*, 2015 WL 5155934, at *6; citing *Hamlen*, 2017 WL 892399, at *5 (noting that the plaintiff had sufficiently "alleged [that the] defendant acted in bad faith by exercising its discretion to charge unreasonable rates to profiteer off its customers, who reasonably expected to pay [the] defendant competitive prices for natural gas" and that "the implied covenant of good faith and fair dealing requires [the] defendant to seek a profit that is commercially reasonable")).

As explained above, the classes will be able to prove that Just Energy's variable rate profit margins are so unreasonable as to be set in bad faith. The classes will demonstrate Just Energy's bad faith by, *inter alia*, showing the stark disparity with Just Energy's fixed rate (which represents an actual market-based rate) profit margins and variable rate profit margins.

IV. <u>Just Energy's Criticisms of Claimant's Expert Report are Easily Dispatched</u>

Offering no facts and little substantive argument, Just Energy contends that Claimants' damages estimates, based on the report of their expert of Serhan Ogur, Ph.D (the "Ogur Report"), are speculative and inflated. Claimants, who have not yet completed discovery in the underlying actions, made clear that their damages estimations were just that, estimations based on the information to which they currently have access. Accordingly, Claimants have been aggressively pushing for disclosures by Just Energy so that the parties and the factfinder can have a clear and accurate understanding of the number of aggrieved U.S. consumers and the

scope of their damages. These are simple facts based on data which Just Energy could easily disclose to resolve most, if not all, of its concerns regarding the scope and size of the classes. Claimants are confident that either this Court or the persons assigned to adjudicate Claimants' claims will require the disclosure of such information.

Critically, Just Energy's attacks on the Ogur Report at best represent a diminution of the size and scope of the classes and their damages; these criticisms of the Ogur Report do not justify complete claim denial. It is unclear why the Monitor would support total claim denial based on Just Energy's claim that the U.S. classes are owed less than the Claimants' expert estimated.

Indeed, none of the criticisms raised by Just Energy justifies denial of the Claimants' claims.

First, Just Energy complains that the Ogur Report addresses both electric and natural gas customers. Mr. Jordet (who represents natural gas consumers) filed a joint Claim with Ms. Donin and Ms. Golovan (who represent both electricity and natural gas customers) and the ten other consumers represented by Ms. Donin's and Ms. Golovan's counsel. All Claimants relied on the Ogur Report, which explicitly and in great detail addresses both natural gas *and* electric customer damages. Neither Just Energy nor the Monitor explain why a combined claim or combined report justifies denial of all Claimants' entire claims.

Second, Just Energy argues that the Ogur Report erred by using utility rates as a baseline for the rates Just Energy should have charged under the terms of its customer contract. As discussed above, this critique has no merit—after all utility rates are called the "price to compare" by utilities and regulators precisely because those rates represent the proper benchmark for customer comparisons. This attack on the Ogur Report is also a red herring, as the report's "overcharge theory is based on the difference between the electricity and natural gas rates the affected class were charged versus what they would have been charged if Just Energy's rates were based on business and market conditions." Ogur Report at 10. During the adjudication process, Claimants will not only rely on utility rates as a price to compare, but they will also show, among other measures, that Just Energy's margins are excessive based on Just Energy's actual costs and the margins it charges customers on fixed rate contracts (which carry the same if not higher costs to Just Energy as compared to its variable rate customers). Notably, the *Jordet* complaint compared Just Energy's rates to both the applicable utility rate **and** also to the applicable wholesale market rates.

Third, Just Energy complains that the Ogur Report includes commercial customers, and it asserts without support that commercial contracts are different than residential contracts. Notably, neither the *Jordet* nor the *Donin* Actions is limited to residential customers, and the *Jordet* contract by its own terms applies to both "Home" and "Business" customers. The same is true for the Donin and Golovan contracts. Again, this is a problem of Just Energy's own making. Producing the applicable contracts will allow the parties and the factfinder to easily determine precisely which customers are subject to which pricing terms.

Fourth, Just Energy wrongly contend that only Just Energy Solutions, Inc. customers can be included in the natural gas portion of the customer class because that is the only entity named in the *Jordet* Action. Even if true, this contention at best would marginally limit the portion of the

class who purchased natural gas because Just Energy Solutions, Inc. is the Just Energy entity that sells all or most of the natural gas the Just Energy Entities sell in the U.S. Likewise, Just Energy is wrong to claim that the electricity portion of the customer class should be limited to customers of Just Energy New York and Just Energy Group, Inc. But a very large portion of the electricity customer class resides in New York, and Just Energy Group, Inc. owns all of the other Just Energy entities that sell electricity in the U.S. Notably, Just Energy Group, Inc. tried and failed to win its dismissal from the *Donin* Action.

Fifth, Just Energy posits without factual support that Dr. Ogur's assumed percentage of variable versus fixed rate customers is not accurate. This is another simple fact that Just Energy will be required to disclose as a part of the adjudication process. Just Energy also claims that a smaller percentage of customers enroll directly into variable rate contracts as opposed customers initially on fixed rate contracts who roll over to variable rates after the fixed rate expires. This is a curious contention given that both the *Jordet* and *Donin* Actions explicitly plead that they had fixed rate contracts that rolled over to variable rates. To the extent there are customers that were on variable rate contracts from the outset, pre-adjudication discovery will reveal that the operative contract language is the same.

Sixth, Just Energy complains (without support or specification) that the Ogur Report covers periods outside the statute of limitations. This is a straightforward issue that will be resolved in the adjudication process.

Seventh, Just Energy contends that the rate of damages after 2018 was less than before 2018. But this argument relies on the faulty notion, discussed above, that only straight variable rate contracts, as opposed to fixed-to-variable rate rollover contracts, are part of the classes. Again, the number of class members and their respective damages usage will be easily determined when Just Energy produces the requested data in pre-adjudication discovery.

Eighth, Just Energy complains that extrapolating damages from those suffered by the named plaintiffs in the *Jordet* and *Donin* Actions is inappropriate because the sample size is too small. But as noted in the Ogur Report, final damages calculations will be based on forthcoming pre-adjudication discovery. Relatedly, Just Energy contends that the difference between their rates and Pennsylvania and New York utility rates may not be the same as in other states. Again, this is an issue easily resolved with pre-adjudication discovery.

Finally, Just Energy quips that Claimants' prejudgment interest calculations were flawed because New York's rate is higher than those of other states. This is largely a math issue to be resolved after pre-adjudication discovery.

None of the arguments proffered in response to the estimations made in the Ogur Report justify wholesale denial of the Claimants' claim, and all concerns raised by Just Energy will all be addressed after pre-adjudication discovery and in the adjudication process.

V. The Classes will be Certified

The Notice of Disallowance curiously posits that class certification presents a "substantial hurdle." Yet the five courts that have addressed a contested motion to certify a class of ESCO customers overcharged under the terms of their customer agreements easily granted the motions. *Bell v. Gateway Energy Services Corp.*, No. 31168/2018 (Rockland Cnty. Super. Ct. Jan. 8, 2021), NYSCEF Doc. No. 152; *Claridge v. N. Am. Power & Gas, LLC*, No. 15-1261, 2016 WL 7009062 (S.D.N.Y. Nov. 30, 2016) (plaintiff was represented by the undersigned); *Roberts v. Verde Energy, USA, Inc.*, No. X07HHDCV156060160S, 2017 WL 6601993 (Conn. Super. Ct. Dec. 6, 2017), *aff'd*, 2019 WL 1276501 (Conn. Super. Ct. Feb. 1, 2019); and *BLT Steak LLC v. Liberty Power Corp, L.L.C.*, No. 151293/2013 (N.Y. Cnty., Super. Ct Aug. 14, 2020), NYSCEF Doc. No. 376 (plaintiff was represented by the undersigned); *Martinez v. Agway Energy Services, LLC*, No. 18-00235, 2022 WL 306437 (N.D.N.Y. Feb. 2, 2022) (plaintiff represented by the undersigned). Claimant is confident that the factfinder here will follow suit.

There are few cases better suited for class certification. The classes' claims arise out of uniform misrepresentations regarding the pricing methodology for Just Energy's variable rate made in its standard customer contract. Just Energy provides its prospective natural gas customers with its standard contract prior to each contract's initiation. If the customer accepts the agreement, the it becomes the operative contract. Additionally, not only are contractual commitments concerning Just Energy's variable rate uniform, but the resultant injury to the classes is also uniform because when Just Energy sets its variable rates, it uses the same rate for all customers within each utility region, regardless of which version of the contract governs its relationship with each variable rate customer. For these and the other reasons described below, the prerequisites to class certification will be easily met.[10]

A. The Proposed Class Satisfies the Rule 23(a) Factors.

Rule 23(a) requires that a plaintiff seeking class certification demonstrate that the proposed class satisfies the following four factors:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); *accord Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011).

i. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." "[N]umerosity is presumed where a putative class has forty or more members." *Shahriar v. Smith & Wollensky Rest. Grp.*, 659 F.3d 234, 252 (2d Cir. 2011). Just Energy had millions of customers on variable rates during the relevant period. There is numerosity here.

[10] Claimant's analysis herein demonstrates compliance with the most exacting class certification standards, Rule 23 of the U.S. Federal Rules of Civil Procedure (the "Rules").

ii. Commonality

Rule 23(a)(2) requires a showing of "questions of law or fact common to the class." "Commonality is satisfied where a single issue of law or fact is common to the class." *In re Scotts EZ Seed Litig.*, 304 F.R.D. at 405 (quoting *In re IndyMac Mort.-Backed Sec. Litig.*, 286 F.R.D. 226, 233 (S.D.N.Y. 2012)). "[E]ven a single common question will do." *Dukes*, 564 U.S. at 346 (citation, internal quotation marks, and brackets omitted).

Here, the class' claims largely turn on whether or not Just Energy set its rate based on "business and market conditions," as required in the customer contract. Because all class members were made the same promise, answering this common question will dominate this action. As one federal judge has held in certifying virtually identical claims, "[t]he claims of the proposed class turn on the 'common contention' that [Defendant] misleadingly described its method for calculating variable monthly rates, a claim that 'is capable of classwide resolution . . .' Plaintiff[] ha[s] therefore shown common questions of law and fact under Rule 23(a)(2)." *Claridge*, 2016 WL 7009062, at *4 (citing *Dukes*, 564 U.S. at 350).[11] And in any event, "[c]ommonality is not defeated because consumers interpreted arguably vague and misleading language in different ways." *Claridge*, 2016 WL 7009062, at *3.

iii. Typicality

Rule 23(a)(3) requires "the claims of the class representatives be typical of those of the class, and is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *In re Scotts EZ Seed Litig.*, 304 F.R.D. at 405 (quoting *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 155 (2d Cir. 2001)). "'Minor variations in the fact patterns underlying the individual claims do not preclude a finding of typicality' . . . [rather, the Rule] requires 'only that the disputed issues of law or fact occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class." *In re Scotts*, 304 F.R.D. at 405-06).

Here, the classes' claims arise from the same core events, and each class member would make the same legal arguments to prove Just Energy's liability. The classes were commonly bound by a sales agreement distributed to all Just Energy customers. Each contract contains the same or

[11] Just Energy half-heartedly argues that individual damages claims arising out of Just Energy's various tangential products and services will predominate over common issues. However, it is well-established that differences in individual damages do not preclude class certification. *See, e,g.*, *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 671 (7th Cir. 2015) ("It has long been recognized that the need for individual damages determinations at this later stage of the litigation does not itself justify the denial of certification.") (collecting cases). Moreover, the classes are limited to variable rate customers and do not include other products or services. To the extent that Just Energy is referring to non-energy-related value-added services, as the NYPSC explained at length, such products have no value and do not justify charging rates more than the default service providers. Thus, the classes can use a common set of proof to show each class member's damages, namely, Just Energy's records showing the rates charged, costs incurred, and margin realized combined with publicly available wholesale cost data and utility rates.

similar terms. Thus, all class members would proffer the same evidence and arguments in pursuing their claims against Just Energy.

iv. <u>Adequacy Of Representation</u>

Rule 23(a)(4) requires that requires a showing that "the representative parties will fairly and adequately protect the interests of the class." "Adequacy is satisfied unless plaintiff's interests are antagonistic to the interest of other members of the class." *Claridge*, 2016 WL 7009062, at *5 (quoting *Sykes v. Mel S. Harris & Associates LLC*, 780 F.3d 70, 90 (2d Cir. 2015)).

Claimant will fairly and adequately protect the interests of the classes. Since the actions' respective inceptions, Claimants have actively assisted in the cases' prosecution and nothing in the record suggests [their] interests are antagonistic to those of other class members." *In re Scotts EZ Seed Litig.*, 304 F.R.D. at 406-07.

Likewise, Claimants' counsel is qualified and experienced in prosecuting complex class actions nationwide, in both state and federal courts, including customer protection class actions against ESCOs. Indeed, no law firms in the U.S. have more experience successfully prosecuting class actions against ESCOs who overcharge their customers.

B. The Proposed Class Satisfies the Rule 23(b)(2) Factors

Pursuant to Rule 23(b)(2), "[a] class action may be maintained if Rule 23(a) is satisfied and if . . . the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]" Just Energy has acted on grounds that apply generally to the Class, namely by representing that its variable rates are market-based, when Just Energy's rates are in fact untethered from market conditions. Thus, final injunctive and declaratory relief is appropriate with respect to the classes.

C. The Proposed Class Satisfies the Rule 23(b)(3) Factors

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

i. <u>Predominance</u>

> A court must "bear[] firmly in mind that the focus of Rule 23(b)(3) is on the predominance of common questions . . ." *Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194 (2013). It "does not require a plaintiff seeking class certification to prove that each element of her claim is susceptible to classwide proof," but instead to prove that "common questions predominate over any questions affecting only individual class members." *Id.* at 1196 (emphasis in original; alterations and quotation marks omitted); *accord Sykes v. Mel S. Harris & Associates LLC*, 780 F.3d 70, 87 (2d Cir. 2015) ("The mere existence of individual

> issues will not be sufficient to defeat certification. Rather, the balance must tip such that these individual issues predominate.").

Claridge, 2016 WL 7009062, at *2 (certifying class of ESCO customers).

"Predominance is satisfied if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Id.* at *5 (quoting *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015)).

a. The Nationwide Classes Will be Certified

Just Energy contends—without any support—that Claimant does not have standing to represent all of Just Energy natural gas customers on a variable rate across the U.S. Specifically, Just Energy asserts that "[s]tate specific regulations could present unique claims and defenses to the extent the Claimant's alleged class extended to Just Energy customers outside of Pennsylvania." However, Just Energy ignores the well-settled doctrine that class action plaintiffs have class standing to allege sufficiently similar injuries suffered by all potential class members. *See, e.g.*, *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 438 (S.D.N.Y. 2020). As Judge Karas aptly explained, Just Energy's use of materially similar representations and pricing policies is sufficient to confer Claimant's standing on behalf of the Class:

> However, Plaintiff has alleged that Defendant sent "uniform notices" to their legacy customers from NYSEG Solutions and/or Energetix that promised competitive, market-based variable rates. (Am. Compl. ¶ 2.) And Plaintiff has further alleged that Defendant engages in a uniform policy of price gouging all of its customers. (*Id.* ¶¶ 2, 24, 68.) The Second Circuit has explicitly instructed that "non-identical injuries of *the same general character* can support standing" for a class action. *Langan*, 897 F.3d at 94 (emphasis added) (citation omitted). And "courts in th[e Second C]ircuit have construed the payment of a premium price to be an injury in and of itself[, and] . . . where plaintiffs allege that customers paid a premium price based on a misrepresentation, those customers can have standing under Article III." *Guariglia v. Procter & Gamble Co.*, No. 15-CV-4307, 2018 WL 1335356, at *12 (E.D.N.Y. Mar. 14, 2018) (citations and quotation marks omitted). Under analogous circumstances, the Second Circuit determined that standing existed for a plaintiff who sought to represent a variety of certificate holders in connection to certain mortgage investments, despite the fact that other certificate holders were "outside the specific tranche from which the named plaintiff purchased certificates" and were subject to "different payment priorities." *Langan*, 897 F.3d at 94 (referring to *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012)). Similarly, here, it may be true that Energetix customers and NYSEG Solutions customers had different contracts before Defendant bought them. It may also be true that customers outside New York received slightly different terms or offers than those that Plaintiff received. But the fact that the "ultimate damages [for each member of the class may] . . . vary . . . is

> not sufficient to defeat class certification under Rule 23(a), let alone class standing." *NECA*, 693 F.3d at 164-65 (citation and quotation marks omitted).

Stanley, 466 F. Supp. 3d at 438-39.

Just Energy's Notice of Disallowance admits that it uses uniform customer contracts with the same pricing provisions, arguing that "the applicable contract contains multiple provisions that put customers (including the Claimant) on clear notice of the variable rates that Just Energy Solutions would set and to which customers (including Claimant) will be subject[.]"

"[W]hether a plaintiff can bring a class action under the state laws of multiple states is a question of predominance under Rule 23(b)(3), not a question of standing[.]" *Rolland v. Spark Energy, LLC*, No. 17-2680, 2019 WL 1903990, at *5 n.6 (D.N.J. Apr. 29, 2019) ("find[ing] Defendant's standing argument unpersuasive") (quoting *Langan v. Johnson & Johnson Consumer Cos.*, 897 F.3d 88, 96 (2d Cir. 2018)). *See also Mussat v. IQVIA, Inc.*, 953 F.3d 441, 448 (7th Cir. 2020) ("[A]bsentees [in a class action] are more like nonparties, and thus there is no need to locate each and every one of them and conduct a separate personal-jurisdiction analysis of their claims."); *In re Thalomid and Revlimid Antitrust Litig.*, No. 14-6997, 2015 WL 9589217, at *18-*19 (D.N.J. Oct. 29, 2015) (denying motion to dismiss multi-state class allegations on standing grounds); *Ramirez v. STI Prepaid LLC*, 644 F. Supp. 2d 496, 504-05 (D.N.J. Mar. 18, 2009) ("Defendants' argument appears to conflate the issue of whether the named Plaintiffs have standing to bring their individual claims with the secondary issue of whether they can meet the requirements to certify a class under Rule 23"); *In re Asacol Antitrust Litig*., No. 18-1065, 2018 WL 4958856, at *4 (1st Cir. Oct. 15, 2018) ("Requiring that the claims of the class representative be in all respects identical to those of each class member in order to establish standing would 'confuse[ ] the requirements of Article III and Rule 23.'") (internal citations omitted).

Multistate breach of contract and breach of the covenant of good faith and fair dealing classes are routinely found to satisfy the predominance factor because such common law claims are generally uniform across the U.S. *See, e.g., In re U.S. Foodservice Inc. Pricing Litig*., 729 F.3d at 127 (no predominance issue for nationwide class asserting claims for breach of contract under the laws of multiple states); *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1122-23 (9th Cir. 2017) (affirming certification of nationwide breach of contract class); *Boyko v. Am. Intern. Group, Inc.*, No. 08-2214, 2012 WL 1495372, at *9 (D.N.J. Apr. 26, 2012), *separate portion vacated in part on reconsideration*, 2012 WL 2132390 (D.N.J. June 12, 2012) ("The Court agrees with Plaintiff that the legal elements of a breach of contract claim are substantially similar in all fifty states, such that certification of the AIG Class as to the breach of contract claim is proper."); *see also Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 233 n.8 (1995) ("contract law is not at its core 'diverse, nonuniform, and confusing'") (citation omitted); *Flanagan v. Allstate Ins. Co.*, 242 F.R.D. 421, 431 (N.D. Ill. 2007) (finding that numerous states' breach of contract laws are sufficiently similar for class certification purposes).

This reflects "the obvious truth that class actions necessarily involve plaintiffs litigating injuries that they themselves would not have standing to litigate," *Langan*, 897 F.3d at 95, and that "[n]amed plaintiffs in a putative consumer protection class action may assert claims under laws of states where they do not reside to preserve those claims in anticipation of eventually being

joined by class members who do not reside in the states for which claims have been asserted." *Pisarri v. Town Sports Int'l, LLC*, No. 18-1737, 2019 WL 1245485, at *3 (S.D.N.Y. Mar. 4, 2019) (quotation and citation omitted). Indeed, the Second Circuit has expressly held that "any concern about whether it is proper for a class to include out-of-state, nonparty class members with claims subject to different state laws is a question of predominance under Rule 23(b)(3) not a question of adjudicatory competence under Article III." *Langan*, 897 F.3d at 93 (quotation marks omitted). Thus, where a plaintiff's own claims survive dismissal, *Langan* teaches that counts alleging violations of other jurisdictions' laws are to be addressed at class certification.

The same is true for class members that purchased energy from one of Just Energy's many affiliates. That consumers purchased from an affiliate is not a barrier to Claimant bringing claims on these consumers' behalf because "courts in this Circuit have held that, subject to further inquiry at the class certification stage, a named plaintiff has standing to bring class action claims . . . for products that he did not purchase, so long as those products . . . are 'sufficiently similar' to the products that the named plaintiff *did* purchase." *Mosely v. Vitalize Labs, LLC*, No. 13-2470, 2015 WL 5022635, at *7 (E.D.N.Y. Aug. 24, 2015) (emphasis in original). This is because a class action plaintiff may sue for non-purchased products if he or she (1) suffered injury, and (2) the injurious conduct implicates the same set of concerns as the conduct alleged to have caused injury to other members of the proposed class. *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145, 162 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 1624 (2013); *see also In re Frito-Lay N. Am., Inc. All Natural Litig.*, No. 12-2413, 2013 WL 4647512, at *12 (E.D.N.Y. Aug. 29, 2013) (same) ("*NECA-IBEW* [] instructs that, because plaintiffs have satisfied the Article III standing inquiry, their ability to represent putative class members who purchased products plaintiffs have not themselves purchased is a question for a class certification motion."); *Wai Chu v. Samsung Elecs. Am., Inc.*, No. 18-11742, 2020 WL 1330662, at *4 (S.D.N.Y. Mar. 23, 2020) (*NECA-IBEW's* "same set of concerns" requirement satisfied for thirty-two devices, even though plaintiff only purchased three).

b. The Breach of Contract Claim Will be Certified

The classes' breach of contract claims present straightforward common questions that will be answered through common proof, precluding the predominance of individual issues. "Contract claims satisfy Rule 23(b)(3) when the claims of the proposed class 'focus predominantly on common evidence[.]'" *Claridge*, 2016 WL 7009062, at *6 (quoting *In re U.S. Foodservice Inc.*, 729 F.3d at 125). "[C]laims arising from interpretations of a form contract appear to present the classic case for treatment as a class action, and breach of contract cases are routinely certified as such." *In re Scotts EZ Seed Litig.,* 304 F.R.D. at 411; *accord Gillis v. Respond Power, LLC*, 677 F. App'x 752, 756 (3d Cir. 2017) ("Because form contracts should be interpreted uniformly as to all signatories, Pennsylvania and federal courts have recognized that claims involving the interpretation of standard form contracts are particularly well-suited for class treatment.") (vacating district court's denial of class certification and remanding). Additionally, "[t]he Second Circuit has affirmed certification of a contract claim when minor variations existed in the language of the disputed contracts because the underlying claim was directed to a 'substantially similar' terms." *Claridge*, 2016 WL 7009062, at *6 (quoting *In re U.S. Foodservice Inc.*, 729 F.3d at 124; *accord In re Scotts EZ Seed Litig.,* 304 F.R.D. at 411 (certifying contract class where, "[a]lthough plaintiffs do not allege defendants breached a 'form contract,' the

representations defendants made to each plaintiff were uniform.") (quoting *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 74 (E.D.N.Y. 2004)); *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003), *aff'd sub nom. Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005) (affirming certification of breach of contract class where the defendant failed to price natural gas in accordance with its uniform contractual obligations).

Moreover, proof of Claimant's claim will be common to all class members, as it will rely on Just Energy's admittedly standard contracts, as well as publicly available data, witness testimony, and business records which will demonstrate that that Just Energy did not set its variable rate in accordance with the market, as required in its customer contract.

c. The Good Faith and Fair Dealing Claim Will be Certified

The good faith and fair dealing claim is likewise well-suited for class treatment. "The implied covenant is "breached when a party acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement.'" *Stanley*, 466 F. Supp. 3d at 428.

Whether Just Energy acted in bad faith is common to all class members and will be evaluated with common evidence. *See In re U.S. Foodservice Inc.*, 729 F.3d at 125 (common evidence used to determine whether business practice "departs from prevailing commercial standards of fair dealing so as to constitute a breach"). As with the classes' breach of contract claim, Claimant will demonstrate that standard contracts gave rise to his and the classes' reasonable expectations concerning the variable rate, and will prove Just Energy's failure to provide a competitive, market-based rate and its bad faith profiteering through common evidence.

ii. Superiority

There are several reasons why a class action is superior to other available adjudicatory methods. First, a class action will permit an orderly and expeditious administration of class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions. *See* Fed. R. Civ. P. 23(b)(3) advisory committee's note. Just Energy has acted on grounds generally applicable to the classes. By prosecuting this action as a class, once Just Energy's liability has been adjudicated, the factfinder will be able to determine the claims of all class members.

Individualized actions, on the other hand, "would simply entail repeated adjudications of identical [contract] provisions." *Claridge*, 2016 WL 7009062, at *6; *cf. Roberts*, 2017 WL 6601993, at *2 ("Piecemeal litigation would be less workable. Given that much of the case depends on the central common legal issues surrounding the contract class members would have little interest in separately controlling the litigation . . ."). Additionally, prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members that could establish incompatible standards of conduct for Just Energy.

Second, the individual damages suffered are small relative to the expense and burden of individual litigation, such that class members are unlikely to prosecute individual actions. *See Roberts*, 2017 WL 6601993, at *2 ("Consumer contracts affecting thousands of people but not

necessarily yielding thousands of dollars to each class member are well suited for class certification. Without the class action method most claims like this wouldn't be brought, including claims with great social utility."). Finally, this lawsuit presents no difficulties that would impede its management as a class action. *See* Fed. R. Civ. P. 23(b)(3)(D).

VI. The Increasing Regulatory Denunciation of Just Energy's Pricing Practices Further Demonstrates that Claimant's Class Action Claims are Strong

Almost all of the states in the U.S. that deregulated their energy markets did so in the mid-to-late 1990s. This wave of deregulation was pushed by then-corporate superstar Enron. For example, in December 1996 when energy deregulation was being considered in Connecticut, Enron CEO Jeffrey Skilling, dubbed "[t]he most aggressive proponent" of deregulation, said:

> Every day we delay [deregulation], we're costing consumers a lot of money . . . . It can be done quickly. The key is to get the legislation done fast.[12]

Operating under this concocted sense of urgency, the U.S. states that deregulated suffered serious consumer harm. For example, in 2001, forty-two states had begun or were considering deregulation. Today, the number of full or partially deregulated U.S. states has dwindled to only seventeen and the District of Columbia. Even within those states, several recognized the harm to everyday consumers and thus only allow large-scale consumers to purchase from ESCOs.

Responding to ESCOs' price gouging, many key deregulation supporters now regret their role. For example, reflecting on Maryland's experience, a Maryland Senator lamented that "[d]eregulation has failed. We are not going to give up on re-regulation till it is done."[13]

A Connecticut leader who joined in that state's foray into deregulation was similarly remorseful:

> Probably six out of the 187 legislators understood it at the time, because it is so incredibly complex . . . . If somebody says, no, we didn't screw up, then I don't know what world we are living in. We did.[14]

State regulators have, ***for years***, also denounced predatory pricing practices like those challenged in the class actions. For example, in 2014 the NYPSC declared that New York's retail energy markets were plagued with "marketing behavior that creates and too often relies on customer

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[12] Keating, Christopher, "Eight Years Later . . . 'Deregulation Failed,'" *Hartford Courant*, Jan. 21, 2007.

[13] Hill, David, "State Legislators Say Utility Deregulation Has Failed in its Goals," *The Washington Times*, May 4, 2011.

[14] Keating, *supra*.

confusion."[15] The NYPSC further noted "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."[16] The NYPSC concluded as follows:

> [A]s currently structured, the retail energy commodity markets for residential and small nonresidential customers cannot be considered to be workably competitive. Although there are a large number of suppliers and buyers, and suppliers can readily enter and exit the market, the general absence of information on market conditions, particularly the price charged by competitors, is an impediment to effective competition . . . .[17]

The conduct of ESCOs like Just Energy has been devastating to consumers across the U.S. For example, "[a]ccording to the data provided by [New York's] utilities, the approximately two million New York State residential utility customers who took commodity service from an ESCO collectively paid almost $1.2 billion more than they would have paid if they purchased commodity from their distribution utility during the 36-months ending December 31, 2016."[18] "Additionally, small commercial customers paid $136 million more than they would have paid if they instead simply remained with their default utilities for commodity supply for the same 36-month period."[19] Combining these two groups, New York consumers have been "'overcharged' by over $1.3 billion dollars over this time period."[20]

Based on the flood of consumer complaints, negative media reports, and data demonstrating massive overcharges, the NYPSC announced in December 2016 an evidentiary hearing to consider primarily whether ESCOs should be "completely prohibited from serving their current products" to New York residential consumers.[21] Then, on December 16, 2016, the NYPSC permanently prohibited ESCOs from serving low-income customers, because of "the persistent ESCO failure to address (or even apparently to acknowledge) the problem of overcharges to [low income] customers . . . ."[22]

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[15] CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 4 (Feb. 25, 2014).

[16] *Id*. at 11.

[17] *Id*. at 10.

[18] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 2 (Mar. 30, 2018).

[19] *Id.* at 3.

[20] *Id.*

[21] CASE 12-M-0476, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, at 3 (December 2, 2016).

[22] CASE 12-M-0476, Order Adopting a Prohibition On Service To Low-Income Customers By Energy Services Companies, at 3 (Dec. 16, 2016).

Following the first part of the evidentiary hearing announced in December 2016, on March 30, 2018, NYPSC staff announced the following conclusions about ESCOs:

> [A]s the current retail access mass markets are structured, customers simply cannot make fully informed and fact-based choices on price . . . since the terms and pricing of the ESCO product offerings are not transparent to customers. For variable rate products this is due, in large part, to the fact that ESCOs often offer "teaser rates" to start, and after expiration of the teaser rate, the rate is changed to what is called a "market rate" that is not transparent to the customer, and the contract signed by the customer does not provide information on how that "market rate" is calculated.[23]
>
> * * *
>
> ESCOs take advantage of the mass market customers' lack of knowledge and understanding of, among other issues, the electric and gas commodity markets, commodity pricing, and contract terms (which often extend to three full pages), and in particular, the ESCOs' use of teaser rates and "market based rate" mechanisms that customers are charged after the teaser rate expires. In fact, ESCOs appear to be unwilling to provide the necessary product pricing details as to how those "market based rates" are derived to mass market customers in a manner that is transparent so as to enable an open and competitive marketplace where customers can participate fairly and with the necessary knowledge to make rational and fully informed decisions on whether it is in their best interest to take commodity service from their default utility, or from a particular ESCO among competing but equally opaque choices.[24]

In response to these criticisms, the ESCOs claimed as Just Energy does here that their marketing and overhead costs explain the overcharges, but NYPSC staff found that these costs do "**<u>not justify the significant overcharges</u>**."[25] Likewise, when the ESCOs claimed as Just Energy does here that their provision to consumers of so-called value-added products such as light bulbs and thermostats contributed to their excessive rates, NYPSC staff found that "**<u>these sorts of value-added products is at best de minimis and does not explain away the significantly higher commodity costs charged by so many ESCOs</u>**."[26]

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[23] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 41–42 (Mar. 30, 2018).

[24] *Id.* at 86 (citations omitted).

[25] *Id.* at 37.
[26] *Id.* at 87.

Instead, NYPSC staff reached the following conclusion:

> The massive $1.3 billion in overcharges is the result of higher, and more often than not, significantly higher, commodity costs imposed by the ESCOs on unsuspecting residential and other mass market customers. These overcharges are simply due to (1) the lack of transparency and greed in the market, which prevents customers from making rational economic choices based on facts rather than the promises of the ESCO representative, and (2) obvious efforts by the ESCOs to prevent, or at least limit, the transparency of the market. These obvious efforts include the lack of a definition for "market rate" in their contracts, resulting in the fattening of ESCOs' retained earnings.[27]

Following these conclusions, in December 2019 the NYPSC **banned** the exact same variable rate pricing practices that the class actions challenge.

The NYPSC's press release announcing the ban on variable energy rates does not mince words, stressing that it was intended to "prevent[] bad actors among ESCOs from overcharging New York consumers" and that the regulations only went forward after "the state's highest court definitively halted ESCOs' attempts to use litigation to evade and/or delay consumer-protection regulation."[28] The regulations themselves likewise condemn ESCOs' conduct and declare that "avoiding accountability" has become a "business model" in the deregulated energy market:

> Based upon the number of customer complaints that continue to be made against ESCOs, and the likely need for increased enforcement activities, the large number of ESCO customers that pay significant premiums for products with little or no apparent added benefit, . . . it appears that a material level of misleading marketing practices continues to plague the retail access market.
>
> * * *
>
> The persistence of complaints related to ESCO marketing practices is indicative of some ESCOs continuing to skirt rules and attempting to avoid accountability as part of their business model.[29]

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[27] *Id.*

[28] Press Release, "PSC Enacts Significant Reforms to the Retail Energy Market," December 12, 2019, *available at*: http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/Web/51A7902329FEA7B7852584CE005CF88D/$File/pr19110.pdf?OpenElement.

[29] December 12, 2019 Order at 88–90.

The NYPSC's variable rate ban followed a two-year investigation of ESCO practices that culminated in a 10-day evidentiary hearing to examine evidence submitted by 19 parties and to hear the testimony and cross-examination of 22 witnesses and witness panels.[30]

The NYPSC prefaced the ban with the observation that variable energy rates—like those Just Energy charged its U.S. customers—are "[t]he most commonly offered ESCO product" and that this popular product is frequently provided at "a higher price than charged by the utilities."[31]

The absurdity of consumers paying ESCOs more for the exact same energy offered by regulated utilities was not lost on the NYPSC:

> If market participants are unwilling, or unable, to provide material benefits to consumers beyond those provided by utilities in exchange for a regulated, just and reasonable rate, the market serves no proper purpose and should be ended.[32]

In fact, the NYPSC found it "troubling" that even after considering reams of evidence "neither ESCOs nor any other party have shown . . . that ESCO charges above utility rates were generally – or in any specific instances – justified."[33] This fact only highlighted the NYPSC's "long-held concern that many customers may only be taking ESCO service due to their misunderstanding of [ESCOs'] products and/or prices."[34]

Accordingly, and on this record, the NYPSC banned variable energy rates like those Just Energy charged to the Claimant Jordet and its other U.S. customers.[35] In place of these floating variable rates, the NYPSC required ESCOs to guarantee that their variable rates would save customers money compared to what the utility would have charged.[36] Under the new regulations, if the the consumer is charged more than the utility, the consumer must be refunded the difference.[37]

In Claimants' class actions, the difference between what Just Energy charged consumers for the exact same energy that class members' utilities would have charged is more than US$2 billion.

[30] *Id.* at 3–4.

[31] *Id.* at 11.

[32] *Id.* at 12.

[33] *Id.* at 30.

[34] *Id.* at 31.

[35] *Id.* at 39.

[36] *Id.*

[37] *Id.*

The NYPSC's regulations took effect in April 2021. Around the same time, Just Energy ceased offering service in New York and tried to spin the state's ban on its core practice as "regulatory constraints . . . requiring certain variable rate customers to be dropped to the utility."[38]

VII. Just Energy's Damning Public Dossier Further Supports the Class Actions

Just Energy has amassed a damning public dossier that includes at least **six** regulatory enforcement actions, reams of investigative journalism exposing Just Energy's deceptive practices, and countless negative customer reviews.

For example, on December 31, 2014, Just Energy agreed to settle claims brought by the Massachusetts Attorney General that are strikingly similar to those in the class actions, making various concessions related to its deceptive energy sales and billing practices in Massachusetts.[39] Just Energy agreed to refund US$4,000,000 along with several key changes to its business practices, including that Just Energy was banned for three years from enrolling Massachusetts consumers into variable rate energy products unless it complied with the following requirements:

> Within 30 days of a customer enrolling in a variable energy rate product, Just Energy must provide the customer with written notice of the date on which the introductory rate will expire.
>
> Any new contracts for variable rate products shall either (i) include the calculation that will be used to set monthly rates under the contract such that the customer can calculate the cost of Just Energy's residential energy, or (ii) make the rates available 60 days in advance via phone and the internet.[40]

Additionally, for three years Just Energy was banned from charging Massachusetts consumers variable electricity rates in excess of 14.25¢ per kWh.[41] The settlement further provided that:

> For current Just Energy variable rate customers, the company is required to clearly and conspicuously post its current variable rates and post subsequent variable rates with at least 45 days advance notice.[42] Just Energy is also required to mail notice to all existing Massachusetts

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[38] Ring, Paul, Energy Choice Matters, Aug. 16, 2021, http://www.energychoicematters.com/stories/20210816a.html

[39] Assurance of Discontinuance, *In the Matter of Just Energy Group, Inc., et al.*, Mass. Sup. Ct., Suffolk, (Dec. 31, 2014).

[40] *Id*. ¶ 28(a)–(b), (d).

[41] *Id*. ¶ 30(a).

[42] *Id*. ¶ 30(b).

variable rate customers alerting them to the fact that advance pricing information is now available via phone and on Just Energy's website, and that these customers can cancel their Just Energy contracts without paying termination fees.[43]

Just Energy must at its own expense hire an independent monitor for three years to audit *inter alia* Just Energy's Massachusetts marketing materials, billing data, consumer communications, and direct marketing efforts.[44]

Just Energy must distribute a copy of the Assurance of Discontinuance to current and future (for three years) principals, officers, directors, and supervisory personnel responsible for the Massachusetts market.[45] Just Energy must also secure and maintain these individuals' signed acknowledgement of receipt of the Assurance of Discontinuance.

The Massachusetts Attorney General's sweeping action was far from the first time Just Energy had been targeted by regulators. For example, in June 2003, the *Toronto Star* reported that Just Energy (then operating under the name Ontario Energy Savings Corp.) was fined for violating the Ontario Energy Board's code of conduct by fraudulently enrolling customers.[46]

In 2008, the Illinois Attorney General sued U.S. Energy Savings Corp. (whose name was changed to Just Energy in 2012), alleging violations of Illinois' consumer fraud laws. The May 2009 anouncement a US$1 million settlement noted that the Attorney General had "received a nearly unprecedented number of calls from consumers who were deceived by false assurances that they would receive significant savings by switching to this alternative gas supplier."[47] According to the lawsuit, among other deceptive conduct "consumers were led to believe that they would automatically save money by enrolling in the U.S. Energy Savings program."[48]

During this same period, the Citizens Utility Board (the "CUB") and AARP filed a formal complaint with the Illinois Commerce Commission (the "ICC") alleging, *inter alia*, that Just Energy told customers they would "save money," that consumers would not see any gas price increases if they signed up, and that Just Energy presented false and misleading information

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[43] *Id*. ¶ 30(c).

[44] *Id*. ¶ 44, Attachment 2.

[45] *Id*. ¶ 46.

[46] Spears, John, "*Energy marketers fined over forgeries*," Toronto Star (June 21, 2003).

[47] Press Release, "Madigan Secures $1 Million in Consumer Restitution from Alternative Gas Supplier for Deceptive claims," May 14, 2009.

[48] *Id*.

about its prices.[49] In April 2010, the ICC found that Just Energy's sales and marketing practices were deceptive, issued a US$90,000 fine, and ordered an independent audit of its practices.[50]

In July 2008, New York's Attorney General announced a US$200,000 settlement with Just Energy (then named U.S. Energy Savings) and noted that the Attorney General's "office received hundreds of consumer complaints that sales contractors promised immediate savings on utility bills, but the price of gas was actually more than the price charged by the local utility because the price was locked in for a multi-year period."[51]

In November 2016, Ohio's Public Utilities Commission (the "PUCO") fined Just Energy **for a second time** for misleading marketing practices. An article in the *Columbus Dispatch* notes that Just Energy is an "energy company with a track record of misleading marketing," that it was fined by the PUCO in 2010 for deceptive marketing, and that it "sells energy contracts that often cost more than customers would pay if they received the standard service price."[52]

There are also *thousands* of complaints about Just Energy and its affiliated entities on the internet. Over the last three years alone, Just Energy has had at least 280 complaints filed against it with the Better Business Bureau (the "BBB").[53] Even though Just Energy is listed on the BBB's website as having been in business for 24 years, the BBB clearly declares that "THIS BUSINESS IS NOT BBB ACCREDITED" and displays the following "Pattern of Complaint" warning to the consuming public:

> **BBB files indicate that this business has a pattern of complaints concerning door to door sales representatives who are using misleading sales tactics, misrepresenting themselves as the consumer's current energy or gas company, and not being transparent about cancellations fees which may be charged by their current provider for switching their services. Additionally, consumers allege Just Energy's representatives display poor customer service when the business is contacted to resolve billing and contract concerns.**

[49] Verified Original Complaint ¶19, Illinois Commerce Commission Docket 08-0175 (March 3, 2008).

[50] Press Release, "Illinois Commerce Commission Fines Just Energy for Deceptive Sales and Marketing Practices, Orders Audit," April 15, 2010.

[51] Press Release, "Attorney General Cuomo Stops WNY Natural Gas Provider From Deceiving Consumers by Misrepresenting Service Contracts," (July 4, 2008).

[52] Gearino, Dan, "Electricity marketer Just Energy fined over complaints,'" The Columbus Dispatch, (Nov. 4, 2016).

[53] Business Profile: Just Energy Group, Inc., BBB.org, https://www.bbb.org/us/tx/houston/profile/electric-companies/just-energy-group-inc-0915-16000393.

Media reports about Just Energy are equally troubling. For example, when the confidential results of the Illinois Commerce Commission's audit referenced above were made public, Chicago's CBS affiliate reported that between 2010 and 2011 Just Energy received over 29,729 customer complaints.[54] "There were so many complaints over so many years with so little company oversight on how they were handled that the audit said, '[a]n adequate compliance culture at the top levels of the organization is not evident.'"[55]

A May 8, 2019, article in the *Chicago Reporter* showcased a carpenter who, over the course of 10 years, paid Just Energy over US$20,000 more than he would have paid the utility.[56] This Just Energy customer's experience was used to highlight the then-proposed Illinois Home Energy Affordability & Transparency Act ("HEAT"). On August 27, 2019, Illinois Governor J.B. Pritzker signed HEAT into law. Effective January 1, 2020, HEAT requires *inter alia* ESCOs like Just Energy operating in Illinois to include the utility's comparison price on all marketing materials, during telephone or door-to-door solicitations, and on every consumer's utility bill so consumers can make informed price comparisons.

Here, the factfinder's informed price comparison, will demonstrate over US$2 billion in damages to Just Energy's U.S. customers.

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[54] Zekman, Pam, "Alternative Energy Supplier Has Long Record Of Fraud Complaints," *CBS2*, (Jan. 15, 2013).

[55] *Id*.

[56] *Available at:* https://www.chicagoreporter.com/illinois-bill-aims-to-curb-alternative-energy-scams-by-forcing-transparency/.

Tab 19

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TREVOR JORDET,

Plaintiff,

v.

DECISION AND ORDER

18-CV-953S

JUST ENERGY SOLUTIONS, INC.,

Defendant.

I. Introduction

This case alleges that Defendant imposed improper pricing for natural gas upon Plaintiff and the proposed class of Defendant's customers (Docket No. 1, Compl.). Before this Court is Defendant's Motion to Dismiss (Docket No. 19)[1] the Complaint.

For the reasons stated herein, Defendant's Motion to Dismiss is granted in part, denied in part.

II. Background

This is a diversity jurisdiction class action under Pennsylvania common law and statute challenging terms of Defendant's utility supply contract (see Docket No. 1, Compl.). Plaintiff commenced the action in the United States District Court for the Eastern District of Pennsylvania, but it was later transferred to this District (Docket No. 23).

[1] In support of its motion to dismiss, Defendant submits its attorney's Declaration with exhibits (an example of Defendant's contract and Pennsylvania Public Utility Commission's Natural Gas Suppliers List) and Memorandum of Law, Docket No. 20. In opposition, Plaintiff submits his Memorandum of Law, Docket No. 26. Defendant filed a timely Reply Memorandum, Docket No. 32. Plaintiff moved to file a Sur-Reply, Docket No. 35, which this Court granted, Docket No. 38. He then filed the Sur-Reply, Docket No. 39.

Plaintiff then filed supplemental authorities, Docket Nos. 41 (Gonzales v. Agway Energy Servs., LLC, No. 18-235-MAD-ATB, 2018 WL 5118509 (N.D.N.Y. Oct. 22, 2018)), 42 (Mirkin v. XOOM Energy, LLC, 931 F.3d 173 (2d Cir. 2019)), presenting cases that denied motions to dismiss.

Plaintiff is a Pennsylvanian who was a customer of Defendant (incorporated in California with its principal place of business in Texas) from 2012 through February 2018 (Docket No. 1, Compl. ¶¶ 6, 5).

Pennsylvania deregulated natural gas in 1999 (id., Compl. ¶ 11; see Docket No. 20, Def. Memo. at 2). The purpose for deregulation was to allow energy supply companies ("ESCOs") to use their natural gas facilities, purchased gas from wholesalers and brokers or purchasing futures contracts at set prices, and other innovations to reduce natural gas costs and pass the savings to consumers (Docket No. 1, Compl. ¶ 12).

Customers only select an ESCO for supplying natural gas while continuing to use the utility for delivery and billing (id. ¶ 13). The only difference from utility-furnished natural gas is the price of energy supply (id.). ESCOs' supply rates, including Defendant's, are not approved by the Pennsylvania public service commission (id. ¶ 14).

A. Pleadings

Plaintiff charges that Defendant entices customers with a low teaser rates and "false promises that it will offer market-based variable rates," then shifts the accounts to variable pricing that are "untethered from changes in wholesale rates" (id. ¶ 15).

In or around 2012, Defendant solicited Plaintiff to change natural gas supplier to Defendant, "representing that [Defendant] would charge a rate lower than the local utility, PECO" (id. ¶ 16). Defendant's agreement contained a rescissionary period when Plaintiff could change his mind and terminate without penalty (id. ¶ 17). Defendant charged Plaintiff a fixed, discounted introductory rate for a number of months then converted the account to a variable price (id. ¶ 18). The agreement represented that the variable price "would be set 'according to business and market conditions, including but not limited to,

the wholesale cost of natural gas supply, transportation, distribution and storage'" (id. ¶ 19).

Plaintiff alleges that a reasonable consumer (like him) would conclude that business and market conditions were the vendor's wholesale costs and the amounts charged by competitors (id. ¶ 20). Instead, Defendant set the variable price higher than Plaintiff's utility (PECO) and Defendant's ESCO competitors (id. ¶¶ 21, 22). Plaintiff contends that Defendant's prices were not competitive market rates; for example, these prices did not fluctuate with changes in natural gas prices (id. ¶¶ 23, 24). Instead, Plaintiff believes that PECO's rates were indicators of the market since it includes supply costs, transportation, distribution, and storage costs (id. ¶ 25). Plaintiff, however, fails to acknowledge that PECO's rates are approved by the public service commission. Even with the advantage of purchasing natural gas from a highly competitive market, Defendant's prices were higher and were not commensurate with PECO's rates (id. ¶¶ 26-30). Plaintiff characterizes these prices as "wildly disparate" (id. ¶ 26). He concedes, however, that Defendant had discretion to set variable prices (id. ¶ 65).

As for market conditions, Plaintiff states that a reasonable customer recognizes the vendor should recoup a reasonable margin on sales of gas (id. ¶ 32), which Plaintiff contends should be the same as other ESCOs and the utility. Because other ESCOs' rates are lower than Defendant's, Plaintiff claims that the profit margin sought by Defendant is in bad faith (id.). Defendant's undisclosed costs in taxes, fees, and assessments Plaintiff deems to be insignificant and not a justification for the disparity in Defendant's pricing from its competitors or PECO (id. ¶ 33). Plaintiff, however, does not state the profit or profit margin of these ESCOs or of PECO.

Plaintiff alleges three causes of action. The First Cause of Action alleges violation of Pennsylvania Unfair Trade Practice and Consumer Protection Law ("UTPCPL") (id. ¶¶ 44-55), with this claim specifically addressed to a subclass of Pennsylvania residents (id.). The Second Cause of Action alleges breach of contract (including breach of the implied covenant of good faith and fair dealing, not distinct causes of action under Pennsylvania law) (id. ¶¶ 57-68). The Third Cause of Action alleges unjust enrichment, as alternative to the Second Cause of Action (id. ¶¶ 70-72).

Plaintiff alleges a class of Defendant's customers who also were charged variable rates for residential natural gas services from April 2012 to the present (id. ¶ 38; see also id. ¶ 39 (subclass of Pennsylvania customers so charged)). The Second and Third Causes of Action apply to the full class, while the First Cause of Action applies to the broader class and also the subclass of Pennsylvania customers.

B. Procedural History

Plaintiff filed this action in the United States District Court for the Eastern District of Pennsylvania on April 6, 2018 (Docket No. 1, Compl.).

With consent, Defendant moved to transfer venue to this District (Docket No. 17), see 28 U.S.C. § 1404(a). There, Defendant argued that the interest of justice supported transfer, in part because of a similar case that then was pending in this Court (Docket No. 18, Def. Memo. at 3, 4-7), see Nieves v. Just Energy New York, No. 17CV561. The district court for the Eastern District of Pennsylvania granted the transfer (Docket No. 23; see Docket No. 24 (transmitted docket)).

On the same day Defendant moved to transfer, Defendant moved to dismiss (Docket No. 19). The parties stipulated to set Plaintiff's response to the Motion to Dismiss

to twenty-one days from the adopting Order (Docket No. 22), or by September 4, 2018. Following transfer to this District and upon the parties' stipulation to extend Defendant's time to reply (Docket No. 28), this Court set the deadline for Defendant's reply for October 5, 2018 (Docket No. 29). After filing a timely Reply (Docket No. 32), Sur-Reply (Docket No. 39), and supplemental authorities from Plaintiff (Docket Nos. 41, 42), the motion to dismiss was deemed submitted without oral argument.

In its Motion to Dismiss, Defendant provides an example of an unexecuted contract (Docket No. 20, Def. Atty. Decl. Ex. 1). The definitional section there defined "Variable Price" as "the monthly rate that you will be charged per Ccf after expiration of the 12 month Intro Price. The Variable Price will not change more than once each billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions." (Id.) In Section 5.1, Natural Gas Charges, the contract provides that

> "the Variable Price during the first billing cycle in which the Variable Price is in effect will be equal to the Intro Price. The Variable Price will not change more than once each monthly billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions, including but not limited to, the wholesale cost of natural gas supply, transportation, distribution and storage, and will not increase more than 35% over the rate from the previous billing cycle."

(Id.; see also Docket No. 1, Compl. ¶ 19).

III. Discussion

A. Applicable Standards

1. Motion to Dismiss

Defendant has moved to dismiss the Complaint on the grounds that it states a claim for which relief cannot be granted (Docket No. 19). Under Rule 12(b)(6) of the

Federal Rules of Civil Procedure, the Court cannot dismiss a Complaint unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), a Complaint must be dismissed pursuant to Rule 12(b)(6) if it does not plead "enough facts to state a claim to relief that is plausible on its face," id. at 570 (rejecting longstanding precedent of Conley, supra, 355 U.S. at 45-46); Hicks v. Association of Am. Med. Colleges, No. 07-00123, 2007 U.S. Dist. LEXIS 39163, at *4 (D.D.C. May 31, 2007). To survive a motion to dismiss, the factual allegations in the Complaint "must be enough to raise a right to relief above the speculative level," Twombly, supra, 550 U.S. at 555; Hicks, supra, 2007 U.S. Dist. LEXIS 39163, at *5. As reaffirmed by the Court in Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009),

> "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' [Twombly, supra, 550 U.S.] at 570 . . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556 . . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Ibid. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."' Id., at 557 . . . (brackets omitted)."

Iqbal, supra, 556 U.S. at 678 (citations omitted).

A Rule 12(b)(6) motion is addressed to the face of the pleading. The pleading is deemed to include any document attached to it as an exhibit, Fed. R. Civ. P. 10(c), or any document incorporated in it by reference. Goldman v. Belden, 754 F.2d 1059 (2d Cir. 1985). This Court deems incorporated here the contract since it is integral to Plaintiff's

claim even if Plaintiff did not incorporate the actual document by reference, Chambers v. Time Warner, Inc., 282 F.3d 147, 152-53 (2d Cir. 2002); 5B Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1357, at 376, 377 (Civil 3d ed. 2004). Neither party, however, produced Plaintiff's actual contract with Defendant (or any potential class member's contract). The Complaint alleges key terms of that agreement (Docket No. 1, Compl. ¶ 19), while Defendant's moving papers contains a facsimile of its Natural Gas Customer Agreement for the Natural Gas Rate Flex Pro Program (Docket No. 20, Def. Atty. Decl. ¶ 1, Ex. 1). Both sides cite to an identical provision about variable prices. And, absent objection from Plaintiff, this Court will consider the Natural Gas Customer Agreement and its definition of "Variable Price" and its terms for natural gas charges (id., Secs. 1, 5.1).

In considering such a motion, the Court must accept as true all of the well pleaded facts alleged in the Complaint. Bloor v. Carro, Spanbock, Londin, Rodman & Fass, 754 F.2d 57 (2d Cir. 1985). However, conclusory allegations that merely state the general legal conclusions necessary to prevail on the merits and are unsupported by factual averments will not be accepted as true. New York State Teamsters Council Health and Hosp. Fund v. Centrus Pharmacy Solutions, 235 F. Supp. 2d 123 (N.D.N.Y. 2002).

2. Pennsylvania Unfair Trade Practices and Consumer Protection Law

Pennsylvania courts construe the Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. §§ 201-3, et seq. (the "UTPCPL"), liberally to effectuate the goal of consumer protection, Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC, 40 A.3d 145, 151 (Pa. Super. Ct. 2012), citing Commonwealth by Creamer v. Monumental

Properties, Inc., 459 Pa. 450, 459, 329 A.2d 812, 816 (1974) (see Docket No. 26, Pl. Memo. at 20).

The UTPCPL creates a cause of action for any person who purchases services primarily for personal, family, or household purposes and thereby suffers ascertainable loss of money as a result of employment by any person of a method, act, or practice declared unlawful by the Act, 73 Pa. Cons. Stat. § 201-9.2 (Docket No. 26, Pl. Memo. at 19). Plaintiff has to allege a deceptive act, an ascertainable loss of money or property, that resulted from the use or employment of a method, act, or practice declared unlawful by the UTPCPL, and that plaintiff justifiably relied on the deceptive conduct, Abraham v. Ocwen Loan Servicing, LLC, 321 F.R.D. 125, 154 n.11 (E.D. Pa. 2017) (Docket No. 20, Def. Memo. at 17); Landau v. Viridian Energy PA LLC, 223 F. Supp.3d 401, 418 (E.D. Pa. 2016) (Docket No. 26, Pl. Memo. at 20).

Unlawful methods of competition and unfair or deceptive acts or practices include false advertising, 73 Pa. Cons. Stat. § 201-2(4)(v) ("Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have"), (vii) ("Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another"), (ix) ("Advertising goods or services with intent not to sell them as advertised") (Docket No. 20, Def. Memo. at 17; see Docket No. 26, Pl. Memo. at 19-20). To state a claim for false advertising as the unlawful method, a plaintiff has to allege that defendant's representations were false, that the representations actually deceived or tended to deceive, and the representation likely made the difference in the purchasing

decision, Price v. Foremost Indus. Ins., No. CV 17-00145, 2017 WL 6596726, at *9 (E.D. Pa. Dec. 22, 2017) (citing Seldon v. Home Loan Servs., Inc., 647 F. Supp.2d 451, 466 (E.D. Pa. 2009) (Docket No. 20, Def. Memo. at 18). The Third Circuit explains "Material representations must be contrasted with statements of subjective analysis or extrapolations, such as opinions, motives and intentions, or general statements of optimism, which constitutes no more than puffery," EP Medsystems, Inc. v. EchoCath, Inc., 235 F.3d 865, 872 (3d Cir. 2000). Puffery, however, is not actionable as false advertising under Pennsylvania law, Castrol, Inc. v. Pennzoil Co., 987 F.2d 939 (3d Cir. 1993); Commonwealth v. Golden Gate Nat'l Senior Care LLC, 158 A.3d 203, 215 (Pa. Commw. Ct. 2017), aff'd in part, rev'd in part, 648 Pa. 604, 194 A.3d 1010 (2018) (reversing dismissal of UTPCPL claims). Whether a statement is puffery is a question of fact to be resolved by a fact finder, Commonwealth v. Golden Gate Nat'l Senior Care LLC, 642 Pa. 604, 626-27, 194 A.3d 1010, 1024 (2018).

Unlawful methods also include a generic category of fraudulent and deceptive conduct. To plead this catchall provision for fraudulent or deceptive conduct, 73 Pa. Cons. Stat. § 201-2(4)(xxi) ("Engaging in any other fraudulent or deceptive conduct which creates likelihood of confusion or of misunderstanding"), plaintiff needs to allege a deceptive act, that is conduct likely to deceive a consumer acting reasonable under similar circumstances; justifiable reliance based on the misrepresentations or deceptive conduct; and ascertainable loss caused by justifiable reliance, Landau, supra, 223 F. Supp. 3d at 418 (Docket No. 26, Pl. Memo. at 20).

3. Pennsylvania Contract Law and Unjust Enrichment

Briefly, under Pennsylvania law, a breach of contract has these elements: the existence of a contract, including its essential terms; breach of a duty imposed by the contract; and resultant damages, Gillis v. Respond Power, LLC, No. 14-3856, 2018 WL 3247636, at *4 (E.D. Pa. July 16, 2018) (Docket No. 20, Def. Memo. at 8); Landau v. Viridian Energy PA LLC, 223 F.Supp.3d 401, 408 (E.D. Pa. 2016) (Docket No. 26, Pl. Memo. at 6) The only element at issue is allegation of breach of the agreement by Defendant.

An implied covenant of good faith and fair dealing is contained in all contracts under Pennsylvania law, and breach of that duty is subsumed in the breach of contract claim, Kantor v. Hiko Energy, LLC, 100 F. Supp. 3d 421, 430 (E.D. Pa. 2015) (quoting Burton v. Teleflex Inc., 707 F.3d 417, 432 (3d Cir. 2013)) (Docket No. 26, Pl. Memo. at 16); see Hatchigian v. State Farm Ins. Co., No. 13-2880, 2014 WL 176585, at *7 (E.D. Pa. Jan. 16, 2014) (breach of implied covenant and breach of contract is a single cause of action under Pennsylvania law), aff'd, 574 F. App'x 103 (3d Cir. 2014) (Docket No. 20, Def. Memo. at 8).

Under Pennsylvania law, unjust enrichment is inapplicable when the relationship is founded on a written agreement or express contract, Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3d Cir. 1987) (Docket No. 20, Def. Memo. at 24-25 (citing Pennsylvania state decisions)). "[T]o sustain a claim of unjust enrichment, the claimant must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be unconscionable for that party to retain without compensating the provider," Hershey Foods, supra, 828 F.2d at 999;

Torchia on behalf of Torchia v. Torchia, 346 Pa. Super. 229, 499 A.2d 581 (1985). Unjust enrichment cannot be alleged while alleging a breach of contract unless the validity of the contract itself is actually disputed, Grudkowski v Foremost Ins. Co., 556 F. App'x 165, 170 n.8 (3d Cir. 2014) (Docket No. 32, Def. Reply Memo. at 8).

B. Motion to Dismiss Contentions

Defendant argues that Plaintiff fails to allege plausible claims for breach of contract and his other contract claims (Docket No. 20, Def. Memo. at 8-16). Defendant invokes Pennsylvania's statute of limitations of four years to bar claims prior to April 6, 2014 (id. at 16-17), 42 Pa. Cons. St. Ann. § 5525(a). Defendant asserts Plaintiff also failed to plead violations of the UTPCPL, namely the asserted violations in advertising and the catchall provision for fraudulent and deceptive conduct (id. at 17-18, 18-21, 21-24). Defendant also contends that Pennsylvania's gist of the action doctrine prohibits a plaintiff from recasting a contract claim as a tort, as Plaintiff did here in alleging unfair trade practice violations (id. at 23-24; see Docket No. 32, Def. Reply Memo. at 7, citing Pollock v. National Football League, 171 A.3d 773, 77 n.2 (Pa. Super. Ct. 2017)). Defendant concludes that Plaintiff cannot invoke unjust enrichment while an express contract exists (Docket No. 20, Def. Memo. at 24-25; see also Docket No. 32, Def. Reply Memo. at 8).

Plaintiff contends that he plausibly alleged his three claims (Docket No. 26, Pl. Memo. at 5-25). The breach of contract here was the manner in which Defendant set variable pricing. Plaintiff responds that Defendant is "hang[ing] its hat on the implausible assertion that the phrase 'business and market conditions' could mean something other than wholesale costs, competitor pricing, or charges Just Energy incurs to supply natural gas (like transmission costs, which are minimal and steady)" (id. at 3). Plaintiff argues

that Pennsylvania law requires Defendant, as an ESCO, to disclose to Plaintiff the conditions of variability in its variable pricing, 52 Pa. Code § 62.75(c)(2)(i) (id. at 7). That provision requires the disclosure of the "conditions of variability (state on what basis prices will vary) including the [ESCO's] specific prescribed variable pricing methodology," id. Plaintiff counters that the gist of the action doctrine was not applicable, allowing his UTPCPL claim as distinct from his contract claim (id. at 23, citing Landau, supra, 223 F. Supp.3d at 408-19 (E.D. Pa. 2016)).

Plaintiff presents a table comparing Defendant's variable prices to the average Pennsylvania ESCO's billing rate from April 2016-February 2018, with Defendant's variable prices exceeding the competitor's average rates (from U.S. Energy Information Administration table) in a range between 7% (in March-April 2017) to 102% (in August-September 2017) (Docket No. 27, Pl. Atty. Decl. Ex. 7).

Defendant replies that Plaintiff concedes that Defendant did not promise to set rates based upon any single factor and that "business and market conditions" included a variety of nonexclusive factors (Docket No. 32, Def. Reply Memo. at 1), that Plaintiff alleged facts only for one factor in a multiple factor process (id. at 2-3). Plaintiff fails to plead in particularity (id. at 3 & n.2). Defendant points out that the Complaint failed to allege competitor ESCO rates (id. at 1, 4-5). Defendant denies that the difference between its rates and PECO's rates creates claims, thus Plaintiff failed to allege a benchmark for market prices (id. at 1-2).

Next, Defendant argues that Plaintiff has not established a violation of the catchall provision for the UTPCPL (id. at 6-7). Defendant asserts that Plaintiff's UTPCPL claim violates the gist of the action doctrine (id.; see Docket No. 20, Def. Memo. at 23-24).

Finally, Defendant distinguishes the motion to dismiss cases cited by Plaintiff (Docket No. 32, Def. Reply Memo. at 8-10 & nn.9-13).

The Sur-Reply argues that U.S. Energy Information Administration data includes pricing data from Pennsylvania for its ESCOs' rates (Docket No. 39). This, however, does not address the contention that the Complaint does not allege ESCO data was collected in Pennsylvania, Docket No. 32, Def. Reply at 1. As a motion to dismiss it rests solely on the four corners of pleadings where additional materials not integral to Plaintiff's claims were not incorporated by reference, cf. 5B Federal Practice and Procedure, supra, § 1357, at 376.

Plaintiff supplemented with two other cases in which motions to dismiss were denied in what he claims were similar circumstances (Docket Nos. 41, 42). In Gonzalez v. Agway Energy Services, LLC, No. 18-235-MAD-ATB, 2018 WL 5118509 (N.D.N.Y. Oct. 22, 2018) (Docket No. 41, Pl. Supp'al Auth. [Gonzalez]), the plaintiff alleged that Agway Energy misled by representing its variable rates for electricity were based on the cost of acquisition of electricity, transmission and distribution charges, market-related factors, plus applicable taxes, fees, charges, or other assessments, and Agway Energy's costs, expenses, and margins, at *1 (Docket No. 41, Pl. Supp'al Auth. at 1-2). In Mirkin v. XOOM Energy, LLC, 931 F.3d 173 (2d Cir. 2019) (Docket No. 42, Pl. Supp'al Auth. [Mirkin]), the Second Circuit reversed the grant of a motion to dismiss. Plaintiffs alleged that XOOM set its variable rate based on XOOM's "actual and estimated supply costs which may include but not be limited to prior period adjustments, inventory and balancing costs," id. at 175 (Docket No. 42, Pl. Supp'al Auth. at 1). They alleged XOOM breached the contract by charging a variable rate that did not reflect the factors in the contract (id. at 2).

After discussing the contract provision at issue here, this Court will consider (out of order) the common law causes of action of breach of contract and unjust enrichment and conclude with Plaintiff's First Cause of Action under the UTPCPL.

C. Variable Price Provision

Each of the three causes of action required Defendant to breach the standard of business and market conditions for imposing variable pricing. The key clause is Section 5.1, Natural Gas Charges of the Terms and Conditions of the contract, specifically declaring that

> "the Variable Price during the first billing cycle in which the Variable Price is in effect will be equal to the Intro Price. The Variable Price will not change more than once each monthly billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions, including but not limited to, the wholesale cost of natural gas supply, transportation, distribution and storage, and will not increase more than 35% over the rate from the previous billing cycle."

(Docket No. 20, Def. Atty. Decl. Ex. 1). The contract stated in the definition section that changes in "Variable Price" would "be determined by Just Energy according to business and market conditions" (id.).

This case, like Nieves v. Just Energy New York, No. 17CV561, 2020 WL 6803056 (W.D.N.Y. Nov. 19, 2020) (Skretny, J.), and its variable rate provision, turns on the meaning of the phrase "business and market conditions." In Nieves, this Court relied upon the Second Circuit's decision in Richards v. Direct Energy Services, 915 F.3d 88 (2d Cir. 2019), and its definition of the terms "business and market conditions," recognizing that these terms (absent restriction or definition) was broad enough to cover the supplier's discretion in setting variable rates or prices, Nieves, supra, 2020 WL 6803056 at *5. This Court distinguished Jordet's contract from Nieves because it

provided some definition of what Defendant considered business and market conditions, id. at *6, from the inclusion of natural gas costs as a factor in rate setting.

D. Breach of Contract and Breach of Implied Covenant of Good Faith (Second Cause of Action)

As a breach of implied covenant of good faith, Plaintiff concedes that Defendant had unilateral discretion in setting the variable rate (Docket No. 1, Compl. ¶ 65). As one noted commentator found, "there can be no breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the actions being challenged, and the defendant acts in accordance with the express terms of the contract," 23 Williston on Contracts § 63:22 (4th ed. 2018); see Richards v. Direct Energy Services, supra,, 915 F.3d at 99.

As a breach of contract, the terms refer to Defendant setting variable prices based upon business and market conditions, defined (in part) to include wholesale natural gas supply costs, transportation, distribution, and storage. Plaintiff reads this as the extent of what are business and market conditions. The cost of natural gas was a factor in business and market conditions (see id. ¶ 19; Docket No. 20, Def. Atty. Decl. Ex 1, Sec. 5.1), but not the exclusive factor. While Defendant has some discretion in setting variable rates, the contract gives some direction in that action.

Pennsylvania law, however, requires a natural gas supplier charging a variable rate to disclose the conditions for variation, 52 Pa. Code § 62.75(c)(2)(i). "Conditions of variability (state on what basis prices will vary) including the [natural gas supplier's] specific prescribed variable pricing methodology," id. This provision is part of natural gas supply regulation that mandates "all natural gas providers enable customers to make informed choices regarding the purchase of all natural gas services offered by providing

adequate and accurate customer information," provided in "an understandable format that enables customers to compare prices and services on a uniform basis," 52 Pa. Code § 62.71(a). Marketing materials advertising variable pricing has to "factor in all costs associated with the rate charged to the customer for supply service," 52 Pa. Code § 62.77(b)(2).

Plaintiff alleges a breach of contract where Defendant's only stated basis for variable pricing is its natural gas acquisition costs and does not specifically include the other, undisclosed factors Defendant used to set the variable prices.

As in Nieves, Jordet cites to cases in other courts that deny motions to dismiss on similar contract provisions (Docket No. 26, Pl. Memo. at 5 & n.2, 8; Docket No. 41, Pl. Supp'al Auth. [Gonzales]; Docket No. 42, Pl. Supp'al Auth. [Mirkin]). Again, these cases have limited precedential value because each is fact specific, resting upon different contract terms and governing law, see Claridge v. North Am. Power & Gas, LLC, No. 15-1261, 2015 WL 5155934, at *5 (S.D.N.Y. Sept. 2, 2015) (denying dismissal); Nieves, supra, 2020 WL 6803056, at *6 (see also Docket No. 32, Def. Reply Memo. at 8-10). Plaintiff cites (Docket No. 26, Pl. Memo. at 5 n.2) cases analogous to the "business and market conditions" provision for Defendant's variable prices where the provisions in these cases specified wholesale costs as part of the calculation, Landau, supra, 223 F. Supp.3d at 406; Steketee v. Viridian Energy, Inc., No. 15-585 (D. Conn. Apr. 14, 2016) (Docket No. 27, Pl. Atty. Decl., Ex. 1, Steketee Tr. at 2-3); Sanborn v. Viridian Energy, Inc., No. 14-1731 (D. Conn. Apr. 1, 2015) (id., Ex. 3, Sanborn Tr. at 3); Fritz v. North Am. Power & Gas, LLC, No. 14-634 (D. Conn. Jan. 29, 2015) (id., Ex. 4, Fritz Tr. at 2). In Landau, plaintiff Steven Landau alleged that associates from defendant represented that he would

enjoy lower rates than offered by utility PECO and that he would never have to worry about defendant suddenly increasing rates, Landau, supra, 223 F. Supp. 3d at 406. The variable rates may fluctuate based upon "wholesale market conditions applicable to the [defendant electric distribution company's] service territory," id. In Steketee, plaintiff amended the Complaint to allege that the variable rate was based on wholesale market conditions and added that a representative of defendant explained to plaintiff that defendant's variable rate would be based on wholesale market conditions (id., Ex. 1, Steketee Tr. at 2-3). In Fritz, defendant's variable market-based rate plan "may increase or decrease to reflect price changes in the wholesale power market" (Docket No. 27, Pl. Atty. Decl. Ex. 4, Fritz Tr. at 2).

In Sanborn, the court noted two statements at issue (id., Ex. 3, Sanborn Tr.). The first statement contained in the contract's terms and conditions provision stated that price may fluctuate from month-to-month "based on wholesale market conditions applicable" to defendant's service area. The second statement is a Massachusetts required disclosure statement that variable rates comes from a variety of factors including the wholesale market. (Id., Ex. 3, Sanborn Tr. at 3-4.)

Although noting that these cases do not present the actual contract texts, Defendant's contract here is like those supply agreements in these cited cases (see id., Ex. 3, Sanborn Tr. at 3-4). In all these contracts the variable rates were set by a combination of operating costs, the costs of purchasing fuel, and a "catch-all of other factors" (id., Sanborn Tr. at 3). As Defendant characterized Sanborn and similar cases, the courts found that the agreements there did not contain specific factors on which the variable rates would be set (Docket No. 32, Def. Reply Memo. at 10 & n.13). The factors

stated in each of these cases provided a basis for those plaintiffs to allege breaches when the defendants set rates at variance with those standards or consistent with objective supply costs. Plaintiff plausibly states a claim where "business and market conditions" has some standard that Defendant had to apply in setting its variable pricing but apparently failed to adhere to in its pricing. Plaintiff also plausibly alleges this breach as natural gas wholesale prices decreased while Defendant's pricing increased (Docket No. 26, Pl. Memo. at 8). Plaintiff also claims Defendant made representations of savings as compared with utility prices for natural gas (Docket No. 1, Compl. ¶ 16) as was alleged in other cases, Landau, supra, 223 F. Supp.3d at 406; Steketee, supra, (Docket No. 27, Pl. Atty. Decl. Ex. 1, Steketee Tr. at 3). In general, Plaintiff plausibly alleges a breach of contract claim.

E. Statutes of Limitations

Under Pennsylvania law, an action upon a contract "must be commenced within four years," 42 Pa. Cons. Stat. § 5525(a)(1). For an action for breach of contract, this limitations period begins to run from the time of breach, Baird v. Marley Co., 537 F. Supp. 156, 157 (E.D. Pa. 1982) (citing cases). With the filing of the Complaint here in April 6, 2018 (Docket No. 1, Compl.), breach of contract claims prior to April 6, 2014, are time barred. Plaintiff did not argue the timeliness of the April 2012 to April 6, 2014, breach of contract claims (either his or the purported class members).

Plaintiff alleged that he signed with Defendant as his natural gas supplier in 2012 (id. ¶ 21). Plaintiff cites PECO and Defendant's rates from April 2016 to February 2018 (id. ¶¶ 21-22). Plaintiff complains the rates charged by Defendant from that period were

higher than PECO's prices (id. ¶¶ 21-22, 24). Plaintiff also alleges a class of similar consumers of Defendant from April 2012 to the present (id. ¶¶ 38-39).

Under Defendant's contract, Defendant charged Plaintiff a fixed introductory rate for a number of months (id. ¶ 18). According to the model gas supply contract Defendant produced in its motion (Docket No. 20, Def. Atty. Decl. Ex. 1), that introductory rate lasted twelve months (id., Definition "Variable Price"). Thus, Plaintiff had claims from variable pricing (the alleged breach of contract) from 2013. Under § 5525, Plaintiff's claims prior to April 6, 2014, are time barred; similarly, the purported class's claims prior to that date also are barred. Defendant's Motion to Dismiss (Docket No. 19) these untimely claims is granted.

Therefore, Defendant's Motion to Dismiss the Second Cause of Action for breach of contract is granted in part, denied in part. The motion is granted for untimely breach of contract claims but denied as to the timely claims.

An action under the UTPCPL has a six-year statute of limitations, 42 Pa. Cons. Stat. Ann. § 5527(b); Morse v. Fisher Asset Mgmt., LLC, 206 A.3d 521, 526 (Pa. Super. Ct. 2019). Plaintiff's Third Cause of Action (and class claims) thus is timely. This Court below address the substance of Plaintiff's statutory claim.

F. Unjust Enrichment (Third Cause of Action)

Under Pennsylvania law, a plaintiff cannot allege an unjust enrichment where there is an existing contract, Hersey Foods, supra, 828 F.3d at 999; Umbelina v. Adams, 34 A.3d 151, 162 n.4 (Pa. Super. Ct. 2011) (Docket No. 20, Def. Memo. at 24-25 (citing cases); see also Docket No. 32, Def. Reply Memo. at 8 & n.8 (citing case)). Plaintiff counters that she is alleging this cause of action in the alternative under Federal

Rule 8(d)(2) (Docket No. 26, Pl. Memo. at 25). Defendant replies that, under Third Circuit precedent, where an express contract governs, a plaintiff may not plead unjust enrichment, even in the alternative, unless 'the validity of the contract itself is actually disputed'" (Docket No. 32, Def. Reply Memo. at 8, quoting Grudkowski v. Foremost Ins. Co., 556 F. App'x 165, 170 n.8 (3d Cir. 2014)). Plaintiff expressly alleged that he entered into a valid contract (id., citing Docket No. 1, Compl. ¶ 57).

Rule 8 allows for alternative pleading; the Second Circuit differs from the Third Circuit in this respect, cf. Kaufman v. Sirius XM Radio, Inc., 474 F. App'x 5, 9 (2d Cir. 2012); U.S. ex rel. Kester v. Novartis Pharm. Corp., No. 11 Civ. 8196 (CM), 2014 WL 4401275, at *12 (S.D.N.Y. Sept. 4, 2014). Under the Erie doctrine, this Court applies Pennsylvania substantive law but federal (here Second Circuit) procedures. The question thus is whether Plaintiff alleges an unjust enrichment claim separate from his contract claim.

Plaintiff's unjust enrichment claim, however, cannot be separated from the contract. Plaintiff alleges in the Third Cause of Action (after repeating and realleging prior allegations acknowledging an express contract, Docket No. 1, Compl. ¶¶ 69, 57)), that "by engaging in the conduct described above, Defendant has unjustly enriched itself and received a benefit beyond what was contemplated in the contract, at the expense of Plaintiff and the Class" (Docket No. 1, Compl. ¶ 70, emphasis supplied). His unjust enrichment claim measures from what Defendant should have been entitled to under the contract. Since he has (and purported class members had) an express contract with Defendant, Plaintiff cannot also allege an unjust enrichment claim. Plaintiff has not

alleged that Defendant had a legal duty independent of that contract in setting its variable rates.

Thus, Defendant's Motion to Dismiss (Docket No. 19) Plaintiff's Third Cause of Action is granted.

G. Pennsylvania Unfair Trade Practices and Consumer Protection Law (First Cause of Action)

Finally, this Court considers dismissal of the First Cause of Action under the Pennsylvania UTPCPL.

As for the element of alleging a deceptive act, Plaintiff alleges deception from the offer made during the initial rescission period, arguing that this offer was a solicitation in which Defendant represented that variable prices would be determined in accordance with business and market conditions (Docket No. 26, Pl. Memo. at 20-21; Docket No. 1, Compl. ¶ 19). He also asserts that the deception was the setting of variable prices untethered to wholesale prices or competitively to other ESCOs (Docket No. 26, Pl. Memo. at 21-22).

By alleging paying higher rates than were charged for natural gas by his former utility or other ESCOs, Plaintiff has alleged a loss of money (see Docket No. 1, ¶¶ 53, 50), either the difference he paid Defendant under the variable price from what Defendant ought to have charged had it applied business and market conditions or the difference from what he paid from his utility's rates (Docket No. 26, Pl. Memo. at 22-23). Plaintiff has not specified either the ESCOs' rates or what Defendant charged from 2013 (after the introductory rate expired) through March 2016 under variable pricing (cf. Docket No. 1, Compl. ¶¶ 21-22) to establish that defendant charged Plaintiff higher rates.

As for Plaintiff's justifiable reliance on Defendant's representation, he alleges deceptive conduct that, but for Defendant's representation about the variable pricing, he would not have contracted with Defendant (id. at 22; Docket No. 1, Compl. ¶¶ 47-53, 66).

As for use of or employment of an illegal method, act or practice, Plaintiff does not allege specific violations of the UTPCPL(see Docket No. 20, Def. Memo. at 17). Both sides now agree Plaintiff alleges wrongful methods of false advertising (Docket No. 20, Def. Memo. at 17; Docket No. 26, Pl. Memo. at 20-21) and fraudulent and deceitful conduct, falling under the Act's catchall provision, 42 Pa. Cons. Stat. § 201-2(4) (xxi) (Docket No. 20, Def. Memo. at 17; Docket No. 26, Pl. Memo. at 19-20, 21-22). He claims this deceptive activity refers to false advertising or solicitation and the catchall of prohibited fraudulent or deceptive conduct. Defendant refutes two theories of deception contending that there is no allegation of false advertising (Docket No. 20, Def. Memo. at 18-21) or fraudulent conduct to meet the catchall provision (id. at 21-23).

1. False Advertising

a. Oral Representation

Plaintiff states that Defendant made a representation that, if he joined Defendant, his natural gas rates would be less than PECO's rates (Docket No. 1, Compl. ¶ 16). After agreeing, Plaintiff argues that he was given a three-day rescission period before the contract went into effect, thus deeming this to be a solicitation regulated by the UTPCPL (Docket No. 26, Pl. Memo. at 20-21). Plaintiff believed that the offer of the proposed agreement represented that Defendant's variable prices would be competitive with other ESCOs, but the actual rates were not (id. at 21).

Defendant argues that Plaintiff fails to allege violation for false advertising (Docket No. 20, Def. Memo. at 17). Defendant claims that the Complaint does not allege a misrepresentation, deception or fraudulent conduct (id.) or make promises regarding the variable pricing (id. at 5-6). The Complaint, however, alleges that Defendant represented to Plaintiff that Defendant would charge lower rates than PECO, his natural gas utility (Docket No. 1, Compl. ¶ 16). Defendant counters that this allegation is parol evidence that is barred pursuant to Pennsylvania law (Docket No. 20, Def. Memo. at 6, 20, 22), see Scardino v. American Int'l Ins. Co., No. CIV.A.07-282, 2007 WL 3243753, at *7-8 (E.D. Pa. Nov. 2, 2007). Defendant denies any representation that under the agreement Defendant would beat utility prices or guarantee financial savings (id.; see Docket No. 20, Def. Atty. Decl., Ex. 1, model contract, at 1, Customer Disclosure Statement).

To allege false advertising as the unlawful method under the Act, Plaintiff has to allege that Defendant's representations were false. Defendant raises threshold objections that the oral representation is barred by Pennsylvania's parol evidence rule and that the agreement is not an advertisement. Courts in Pennsylvania have granted motions to dismiss because of the parol evidence rule, Bernardine v. Weiner, 198 F. Supp. 3d 439, 441, 443-44 (E.D. Pa. 2016). Pennsylvania law bars parol evidence and fraud in the inducement claim based on parol evidence, id. Here, Plaintiff alleges that Defendant represented that its rates would be less than PECO, inducing Plaintiff to sign up. This is parol evidence and fails to state a claim. Even if this oral representation remains, Plaintiff has not alleged that variable pricing after the introductory price expired.

Furthermore, the Eastern District of Pennsylvania held that representations by individual employees or agents of a defendant are not advertisements under the UTPCPL

and cannot constitute a violation of that act, Seldon, supra, 647 F. Supp. 2d at 466; see Thompson v. The Glenmede Trust Co., No. 04428, 2003 WL 1848011, at *1 (Pa. Ct. Com. Pl. Feb. 18, 2003). The court also noted that 73 Pa. Cons. Stat. § 201-2(4)(ix) false advertising requires allegation of intent, Seldon, supra, 647 F. Supp.2d at 466; Karlsson v. FDIC, 942 F. Supp. 1022, 1023 (E.D. Pa. 1996), aff'd, 107 F.3d 862 (3d Cir. 1997). Plaintiff here, however, has not alleged that Defendant intentionally engaged in false advertising; the Complaint merely alleges that Defendant intentionally concealed its pricing strategy while representing that it would base variable prices on business and market conditions (cf. Docket No. 1, Compl. ¶ 50).

Finally, Plaintiff's alleged representation is threadbare, merely alleging that Defendant's unnamed representative solicited Plaintiff representing lower rate than PECO (Docket No. 1, Compl. ¶ 16). This is similar to the allegations rejected by the United States District Court for the Western District of Pennsylvania in Corsale v. Sperian Energy Corp., 412 F. Supp. 3d 556, 563 (W.D. Pa. 2019). In Corsale, plaintiffs alleged that Sperian Energy Corp. advertised that it offered "competitive" rates; the Western District of Pennsylvania held this was threadbare and the vague claim of competitive rates was nonactionable puffery, id. Therefore, Defendant's motion to dismiss the First Cause of Action for claims under Complaint ¶ 16 is granted.

b. Cancellation Provision Making Contract an Advertisement

The second representation or solicitation alleged is the offered agreement during a recessionary period (see Docket No. 1, Compl. ¶ 17). Plaintiff argues that its terms was an advertisement until it came into effect when Plaintiff did not reject the agreement. According to the model Natural Gas Customer Agreement furnished by Defendant, the

customer could cancel that agreement up to three business days after receipt of the agreement without penalty (Docket No. 20, Def. Atty. Decl. Ex. 1, at 1). The agreement repeats in all capital letters "THE CUSTOMER MAY RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF THIS AGREEMENT WITHOUT PENALTY" (id. (emphasis in original)).

Plaintiff argues that there was thus no contract for that three-day period because of his ability to rescind without penalty, concluding that the document he received was a solicitation or advertisement until those three days passed (Docket No. 26, Pl. Memo. at 21). Plaintiff cites for example In re Estate of Rosser, 821 A.2d 615, 623 (Pa. Super. Ct. 2003), where whether a contract had consideration or mutuality of obligation was necessary to determine if a decedent's conveyance could be voided by the survivors. To the contrary, Plaintiff and Defendant had mutuality of obligations even during the three-day rescissionary period. Plaintiff had to act to cancel the contract within those three days to terminate the agreement without penalty while Defendant still had to supply natural gas. Plaintiff has not cited other cases where the UTPCPL applied to the recessionary period of a contract by deeming that to be a solicitation or advertisement. He also has not cited authorities that render an agreement like the one in this case illusory merely because a party can opt out after a brief initial period. Pennsylvania law recognizes binding contracts that contain cancellation provisions, e.g., Samuel Williston, Williston on Contracts § 7:13 (2020), recognizing valid agreement with provision that one party may cancel provided the method to do so is limited. Reservation, for example, of right to cancel upon written notice or after a definite period after giving notice, "there is consideration for the promisor's promise, despite the fact that the promisor may in fact be

able to avoid its obligation," id.; see also Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 51 A. 973 (1902). That an agreement contains this initial cancellation provision does not invalidate it as a contract and render it into a mere offer.

This Court has not found precedent under the UTPCPL that considered an agreement as an advertisement. This Court agrees with the Eastern District of Pennsylvania in Price, supra, 2018 WL 1993378, at *5 (see also Docket No. 20, Def. Memo. at 21), that "to the extent Plaintiffs rely on the sales agreement itself for their claim, that claim is duplicative of the breach of contract claim." The distinction Plaintiff argues from the lack of a recessionary period makes little difference; as discussed above, Plaintiff entered the contract with a recessionary period. A claim that this agreement is also advertising merely alleges a duplicative claim under common law and the UTPCPL.

Thus, Defendant's Motion to Dismiss (Docket No. 19) so much of the Complaint alleging the contract was advertising in violation of the UTPCPL is granted.

2. UTPCPL's Catchall for Fraudulent and Deceptive Practices and Federal Rule 9 Pleading Requirements

Defendant argues that Plaintiff has not alleged fraud and deception under the UTPCPL with specificity as required by Federal Rule of Civil Procedure 9(b) (Docket No. 20, Def. Memo. at 22-23). The parties dispute whether Plaintiff alleged fraud and thus under Rule 9(b) needed to plead fraud with particularity. Defendant argues that violation of the UTPCPL needs to be alleged with particularity (Docket No. 20, Def. Memo. at 18 n.4, citing, e.g., Dolan v. PHI Variable Ins. Co., No. 3:15-CV-01987, 2016 WL 6879622, at *5 (M.D. Pa. Nov. 22, 2016) (Rule 9(b) heightened specificity extends to all claims that sound in fraud, citations to District of New Jersey case omitted). The court in

Dolan held that Rule 9(b) applied to state fraud claims including alleged violations of the UTPCPL, id.

Plaintiff counters that under Landau, supra, 223 F. Supp. 3d at 418, pleading under the UTPCPL need not be particularized (Docket No. 26, Pl. Memo. at 20 n.8). The court in Landau considered the amendment to the catchall provision adding deceptive conduct and the court held that pleading deceptive conduct only required Rule 8(a) normal pleading and not the heightened fraud pleading of Rule 9(b), 223 F. Supp. 3d at 418.

An Erie doctrine issue arises whether Pennsylvania law (here, as construed by federal courts in that Commonwealth) applies or does this Court's (or the Second Circuit's) procedural caselaw applies on the particularity issue. Both sides here cite federal decisions from Pennsylvania. Under the Erie doctrine, while state law governs the substantive issues, procedural law in diversity cases is federal procedures, e.g., Loreley Financing (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 182 n.14 (2d Cir. 2015); NCC Sunday Inserts, Inc. v. World Color Press, Inc., 692 F. Supp. 327, 330 (S.D.N.Y. 1988) (applying Rule 9(b) to Connecticut Unfair Trade Practices Act claim, "while state law governs substantive issues of state law raised in federal court, it is federal law which governs procedural issues of state law raised in federal court, and Rule 9(b) is a procedural rule"). Where this Court or the Second Circuit has ruled on a procedure, this Court is bound to apply it. Absent that precedent, this Court reviews the decisions of other districts and may adopt its rationale.

As of 2016, the Second Circuit has not held that Rule 9(b) applies to similar state unfair trade practices laws, see L.S. v. Webloyalty.com, Inc., 673 F. App'x 100, 105 (2d Cir. 2016) (summary Order), where the court noted that Connecticut law did not require

a plaintiff to allege or prove fraud for violations of the Connecticut Unfair Trade Practices Act (or "CUTPA"), see Willow Springs Condo. Ass'n, Inc. v. Seventh BRT Dev. Corp., 245 Conn. 1, 43, 717 A.2d 77, 100 (1998). Acknowledging there that a CUTPA violation may overlap with common law claims, the Second Circuit and Connecticut courts recognize that "to the extent that they diverge, dismissal of a plaintiff's CUTPA claim is not warranted unless the facts as alleged do not independently support a CUTPA claim," L.S., supra, 673 F. App'x at 105. The Second Circuit then stated "we are doubtful, even assuming Rule 9(b) applies to certain CUTPA claims, Rule 9(b)'s particularity requirement would apply to a CUTPA claim premised" on the facts alleged, id., concluding that those alleged facts nevertheless would satisfy Rule 9(b) pleading requirements, id.

Magistrate Judge Hugh Scott of this District once found that an allegation under the New York General Business Law was not pled, Navitas LLC v. Health Matters Am., Inc., No. 16CV699, 2018 WL 1317348, at *19-20 (W.D.N.Y. Mar. 14, 2018) (Report & Rec), but did not require that pleading with particularity under Rule 9(b). There, co-defendant Bio Essentials asserted crossclaims for fraud and presumably for violation of New York General Business Law § 349 against defendant Health Matters America but not expressing alleging the claim under that statute, id. at *19, 3. Health Matters then moved to dismiss some of the crossclaims, including those alleging fraud and unfair business practices, id. at *4, 14-15. In two crossclaims, Bio Essentials alleged Health Matters false statements damaged Bio Essentials either as unfair trade practices or as fraudulent statements, id. at *14-15. Given Bio Essentials' relatively vague pleading, Health Matters argued that the fraud and unfair trade practice crossclaims violated Rule 9(b), id. at *15-16. Bio Essentials argued that only its fraud crossclaim required

pleading under Rule 9(b), id. at *17. Magistrate Judge Scott then applied Rule 9(b) to the fraud crossclaim while recommending dismissal of the unfair practices crossclaims for failure to allege the elements of General Business Law § 349 claims, id. at *17-19, quoting Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 N.Y.2d 20,24-25, 623 N.Y.S.2d 529, 532 (1995).

Both L.S. and Navitas skirt applying Rule 9(b) particularity for state unfair trade practices actions, recognizing that they are distinct from common law fraud claims that would require particular pleading. Deceptive acts under the UTPCPL's catchall provision has been held not to be fraud and could be plead under Rule 8(a), Landau, supra, 223 F. Supp. 3d at 418. But the UTPCPL catchall refers to "engaging in fraudulent or deceptive conduct," 73 Penn. Cons. Stat. § 201-2(4)(xxi), which includes fraud. Therefore, so much of Plaintiff's catchall claim that alleges fraudulent conduct requires particular allegation under Rule 9(b), see 5A Charles A. Wright, Arthur R. Miller & A. Benjamin Spencer, Federal Practice and Procedure § 1297, at 63-64 (Civil 2018).

Even if Rule 9(b) is not required for allegations under the UTPCPL, Twombly and Iqbal require pleading details to allege a plausible claim, see Price v. Foremost Indus., Inc., Civil Action No.17-00145, 2018 WL 1993378, at *5 (E.D. Pa. Apr. 26, 2018) (plaintiffs' alleging UTPCPL violations stated misrepresentations that were "devoid of the details that Twombly and Iqbal require").

The allegations here, however, do not meet the plausibility standard of Twombly and Iqbal without regard to Rule 9(b) particularization, id. It is not clear what the deceptive act is here. The agreement ultimately gave Defendant discretion to set its variable pricing with one stated factor but allowing discretion to set it based upon "business and market

conditions". Plaintiff alleges his understanding of what "business and market conditions" is (or ought to have been) but he does not allege that Defendant represented that this understanding was what it meant.

Defendant's Motion to Dismiss (Docket No. 19) the First Cause of Action under the UTPCPL is granted.

H. How This Case Differs from Nieves v. Just Energy New York Corp.

Since Plaintiff's counsel in this case also represented Malta Nieves and the same defense counsel represent the Just Energy Defendants in both cases, a comparison of the result here and in Nieves is in order. Defendant moved to transfer this case to the Western District of New York because of the then-pending Nieves action was before this Court. Factually, the cases are distinguishable. First, the language of the variable terms differs between this case and Nieves. In Nieves, Just Energy New York ("Just Energy") set the variable electricity rate solely based on "business and market conditions" without that phrase being defined or giving specific examples of those conditions. This Court held that Just Energy had unfettered discretion in setting these rates without reference to wholesale electricity rates or competitors' charges, Nieves, supra, 2020 WL 6803056, at *4. Malta Nieves did not allege representations by Just Energy that she would pay less than the electrical utility; Nieves merely claimed that Just Energy represented that she would save money, id., at *2.

Second, Nieves arose in New York and argued breach of contract and other claims under New York law. Pennsylvania law expressly required natural gas suppliers to specify the basis for variable pricing while New York law does not. Third, the energy supplied differed, with Nieves involving electricity. There was no express breakdown of

the cost of electrical supply, transmission, or storage as was in Defendant's gas supply contract with Jordet in this case. Fourth, both cases involve different corporate Defendants that might be affiliates but each Defendant was incorporated and had principal place of business in different jurisdictions.

The crucial difference between Nieves and this case is the variable terms in the supply contracts. Defendant here listed some (but not all) elements toward establishing business and market conditions in variable pricing, whereas Just Energy in Nieves has more open concept of that phrase "business and market conditions."

IV. Conclusion

Plaintiff's understanding of what a reasonable customer might expect is not the terms of the contract he signed with Defendant. That agreement gave Defendant some discretion to set variable rates, but expressly included natural gas costs as factors for business or market conditions. As summarized in wholesale gas costs (as Plaintiff argues), this is an element of Defendant's pricing but not necessarily the entirety of the business and market conditions.

Deregulation of natural gas supply rates moved the marketplace from regulated monopoly (rates set by PECO, for example, as approved by the Pennsylvania regulators) to those set in the marketplace. Defendant, as an ESCO, did not have its rates set by a public agency or by its competitors (including utilities like PECO). But Pennsylvania law in establishing deregulation required natural gas suppliers to furnish information for the basis of their pricing to have informed consumers.

Defendant's Motion to Dismiss (Docket No. 19) is granted in part, denied in part. Defendant's Motion to Dismiss the First Cause of Action for violation of the Pennsylvania

Unfair Trade Practices and Consumer Protection Law is granted for both the advertising and fraudulent and deceptive conduct violations. Defendant's Motion to Dismiss (id.) the Second Cause of Action for breach of contract is denied. Its Motion to Dismiss (id.) the Third Cause of Action for unjust enrichment is granted. Defendant shall answer the surviving Second Cause of Action within fourteen (14) days after entry of this Decision and Order. This Court then will refer this case to a Magistrate Judge for conducting pretrial proceedings.

V. Orders

IT HEREBY IS ORDERED, that Defendant's Motion to Dismiss (Docket No. 19) is GRANTED in part, DENIED in part. Defendant shall answer the surviving Causes of Action within fourteen (14) days after entry of this Decision and Order. This Court will refer this case to a Magistrate Judge for pretrial proceedings.

SO ORDERED.

Dated: December 7, 2020
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

Tab 20

PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES[1]

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

1. Name of Just Energy Entity or Entities (the "Debtor(s)") the Claim is being made against[2]:

Debtor(s): Just Energy Entities

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: Fira Donin and Inna Golovan and as Representative Plaintiffs

Name of Contact: J. Burkett McInturff

Address: Wittels McInturff Palikovic
18 Half Mile Road

Title: Attorney for the Representative Plaintiffs

Phone #: 910-476-7253

Fax #:

City: Armonk

Prov /State: NY

Email: jbm@wittelslaw.com

Postal/Zip Code: 10504

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[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

[2] List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "Claims Procedure Order"), a copy of which is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: n/a

Name of Contact ______

Address ______

Title ______

Phone # ______

Fax # ______

City ______ Prov /State ______

Email ______

Postal/Zip Code ______

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of Pre-Filing Claim (including interest up to and including March 9, 2021)[3]:	Whether Claim is Secured:	Value of Security Held, if any[4]:
Just Energy Entities	USD	$3,662,444,442	Yes ☐ No ☒	n/a
			Yes ☐ No ☐	
			Yes ☐ No ☐	

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Restructuring Period Claims

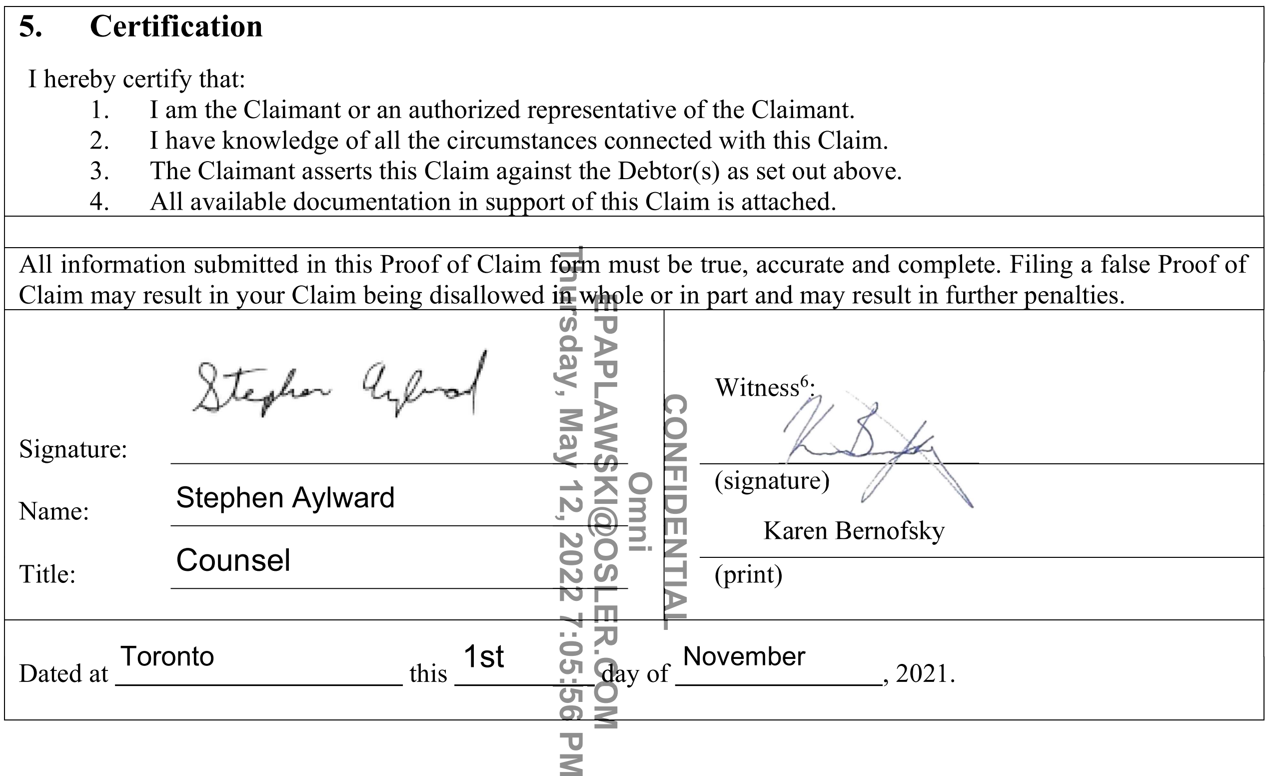
Debtor Name:	Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

[3] Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

[4] If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation[5]

Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.



5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: [signature] Witness[6]: [signature]

(signature)

Name: Stephen Aylward

Karen Bernofsky

Title: Counsel

(print)

Dated at Toronto this 1st day of November, 2021.

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6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

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[5] If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

[6] Witnesses are required if an individual is submitting this Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

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CLAIM DOCUMENTATION

I. Relevant Background and Summary of Claim Documentation

Claimants Fira Donin, Inna Golovan, and Trevor Jordet have pending proposed class action lawsuits against the Just Energy Entities in two United States Federal District Courts. Claimants Donin's and Golovan's case is captioned *Donin et al. v. Just Energy Group Inc. et al.*, No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.) (hereafter "*Donin* Dkt.") and Claimant Jordet's case is captioned *Jordet v. Just Energy Solutions, Inc.*, No. 18 Civ. 953 (WMS) (W.D.N.Y.) (hereafter "*Jordet* Dkt"). Fira Donin, Inna Golovan, and Trevor Jordet, as well as the other individuals who have retained undersigned Class Counsel to sue the Just Energy Entities on a class-wide basis are referred to hereafter as the "Representative Plaintiffs."[1, 2]

Pursuant to the expert Affidavit of Dr. Serhan Ogur (the "Expert Report"), the Representative Plaintiffs hereby submit a general unsecured claim of **US$3,662,444,442**, which reflects the Just Energy Entities' liability to their U.S. customers for *inter alia* breaching the pricing terms of their residential and commercial contracts to supply electricity and gas. The Representative Plaintiffs' damages calculations are derived from the difference between the prices the Just Energy Entities were contractually bound to charge U.S. customers as compared to the prices ultimately charged. A true and correct copy of the Expert Report is attached hereto as **Exhibit 1**. In support of their calculations, the Representative Plaintiffs provide the following chart summarizing their class-wide damages calculations.

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Class-Wide Damages Calculations	
U.S. Residential Electric Damages	$1,144,609,092
U.S. Residential Gas Damages	$717,711,010
U.S. Commercial Electric Damages	$449,392,725
U.S. Commercial Gas Damages	$68,624,767
Total:	**$2,380,337,594**

In addition to damages of US$2,380,337,594, the Representative Plaintiffs calculate that US$**1,282,106,848** is owed to them as pre-judgment interest, which amount has been added to their damages calculation to make up the remainder of their claim.[3]

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[1] Those other individuals are: New York resident Todd Orsi; California residents Danielle Greer, Hannad Naveed, and Naveed Yamin; Michigan residents Nicholas Aldridge, Ariel Meserva, Jessica Smith Mixon, and Vernon Van Halm; and Texas residents Kadidja Fofana and Lisa Widner.

[2] Please note that while the Representative Plaintiffs are submitting proofs of claim for each of the two pending proposed class actions (*Donin* and *Jordet*), they are submitting identical claim documentation and amounts for each case.

[3] U.S. state law governs statutory pre-judgment interest. *Schipani v. McLeod*, 541 F.3d 158, 164 (2d Cir. 2008). The class actions challenge the Just Energy Entities' conduct in 11 jurisdictions— California,

Footnote continued on next page.

By way of brief background, on October 3, 2017, Fira Donin and Inna Golovan filed proposed class action lawsuits on behalf of themselves and all other U.S. customers alleging *inter alia* that the Just Energy Entities breached their contractual obligations to base their variable gas and electricity rates on "business and market conditions," breached their contractual obligation to charge a specified energy rate, and breached the implied covenant of duty of good faith and fair dealing. *See, e.g.*, *Donin* Complaint ¶¶ 26-35, attached hereto as **Exhibit 2**. On September 24, 2021, Judge William F. Kuntz of the U.S. District Court for the Eastern District of New York denied the Just Energy Entities' motion to dismiss all of the aforementioned class action claims on behalf of all U.S. customers, ruling *inter alia* that Plaintiffs Donin and Golovan had adequately alleged that the Just Energy Entities breached their contractual obligation to charge market-based rates, breached their contractual obligation to charge a specified energy rate, and breached the implied covenant of good faith and fair dealing. Decision & Order at 3, 12–15, *Donin* Dkt. No. 111 attached hereto as **Exhibit 3.**

Similarly, on April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers alleging *inter alia* that the Just Energy Entities breached their contractual obligations to base their variable gas rates on "business and market conditions." *See, e.g.*, *Jordet* Complaint ¶¶ 19-37 attached hereto as **Exhibit 4**. On December 7, 2020, Judge William M. Skrenty of the U.S. District Court for the Western District of New York denied the Just Energy Entities' motion to dismiss the aforementioned class action breach of contract claim on behalf of all U.S. customers, holding that "'business and market conditions' has some standard that [the Just Energy Entities] had to apply in setting [their] variable pricing but apparently failed to adhere to in [their] pricing." *See* Decision & Order at 18, *Jordet* Dkt. No. 43, attached hereto as **Exhibit 5.**

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As set forth on pp. 18-19 below, the Representative Plaintiffs' claims encompass the damages of **millions** of U.S. Just Energy customers. These claims are founded in well-established principals of contract, are buttressed by a legion of U.S. case law, regulation, and statue. The claims also represent paradigmatic class action claims that are readily certifiable (and have been certified on four separate occasions), are pleaded in tandem with increasing regulatory scrutiny (including outright bans) of the exact practices the Just Energy Entities employed throughout the U.S., and follow in the footsteps of at least **six** regulatory actions against the Just Energy Entities.

Delaware, Illinois, Massachusetts, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas. Each of these jurisdictions award pre-judgment interest as a matter of right. *See generally Allapattah Servs., Inc. v. Exxon Corp.*, 157 F. Supp. 2d 1291, 1311–12 (S.D. Fla. 2001), *aff'd*, 333 F.3d 1248 (11th Cir. 2003). The Representative Plaintiffs here have applied the forum state's (New York) pre-judgment interest rate (9% per annum) as well as the forum law on the date from which to calculate interest. New York courts usually pick the midpoint of the class period as the period from which to calculate pre-judgment interest, or any other reasonable date as "[t]he choice of the date from which to compute prejudgment interest is left to the discretion of the court." *Chuchuca v. Creative Customs Cabinets Inc.*, No. 13 Civ. 2506 (RLM), 2014 WL 6674583, at *16 (E.D.N.Y. Nov. 25, 2014)(collecting cases); *see also Marfia v. T.C. Ziraat Bankasi*, 147 F.3d 83, 91 (2d Cir. 1998) ("New York law leaves to the discretion of the court the choice of whether to calculate prejudgment interest based upon the date when damages were incurred or 'a single reasonable intermediate date,' which can be used to simplify the calculation.").

II. The Class Action Claims Are Strong and Supported by Ample Precedent

A. U.S. Courts Regularly Hold That ESCOs like Just Energy Are Liable When They Promise to Charge Market-Based Rates but Actually Charge Rates That Are Much Higher

As a result of deregulation in states across the United States, consumers and businesses can purchase natural gas and electricity through third-party suppliers while continuing to receive delivery of the energy from their existing public utilities. These third-party energy suppliers are known as energy service companies, or "ESCOs."

ESCOs like the Just Energy Entities play a middleman role: they purchase energy directly or indirectly from energy producers and then sell that energy to end-user consumers. However, ESCOs do not deliver energy to consumers. Rather, the companies that produce energy deliver it to consumers' utility companies, which in turn deliver it to the end-user. ESCOs merely buy gas and electricity and then sell that energy to end-users with a mark-up. Thus, ESCOs are essentially brokers and traders: they neither make nor deliver gas or electricity, but merely buy energy from a producer and re-sell it.

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If a customer switches to an ESCO, the customer's existing utility continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is whether the customer's energy supply rate is set by the ESCO or the utility.

Numerous courts have held that consumers may recover against ESCOs like Just Energy who promise to base their rates on business and market conditions when plaintiffs show that the defendant ESCO's rate is higher than that of public utilities or where they show that rates do not otherwise change in a manner commensurate with market conditions. *See, e.g.*, *Burger v. Spark Energy Gas, LLC*, 507 F. Supp. 3d 982, 990 (N.D. Ill. 2020) ("Burger[] . . . alleg[es] that the Terms of Service provided that the variable rate 'may vary based on market conditions' and that [the ESCO] exercised its discretion contrary to consumers' reasonable expectations by setting a variable rate that did not fluctuate in connection with market conditions. Therefore . . . Burger can proceed on her contract claim concerning the variable rate based on a breach of the implied duty of good faith and fair dealing."); *Mirkin v. Viridian Energy, Inc.*, No. 15-1057, 2016 WL 3661106, at *8 (D. Conn. July 5, 2016) (holding that the plaintiffs plausibly alleged breach of contract where the contract provided that variable rates will be "based on wholesale market conditions" and variable rate failed to track wholesale market rates) (citing *Sanborn v. Viridian Energy, Inc.*, No. 14-1731, and *Steketee v. Viridian Energy, Inc.*, No. 15-585); *Melville v. Spark Energy, Inc.*, No. 15-8706 (RBK/JS), 2016 WL 6775635, at *3 (D.N.J. Nov. 15, 2016) ("Here, the [contract] states that the flex-rate plan uses a rate that 'may vary according to market conditions.' Plaintiffs argue that rates charged . . . were not market-based and, in support, list the rates charged by Spark in comparison to [the utility] during several months from 2013 to 2014. . . . [T]he Court finds that Plaintiffs have proffered sufficient evidence to state a claim for relief . . . Plaintiffs provided comparisons of rates offered by Spark to those of a competing energy provider. Such evidence supports the allegation that Spark's prices were untethered to those of the market at large."); *Oladapo v. Smart One Energy, LLC*, No. 14-7117, 2016 WL 344976, at

*4 (S.D.N.Y. Jan. 27, 2016) (holding that "the fact that Smart One's rates consistently rose over time, while those set by [the local utility] fluctuated, indicates that Smart One was not setting its rates in response to 'changing gas market conditions,' as it represented[.]"); *Landau v. Viridian Energy PA LLC*, 223 F. Supp. 3d 401, 408-09 (E.D. Pa. 2016) (holding that where a plaintiff introduces evidence demonstrating that "[an ESCO's] rates increased or stayed the same even when the average wholesale market price for the region decreased[,]" the plaintiff has sufficiently alleged a breach of contract claim); *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 426 (S.D.N.Y. 2020) (holding that "there is a reasonable contract interpretation that 'Market' meant that Defendant's variable rate would be tethered to some degree to supply costs or to competitors' rates . . . upward variation from local utility rates may also demonstrate how Defendant's consumer rates are materially disconnected from their supply costs."); *Edwards v. N. Am. Power & Gas, LLC*, 120 F. Supp. 3d 132, 42-43 (D. Conn. 2015) (sustaining claim where contract promised "[t]he variable rate may increase or decrease to reflect the changes in the wholesale power market" and the plaintiff alleged that "the rates [the ESCO] charged were significantly higher than the wholesale market rate and did not always increase or decrease when the wholesale market rates did."); *Chen v. Hiko Energy, LLC*, No. 14-1771, 2014 WL 7389011, at *6 (S.D.N.Y. Dec. 29, 2014) (where contract provided that variable rate would be based on wholesale costs and other market-related conditions, plaintiffs plausibly alleged that the ESCO "breached . . . by charging them 'a rate that was not based on the factors upon which the parties agreed the rate would be based'" and noting the same disconnect between the ESCO's rates and utility rates alleged here).

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In both pending class actions, the Representative Plaintiffs can prove that Just Energy's rates were substantially higher than utility rates and not commensurate with market conditions. *See* Compl. at 44-47, *Donin* Dkt. No. 17 (showing Just Energy's rate was typically between 30% and 50% higher than the utility rate); Compl. at 6-8, *Jordet* Dkt. No. 1 (showing Just Energy's rate was frequently more than double the utility rate and that its rate increased when wholesale costs declined).

B. Courts Regularly Certify Classes of Consumers Against ESCOs That Charge <u>Rates Higher Than Allowed under the ESCOs' Customer Contracts</u>

Four courts have addressed a contested motion to certify a class of customers of ESCOs like Just Energy who were overcharged under the terms of their written customer agreements, and each held that certification was appropriate. *See Bell v. Gateway Energy Services Corp.*, No. 31168/2018 (Rockland Cnty. Super. Ct. Jan. 8, 2021), NYSCEF Doc. No. 152; *BLT Steak LLC v. Liberty Power Corp, L.L.C.*, No. 151293/2013 (N.Y. Cnty., Super. Ct Aug. 14, 2020), NYSCEF Doc. No. 376 (a case in which the plaintiff was represented by FBFG, one of the law firms representing the Representative Plaintiffs); *Claridge v. N. Am. Power & Gas, LLC*, No. 15-1261, 2016 WL 7009062 (S.D.N.Y. Nov. 30, 2016) (a case in which the plaintiff was represented by FBFG); *Roberts v. Verde Energy, USA, Inc.*, No. X07HHDCV156060160S, 2017 WL 6601993 (Conn. Super. Ct. Dec. 6, 2017), *aff'd*, 2019 WL 1276501 (Conn. Super. Ct. Feb. 1, 2019).[4]

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[4] Numerous other courts have followed suit in the settlement context. *See, e.g.*, *Edwards v. N. Am. Power & Gas, LLC*, 2018 WL 3715273, at *6–8 (D. Conn. Aug. 3, 2018) (granting final approval of settlement class, finding the requirements for class certification satisfied); *Silvis v. Ambit Energy L.P.*, 326 F.R.D. 419, 428–29 (E.D. Pa. 2018) (same); *Hamlen v. Gateway Energy Services Corp.*, Case No. 16-3526, ECF

Footnote continued on next page.

Indeed, there are few cases better suited for class certification than the instant actions. The Representative Plaintiffs' claims, like those of each Class Member, arise out of uniform misrepresentations regarding the pricing methodology for Just Energy's variable rate made in its standard customer agreements. Additionally, not only are the misrepresentations concerning Just Energy's variable rate uniform, but the resultant injury to Class Members is also uniform because when Just Energy sets its variable rates each month, it uses standardized procedures within each utility region. Thus, the proposed Class is easily amenable to certification.

III. The Increasing Regulatory Denunciation of Just Energy's Pricing Practices Strongly Supports the Class Action Claims

Almost all of the states in the U.S. that deregulated their energy markets did so in the mid-to-late 1990s. This wave of deregulation was pushed by then-corporate superstar Enron. For example, in December 1996 when energy deregulation was being considered in Connecticut, Enron CEO Jeffrey Skilling, dubbed "[t]he most aggressive proponent" of deregulation, said:

> Every day we delay [deregulation], we're costing consumers a lot of money . . . . It can be done quickly. The key is to get the legislation done fast.[5]

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Operating under this concocted sense of urgency, states in the U.S. that deregulated suffered serious consumer harm. For example, in 2001, forty-two states had started the deregulation process or were considering deregulation. Today, the number of full or partially deregulated U.S. states has dwindled to only seventeen and the District of Columbia. Even within those states, several have recognized deregulation's potential harm to everyday consumers and thus only allow large-scale consumers to purchase from ESCOs.

Responding to shocking energy prices, many key players that supported deregulation now regret the role they played. For example, reflecting on Maryland's deregulation experience, a Maryland Senator commented that "[d]eregulation has failed. We are not going to give up on re-regulation till it is done."[6]

A Connecticut leader who participated in that state's foray into energy deregulation was similarly regretful:

No. 141 (S.D.N.Y. Sept. 13, 2019) (same); *In re Hiko Energy LLC Litig*., Case No. 14-1771, ECF No. 93 (S.D.N.Y. May 9, 2016) (same); *Wise v. Energy Plus Holdings, LLC*, Case No. 11-7345, Dkt. No. 75 (S.D.N.Y. Sept. 17, 2013) (same).

[5] Keating, Christopher, "Eight Years Later . . . 'Deregulation Failed,'" *Hartford Courant*, Jan. 21, 2007.

[6] Hill, David, "State Legislators Say Utility Deregulation Has Failed in its Goals," *The Washington Times*, May 4, 2011.

> Probably six out of the 187 legislators understood it at the time, because it is so incredibly complex . . . . If somebody says, no, we didn't screw up, then I don't know what world we are living in. We did.[7]

As a result of the widespread improper pricing practices by ESCOs like Just Energy, more than a decade ago states like New York began enacting remedial legislation meant to "establish[] important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers."[8] As the drafters of this legislation noted, New York's ESCO Consumers Bill of Rights, codified as G.B.L. Section 349-d, in 2010 sought to end the exact type of conduct that harmed the Just Energy Entities' U.S. customers:

> Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process.
>
> * * *
>
> High-pressure and misleading sales tactics, onerous contracts with unfathomable fine print, short-term "teaser" rates followed by skyrocketing variable prices—many of the problems recently seen with subprime mortgages are being repeated in energy competition.[9]

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State regulators have for years also denounced predatory pricing practices like those challenged in the class actions. For example, in 2014 the New York's Public Service Commission (the "NYPSC") declared that New York's retail energy markets were plagued with "marketing behavior that creates and too often relies on customer confusion."[10] The NYPSC further noted "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."[11] The NYPSC concluded as follows:

> [A]s currently structured, the retail energy commodity markets for residential and small nonresidential customers cannot be considered

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[7] Keating, *supra*.

[8] ESCO Consumers Bill of Rights, New York Sponsors Memorandum, 2009 A.B. 1558, at 1 (2009).

[9] *Id*. at 3–4.

[10] CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 4 (Feb. 25, 2014).

[11] *Id*. at 11.

> to be workably competitive. Although there are a large number of suppliers and buyers, and suppliers can readily enter and exit the market, the general absence of information on market conditions, particularly the price charged by competitors, is an impediment to effective competition . . . .[12]

The NYPSC's consumer complaint data confirms this. The number of deceptive marketing allegations against ESCOs far exceed the combined number of complaints submitted regarding all other utilities in New York, including the lightly regulated telecommunications industry.

Many NYPSC complaints concern variable rate pricing like that practiced by the Just Energy Entities. Under this pricing practice, during an initial teaser or fixed rate period, the customer's energy supply costs are more or less as advertised, but after the initial period expires, instead of switching the consumer back to the utility, the ESCO uses customer inaction to substantially increase the price without further notice or explanation as to how the new rate is determined.

The conduct of ESCOs like the Just Energy Entities has been devastating to consumers across the United States. For example, "[a]ccording to the data provided by [New York's] utilities, the approximately two million New York State residential utility customers who took commodity service from an ESCO collectively paid almost $1.2 billion more than they would have paid if they purchased commodity from their distribution utility during the 36-months ending December 31, 2016."[13] "Additionally, small commercial customers paid $136 million more than they would have paid if they instead simply remained with their default utilities for commodity supply for the same 36-month period."[14] Combining these two groups, New York consumers have been "'overcharged' by over $1.3 billion dollars over this time period."[15]

Based on the flood of consumer complaints, negative media reports, and data demonstrating massive overcharges, the NYPSC announced in December 2016 an evidentiary hearing to consider primarily whether ESCOs should be "completely prohibited from serving their current products" to New York residential consumers.[16] Then, on December 16, 2016, the NYPSC permanently prohibited ESCOs from serving low-income customers, because of "the persistent ESCO failure to address (or even apparently to acknowledge) the problem of overcharges to [low income] customers . . . ."[17]

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[12] *Id*. at 10.

[13] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 2 (Mar. 30, 2018).

[14] *Id.* at 3.

[15] *Id.*

[16] CASE 12-M-0476, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, at 3 (December 2, 2016).

[17] CASE 12-M-0476, Order Adopting a Prohibition On Service To Low-Income Customers By Energy Services Companies, at 3 (Dec. 16, 2016).

Following the first part of the evidentiary hearing announced in December 2016, on March 30, 2018, NYPSC staff announced the following conclusions about ESCOs:

> [A]s the current retail access mass markets are structured, customers simply cannot make fully informed and fact-based choices on price . . . since the terms and pricing of the ESCO product offerings are not transparent to customers. For variable rate products this is due, in large part, to the fact that ESCOs often offer "teaser rates" to start, and after expiration of the teaser rate, the rate is changed to what is called a "market rate" that is not transparent to the customer, and the contract signed by the customer does not provide information on how that "market rate" is calculated.[18]
>
> * * *
>
> ESCOs take advantage of the mass market customers' lack of knowledge and understanding of, among other issues, the electric and gas commodity markets, commodity pricing, and contract terms (which often extend to three full pages), and in particular, the ESCOs' use of teaser rates and "market based rate" mechanisms that customers are charged after the teaser rate expires. In fact, ESCOs appear to be unwilling to provide the necessary product pricing details as to how those "market based rates" are derived to mass market customers in a manner that is transparent so as to enable an open and competitive marketplace where customers can participate fairly and with the necessary knowledge to make rational and fully informed decisions on whether it is in their best interest to take commodity service from their default utility, or from a particular ESCO among competing but equally opaque choices.[19]

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In response to these criticisms, the ESCOs claimed that their marketing and overhead costs explain the overcharges, but NYPSC staff found that these costs do "not justify the significant overcharges."[20] Likewise, when the ESCOs claimed that their provision to consumers of so-called value-added products such as light bulbs and thermostats contributed to their excessive rates, NYPSC staff found that "these sorts of value-added products is at best de minimis and does not explain away the significantly higher commodity costs charged by so many ESCOs."[21]

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[18] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 41–42 (Mar. 30, 2018).

[19] *Id.* at 86 (citations omitted).

[20] *Id.* at 37.

[21] *Id.* at 87.

Similarly, the NYPSC staff found that the "claim that at least a portion of the significant delta between ESCO and utility charges is explained by ESCOs offering renewable energy is disingenuous at best. ESCOs may be charging a premium for green energy, but they are not actually providing a significant amount of added renewable energy to customers in New York."[22]

Instead, NYPSC staff reached the following conclusion:

> The massive $1.3 billion in overcharges is the result of higher, and more often than not, significantly higher, commodity costs imposed by the ESCOs on unsuspecting residential and other mass market customers. These overcharges are simply due to (1) the lack of transparency and greed in the market, which prevents customers from making rational economic choices based on facts rather than the promises of the ESCO representative, and (2) obvious efforts by the ESCOs to prevent, or at least limit, the transparency of the market. These obvious efforts include the lack of a definition for "market rate" in their contracts, resulting in the fattening of ESCOs' retained earnings.[23]

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Following these conclusions, in December 2019 the NYPSC **banned** the exact same variable rate pricing practices the Representative Plaintiffs challenge in the class actions. The NYPSC's press release announcing the ban on variable energy rates does not mince words, stressing that it was intended to "prevent[] bad actors among ESCOs from overcharging New York consumers" and that the regulations only went forward after "the state's highest court definitively halted ESCOs' attempts to use litigation to evade and/or delay consumer-protection regulation."[24] The regulations themselves likewise condemn ESCOs' conduct and declare that "avoiding accountability" has become a "business model" in the deregulated energy market:

> Based upon the number of customer complaints that continue to be made against ESCOs, and the likely need for increased enforcement activities, the large number of ESCO customers that pay significant premiums for products with little or no apparent added benefit, . . . it appears that a material level of misleading marketing practices continues to plague the retail access market.

* * *

[22] *Id.* at 69.

[23] *Id.*

[24] Press Release, "PSC Enacts Significant Reforms to the Retail Energy Market," December 12, 2019, *available at*: http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/Web/51A7902329FEA7B7852584CE005CF88D/$File/pr19110.pdf?OpenElement.

> The persistence of complaints related to ESCO marketing practices is indicative of some ESCOs continuing to skirt rules and attempting to avoid accountability as part of their business model.[25]

The NYPSC's variable rate ban followed a two-year investigation of ESCO practices that culminated in a 10-day evidentiary hearing to examine evidence submitted by 19 parties and to hear the testimony and cross-examination of 22 witnesses and witness panels.[26]

The NYPSC prefaced the ban with the observation that variable energy rates—like those the Just Energy Entities charged the Representative Plaintiffs and the Class—are "[t]he most commonly offered ESCO product" and that this popular product is frequently provided at "a higher price than charged by the utilities."[27] The absurdity of consumers paying ESCOs more for the exact same energy offered by regulated utilities was not lost on the NYPSC:

> If market participants are unwilling, or unable, to provide material benefits to consumers beyond those provided by utilities in exchange for a regulated, just and reasonable rate, the market serves no proper purpose and should be ended.[28]

In fact, the NYPSC found it "troubling" that even after considering reams of evidence "neither ESCOs nor any other party have shown . . . that ESCO charges above utility rates were generally – or in any specific instances – justified."[29] This fact only highlighted the NYPSC's "long-held concern that many customers may only be taking ESCO service due to their misunderstanding of [ESCOs'] products and/or prices."[30]

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Accordingly, and on this record, the NYPSC banned variable energy rates like those the Just Energy Entities charged to the Representative Plaintiffs and the Class.[31] In place of these floating variable rates, the NYPSC required ESCOs to guarantee that their variable rates would save customers money compared to what the utility would have charged.[32] Under the new regulations, if the ESCO charges the consumer more than the utility, the consumer is owed a

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[25] December 12, 2019 Order at 88–90.

[26] *Id.* at 3–4.

[27] *Id.* at 11.

[28] *Id.* at 12.

[29] *Id.* at 30.

[30] *Id.* at 31.

[31] *Id.* at 39.

[32] *Id.*

refund for the difference.[33] In the Representative Plaintiffs' class actions, the difference between what the Just Energy Entities charged consumers for the exact same energy that Class Members' utilities would have charged is more than US$2 billion. The NYPSC's regulations took effect in April 2021. Around the same time, the Just Energy Entities ceased offering service in New York and attempted to reframe the state's ban on the Just Energy Entities' core business practice as "regulatory constraints . . . requiring certain variable rate customers to be dropped to the utility."[34]

IV. <u>Just Energy's Damning Public Dossier Further Supports the Class Actions</u>

The Just Energy Entities have amassed a damning public dossier that includes at least **<u>six</u>** regulatory enforcement actions, reams of investigative journalism exposing Just Energy's deceptive practices, and countless negative customer reviews.

For example, on December 31, 2014, Just Energy agreed to settle claims brought by the Massachusetts Attorney General that are strikingly similar to those of the Representative Plaintiffs', making various concessions related to its deceptive energy sales and billing practices in Massachusetts.[35]

The Massachusetts Attorney General alleged that Just Energy made misleading, false, and unlawful representations and omissions concerning its energy, including that:

> Just Energy represented to consumers that purchasing residential gas and/or electricity from Just Energy will save customers money;
>
> Just Energy failed to disclose complete and accurate pricing information; and
>
> Just Energy failed to disclose to consumers that its rates following any introductory period may be higher than the rates charged by consumers' traditional utilities.[36]

In response to the Massachusetts Attorney General's allegations, Just Energy agreed to refund a total of US$4,000,000 to Massachusetts customers along with implementing several key changes to its marketing and sales practices, as follows:

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[33] *Id.*

[34] Ring, Paul, Energy Choice Matters, Aug. 16, 2021, http://www.energychoicematters.com/stories/20210816a.html

[35] Assurance of Discontinuance, *In the Matter of Just Energy Group, Inc., et al.*, Mass. Sup. Ct., Suffolk, (Dec. 31, 2014).

[36] *Id*. ¶¶ 19(a), 20(a)–(b).

> Just Energy must cease making representations, either directly or by implication, about savings that consumers may realize by switching to Just Energy, unless Just Energy contractually obligates itself to provide such savings to consumers.[37]
>
> Where Just Energy quotes introductory teaser rates in its marketing material or in any verbal representation, the rate quote must be accompanied by a statement informing consumers that the quoted rate is an introductory rate and state when the rate will expire.[38]

Just Energy was banned for three years from enrolling Massachusetts consumers into variable rate energy products unless it complied with the following requirements:

> Within 30 days of a customer enrolling in a variable energy rate product, Just Energy must provide the customer with written notice of the date on which the introductory rate will expire.
>
> Any new contracts for variable rate products shall either (i) include the calculation that will be used to set monthly rates under the contract such that the customer can calculate the cost of Just Energy's residential energy, or (ii) make the rates available 60 days in advance via phone and the internet.[39]

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Additionally, for three years Just Energy was banned from charging Massachusetts consumers variable electricity rates in excess of 14.25¢ per kWh.[40, 41] The settlement further provided that:

> For current Just Energy variable rate customers, the company is required to clearly and conspicuously post its current variable rates and post subsequent variable rates with at least 45 days advance notice.[42] Just Energy is also required to mail notice to all existing Massachusetts variable rate customers alerting them to the fact that advance pricing information is now available via phone and on Just

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[37] *Id.* ¶ 26(a).

[38] *Id.* ¶ 26(c).

[39] *Id.* ¶ 28(a)–(b), (d).

[40] *Id.* ¶ 30(a).

[41] Just Energy charged Representative Plaintiff Donin electricity rates higher than this very high rate for 17 months while she was a Just Energy customer. 14 of those 17 months were consecutive. For the 10 months of billing data Representative Plaintiff Golovan possesses, Just Energy charged her more than the 14.25¢ cap **every single month**.

[42] *Id.* ¶ 30(b).

> Energy's website, and that these customers can cancel their Just Energy contracts without paying termination fees.[43]
>
> Just Energy must at its own expense hire an independent monitor for three years to audit *inter alia* Just Energy's Massachusetts marketing materials, billing data, consumer communications, and direct marketing efforts.[44]
>
> Just Energy must distribute a copy of the Assurance of Discontinuance to current and future (for three years) principals, officers, directors, and supervisory personnel responsible for the Massachusetts market.[45] Just Energy must also secure and maintain these individuals' signed acknowledgement of receipt of the Assurance of Discontinuance.

The Massachusetts Attorney General's sweeping action was far from the first time the Just Energy Entities had been targeted by regulators.

For example, in June 2003, the *Toronto Star* reported that Just Energy (then operating under the name Ontario Energy Savings Corp.) was fined for violating the Ontario Energy Board's code of conduct by fraudulently enrolling customers.[46]

In 2008, the Illinois Attorney General sued U.S. Energy Savings Corp. (whose name was changed to Just Energy in 2012), alleging violations of Illinois' consumer fraud laws. The May 2009 Press Release announcing a US$1 million settlement noted that the Illinois Attorney General had "received a nearly unprecedented number of calls from consumers who were deceived by false assurances that they would receive significant savings by switching to this alternative gas supplier."[47] According to the Attorney General's complaint, among other deceptive conduct "consumers were led to believe that they would automatically save money by enrolling in the U.S. Energy Savings program."[48]

During this same period, the Citizens Utility Board (the "CUB") and AARP filed a formal complaint with the Illinois Commerce Commission (the "ICC") alleging, *inter alia*, that Just Energy told customers they would "save money" by signing up, that consumers would not see

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[43] *Id.* ¶ 30(c).

[44] *Id.* ¶ 44, Attachment 2.

[45] *Id.* ¶ 46.

[46] Spears, John, "*Energy marketers fined over forgeries*," Toronto Star (June 21, 2003).

[47] Press Release, "Madigan Secures $1 Million in Consumer Restitution from Alternative Gas Supplier for Deceptive claims," May 14, 2009.

[48] *Id.*

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any gas price increases if they signed up, and that Just Energy presented false and misleading information about its prices.[49] In April 2010, the ICC found that Just Energy's sales and marketing practices were deceptive, fined the company US$90,000, and ordered an independent audit of its practices.[50]

In July 2008, New York's Attorney General announced a US$200,000 settlement with Just Energy (then named U.S. Energy Savings) and noted that the Attorney General's "office received hundreds of consumer complaints that sales contractors promised immediate savings on utility bills, but the price of gas was actually more than the price charged by the local utility because the price was locked in for a multi-year period."[51]

In November 2016, Ohio's Public Utilities Commission (the "PUCO") fined Just Energy **for a second time** for misleading marketing practices. An article in the *Columbus Dispatch* notes that Just Energy is an "energy company with a track record of misleading marketing," that it was fined by the PUCO in 2010 for deceptive marketing, and that it "sells energy contracts that often cost more than customers would pay if they received the standard service price."[52] The article also mentions that some of the complaints that led to the PUCO's action "stemmed from contracts sold on behalf of Just Energy by another company, saveonenergy.com."[53]

There are also thousands of complaints about the Just Energy Entities on the internet. Over the last three years alone, Just Energy has had at least 282 complaints filed against it with the Better Business Bureau (the "BBB").[54] Even though Just Energy is listed on the BBB's website as having been in business for 24 years, the BBB clearly declares that "THIS BUSINESS IS NOT BBB ACCREDITED" and displays the following "Pattern of Complaint" warning to the consuming public:

> BBB files indicate that this business has a pattern of complaints concerning door to door sales representatives who are using misleading sales tactics, misrepresenting themselves as the consumer's current energy or gas company, and not being transparent about cancellations fees which may be charged by their

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[49] Verified Original Complaint ¶19, Illinois Commerce Commission Docket 08-0175 (March 3, 2008).

[50] Press Release, "Illinois Commerce Commission Fines Just Energy for Deceptive Sales and Marketing Practices, Orders Audit," April 15, 2010.

[51] Press Release, "Attorney General Cuomo Stops WNY Natural Gas Provider From Deceiving Consumers by Misrepresenting Service Contracts," (July 4, 2008).

[52] Gearino, Dan, "Electricity marketer Just Energy fined over complaints,'" The Columbus Dispatch, (Nov. 4, 2016).

[53] *Id.*

[54] Business Profile: Just Energy Group, Inc., BBB.org, https://www.bbb.org/us/tx/houston/profile/electric-companies/just-energy-group-inc-0915-16000393.

> current provider for switching their services. Additionally, consumers allege Just Energy's representatives display poor customer service when the business is contacted to resolve billing and contract concerns.
>
> In November 2019, consumers also began filing customer reviews alleging sales representatives stationed at a local warehouse club were not being truthful about the rates for natural gas. We also received a customer review that stated the Just Energy employee was wearing a t-shirt with the warehouse club's logo.

Media reports about Just Energy equally condemn the Just Energy Entities. When the confidential results of the Illinois Commerce Commission's audit referenced above were made public, Chicago's CBS affiliate reported that between 2010 and 2011 Just Energy received over 29,729 customer complaints.[55] "There were so many complaints over so many years with so little company oversight on how they were handled that the audit said, '[a]n adequate compliance culture at the top levels of the organization is not evident.'"[56]

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A 2014 exposé by Canada's Global News highlights that the "CUB, the Better Business Bureau (BBB), the Ontario Energy Board, among others, have been inundated with complaints from consumers about the sales methods employed by Just Energy. The most common grievance is Just Energy promises people savings that don't materialize."[57]

The exposé further reported that Just Energy's founder Rebecca MacDonald has "raked in an estimated $150 million from the company since she established it in the 1990s" and is facing accusations "over whether she's misled investors in her company."[58] Those accusations include that MacDonald faked her credentials and the conclusions by "two of Canada's top forensic accounting firms" that Just Energy used "an unregulated form of accounting to paint a much rosier picture of the company's financial situation," which in turn allowed Just Energy to show an "artificial profit."[59]

The Global News exposé also contains a 22-minute video entitled the "Just Energy Hustle." Below is an excerpt of a Global News journalist's videotaped interview with Just Energy's then-Co-CEO Deborah Merril. Despite having joined Just Energy in 2007, in the 2014 interview the

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[55] Zekman, Pam, "Alternative Energy Supplier Has Long Record Of Fraud Complaints," *CBS2*, (Jan. 15, 2013).

[56] *Id*.

[57] Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014). *Available at:* https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/.

[58] *Id*.

[59] *Id*.

Co-CEO denies even knowing about the many criticisms leveled at Just Energy's marketing and sales practices:

> JOURNALIST: "Critics have accused your company of underhanded sales tactics, sleazy tactics to try to get people to sign their name to a contract."
>
> CO-CEO MERRIL: "I have not heard those accusations, so, nobody said that to me, no."
>
> JOURNALIST: "Really, this is news to you?"
>
> CO-CEO MERRIL: "No, nobody's said that to me. I think it's . . . ."
>
> JOURNALIST: "It's your company. I mean, you know . . . ."
>
> CO-CEO MERRIL: "I would disagree with that."
>
> JOURNALIST: "You would disagree that there's a view that your company is doing things at the door that it shouldn't be doing?"
>
> CO-CEO MERRIL: "No, I'm saying that mistakes happen and we take 'em very seriously."

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"The Just Energy Hustle," Timestamp 18:35 to 19:18.[60]

More than a year prior to the Global News exposé, on July 31, 2013, New York-based investment management firm Spruce Point Capital Management released an investment analysis that labeled Just Energy as "a company that U.S. consumers and investors are quickly realizing has become toxic to their wallets through deceptive energy marketing practices, and harmful to their brokerage accounts."[61] The report signaled that Just Energy's "growth appears to be the result of deceptive sales tactics, now at risk of unravelling" which is "evidenced by a large body of consumer fraud complaints."[62] The report also highlights how Just Energy uses a teaser rate to deceive consumers:[63]

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[60] Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014). *Available at:* https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/.

[61] Spruce Point Capital Management, "Just Energy: Another Dividend Cut Poses An Above Average Risk to Investors" at 2 (July 31, 2013), *available at:* http://www.sprucepointcap.com/just-energy/.

[62] *Id*. at 3.

[63] *Id*. at 4–5.

As noted in the table and analysis excerpted below, Just Energy (referred to in the report as "JE") "appears" to offer the lowest price fixed contract, but there's a 'catch:'

	ConEd Solutions	Constellation	Spark Energy	Greenlight Energy	US Gas & Electric	Just Energy	Constellation	Spark Energy	Greenlight Energy	Just Energy
Commodity	Electric	Electric	Electric	Electric	Electric	Electric	Gas	Gas	Gas	Gas
Term (months)	12	12	12	None	5	60	12	12	None	60
Initiation Fee	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Cancellation Fee	-	-	-	-	$50.00	$50.00	-	-	-	$50.00
Monthly Fee	-	-	-	-	-	-	-	4.95	-	
Unit Cost (c/KWh | c/therm)	**10.45c**	**10.99c**	**10.49c**	**10.00c**	**10.50c**	**7.15c**	**67.90c**	**77.50c**	**66.00c**	**62.00c**

Source: ConEdison website and company websites. End of April 2013

JE's gas RateFlex prices are fixed *only for three* months – despite the 5-year term – and after three months, the contract reverts to a *fluctuating* price based on "*business and market conditions*." The Electric RateFlex is fixed for 2 months. JE then gives its customers the option of locking in this new, variable and unknown price. The company tries to reassure consumers that the rate won't fluctuate that much by guaranteeing that the variable rate won't increase by more than *35% per month* (see: section 7). Just Energy also allows consumers to cancel their contract free within 30 days – before the misleadingly low introductory price expires – but charges a $50 "Exit Fee" if cancelled thereafter. Of course, most consumers don't bother to read the fine print, particularly if salesmen are pushing quick cash back incentives with Visa Gift Cards for registering and referring friends.

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A May 8, 2019 article in the *Chicago Reporter* tells a similar story. The article showcased the experience of a 45-year-old carpenter who, over the course of 10 years, paid Just Energy more than US$20,000 more than he would have paid his local utility.[64] This Just Energy customer's experience was used to highlight the then-proposed Illinois Home Energy Affordability & Transparency Act ("HEAT"). On August 27, 2019, Illinois Governor J.B. Pritzker signed HEAT into law. Effective January 1, 2020, HEAT requires *inter alia* ESCOs like Just Energy operating in Illinois to include the utility's comparison price on all marketing materials, during telephone or door-to-door solicitations, and on every consumer's utility bill so consumers can make informed price comparisons.

In addition, on May 9, 2019, *CommonWealth* featured the Massachusetts Attorney General's findings that Massachusetts consumers who switched to ESCOs paid US$177 million more over a two-year period than they would have if they had stayed with the local utility.[65] The *CommonWealth* article references the fact that the Massachusetts Attorney General brought successful lawsuits against ESCOs "including Just Energy" which actions resulted "in almost $10 million in refunds to consumers and forc[ed] the defendant companies to cease their unfair practices." *Id.*

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[64] *Available at:* https://www.chicagoreporter.com/illinois-bill-aims-to-curb-alternative-energy-scams-by-forcing-transparency/.

[65] Harak, Charlie et al., "DPU failing to protect Mass. Consumers," *CommonWealth*, May 9, 2019. *Available at:* https://commonwealthmagazine.org/opinion/dpu-failing-to-protect-mass-consumers/.

V. The Class Actions Encompass Approximately 8,000,000 U.S. Just Energy Customers

Using Just Energy's public 2015 Annual Report (which covers the year ended March 31, 2015), Class Counsel calculated the approximate number of Class Members during the relevant period of 2011 to present:

A. U.S. Residential Electric Class Members – 2,481,640 RCEs[66]

B. U.S. Residential Gas Class Members – 1,096,180 RCEs

C. U.S. Commercial Electric Class Members – 3,702,200 RCEs

D. U.S. Commercial Gas Class Members – 596,040 RCEs

Total U.S. Residential Class Members (Electric and Gas Combined) – 3,577,820 RCEs

Total U.S. Commercial Class Members (Electric and Gas Combined) – 4,298,240 RCEs

Total U.S. Class Members (All Combined) – **7,876,060 RCEs**

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Regarding Class Counsel's methodology for calculating the U.S. class size, Just Energy's 2015 Annual Report discloses (a) the number of worldwide Just Energy gas RCEs by commodity and the number of worldwide Just Energy electric RCEs by commodity for the year ended April 1, 2014, and (b) the "additional" number of worldwide gas and worldwide electric RCEs by commodity added in the one-year period from April 1, 2014, to March 31, 2015. The 2015 Annual Report also identifies the percentage of Just Energy's customer base that takes service in the U.S. and distinguishes between commercial and residential RCEs.

Beginning with the April 1, 2014 current customer data, Class Counsel used the percentage of U.S. Just Energy customers to calculate the number of U.S. residential and commercial gas and electric customers as of April 1, 2014. Class Counsel then took the number of additional gas and electric customers added in the one-year period from April 1, 2014 to March 31, 2015 and multiplied it by the percentage of U.S. Just Energy customers to determine the number of U.S. gas and electric customers added at each service level during this one-year period. For example, Just Energy's 2015 Annual Report states that as of April 1, 2014 Just Energy had 1,198,000 RCEs and that 72% of Just Energy customer base takes service in the U.S. Class Counsel thus calculate that as of the April 1, 2015, the Just Energy Entities had approximately 862,560 U.S. residential electric customers (i.e. 1,198,00 RCEs x .72). The 2015 Annual Report also states that Just Energy added 489,000 residential RCEs in the one-year period from April 1, 2014, to March 31, 2015. Using the same percentage of U.S. based customers (72%), Class Counsel

[66] According to Just Energy's 2021 Annual Report, an "RCE" means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m3 (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada.

calculates that during this one-year period Just Energy added approximately 352,080 U.S. residential electric customers (i.e. 489,000 RCEs x .72).

During each of the reporting years from 2015 to 2021, Just Energy reported figures for the number of additional residential and commercial gas and electric RCEs as well as the percentage of Just Energy's U.S. customer base. Beginning with the 2014 total customer count and using only the "additional" U.S. residential and commercial RCEs added each year, Class Counsel calculated the approximate total class size. The following chart summarizes Class Counsel's class size calculations:

Year	U.S. Residential Electric Customers Added	U.S. Residential Gas Customers Added	U.S. Commercial Electric Customers Added	U.S. Commercial Gas Customers Added
2014[67]	862,560	537,840	1,627,920	146,880
2015	352,080	133,920	503,280	48,240
2016	271,440	105,120	395,280	61,920
2017	237,850	85,200	234,300	38,340
2018	260,000	115,700	274,950	110,500
2019	226,800	87,570	291,690	88,200
2020	142,120	25,160	259,760	59,840
2021	128,790	5,670	115,020	42,120
Total	2,481,640	1,096,180	3,702,200	596,040
Total Customers Across All Four Customer Categories:				**7,876,060**

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Please note that due to missing data from the 2011 to 2014 period, these calculations are **underinclusive**. With discovery, the Representative Plaintiffs' expert will be able to provide the exact class size.

[67] 2014 figures represent current U.S. Just Energy customers as of April 1, 2014.

Dated: November 1, 2021
Armonk, New York

By: /s/ Steven L. Wittels

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Class Counsel for the Representative Plaintiffs and the Class

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Tab 21

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1]

TO: Fira Donin and Inna Golovan as Representative Plaintiffs (the "**Claimants**")

J. Burkett McIntuff (attorney for Representative Plaintiffs)
jbm@wittelslaw.com
Wittels McInturff Palikovic
18 Half Mile Rd
Armonk, NY
10504
United States

RE: Claim Reference Number: PC-11177-1

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0
B. Restructuring Period Claim			$	$	$
C. Total Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 11th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: ____

Jim Robinson
Senior Managing Director

SCHEDULE A

The Claimants advance a claim against the "Just Energy Entities" in the amount of US$3,662,444,442.00 based on a proposed and uncertified class action filed in the US District Court in the Western District of New York (the "**New York Court**") on April 27, 2018, titled *Fira Donin and Inna Golovan v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB (the "**Donin Action**").

The Just Energy Entities, in consultation with the Monitor, disallow the claim in its entirety.

Status of Litigation

The Donin Action was brought against Just Energy Group Inc. ("**JEGI**") and Just Energy New York Corp. ("**Just Energy NY**") on behalf of a putative class of "all Just Energy customers in the United States […] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment". The Claimants alleged, among other things, that the defendants engaged in fraudulent conduct, violated New York statutes by engaging in deceptive acts and practices, breached contractual provisions to consider "business and market conditions",[2] and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and electricity in New York.

Following a motion to dismiss, the New York Court dismissed all the Claimants' claims except for the breach of contract and implied covenant of good faith claims. The survival of a claim on a motion to dismiss is not an assessment of its merits but only a determination that, accepting as true all of the allegations in the complaint as required on that motion, the plaintiff has alleged a right to relief that is not entirely speculative.[3] The Court did not find that Just Energy NY had improperly exercised its contractually agreed discretion to set rates, or even that Just Energy NY did not consider the many different business and market conditions in setting its rates. These were all matters which could not be resolved solely on the pleadings.

The New York Court also found that it did not have jurisdiction over John Does 1-100, which the Claimants alleged were "shell companies and affiliates" through which JEGI did business in New York and elsewhere, as well as "Just Energy management and employees who perpetrated the

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[2] The Claimants also allege that the defendants breached the agreement by (i) charging rates higher than the rates set forth in the welcome email sent to consumers and (ii) increasing the variable rate by more than 35% over the rate from the previous billing cycle. With respect to the first allegation, the language of the agreement between the parties made it clear that Just Energy NY would charge the Claimants variable rates and that Just Energy NY did not contract to charge the Claimants particular rates. The second allegation applies to only one of the two proposed representative plaintiffs, and any damages would be limited to the overpayment due to the difference between the actual increase and a 35% increase for the particular months in question. These claims are not amenable to certification and are secondary to the Claimants' main argument that the defendants breached the contract's requirement to charge variable rates "determined by business and market conditions". The Claimants have made no effort to quantify any damages that might arise from these alleged breaches.

[3] *Donin et al v. Just Energy Group Inc. et al,* Decision and Order 17-CV-5787(WFK)(SJB) regarding Motion to Dismiss dated September 24, 2021, Dkt. 111, at 4.

unlawful acts." All claims against these defendants were dismissed, which effectively limits the Donin class, should it be certified, to New York customers.

On January 10, 2020, over the Claimants' objection, the New York Court ordered that factual discovery in this matter was closed and that all pending discovery requests and disputes before that Court were terminated. This ruling came after years of discovery, including the production of documents by the defendants in response to numerous requests by the Claimants. That discovery was also limited to the defendants' New York business, consistent with the limited scope of the claim that remains.

Improper Expansion of Claim

Four years after the commencement of the litigation, the Claimants now purport to advance a claim against all "Just Energy Entities" on behalf of the proposed class, notwithstanding the fact that the only named parties in the Donin Action are JEGI and Just Energy NY. Even if the underlying litigation had any merit (it does not), the Claimants cannot use these CCAA Proceedings to improperly expand the scope of their April 2018 claim to now add new defendants who were never included in the Donin Action. The Claimants' attempt to do so is particularly inappropriate given the New York Court's dismissal of all claims against JEGI's affiliates other than Just Energy NY.

Claim Is Meritless

The claim is contingent, uncertified, speculative, and remote. The Claimants will have to overcome substantial hurdles to be entitled to any recovery, including:

- dispositive motion practice (i.e. motion for summary judgment), which would involve the disclosure of expert reports and supporting evidence from fact witnesses, depositions, potential preliminary motions, written briefs, and oral argument. In particular, the defendants would seek to have the claim dismissed as against JEGI, as it is a holding company that does not contract to provide natural gas or electricity to any customers;

- a contested class certification process, which would include written briefing, presentation of supporting evidence from fact and expert witnesses, and oral argument;

- a trial on the issue of liability, including pretrial submissions and motion practice to resolve evidentiary issues, voir dire, direct testimony and cross-examination of fact and expert witnesses, and legal argument from counsel; and

- resolution of damages of the plaintiffs or certified class(es), which may require bifurcation from the trial on liability (especially if the Claimants continue to allege damages on behalf of a national class, which the defendants argue is impermissible).

A loss by the Claimants at any one of these phases would either entirely eliminate, or severely restrict, the Claimants' potential damages (and those of any other members of any certified class).

The claim is devoid of merit for numerous reasons, including the fact that the applicable contract puts customers (including the Claimants) on clear notice of the variable rates that Just Energy NY would set and to which customers (including the Claimant) will be subject. The language in the operative agreements provides that "This Agreement does not guarantee financial savings" and

that the Claimants were paying a variable rate that "may change every month."[4] In complaining that their local utility's rates ended up being lower for a portion of the Claimants' contract term, the Claimants simply ignore away the operative agreement. There was no obligation under the agreement for Just Energy NY's rates to match or track those charged by the local utility.

Critically, the Claimants' allegation that the defendants breached the parties' contract by failing to set rates "according to business and market conditions" is premised on the erroneous assumption that local public utilities are the main competitors of Just Energy NY, and as such the defendants overcharged when their rates were higher than that of the local utility.[5] In reality, local utility rates are not an appropriate barometer by which to measure the rates of energy service companies ("**ESCOs")** like Just Energy NY (let alone an appropriate proxy for the long list of business and market conditions Just Energy NY was permitted to consider in exercising its discretion to set its rates) for several reasons, including because:

- **Local utilities and ESCOs do not offer the same products and services.** For instance, ESCOs offer 100% green products, fixed-rate products, energy conservation bundled services and products, dedicated customer service, and affinity rebates or refunds that many consumers prefer. ESCO retail commodity prices are part of a bundle of product and service offerings ESCOs provide their customers, in which products and services interact with each other; comparing the prices charged for those products and services with local utility commodity prices results in erroneous, misleading and distorted conclusions.

- **Local utility commodity prices do not reflect wholesale energy prices.** Local utilities are permitted to defer charges (with the approval of the regulator) to smooth price volatility during periods with particularly high wholesale gas and electricity costs (e.g., 2014 polar vortex price spikes). Such utility regulated deferral activity renders the local utility rates a particularly inappropriate proxy for actual wholesale rates and the actual business and market conditions for the given period and makes an accurate comparison between default service prices and ESCO prices for a particular period impossible. ESCOs do not have the ability to shift the costs of energy service over time, nor can they take advantage of regulated rates that ensure full cost recovery to the provider.

- **Local utilities and ESCOs do not have the same business model.** Just Energy NY must compete with other ESCOs to sell energy commodities to consumers. In contrast, local utilities are "default" providers of energy commodities and provide delivery service (gas and electric distribution) regardless of whether the consumer purchases energy commodities from the utility or an ESCO. As a result, local utilities do not face the same costs, risks and market forces that ESCOs face.

- **Local utility commodity prices do not include reasonable profit margins.** Unlike ESCOs, local utility commodity prices are designed to be a pass-through of wholesale costs (sometimes from different periods of time) and not a profit-generating business activity. Moreover, utilities are incentivised to allocate all possible commodity and

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[4] "Essential Agreement Information" which is provided in the "Customer Disclosure Statement," which is incorporated into the Claimant's agreement with the defendant.

[5] The allegation that the defendant breached the covenant of good faith by failing to act reasonably in exercising its discretion to set rates is based on the same erroneous assumption.

employee/technology costs to a customer's delivery bill, since that is where the utility has a monopoly and is permitted to receive a return on investment. As a result, no accurate comparison is possible between utility commodity prices and ESCO commodity prices.

- **General energy market conditions affect ESCOs and local utilities differently.** ESCOs incur costs well beyond the costs of energy procurement, which are reflected in their prices. In addition to the costs of the product or service bundled with the commodity cost, ESCO prices may also include consideration of competitors' prices, profit margins, and customer retention policies in addition to overhead costs and marketing efforts. ESCOs account for the costs and values associated with their enhanced products and services, including renewables, and need to structure their businesses to successfully offer fixed-rate guarantees to customers who purchase such products. ESCOs face the business conditions of a competitive market—not at all like the business conditions faced by a regulated utility.

The Claimants' expert has failed to even consider the variable rates charged by other ESCOs during the relevant period in calculating the alleged damages.

Not only is the Donin Action devoid of merit, it is not amenable to Rule 23 certification pursuant to the relevant US law, including because:

- Claimants will need to show that the language in the various contracts falling within the class definition are sufficiently similar to present common issues of law, and that those issues predominate over individual issues that different class members face.

- Claimants will need to establish that the proposed representative plaintiffs' claims are representative of the experience other customers may have had. The one-size-fits-all approach taken in the Claimants' damages model does not account for the different products and services offered by Just Energy NY to its customers and the different providers individual customers had prior to contracting to purchase energy services from Just Energy NY, and those differences may be considered at class certification.

- The differences between various contracts and products would be even more pronounced and problematic for purposes of a motion for class certification to the extent the Claimants continue to take the position that they will be seeking to include in the proposed class consumers who are not customers of Just Energy NY whose contracts for variable rate energy fit within Claimants' class definition. Although such an expansion is impermissible for the reasons described above, the proposed class's failure to satisfy the strict requirements of Rule 23 would be exponentially more pronounced where the proposed class includes customers who contracted with different entities, using different contracts, subject to different regulatory regimes, and for different product offerings.

- The Court will also need to find that the proposed representative plaintiffs or other subsets of the proposed class are not subject to unique defenses that would impair the fair and efficient resolution of the action. State specific regulations could present unique claims and

defenses to the extent the Claimants' alleged class extended to Just Energy customers outside of New York.

Expert Report

The Claimants have submitted a report, that purports to be an expert report, in support of their proof of claim, however the Claimants have missed the relevant deadlines set by the New York Court to submit expert reports in the underlying litigation. Given the New York Court's order that discovery is closed in the Donin Action, the Claimants should not be allowed, as part of this proceeding, to cure defects of their own making in the litigation that existed prior to the CCAA Proceedings, in order to attempt to obtain monies to which they are not otherwise entitled.

The quantum of damages set out in the Claimants' expert report is speculative and highly inflated, as it is, among other things, based on several flawed assumptions. For example:

- The report assumes the correct "comparable" to determine "business and market conditions" is that of the local utility, instead of considering the rates charged by other ESCOs. As noted above, this assumption is deeply flawed. This approach fails for a number of reasons, including by failing to account for any ESCO reasonable profit margin on commodity prices, as local utility commodity prices are not designed to generate any profit.

- The report incorrectly includes commercial customers, whose contracts were materially different from (and subject to different regulatory regimes than) those of residential customers. Moreover, very few of Just Energy Entities' commercial customers are contractual counterparties of the named defendants. Commercial customers currently account for approximately 50% of the Just Energy Entities' customers' electricity and gas usage.

- Calculation of damages for residential and commercial gas customers is derived from a calculation that includes the residential gas load served by all Just Energy Entities. However, only Just Energy NY and JEGI are named defendants in the Donin Action, and any damages must be limited to customers who were contractual counterparties with those defendants. This effectively limits the claim to New York customers since JEGI does not contract directly with customers.

- Calculation of damages for residential and commercial electricity customers is derived from a calculation that includes the residential electricity load served by "Just Energy", Just Energy New York Corp., Amigo Energy, Commerce Energy, Hudson Energy Services, and Tara Energy, LLC (and Tara Energy Resources for commercial customers). However:

    - Only Just Energy NY and JEGI are named defendants in the action, and any damages must be limited to customers who were contractual counterparties with those defendants;

    - Including entities like Amigo Energy and Tara Energy, LLC, which only operate in Texas, makes no sense, given that the comparison to local utility rates is the basis of the Claimants' claim for damages and customers in Texas cannot obtain power directly from a local utility (they must obtain power from a retailer). The Just

Energy Entities' Texas customers currently account for approximately 85% of non-commercial electricity usage, and approximately 52% of non-commercial electricity usage that is being charged out based on variable rates.

- The report assumes that 50% of residential and commercial electricity and natural gas usage of the Just Energy Entities' customer base is attributable to customers that are parties to variable rate contracts that would be included in the proposed class. This assumption is incorrect.

    - Currently, only approximately 34.9% of the Just Energy Entities' non-commercial customers' natural gas usage and approximately 6.9% of the Just Energy Entities' non-commercial customers' electricity usage is being charged out based on variable rates. Of that, only 2.1% and 0.04%, respectively, of natural gas and electricity usage is attributable to customers who are parties to variable rate contracts with the Just Energy Entities – the rest being customers who are parties to fixed-rate contracts with Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts.[6] This latter subset of customers would not be properly included in the proposed class.

- The damages calculation includes time-barred claims. Pursuant to the 6-year limitation period applicable under New York law, all breach of contract claims with respect to alleged overcharges prior to October 3, 2011, are time-barred, consistent with other court decisions addressing this issue, including Judge Skretny's decision in the Jordet action.

- The expert report erroneously assumes the same rate of damages applies for the period between 2018 and 2020 as applied to the period before 2018. Given that the Just Energy Entities ceased to market variable-rate contracts to new customers by the end of 2017, the quantum of damages, if any, would have continued to decline materially following 2017 as no new variable rate customers were added to the customer pool.[7]

- The damages in the expert report are based on the calculated excess natural gas margin for residential customers, which was derived using two customers' billing data. The Claimants' expert himself acknowledges that the excess natural gas margin "is subject to potentially significant modification". This miniscule sample size means that the estimate of damages is effectively useless in accurately estimating any alleged damages. The same

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[6] In certain jurisdictions, the Just Energy Entities are required by the relevant regulations to roll over fixed rate customers to variable rates where they do not affirmatively renew their fixed term contract.

[7] As noted above, customers who are parties to fixed rate contracts with the Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts would not be properly included in the class.

issue also applies with respect to the calculation of the excess electricity margin, which was derived using only one customer's data.

- The report assumes, without any evidence, that the differences between the variable rates the Claimants were charged and the local utility rates in New York are the same as that in other states.

- The Claimants' expert acknowledges that he can only calculate overcharges "more precisely for each member of the affected class as well as for the entire class" once additional discovery is conducted, including Just Energy NY's provision of monthly customer level sales and price data and cost of sales data. However, the New York Court ruled that the Claimants are not entitled to additional discovery in the Donin Action.

The speculative nature of the Claimants' damages calculations is further exacerbated to the extent they continue to seek to include in the proposed class consumers who are not customers of Just Energy NY whose contracts for variable rate energy fit within the Claimants' class definition. Although such an expansion is impermissible for the reasons described above, the assumptions underlying the Claimants' proffered damages analysis are even more speculative where different utility rates and regulatory regimes apply in different jurisdictions, with different product offerings and rate structures. These variables are not accounted for at all in the Claimants' rudimentary damages analysis.

Inflated Claim of Prejudgment Interest

For all the reasons outlined above, the inclusion of US$1,282,196,848 in prejudgment interest is also contingent, speculative, remote, and excessive. The prejudgment interest amount calculation is also fundamentally flawed, as it applies New York's prejudgment interest rate of 9% to damages allegedly incurred in California, Delaware, Illinois, Massachusetts, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Texas. Putting aside the fact that there is no basis for the underlying damages figure, the relevant prejudgment interest rates are significantly lower in most of these jurisdictions.

Tab 22

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against the Just Energy Entities[1] and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. **Particulars of Claimant:**

Claims Reference Number: PC-11177-1

Full Legal Name of Claimant (include trade name, if different)

Fira Donin and Inna Golovan (as Representative Plaintiffs)

(the "**Claimant**")

Full Mailing Address of the Claimant:

J. Burkett McIntuff (attorney for Representative Plaintiffs), Wittels McInturff Palikovic

18 Half Mile Rd, Armonk, New York, 10504, United States

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number:	+1 910-476-7253
Email Address:	jbm@wittelslaw.com
Facsimile Number:	+1 914-273-2563
Attention (Contact Person):	J. Burkett McIntuff (attorney for Representative Plaintiffs)

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐ No: ☒

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): Fira Donin and Inna Golovan (as Representative Plaintiffs)

3. **Dispute of Revision or Disallowance of Claim:**

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated January 11, 2022, and asserts a Claim as follows:

Type of Claim	Applicable Debtor(s)	Amount allowed by the Just Energy Entities		Amount claimed by Claimant	
		Amount allowed as secured:	Amount allowed as unsecured:	Secured:	Unsecured:
A. Pre-Filing Claim	Just Energy Entities	$ 0	$ 0	$	$ USD 3,662,444,442.00
B. Restructuring Period Claim		$	$	$	$
C. Pre-Filing D&O Claim		$	$	$	$
D. Restructuring Period D&O Claim		$	$	$	$
E. Total Claim	Just Energy Entities	$ 0	$ 0	$	$ USD 3,662,444,442.00

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. Reasons for Dispute:

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

See attached Schedule A.

5. Certification

I hereby certify that:

1. **I am the Claimant or an authorized representative of the Claimant.**
2. **I have knowledge of all the circumstances connected with this Claim.**
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your **Claim may result in your Claim being disallowed in whole or in part and** may result in further penalties.

Signature: [signature]	**Witness:** [signature] (signature)
Name: J. Burkett McIntuff	Susan Russell **(print)**
Title: Partner, Wittels McInturff Palikovic	

Dated at Armonk, New York this 10 day of February, 2022

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Notice of Dispute of Revision or Disallowance

RE: Claim Reference Number: PC-11177-1

Schedule A

INTRODUCTION

Claimants Fira Donin and Inna Golovan (the "Claimants") brought a U.S. class action to redress Just Energy Group Inc. et al. and the other Just Energy Entities' ("Just Energy") deceptive, bad faith, and unfair pricing practices that have caused millions of consumers and businesses across the U.S. to pay considerably more for their electricity and natural gas than they should have paid.

Ms. Donin and Ms. Golovan's claims are joined by and parallel to those of Trevor Jordet (Claim Reference Number: PC-11175-1). Mr. Jordet brought a separate and similar U.S. class action that also seeks to recover for the millions of U.S. consumers and businesses harmed by Just Energy's unlawful conduct.

Regarding the class actions' status, **two** separate U.S. federal judges have concluded that Mses. Donin and Golovan, and Mr. Jordet alleged valid class claims against the Just Energy Entities. Both of Just Energy's Notices of Revision or Disallowance (the "Notice of Disallowance") concede this fact; both acknowledge that **two** different federal judges ruled that the class actions have viable contract claims and have "alleged a right to relief that is not entirely speculative," and that each presents serious liability issues that "could not readily be resolved solely on the pleadings."

These federal judges' conclusions are no surprise to Claimants, Just Energy, or their respective counsel. The class action claims arise from bedrock principals of contract law and are supported by a legion of U.S. case law, regulations, and statutes. The claims also represent paradigmatic class action claims that are readily certifiable (and have been certified on five separate occasions), are pleaded in tandem with increasing regulatory scrutiny (including outright bans) of the exact pricing practices Just Energy employed throughout the U.S., and follow in the footsteps of at least **six** regulatory actions against Just Energy.

What is more, the class claims were supported with a preliminary yet detailed report by an expert in competitive wholesale and retail energy markets. This expert advises the U.S. Air Force, the U.S. Army, and the U.S. Department of Energy when they act as purchasers of electricity and natural gas from competitive retail suppliers in the *same* markets where Just Energy operates. This expert, who also supports U.S. state governments and agencies in energy-related formal proceedings, used the *same* breach of contract theories upheld by the two separate federal judges and calculated that Just Energy overcharged its U.S. customers by US$2,380,337,594. Just as the federal judges agreed, the expert calculated damages from the difference between the prices Just Energy was contractually bound to charge U.S. customers as compared to the prices ultimately charged. Then, because Just Energy's unlawful pricing practices spanned more than a decade, Claimants' counsel applied the pre-judgment interest rules of the class actions' forum

state (New York) and calculated US$1,282,106,848 in unpaid interest. On November 1, 2021, Claimants submitted a class action claim in this proceeding for US$3,662,444,442.

The class action claims are as straightforward as they are strong. Just Energy targets consumers and businesses hoping to save on energy supply costs. Just Energy lures customers with a teaser or fixed rate for a limited period that is initially below its competitors' rates. Once that initial rate expires, Just Energy charges what it represents to be a "variable rate," which under Just Energy's contract must be set according to "business and market conditions." As one federal judge has already observed, "'business and market conditions' has some standard that [Just Energy] had to apply in setting [their] variable pricing but apparently failed to adhere to in [their] pricing."

In reality, however, Just Energy exploits its pricing discretion and the dramatic information asymmetry with its customers to artificially inflate its variable rates without regard to its contractual obligations. As a result, Just Energy's variable rates are consistently substantially higher than those otherwise available in the natural gas and electricity supply markets, and its rates do not fluctuate based on any reasonable interpretation of "business market conditions," such as wholesale market energy prices or the rates other competitive market participants (including local utilities and Just Energy's own fixed rates) charge for energy supply.

At bottom, Just Energy faces grim prospects in the class actions: The decisions of two federal judges sustaining straightforward and meritorious claims, a preliminary yet detailed analysis by a qualified expert showing *billions* in damages, a multitude of case law and regulatory action condemning Just Energy's very practices, five highly similar class certification decisions, and a checkered past of at least at least six regulatory actions.

Considering its slim odds on the merits, Just Energy's Notice of Disallowance predictably takes a blunderbuss approach. In fact, the Notice of Disallowance is essentially an outline of defenses that either this Court or the persons assigned to adjudicate Claimants' claims can evaluate (and discard) with straightforward discovery and limited testimony—just as other factfinders have done in previous similar cases. The Notice of Disallowance also presents no case law or a shred of actual evidence to support its odd contention that the sustained claims in two U.S. class actions are "meritless." It instead offers smokescreens and paper tigers that have been rejected by courts and regulators alike. Musings of counsel as to why Just Energy may not have breached its customer contracts are offered in place of facts, yet such conjecture was already rebuffed by two U.S. federal judges.

Just Energy understands its imminent risk of staggering liability. All five courts that have addressed class certification in cases involving energy supply companies based on the same liability theory Claimants proffer here certified the classes. Nearly every defendant involved in a similar energy class action that has survived a motion to dismiss—as is doubly the case here—settles due to the ease of proving liability and class certification following discovery. No factfinder will look kindly on variable rates that are substantially higher than utility rates and Just Energy's own fixed rates, even though Just Energy's costs for fixed and variable rate customers are the same. Claimants' expert will handily dispose of Just Energy's incredible and counterintuitive claims, including that variable rates are riskier to service than fixed rates and

therefore its exorbitant variable rate margins are justified. Just Energy's internal pricing data and analysis will show the real basis for Just Energy's variable rate margins and the factfinder will easily conclude that Just Energy breached its contracts with its U.S. customers. For these and the other reasons below, Claimants dispute the Notice of Disallowance.

BACKGROUND

I. Procedural History

On October 3, 2017, Claimants Donin and Golovan filed their proposed class action lawsuit *Donin et al. v. Just Energy Group Inc. et al.*, No. 17-cv-5787-WFK-SJB (E.D.N.Y.) in the United States Federal District Court for the Eastern District of New York. (Claimants' counsel also represent ten other Just Energy customers.) Claimants' complaint alleges the Just Energy Entities breached the following: their contractual obligations to base their variable gas and electricity rates on "business and market conditions"; their contractual obligation to charge a specified energy rate; and the implied covenant of duty of good faith and fair dealing. *See, e.g.*, *Donin* Complaint ¶¶ 26-35. Claimants brought their claims on behalf of all Just Energy Entities' U.S. customers that were charged a variable rate for electricity and natural gas supply.

On September 24, 2021, Judge William F. Kuntz of the U.S. District Court for the Eastern District of New York denied the Just Energy Entities' motion to dismiss Claimants' contract claims on behalf of all U.S. customers, ruling *inter alia* that Claimants had adequately alleged that the Just Energy Entities breached their contractual obligation to charge market-based rates, breached their contractual obligation to charge a specified energy rate, and breached the implied covenant of good faith and fair dealing. Decision & Order at 3, 12–15, *Donin* Dkt. No. 111.

That Just Energy Group Inc. was ***not*** dismissed from *Donin*, of course exposes the falsity of Just Energy's claim that *Donin* is limited "should it be certified, to New York customers." Further, and as set forth below, the relevant law is clear that Mses. Donin and Golovan can represent Just Energy customers from states other than New York. Indeed, the Donin/Golovan claim was also submitted on behalf of ten other U.S. consumers represented by the undersigned. Those consumers are from California, Michigan, Texas, and New York.

Regarding the status of discovery in the *Donin* action, Just Energy's claims are demonstrably false. For example, Just Energy oddly posits that "Claimants have missed the relevant deadline set by the New York Court to submit expert reports in the underlying litigation" when the *Donin* docket plainly shows expert discovery was stayed as of May 8, 2019 pending the dismissal ruling. May 8, 2019, Minute Order; *see also* ECF No. 51 at 14:14–17 (THE COURT: "[S]hould the case survive summary -- excuse me, motion to dismiss, we will discuss a timely schedule for conducting expert discovery. Until then, expert discovery is stayed."). Likewise, Just Energy falsely claims that fact discovery closed right before the COVID-19 pandemic. Yet the record is clear that discovery in *Donin* was simply stayed pending the dismissal ruling, which because of the pandemic was not issued until September 24, 2021. *See e.g.,* ECF No. 60 at 12:8–13:2. Just Energy similarly ignores the fact that the Donin/Golovan claim here was also submitted on behalf of ten other U.S. consumers whose class action claims are not pending in *Donin*.

II. Deregulation of State Gas and Electricity Retail Supply Markets

In the 1990s and early 2000s, numerous U.S. states deregulated retail natural gas and electricity supply markets. Retail energy supply deregulation's primary goal was increased competition with an eye to achieving greater consumer choice and lower energy supply rates. The most frequently cited reason for deregulation was lower prices. As a result, in deregulated states across the U.S. consumers and businesses can choose their energy supplier. The new energy suppliers, who compete against local utilities, are known as energy service companies, or "ESCOs."[1] Regardless of the supplier consumers select, the local utility continues to deliver the commodity to consumers' homes. In almost all states, the local utility also bills customers for both the energy supply and delivery costs in a single "consolidated" bill. The only difference to the customer is whether the utility or an ESCO sets the energy supply price.

ARGUMENT

III. Just Energy Breached Its Contracts with U.S. Customers

Just Energy's Notice of Disallowance wrongly argues that liability presents a "substantial hurdle" for the classes, namely because Just Energy's customer contract "expressly provides that it does not guarantee the financial savings" and because "local utility rates are not an appropriate barometer by which to measure the rates of energy service companies[.]" As described below, these arguments miss the mark and the classes will prevail on the merits. *See, e.g.*, *Melville v. Spark Energy, Inc.*, No. 15-8706, 2016 WL 6775635, at *5 (D.N.J. Nov. 15, 2016) ("[B]ecause [the local utility] is a supplier in the energy market; its prices thus serve as at least partial indications of the market rate and are relevant despite the lack of a savings guarantee clause.").

A. Default Utility Prices Are a Valid Benchmark

In what is best characterized as a "see what sticks" argument, Just Energy briefly claims (without support) that utility rates cannot serve as proper benchmarks for variable prices based on "business and market conditions." Yet courts and public service commissions throughout the U.S. have repeatedly (and resoundingly) rejected this claim.

By way of background, consumers that do not switch to an ESCO continue to receive supply from their local utility. The utilities charge supply rates consistent with market conditions in the competitive wholesale market, plus other wholesale costs, namely transmission, capacity, ancillary, congestion, and storage costs (for electric) and transportation and distribution costs (for gas)—without any markup or profit. Because utility supply rates do not include any profits, they are pure reflections of wholesale market costs and associated costs over time. Additionally,

[1] The acronyms for competitive energy supply companies vary from state to state. For example, in Indiana and Illinois, independent natural gas service companies are known as alternative retail natural gas suppliers or "AGS." In Pennsylvania, independent natural gas supply companies are known as natural gas suppliers or "NGS."

because the utility is the primary supplier and competitor in virtually all utility regions, its rates by definition represent retail electricity and natural gas market pricing.

By contrast, ESCOs like Just Energy have a tactical advantage over the regulated utilities as they can purchase electricity and natural gas from any number of markets using any number of strategies, and therefore their costs for purchasing electricity and natural gas should at the very least track—if not undercut—utility prices. For example, ESCOs such as Just Energy can employ various energy acquisition strategies including: (i) owning energy production and generation facilities; (ii) purchasing energy from wholesale marketers and brokers at the price available at or near the time it is used by the consumer; (iii) and purchasing energy ahead of time, either by purchasing energy to be used in the future or by purchasing futures contracts for the delivery at a predetermined price. Deregulation's purpose is to allow ESCOs to use these and other arbitrage opportunities to benefit consumers.

Additionally, because of deregulation, ESCOs like Just Energy do not need regulatory approval of their rates or the method by which they set their rates. Customers are protected in the competitive market by enforcement of the terms of their contracts. While utility supply is typically procured from the competitive wholesale market, ultimately the utility may charge no more than allowed by the regulator. ESCO customers do not have this safeguard. Consumers must rely on their contracts with the ESCOs to ensure that they receive the promised price.

Considering these realities, ESCOs should be able to offer rates competitive with, or substantially lower than, utilities, and in fact many do. Indeed, Just Energy's fixed rates are competitive with, and in fact almost always lower than, contemporaneous utility rates. Therefore, while utility rates may not precisely match Just Energy's rates, they should be commensurate. But Just Energy's variable rates are not remotely commensurate with utility rates because they are always substantially higher.

In fact, contrary to its contractual obligation, Just Energy's rates are substantially higher than its own fixed rates, other ESCOs' rates, and local utilities' rates, and are wholly disconnected from wholesale electricity and natural gas prices. Instead, Just Energy's variable rates are based on factors other than market conditions.

Further, there is no good faith justification for charging customers a variable rate that is outrageously higher than the rates Just Energy charges its fixed rate customers. Just Energy routinely predicts with reasonable accuracy the energy needs of its variable rate customers, and because it has access to multiple variable rate procurement strategies, its costs for serving variable rate customers and fixed rate customers are not substantially different. The only reason Just Energy's variable rates are so much higher than its fixed rates is that it engages in profiteering and price gouging, a stark demonstration of bad faith pricing practices.

In its Notice of Disallowance, Just Energy first claims that local utilities are improper benchmarks because ESCOs occasionally offer tangential products or services. This is balderdash. New York's Public Service Commission (the "NYPSC") recently examined—and forcefully rejected—this precise contention from Just Energy and other ESCOs, who were represented by Just Energy's U.S. counsel at bar.

With respect to value-added products, NYPSC staff found that "these sorts of value-added products is at best de minimis and **does not explain away the significantly higher commodity costs charged by so many ESCOs**."[2] Similarly, the NYPSC found that the "claim that at least a portion of the significant delta between ESCO and utility charges is explained by ESCOs offering renewable energy is disingenuous at best. ESCOs may be charging a premium for green energy, but they are not actually providing a significant amount of added renewable energy to customers in New York."[3] In fact, the NYPSC found it "troubling" that even after considering reams of evidence "neither ESCOs nor any other party have shown . . . that ESCO charges above utility rates were generally – or in any specific instances – justified."[4]

Second, in its Notice of Disallowance, Just Energy claims that "[l]ocal utility commodity prices do not reflect wholesale energy prices" because utilities "are permitted to defer charges (with the approval of the regulator) to smooth price volatility." The NYPSC rejected this claim as well:

> [S]ome ESCOs complain that out-of-period adjustments made by utilities, with the Commission's approval, make it impossible for ESCOs to be competitive with the utilities, particularly in the context of variable-rate gas commodity service.[] These ESCOs do not acknowledge, however, that out-of-period adjustments by the utilities ultimately are a zero-sum game: for any downward adjustment made to a customer's bill, a corresponding out-of-period increase must be made. This process moderates fluctuations in customer bills that otherwise would result from market activity.[] Thus, out-of-period adjustments do not unfairly provide the utilities a pricing advantage when a price comparison is made on an annual basis.[5]

Third, Just Energy argues that local utilities do not compete with ESCOs because they do not face the same costs, risks, and market forces as ESCOs. To the contrary, as explained above, ESCOs have significant purchasing and pricing advantages over utilities.

Fourth, Just Energy wrongly contends that a comparison is not possible because "utility commodity prices do not include reasonable profit margins" and overhead. The NYPSC staff explained that these costs do "not justify the significant overcharges" ESCOs levied on consumers.[6] The ultimate factfinder might understand that the contract's "business and market

[2] Case No. 12-M-0476, Department of Public Service Staff Unredacted Initial Brief (Mar. 30, 2018), at 87 (emphasis added).

[3] Case No. 12-M-0476, Department of Public Service Staff Unredacted Initial Brief (Mar. 30, 2018), at 69.

[4] Case No. 12-M-0476, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, New York Public Service Commission (Dec. 12, 2019) at 30.

[5] Case No. 12-M-0476, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, New York Public Service Commission (Dec. 12, 2019) at 43 (citations in footnotes omitted).

[6] Case No. 12-M-0476, Department of Public Service Staff Unredacted Initial Brief (Mar. 30, 2018), at 37.

conditions" language permits Just Energy a reasonable margin. However, such profits must be consistent with others' profit margins, and Just Energy's profiteering cannot be so extreme that its rate bears no relation to market prices.

Finally, Just Energy asserts that "[g]eneral energy market conditions affect ESCOs and local utilities differently," and that ESCOs might consider competitors' prices, customer retention, subsidizing the fixed rates, and value into consideration when setting their rates. Yet Just Energy's contract does not bear such weight, and these exact defenses have been resoundingly rejected by many courts. *See, e.g.*, *Hamlen v. Gateway Energy Servs. Corp.*, No. 16-3526, 2017 WL 6398729, at *7 (S.D.N.Y. Dec. 8, 2017) (contract breached when ESCO considered, but did not disclose, customer retention and attrition as factors when setting variable rates).

Recently, U.S. state regulators have begun to make clear that variable rate schemes like Just Energy's are antithetical to deregulation's purpose and provide no value to consumers or the market. For instance, the NYPSC recently concluded:

> Because customers receive no value when they pay a premium for variable-rate commodity-only service from ESCOs, ESCOs will be prohibited from offering variable-rate, commodity-only service except where the offering includes generated savings. As has been demonstrated in these proceedings in the context of low-income customer protection, it is possible for some ESCOs to serve customers at a guaranteed savings. Saving customers money was a crucial policy goal articulated by the Commission when the retail access market was initially opened. Thus, rather than prohibit variable-rate, commodity-only offerings, such offerings will be permitted only if the ESCO guarantees to serve the customer at a price below the price charged by the utility on an annually reconciled basis.[7]

Similarly, the Connecticut Public Service Commission requested that "all Variable Plans for residential and business customers" be eliminated, citing the recent significant increases to generation rates under these plans in support of its request.[8]

As discussed below, countless courts throughout the country likewise agree that contemporaneous utility rates serve as a proper barometer for business and market conditions and have sustained claims based on the differentials. *See, e.g.*, *Mirkin v. XOOM Energy, LLC*, 931 F.3d 173, 178 n.2 (2d Cir. 2019) (holding that "[b]ecause utility companies like Con Edison participate on the wholesale energy market, their rates are another reflection of the Market Supply Cost."); *see also id.* (sustaining breach of contract claim where the defendant ESCO deviated from the leading public utility); *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 426 (S.D.N.Y. 2020) ("there is a reasonable contract interpretation that 'Market' meant that Defendant's variable rate would be tethered to some degree to supply costs or to competitors'

[7] Case No. 15-M-0127, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, New York Public Service Commission (Dec. 12, 2019) at 39-40.

[8] PURA Establishment of Rules for Electric Suppliers and EDCs Concerning Operations and Marketing in the Electric Retail Market, Connecticut Public Regulatory Authority Docket No. 13-07-18 (Nov. 5, 2014).

rates . . . upward variation from local utility rates may also demonstrate how Defendant's consumer rates are materially disconnected from their supply costs."); *Oladapo v. Smart One Energy, LLC*, No. 14-cv-7117, 2016 WL 344976, at *4 (S.D.N.Y. Jan. 27, 2016) ("the fact that [the ESCO's] rates consistently rose over time, while those set by [local utility] fluctuated, indicates that [the ESCO] was not setting its rates in response to 'changing gas market conditions'"); *Melville v. Spark Energy, Inc.*, No. 15-cv-8706, 2016 WL 6775635, at *5 (D.N.J. Nov. 15, 2016) ("because [local utility] is a supplier in the energy market; its prices thus serve as at least partial indications of the market rate and are relevant despite the lack of a savings guarantee clause."); *Landau v. Viridian Energy PA LLC*, 223 F. Supp. 3d 401, 410 (E.D. Pa. 2016) (finding breach of contract where rates were higher than the local utility's rates); *Melville v. Spark Energy, Inc.*, No. 15-cv-8706, 2016 WL 6775635, at *3 (D.N.J. Nov. 15, 2016) ("Here, the [contract] states that the flex-rate plan uses a rate that 'may vary according to market conditions.' Plaintiffs argue that rates charged . . . were not market-based and, in support, list the rates charged by [the ESCO] in comparison to [the utility] during several months from 2013 to 2014. . . . Such evidence supports the allegation that [the ESCO's] prices were untethered to those of the market at large."); *Chen v. Hiko Energy, LLC*, No. 14-cv-1771, 2014 WL 7389011, at *4 (S.D.N.Y. Dec. 29, 2014) ("Given the dramatic differences in pricing between defendant and [the local utility], it is plausible defendant's rates were not, in fact, reflective of the wholesale cost of electricity or gas, market-related factors, and . . . "costs, expenses and margins.").

B. Breach of Contract

To state a breach of contract claim, the classes need only satisfy three elements: "the existence of a contract, including its essential terms; breach of a duty imposed by the contract; and resultant damages." *Jordet*, 505 F. Supp. 3d at 222 (citations omitted). The classes allege that Just Energy breached its contract with class members, which represented that variable rates were priced based on the "business and market conditions," because Just Energy's variable rates bear no semblance to either wholesale prices or competitors' rates.

The classes will use numerous comparators to demonstrate that Just Energy's prices materially differed from metrics that could be reasonable interpretations of the use of the phrase "business and market conditions" in Just Energy's contracts.

First, the classes will use comparisons to class members' local utility rates, which countless courts have held is a proper comparator. In *Mirkin v. XOOM*, the U.S. Court of Appeals for the Second Circuit concluded that consumers could plausibly state a claim for breach of contract because the defendant ESCO deviated from the leading public utility by "up to" sixty percent. 931 F.3d at 178. The Second Circuit also plainly held that utilities are a reflection of wholesale market costs that can be used to evaluate whether an ESCOs rates are reflective of such costs. *Id.* at 178 n.2 ("Because utility companies like Con Edison participate on the wholesale energy market, their rates are another reflection of the Market Supply Cost."). As one federal judge held in *Chen v. Hiko Energy, LLC*:

> Plaintiffs' contracts provided that defendant would charge variable monthly rate reflecting the wholesale cost of electricity or gas, as well as various "market-related

> factors, plus all sales and other applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins." . . . But the [complaint] alleges the electricity rate defendant charged Chen in February 2014 was nearly triple [the local utility] . . . **Given the dramatic differences in pricing between defendant and [the utility], it is plausible defendant's rates were not, in fact, reflective of the wholesale cost of electricity or gas, market-related factors, and defendant's "costs, expenses and margins."**

No. 14-cv-1771, 2014 WL 7389011, at *4 (S.D.N.Y. Dec. 29, 2014) (emphasis added); *see also Melville*, 2016 WL 6775635, at *5 ("[B]ecause [the local utility] is a supplier in the energy market, its prices thus serve as at least partial indications of the market rate and are relevant despite the lack of a savings guarantee clause."); *Stanley*, 466 F. Supp. 3d at 427 ("'This incomplete and confusing explanation for calculating variable market-based rates could lead a reasonable consumer to believe that he or she would receive a variable market rate, *i.e.*, one that was competitive with those charged by other ESCOs.'") (quoting *Claridge v. N. Am. Power & Gas, LLC*, No. 15-cv-1261, 2015 WL 5155934, *4 (S.D.N.Y. Sept. 2, 2015)).

Second, the classes will use wholesale prices and Just Energy's own costs to demonstrate that Just Energy's variable rate was inconsistent and significantly higher than wholesale costs. *See, e.g.*, *Landau*, 223 F. Supp. 3d at 408-09 (E.D. Pa. 2016) (where "[an ESCO's] rates increased or stayed the same even when the average wholesale market price for the region decreased[,]" breach of contract claim may proceed to trial); *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d at 426 (S.D.N.Y. 2020) ("[T]here is a reasonable contract interpretation that 'Market' meant that Defendant's variable rate would be tethered to some degree to supply costs or to competitors' rates . . . upward variation from local utility rates may also demonstrate how Defendant's consumer rates are materially disconnected from their supply costs."); *Mirkin*, 2016 WL 3661106, at *8 (breach of contract when contract provided that variable rates will be "based on wholesale market conditions" and variable rate failed to track wholesale market rates) (citing *Sanborn v. Viridian Energy, Inc.*, No. 14-cv-1731 (D. Conn.), and *Steketee v. Viridian Energy, Inc.*, No. 15-cv-585 (D. Conn.)); *Edwards v. N. Am. Power & Gas, LLC*, 120 F. Supp. 3d 132, 42-43 (D. Conn. 2015) (sustaining contract claim where contract promised "[t]he variable rate may increase or decrease to reflect the changes in the wholesale power market" and the plaintiff alleged that "the rates [the ESCO] charged were significantly higher than the wholesale market rate and did not always increase or decrease when the wholesale market rates did.").[9]

Third, the classes will use comparisons to Just Energy's contemporaneous fixed rates and other ESCOs' contemporaneous rates "to support her allegation that Defendant's variable rates are untethered to wholesale market supply costs" and to show "that Defendant charges higher variable rates than other ESCOs." *Stanley*, 466 F. Supp. 3d at 427. Just Energy likewise does not take issue with Claimants' use of Just Energy's fixed rates and other ESCOs' rates as comparators; rather, it specifically demands the latter.

[9] This of course easily defeats the Notice of Disallowance's claim that utility rates cannot serve as a yardstick for Texas wholesale rates because "customers in Texas cannot obtain power directly from a local utility (they must obtain power from a retailer)." That Just Energy's rates were consistently and substantially higher than wholesale costs and Just Energy's own costs will show breach even though Texas customers must purchase from a retailer.

Just Energy's claim that its contracts do not guarantee savings is similarly of no moment. Indeed, the same argument has been quickly dispatched by numerous courts.

> Agway's agreement represents that the variable monthly rate "shall each month reflect the cost of electricity acquired by Agway from all sources . . . related transmission and distribution charges and other market-related factors, plus all applicable taxes, fees, charges or other assessments and Agway's costs, expenses and margins." **Defendant argues that it has not been misleading because it never represented that savings were guaranteed. But this is inapposite to whether Defendant in fact charged rates to Plaintiff and putative class members that were based only upon those factors explicitly enumerated in the contract, as required by the contract.** . . . Plaintiff has plausibly alleged that Agway's rates were "not in fact competitive market rates based on the wholesale cost of electricity" or the factors set forth in the agreement.

Gonzales v. Agway Energy Servs., LLC, No. 18-cv-235, 2018 WL 5118509, at *4 (N.D.N.Y. Oct. 22, 2018) (emphasis added).

No factfinder will interpret "business and market conditions" to mean that Just Energy can price gouge—so much so that the rates bear no resemblance to wholesale costs and competitors' rates.

C. Breach of Implied Covenant of Good Faith and Fair Dealing

"An implied covenant of good faith and fair dealing is contained in all contracts . . . , and breach of that duty is subsumed in the breach of contract claim." *Jordet*, 505 F. Supp. 3d at 222; *cf. Stanley*, 466 F. Supp. 3d at 428 (all contracts contain an implied covenant of good faith and fair dealing) (citing *Arcadia Bioscis., Inc. v. Vilmorin & Cie*, 356 F. Supp. 3d 379, 399 (S.D.N.Y. 2019)). "The implied covenant is 'breached when a party acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement.'" *Stanley*, 466 F. Supp. 3d at 428 (quoting *Skillgames, LLC v. Brody*, 767 N.Y.S.2d 418, 423 (2003); citing *Moran v. Erk*, 11 N.Y.3d 452 (2008) ("The implied covenant . . . embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.")). "'In order to find a breach of the implied covenant, a party's action must directly violate an obligation that may be presumed to have been intended by the parties.'" *Id.* at 428-29 (quoting *Gaia House Mezz LLC v. State Street Bank & Tr. Co.*, 720 F.3d 84, 93 (2d Cir. 2013)).

Just Energy "'violated the covenant by exercising [any price-setting] discretion [it may have had] in bad faith and in a manner inconsistent with [Claimants'] reasonable expectations.'" *Stanley*, 466 F. Supp. 3d at 429 (quoting *Claridge*, 2015 WL 5155934, at *6; citing *Hamlen*, 2017 WL 892399, at *5 (noting that the plaintiff had sufficiently "alleged [that the] defendant acted in bad faith by exercising its discretion to charge unreasonable rates to profiteer off its customers, who reasonably expected to pay [the] defendant competitive prices for natural gas" and that "the implied covenant of good faith and fair dealing requires [the] defendant to seek a profit that is commercially reasonable")).

As explained above, the classes will be able to prove that Just Energy's variable rate profit margins are so unreasonable as to be set in bad faith. The classes will demonstrate Just Energy's bad faith by, *inter alia*, showing the stark disparity with Just Energy's fixed rate (which represents an actual market-based rate) profit margins and variable rate profit margins.

IV. Just Energy's Criticisms of Claimants' Expert Report Are Easily Dispatched

Offering no facts and little substantive argument, Just Energy contends that Claimants' damages estimates, based on the report of their expert Serhan Ogur, Ph.D (the "Ogur Report"), are speculative and inflated. Claimants, who have not yet completed discovery in the underlying actions, made clear that their damages estimations were just that, estimations based on the information to which they currently have access. Accordingly, Claimants have been aggressively pushing for disclosures by Just Energy so that the parties and the factfinder can have a clear and accurate understanding of the number of aggrieved U.S. consumers and the scope of their damages. These are simple facts based on data which Just Energy could easily disclose to resolve most, if not all, of its concerns regarding the scope and size of the classes. Claimants are confident that either this Court or the persons assigned to adjudicate Claimants' claims will require the disclosure of such information.

Critically, Just Energy's attacks on the Ogur Report at best represent a diminution of the size and scope of the classes and their damages; these criticisms of the Ogur Report do not justify complete claim denial. It is unclear why the Monitor would support total claim denial based on Just Energy's claim that the U.S. classes are owed less than the Claimants' expert estimated.

Indeed, none of the criticisms raised by Just Energy justifies denial of the Claimants' claims.

First, Just Energy argues that the Ogur Report erred by using utility rates as a baseline for the rates Just Energy should have charged under the terms of its customer contract. As discussed above, this critique has no merit—after all utility rates are called the "price to compare" by utilities and regulators precisely because those rates represent the proper benchmark for customer comparisons. This attack on the Ogur Report is also a red herring, as the report's "overcharge theory is based on the difference between the electricity and natural gas rates the affected class were charged versus what they would have been charged if Just Energy's rates were based on business and market conditions." Ogur Report at 10. During the adjudication process, Claimants will not only rely on utility rates as a price to compare, but they will also show, among other measures, that Just Energy's margins are excessive based on Just Energy's actual costs and the margins it charges customers on fixed rate contracts (which carry the same if not higher costs to Just Energy as compared to its variable rate customers).

Second, Just Energy complains that the Ogur Report includes commercial customers, and it asserts without support that commercial contracts are different than residential contracts. Notably, neither the *Donin/Golovan* nor the *Jordet* Actions is limited to residential customers, and the Donin and Golovan contracts by their own terms apply to both "Home" and "Business" customers. The same is true for the Jordet contract. Again, this is a problem of Just Energy's own making. Producing the applicable contracts will allow the parties and the factfinder to easily determine precisely which customers are subject to which pricing terms.

<u>Third</u>, while conceding that the breach of contract claims against Just Energy Group, Inc. were sustained, Just Energy wrongly argues that "any damages must be limited to customers who were contractual counterparties with those defendants." Just Energy Group, Inc. is the parent company of all U.S. Just Energy entities that contract with U.S. consumers and **<u>lost</u>** its motion to dismiss the *Donin* breach of contract claims that were brought directly against Just Energy Group, Inc. Just like for New York, Just Energy Group, Inc. is responsible for the damages to customers across the U.S. Moreover, a very large portion of the gas and electricity customer class resides in New York.

<u>Fourth</u>, Just Energy curiously claims that Texas customers are somehow not included in the sustained class action breach of contract claims. Yet as discussed above, the undersigned represents consumers from Texas, and the *Donin* dismissal opinion dis not limit the nationwide scope of the classes' claims in any way.

<u>Fifth</u>, Just Energy posits without factual support that Dr. Ogur's assumed percentage of variable versus fixed rate customers is not accurate. This is another simple fact that Just Energy will be required to disclose as a part of the adjudication process. Just Energy also claims that a smaller percentage of customers enroll directly into variable rate contracts as opposed to customers initially on fixed rate contracts who roll over to variable rates after the fixed rate expires. This is a curious contention given that both the *Donin*/*Golovan* and *Jordet* Actions explicitly plead that they had fixed rate contracts that rolled over to variable rates. To the extent there are customers that were on variable rate contracts from the outset, pre-adjudication discovery will reveal that the operative contract language is the same.

<u>Sixth</u>, Just Energy complains (without support or specification) that the Ogur Report covers periods outside the statute of limitations. This is a straightforward issue that will be resolved in the adjudication process.

<u>Seventh</u>, Just Energy contends that the rate of damages after 2018 was less than before 2018. But this argument relies on the faulty notion, discussed above, that only straight variable rate contracts, as opposed to fixed-to-variable rate rollover contracts, are part of the classes. Again, the number of class members and their respective damages and usage will be easily determined when Just Energy produces the requested data in pre-adjudication discovery.

<u>Eighth</u>, Just Energy complains that extrapolating damages from those suffered by the named plaintiffs in the *Donin/Golovan* and *Jordet* Actions is inappropriate because the sample size is too small. But as noted in the Ogur Report, final damages calculations will be based on forthcoming pre-adjudication discovery. Relatedly, Just Energy contends that the difference between their rates and Pennsylvania and New York utility rates may not be the same as in other states. Again, this is an issue easily resolved with pre-adjudication discovery.

<u>Ninth</u>, Just Energy claims that Dr. Ogur is somehow barred from the straightforward data that can be used to calculate class-wide damages without disclosing that expert discovery in *Donin* was stayed pending the dismissal ruling. *See* ECF No. 51 at 14:14–17 (THE COURT: "[S]hould

the case survive summary -- excuse me, motion to dismiss, we will discuss a timely schedule for conducting expert discovery. Until then, expert discovery is stayed.”).

Finally, Just Energy quips that Claimants’ prejudgment interest calculations were flawed because New York’s rate is higher than those of other states. This is largely a math issue to be resolved after pre-adjudication discovery.

None of the arguments proffered in response to the estimations made in the Ogur Report justify wholesale denial of Claimants’ claims, and all concerns raised by Just Energy will all be addressed after pre-adjudication discovery and in the adjudication process.

V. The Classes Will Be Certified

The Notice of Disallowance curiously posits that class certification presents a “substantial hurdle.” Yet the five courts that have addressed a contested motion to certify a class of ESCO customers overcharged under the terms of their customer agreements easily granted the motions. *Bell v. Gateway Energy Services Corp.*, No. 31168/2018 (Rockland Cnty. Super. Ct. Jan. 8, 2021), NYSCEF Doc. No. 152; *Claridge v. N. Am. Power & Gas, LLC*, No. 15-cv-1261, 2016 WL 7009062 (S.D.N.Y. Nov. 30, 2016) (plaintiff was represented by co-counsel *Roberts v. Verde Energy, USA, Inc.*, No. X07HHDCV156060160S, 2017 WL 6601993 (Conn. Super. Ct. Dec. 6, 2017), *aff’d*, 2019 WL 1276501 (Conn. Super. Ct. Feb. 1, 2019); and *BLT Steak LLC v. Liberty Power Corp, L.L.C.*, No. 151293/2013 (N.Y. Cnty., Super. Ct Aug. 14, 2020), NYSCEF Doc. No. 376 (plaintiff was represented by co-counsel); *Martinez v. Agway Energy Services, LLC*, No. 18-cv-00235, 2022 WL 306437 (N.D.N.Y. Feb. 2, 2022) (plaintiff represented by co-counsel). Claimants are confident that the factfinder here will follow suit.

There are few cases better suited for class certification. The classes’ claims arise out of uniform misrepresentations regarding the pricing methodology for Just Energy’s variable rate made in its standard customer contract. Just Energy provides its prospective electricity and natural gas customers with its standard contract prior to each contract’s initiation. If the customer accepts the agreement, the it becomes the operative contract. Additionally, not only are the contractual commitments concerning Just Energy’s variable rate uniform, but the resultant injury to the classes is also uniform because when Just Energy sets its variable rates, it uses the same rate for all customers within each utility region, regardless of which version of the contract governs its relationship with each variable rate customer. For these and the other reasons described below, the prerequisites to class certification will be easily met.[10]

A. The Proposed Class Satisfies the Rule 23(a) Factors.

Rule 23(a) requires that a plaintiff seeking class certification demonstrate that the proposed class satisfies the following four factors:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the

[10] Claimants’ analysis herein demonstrates compliance with the most exacting class certification standards, Rule 23 of the U.S. Federal Rules of Civil Procedure (the “Rules”).

representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); *accord Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011).

i. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." "[N]umerosity is presumed where a putative class has forty or more members." *Shahriar v. Smith & Wollensky Rest. Grp.*, 659 F.3d 234, 252 (2d Cir. 2011). Just Energy had millions of customers on variable rates during the relevant period. There is numerosity here.

ii. Commonality

Rule 23(a)(2) requires a showing of "questions of law or fact common to the class." "Commonality is satisfied where a single issue of law or fact is common to the class." *In re Scotts EZ Seed Litig.*, 304 F.R.D. at 405 (quoting *In re IndyMac Mort.-Backed Sec. Litig.*, 286 F.R.D. 226, 233 (S.D.N.Y. 2012)). "[E]ven a single common question will do." *Dukes*, 564 U.S. at 346 (citation, internal quotation marks, and brackets omitted).

Here, the class' claims largely turn on whether or not Just Energy set its rate based on "business and market conditions," as required in the customer contract. Because all class members were made the same promise, answering this common question will dominate this action. As one federal judge has held in certifying virtually identical claims, "[t]he claims of the proposed class turn on the 'common contention' that [Defendant] misleadingly described its method for calculating variable monthly rates, a claim that 'is capable of classwide resolution . . .' Plaintiff[] ha[s] therefore shown common questions of law and fact under Rule 23(a)(2)." *Claridge*, 2016 WL 7009062, at *4 (citing *Dukes*, 564 U.S. at 350).[11] And in any event, "[c]ommonality is not defeated because consumers interpreted arguably vague and misleading language in different ways." *Claridge*, 2016 WL 7009062, at *3.

iii. Typicality

Rule 23(a)(3) requires "the claims of the class representatives be typical of those of the class, and is satisfied when each class member's claim arises from the same course of events, and each

[11] Just Energy half-heartedly argues that individual damages claims arising out of Just Energy's various tangential products and services will predominate over common issues. However, it is well established that differences in individual damages do not preclude class certification. *See, e,g.*, *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 671 (7th Cir. 2015) ("It has long been recognized that the need for individual damages determinations at this later stage of the litigation does not itself justify the denial of certification.") (collecting cases). Moreover, the classes are limited to variable rate customers and do not include other products or services. To the extent that Just Energy is referring to non-energy-related value-added services, as the NYPSC explained at length, such products have no value and do not justify charging rates more than the default service providers. Thus, the classes can use a common set of proof to show each class member's damages, namely, Just Energy's records showing the rates charged, costs incurred, and margin realized combined with publicly available wholesale cost data and utility rates.

class member makes similar legal arguments to prove the defendant's liability." *In re Scotts EZ Seed Litig.*, 304 F.R.D. at 405 (quoting *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 155 (2d Cir. 2001)). "'Minor variations in the fact patterns underlying the individual claims do not preclude a finding of typicality' . . . [rather, the Rule] requires 'only that the disputed issues of law or fact occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class." *In re Scotts*, 304 F.R.D. at 405-06.

Here, the classes' claims arise from the same core events, and each class member would make the same legal arguments to prove Just Energy's liability. The classes were commonly bound by a sales agreement distributed to all Just Energy customers. Each contract contains the same or similar terms. Thus, all class members would proffer the same evidence and arguments in pursuing their claims against Just Energy.

iv. <u>Adequacy Of Representation</u>

Rule 23(a)(4) requires a showing that "the representative parties will fairly and adequately protect the interests of the class." "Adequacy is satisfied unless plaintiff's interests are antagonistic to the interest of other members of the class." *Claridge*, 2016 WL 7009062, at *5 (quoting *Sykes v. Mel S. Harris & Associates LLC*, 780 F.3d 70, 90 (2d Cir. 2015)).

Claimants will fairly and adequately protect the interests of the classes. Since the Actions' respective inceptions, Claimants have "actively assisted in the cases' prosecution and nothing in the record suggests [their] interests are antagonistic to those of other class members." *In re Scotts EZ Seed Litig.*, 304 F.R.D. at 406-07.

Likewise, Claimants' counsel is qualified and experienced in prosecuting complex class actions nationwide, in both state and federal courts, including customer protection class actions against ESCOs. Indeed, no law firms in the U.S. have more experience successfully prosecuting class actions against ESCOs who overcharge their customers.

B. The Proposed Class Satisfies the Rule 23(b)(2) Factors

Pursuant to Rule 23(b)(2), "[a] class action may be maintained if Rule 23(a) is satisfied and if . . . the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]" Just Energy has acted on grounds that apply generally to the classes, namely by representing that its variable rates are market based, when Just Energy's rates are in fact untethered from market conditions. Thus, final injunctive and declaratory relief is appropriate with respect to the classes.

C. The Proposed Class Satisfies the Rule 23(b)(3) Factors

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

i. <u>Predominance</u>

> A court must "bear[] firmly in mind that the focus of Rule 23(b)(3) is on the predominance of common questions . . ." *Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194 (2013). It "does not require a plaintiff seeking class certification to prove that each element of her claim is susceptible to classwide proof," but instead to prove that "common questions predominate over any questions affecting only individual class members." *Id.* at 1196 (emphasis in original; alterations and quotation marks omitted); *accord Sykes v. Mel S. Harris & Associates LLC*, 780 F.3d 70, 87 (2d Cir. 2015) ("The mere existence of individual issues will not be sufficient to defeat certification. Rather, the balance must tip such that these individual issues predominate.").

Claridge, 2016 WL 7009062, at *2 (certifying class of ESCO customers).

"Predominance is satisfied if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Id.* at *5 (quoting *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015)).

a. The Nationwide Classes Will be Certified

Just Energy contends—without any support—that Claimant does not have standing to represent all of Just Energy natural gas customers on a variable rate across the U.S. However, Just Energy ignores the well-settled doctrine that class action plaintiffs have class standing to allege sufficiently similar injuries suffered by all potential class members. *See, e.g.*, *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 438 (S.D.N.Y. 2020). As Judge Karas aptly explained, Just Energy's use of materially similar representations and pricing policies is sufficient to confer Claimants' standing on behalf of the class:

> However, Plaintiff has alleged that Defendant sent "uniform notices" to their legacy customers from NYSEG Solutions and/or Energetix that promised competitive, market-based variable rates. (Am. Compl. ¶ 2.) And Plaintiff has further alleged that Defendant engages in a uniform policy of price gouging all of its customers. (*Id.* ¶¶ 2, 24, 68.) The Second Circuit has explicitly instructed that "non-identical injuries of *the same general character* can support standing" for a class action. *Langan*, 897 F.3d at 94 (emphasis added) (citation omitted). And "courts in th[e Second C]ircuit have construed the payment of a premium price to be an injury in and of itself[, and] . . . where plaintiffs allege that customers paid a premium price based on a misrepresentation, those customers can have standing under Article III." *Guariglia v. Procter & Gamble Co.*, No. 15-CV-4307, 2018 WL 1335356, at *12 (E.D.N.Y. Mar. 14, 2018) (citations and quotation marks omitted). Under analogous circumstances, the Second Circuit determined that standing existed for a plaintiff who sought to represent a variety of certificate holders in connection to certain mortgage investments, despite the fact that other certificate holders were "outside the specific tranche from which the named plaintiff

> purchased certificates" and were subject to "different payment priorities." *Langan*, 897 F.3d at 94 (referring to *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012)). Similarly, here, it may be true that Energetix customers and NYSEG Solutions customers had different contracts before Defendant bought them. It may also be true that customers outside New York received slightly different terms or offers than those that Plaintiff received. But the fact that the "ultimate damages [for each member of the class may] . . . vary . . . is not sufficient to defeat class certification under Rule 23(a), let alone class standing." *NECA*, 693 F.3d at 164-65 (citation and quotation marks omitted).

Stanley, 466 F. Supp. 3d at 438-39.

Just Energy's Notice of Disallowance admits that it uses uniform customer contracts with the same pricing provisions, arguing that "the applicable contract puts customers (including the Claimants) on clear notice of the variable rates that Just Energy NY ould set and to which customers (including the Claimant) will be subject."

"[W]hether a plaintiff can bring a class action under the state laws of multiple states is a question of predominance under Rule 23(b)(3), not a question of standing[.]" *Rolland v. Spark Energy, LLC*, No. 17-cv-2680, 2019 WL 1903990, at *5 n.6 (D.N.J. Apr. 29, 2019) ("find[ing] Defendant's standing argument unpersuasive") (quoting *Langan v. Johnson & Johnson Consumer Cos.*, 897 F.3d 88, 96 (2d Cir. 2018)). *See also Mussat v. IQVIA, Inc.*, 953 F.3d 441, 448 (7th Cir. 2020) ("[A]bsentees [in a class action] are more like nonparties, and thus there is no need to locate each and every one of them and conduct a separate personal-jurisdiction analysis of their claims."); *In re Thalomid and Revlimid Antitrust Litig.*, No. 14-cv-6997, 2015 WL 9589217, at *18-*19 (D.N.J. Oct. 29, 2015) (denying motion to dismiss multi-state class allegations on standing grounds); *Ramirez v. STI Prepaid LLC*, 644 F. Supp. 2d 496, 504-05 (D.N.J. Mar. 18, 2009) ("Defendants' argument appears to conflate the issue of whether the named Plaintiffs have standing to bring their individual claims with the secondary issue of whether they can meet the requirements to certify a class under Rule 23"); *In re Asacol Antitrust Litig*., No. 18-cv-1065, 2018 WL 4958856, at *4 (1st Cir. Oct. 15, 2018) ("Requiring that the claims of the class representative be in all respects identical to those of each class member in order to establish standing would 'confuse[ ] the requirements of Article III and Rule 23.'") (internal citations omitted).

Multistate breach of contract and breach of the covenant of good faith and fair dealing classes are routinely found to satisfy the predominance factor because such common law claims are generally uniform across the U.S. *See, e.g., In re U.S. Foodservice Inc. Pricing Litig*., 729 F.3d at 127 (no predominance issue for nationwide class asserting claims for breach of contract under the laws of multiple states); *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1122-23 (9th Cir. 2017) (affirming certification of nationwide breach of contract class); *Boyko v. Am. Intern. Group, Inc.*, No. 08-cv-2214, 2012 WL 1495372, at *9 (D.N.J. Apr. 26, 2012), *separate portion vacated in part on reconsideration*, 2012 WL 2132390 (D.N.J. June 12, 2012) ("The Court agrees with Plaintiff that the legal elements of a breach of contract claim are substantially similar in all fifty states, such that certification of the AIG Class as to the breach of contract claim is proper."); *see also Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 233 n.8 (1995) ("contract law is not at its core

'diverse, nonuniform, and confusing'") (citation omitted); *Flanagan v. Allstate Ins. Co.*, 242 F.R.D. 421, 431 (N.D. Ill. 2007) (finding that numerous states' breach of contract laws are sufficiently similar for class certification purposes).

This reflects "the obvious truth that class actions necessarily involve plaintiffs litigating injuries that they themselves would not have standing to litigate," *Langan*, 897 F.3d at 95, and that "[n]amed plaintiffs in a putative consumer protection class action may assert claims under laws of states where they do not reside to preserve those claims in anticipation of eventually being joined by class members who do not reside in the states for which claims have been asserted." *Pisarri v. Town Sports Int'l, LLC*, No. 18-1737, 2019 WL 1245485, at *3 (S.D.N.Y. Mar. 4, 2019) (quotation and citation omitted). Indeed, the Second Circuit has expressly held that "any concern about whether it is proper for a class to include out-of-state, nonparty class members with claims subject to different state laws is a question of predominance under Rule 23(b)(3) not a question of adjudicatory competence under Article III." *Langan*, 897 F.3d at 93 (quotation marks omitted). Thus, where a plaintiff's own claims survive dismissal, *Langan* teaches that counts alleging violations of other jurisdictions' laws are to be addressed at class certification.

The same is true for class members that purchased energy from one of Just Energy's many affiliates. That consumers purchased from an affiliate is not a barrier to Claimants bringing claims on these consumers' behalf because "courts in this Circuit have held that, subject to further inquiry at the class certification stage, a named plaintiff has standing to bring class action claims . . . for products that he did not purchase, so long as those products . . . are 'sufficiently similar' to the products that the named plaintiff *did* purchase." *Mosely v. Vitalize Labs, LLC*, No. 13-2470, 2015 WL 5022635, at *7 (E.D.N.Y. Aug. 24, 2015) (emphasis in original). This is because a class action plaintiff may sue for non-purchased products if he or she (1) suffered injury, and (2) the injurious conduct implicates the same set of concerns as the conduct alleged to have caused injury to other members of the proposed class. *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145, 162 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 1624 (2013); *see also In re Frito-Lay N. Am., Inc. All Natural Litig.*, No. 12-2413, 2013 WL 4647512, at *12 (E.D.N.Y. Aug. 29, 2013) (same) ("*NECA-IBEW* [] instructs that, because plaintiffs have satisfied the Article III standing inquiry, their ability to represent putative class members who purchased products plaintiffs have not themselves purchased is a question for a class certification motion."); *Wai Chu v. Samsung Elecs. Am., Inc.*, No. 18-11742, 2020 WL 1330662, at *4 (S.D.N.Y. Mar. 23, 2020) (*NECA-IBEW's* "same set of concerns" requirement satisfied for thirty-two devices, even though plaintiff only purchased three).

b. The Breach of Contract Claim Will Be Certified

The classes' breach of contract claims present straightforward common questions that will be answered through common proof, precluding the predominance of individual issues. "Contract claims satisfy Rule 23(b)(3) when the claims of the proposed class 'focus predominantly on common evidence[.]'" *Claridge*, 2016 WL 7009062, at *6 (quoting *In re U.S. Foodservice Inc.*, 729 F.3d at 125). "[C]laims arising from interpretations of a form contract appear to present the classic case for treatment as a class action, and breach of contract cases are routinely certified as such." *In re Scotts EZ Seed Litig.,* 304 F.R.D. at 411; *accord Gillis v. Respond Power, LLC*, 677 F. App'x 752, 756 (3d Cir. 2017) ("Because form contracts should be interpreted uniformly as to

all signatories, Pennsylvania and federal courts have recognized that claims involving the interpretation of standard form contracts are particularly well-suited for class treatment.") (vacating district court's denial of class certification and remanding). Additionally, "[t]he Second Circuit has affirmed certification of a contract claim when minor variations existed in the language of the disputed contracts because the underlying claim was directed to a 'substantially similar' terms." *Claridge*, 2016 WL 7009062, at *6 (quoting *In re U.S. Foodservice Inc.*, 729 F.3d at 124; *accord In re Scotts EZ Seed Litig.,* 304 F.R.D. at 411 (certifying contract class where, "[a]lthough plaintiffs do not allege defendants breached a 'form contract,' the representations defendants made to each plaintiff were uniform.") (quoting *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 74 (E.D.N.Y. 2004)); *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003), *aff'd sub nom. Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005) (affirming certification of breach of contract class where the defendant failed to price natural gas in accordance with its uniform contractual obligations).

Moreover, proof of Claimants' claims will be common to all class members, as it will rely on Just Energy's admittedly standard contracts, as well as publicly available data, witness testimony, and business records which will demonstrate that Just Energy did not set its variable rate in accordance with the market, as required in its customer contract.

c. The Good Faith and Fair Dealing Claim Will Be Certified

The good faith and fair dealing claim is likewise well suited for class treatment. "The implied covenant is "breached when a party acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement.'" *Stanley*, 466 F. Supp. 3d at 428.

Whether Just Energy acted in bad faith is common to all class members and will be evaluated with common evidence. *See In re U.S. Foodservice Inc.*, 729 F.3d at 125 (common evidence used to determine whether business practice "departs from prevailing commercial standards of fair dealing so as to constitute a breach"). As with the classes' breach of contract claim, Claimants will demonstrate that standard contracts gave rise to their and the classes' reasonable expectations concerning the variable rate, and will prove Just Energy's failure to provide a competitive, market-based rate and its bad faith profiteering through common evidence.

ii. Superiority

There are several reasons why a class action is superior to other available adjudicatory methods. First, a class action will permit an orderly and expeditious administration of class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions. *See* Fed. R. Civ. P. 23(b)(3) advisory committee's note. Just Energy has acted on grounds generally applicable to the classes. By prosecuting this action as a class, once Just Energy's liability has been adjudicated, the factfinder will be able to determine the claims of all class members.

Individualized actions, on the other hand, "would simply entail repeated adjudications of identical [contract] provisions." *Claridge*, 2016 WL 7009062, at *6; *cf. Roberts*, 2017 WL 6601993, at *2 ("Piecemeal litigation would be less workable. Given that much of the case

depends on the central common legal issues surrounding the contract class members would have little interest in separately controlling the litigation . . ."). Additionally, prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members that could establish incompatible standards of conduct for Just Energy.

Second, the individual damages suffered are small relative to the expense and burden of individual litigation, such that class members are unlikely to prosecute individual actions. *See Roberts*, 2017 WL 6601993, at *2 ("Consumer contracts affecting thousands of people but not necessarily yielding thousands of dollars to each class member are well suited for class certification. Without the class action method most claims like this wouldn't be brought, including claims with great social utility.").

Finally, this lawsuit presents no difficulties that would impede its management as a class action. *See* Fed. R. Civ. P. 23(b)(3)(D).

VI. The Increasing Regulatory Denunciation of Just Energy's Pricing Practices Further Demonstrates that Claimants' Class Action Claims Are Strong

Almost all of the states in the U.S. that deregulated their energy markets did so in the mid-to-late 1990s. This wave of deregulation was pushed by then-corporate superstar Enron. For example, in December 1996 when energy deregulation was being considered in Connecticut, Enron CEO Jeffrey Skilling, dubbed "[t]he most aggressive proponent" of deregulation, said:

> Every day we delay [deregulation], we're costing consumers a lot of money . . . . It can be done quickly. The key is to get the legislation done fast.[12]

Operating under this concocted sense of urgency, the U.S. states that deregulated suffered serious consumer harm. For example, in 2001, forty-two states had begun or were considering deregulation. Today, the number of full or partially deregulated U.S. states has dwindled to only seventeen and the District of Columbia. Even within those states, several recognized the harm to everyday consumers and thus only allow large-scale consumers to purchase from ESCOs.

Responding to ESCOs' price gouging, many key deregulation supporters now regret their role. For example, reflecting on Maryland's experience, a Maryland Senator lamented that "[d]eregulation has failed. We are not going to give up on re-regulation till it is done."[13]

A Connecticut leader who joined in that state's foray into deregulation was similarly remorseful:

> Probably six out of the 187 legislators understood it at the time, because it is so incredibly complex . . . . If somebody says, no, we

[12] Keating, Christopher, "Eight Years Later . . . 'Deregulation Failed,'" *Hartford Courant*, Jan. 21, 2007.

[13] Hill, David, "State Legislators Say Utility Deregulation Has Failed in its Goals," *The Washington Times*, May 4, 2011.

> didn't screw up, then I don't know what world we are living in. We did.[14]

State regulators have, ***for years***, also denounced predatory pricing practices like those challenged in the class actions. For example, in 2014 the NYPSC declared that New York's retail energy markets were plagued with "marketing behavior that creates and too often relies on customer confusion."[15] The NYPSC further noted "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."[16] The NYPSC concluded as follows:

> [A]s currently structured, the retail energy commodity markets for residential and small nonresidential customers cannot be considered to be workably competitive. Although there are a large number of suppliers and buyers, and suppliers can readily enter and exit the market, the general absence of information on market conditions, particularly the price charged by competitors, is an impediment to effective competition. . . . [17]

The conduct of ESCOs like Just Energy has been devastating to consumers across the U.S. For example, "[a]ccording to the data provided by [New York's] utilities, the approximately two million New York State residential utility customers who took commodity service from an ESCO collectively paid almost $1.2 billion more than they would have paid if they purchased commodity from their distribution utility during the 36-months ending December 31, 2016."[18] "Additionally, small commercial customers paid $136 million more than they would have paid if they instead simply remained with their default utilities for commodity supply for the same 36-month period."[19] Combining these two groups, New York consumers have been "'overcharged' by over $1.3 billion dollars over this time period."[20]

Based on the flood of consumer complaints, negative media reports, and data demonstrating massive overcharges, the NYPSC announced in December 2016 an evidentiary hearing to consider primarily whether ESCOs should be "completely prohibited from serving their current

[14] Keating, *supra*.

[15] CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 4 (Feb. 25, 2014).

[16] *Id*. at 11.

[17] *Id*. at 10.

[18] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 2 (Mar. 30, 2018).

[19] *Id.* at 3.

[20] *Id.*

products" to New York residential consumers.[21] Then, on December 16, 2016, the NYPSC permanently prohibited ESCOs from serving low-income customers, because of "the persistent ESCO failure to address (or even apparently to acknowledge) the problem of overcharges to [low income] customers . . . ."[22]

Following the first part of the evidentiary hearing announced in December 2016, on March 30, 2018, NYPSC staff announced the following conclusions about ESCOs:

> [A]s the current retail access mass markets are structured, customers simply cannot make fully informed and fact-based choices on price . . . since the terms and pricing of the ESCO product offerings are not transparent to customers. For variable rate products this is due, in large part, to the fact that ESCOs often offer "teaser rates" to start, and after expiration of the teaser rate, the rate is changed to what is called a "market rate" that is not transparent to the customer, and the contract signed by the customer does not provide information on how that "market rate" is calculated.[23]
>
> * * *
>
> ESCOs take advantage of the mass market customers' lack of knowledge and understanding of, among other issues, the electric and gas commodity markets, commodity pricing, and contract terms (which often extend to three full pages), and in particular, the ESCOs' use of teaser rates and "market based rate" mechanisms that customers are charged after the teaser rate expires. In fact, ESCOs appear to be unwilling to provide the necessary product pricing details as to how those "market based rates" are derived to mass market customers in a manner that is transparent so as to enable an open and competitive marketplace where customers can participate fairly and with the necessary knowledge to make rational and fully informed decisions on whether it is in their best interest to take commodity service from their default utility, or from a particular ESCO among competing but equally opaque choices.[24]

[21] CASE 12-M-0476, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, at 3 (December 2, 2016).

[22] CASE 12-M-0476, Order Adopting a Prohibition On Service To Low-Income Customers By Energy Services Companies, at 3 (Dec. 16, 2016).

[23] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 41–42 (Mar. 30, 2018).

[24] *Id.* at 86 (citations omitted).

In response to these criticisms, the ESCOs claimed as Just Energy does here that their marketing and overhead costs explain the overcharges, but NYPSC staff found that these costs do "**not justify the significant overcharges**."[25] Likewise, when the ESCOs claimed as Just Energy does here that their provision to consumers of so-called value-added products such as light bulbs and thermostats contributed to their excessive rates, NYPSC staff found that "**these sorts of value-added products is at best de minimis and does not explain away the significantly higher commodity costs charged by so many ESCOs**."[26]

Instead, NYPSC staff reached the following conclusion:

> The massive $1.3 billion in overcharges is the result of higher, and more often than not, significantly higher, commodity costs imposed by the ESCOs on unsuspecting residential and other mass market customers. These overcharges are simply due to (1) the lack of transparency and greed in the market, which prevents customers from making rational economic choices based on facts rather than the promises of the ESCO representative, and (2) obvious efforts by the ESCOs to prevent, or at least limit, the transparency of the market. These obvious efforts include the lack of a definition for "market rate" in their contracts, resulting in the fattening of ESCOs' retained earnings.[27]

Following these conclusions, in December 2019 the NYPSC **banned** the exact same variable rate pricing practices that the class actions challenge.

The NYPSC's press release announcing the ban on variable energy rates does not mince words, stressing that it was intended to "prevent[] bad actors among ESCOs from overcharging New York consumers" and that the regulations only went forward after "the state's highest court definitively halted ESCOs' attempts to use litigation to evade and/or delay consumer-protection regulation."[28] The regulations themselves likewise condemn ESCOs' conduct and declare that "avoiding accountability" has become a "business model" in the deregulated energy market:

> Based upon the number of customer complaints that continue to be made against ESCOs, and the likely need for increased enforcement activities, the large number of ESCO customers that pay significant premiums for products with little or no apparent added benefit, . . .

[25] *Id.* at 37.

[26] *Id.* at 87.

[27] *Id*.

[28] Press Release, "PSC Enacts Significant Reforms to the Retail Energy Market," December 12, 2019, *available at*: http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/Web/51A7902329FEA7B7852584CE005CF88D/$File/pr19110.pdf?OpenElement.

> it appears that a material level of misleading marketing practices continues to plague the retail access market.
>
> * * *
>
> The persistence of complaints related to ESCO marketing practices is indicative of some ESCOs continuing to skirt rules and attempting to avoid accountability as part of their business model.[29]

The NYPSC's variable rate ban followed a two-year investigation of ESCO practices that culminated in a 10-day evidentiary hearing to examine evidence submitted by 19 parties and to hear the testimony and cross-examination of 22 witnesses and witness panels.[30]

The NYPSC prefaced the ban with the observation that variable energy rates—like those Just Energy charged its U.S. customers—are "[t]he most commonly offered ESCO product" and that this popular product is frequently provided at "a higher price than charged by the utilities."[31]

The absurdity of consumers paying ESCOs more for the exact same energy offered by regulated utilities was not lost on the NYPSC:

> If market participants are unwilling, or unable, to provide material benefits to consumers beyond those provided by utilities in exchange for a regulated, just and reasonable rate, the market serves no proper purpose and should be ended.[32]

In fact, the NYPSC found it "troubling" that even after considering reams of evidence "neither ESCOs nor any other party have shown . . . that ESCO charges above utility rates were generally – or in any specific instances – justified."[33] This fact only highlighted the NYPSC's "long-held concern that many customers may only be taking ESCO service due to their misunderstanding of [ESCOs'] products and/or prices."[34]

Accordingly, and on this record, the NYPSC banned variable energy rates like those Just Energy charged to the Claimants and its other U.S. customers.[35] In place of these floating variable rates,

[29] December 12, 2019 Order at 88–90.

[30] *Id.* at 3–4.

[31] *Id.* at 11.

[32] *Id.* at 12.

[33] *Id.* at 30.

[34] *Id.* at 31.

[35] *Id.* at 39.

the NYPSC required ESCOs to guarantee that their variable rates would save customers money compared to what the utility would have charged.[36] Under the new regulations, if the consumer is charged more than the utility, the consumer must be refunded the difference.[37]

In Claimants' class actions, the difference between what Just Energy charged consumers for the exact same energy that class members' utilities would have charged is more than US$2 billion. The NYPSC's regulations took effect in April 2021. Around the same time, Just Energy ceased offering service in New York and tried to spin the state's ban on its core practice as "regulatory constraints . . . requiring certain variable rate customers to be dropped to the utility."[38]

VII. Just Energy's Damning Public Dossier Further Supports the Class Actions

Just Energy has amassed a damning public dossier that includes at least **six** regulatory enforcement actions, reams of investigative journalism exposing Just Energy's deceptive practices, and countless negative customer reviews.

For example, on December 31, 2014, Just Energy agreed to settle claims brought by the Massachusetts Attorney General that are strikingly similar to those in the class actions, making various concessions related to its deceptive energy sales and billing practices in Massachusetts.[39] Just Energy agreed to refund US$4,000,000 along with several key changes to its business practices, including that Just Energy was banned for three years from enrolling Massachusetts consumers into variable rate energy products unless it complied with the following requirements:

> Within 30 days of a customer enrolling in a variable energy rate product, Just Energy must provide the customer with written notice of the date on which the introductory rate will expire.
>
> Any new contracts for variable rate products shall either (i) include the calculation that will be used to set monthly rates under the contract such that the customer can calculate the cost of Just Energy's residential energy, or (ii) make the rates available 60 days in advance via phone and the internet.[40]

[36] *Id.*

[37] *Id.*

[38] Ring, Paul, Energy Choice Matters, Aug. 16, 2021, http://www.energychoicematters.com/stories/20210816a.html

[39] Assurance of Discontinuance, *In the Matter of Just Energy Group, Inc., et al.*, Mass. Sup. Ct., Suffolk, (Dec. 31, 2014).

[40] *Id*. ¶ 28(a)–(b), (d).

Additionally, for three years Just Energy was banned from charging Massachusetts consumers variable electricity rates in excess of 14.25¢ per kWh.[41] The settlement further provided that:

> For current Just Energy variable rate customers, the company is required to clearly and conspicuously post its current variable rates and post subsequent variable rates with at least 45 days advance notice.[42] Just Energy is also required to mail notice to all existing Massachusetts variable rate customers alerting them to the fact that advance pricing information is now available via phone and on Just Energy's website, and that these customers can cancel their Just Energy contracts without paying termination fees.[43]
>
> Just Energy must at its own expense hire an independent monitor for three years to audit *inter alia* Just Energy's Massachusetts marketing materials, billing data, consumer communications, and direct marketing efforts.[44]
>
> Just Energy must distribute a copy of the Assurance of Discontinuance to current and future (for three years) principals, officers, directors, and supervisory personnel responsible for the Massachusetts market.[45] Just Energy must also secure and maintain these individuals' signed acknowledgement of receipt of the Assurance of Discontinuance.

The Massachusetts Attorney General's sweeping action was far from the first time Just Energy had been targeted by regulators. For example, in June 2003, the *Toronto Star* reported that Just Energy (then operating under the name Ontario Energy Savings Corp.) was fined for violating the Ontario Energy Board's code of conduct by fraudulently enrolling customers.[46]

In 2008, the Illinois Attorney General sued U.S. Energy Savings Corp. (whose name was changed to Just Energy in 2012), alleging violations of Illinois' consumer fraud laws. The May 2009 anouncement a US$1 million settlement noted that the Attorney General had "received a nearly unprecedented number of calls from consumers who were deceived by false assurances that they would receive significant savings by switching to this alternative gas supplier."[47]

[41] *Id*. ¶ 30(a).

[42] *Id*. ¶ 30(b).

[43] *Id*. ¶ 30(c).

[44] *Id*. ¶ 44, Attachment 2.

[45] *Id*. ¶ 46.

[46] Spears, John, "*Energy marketers fined over forgeries*," Toronto Star (June 21, 2003).

[47] Press Release, "Madigan Secures $1 Million in Consumer Restitution from Alternative Gas Supplier for Deceptive claims," May 14, 2009.

According to the lawsuit, among other deceptive conduct "consumers were led to believe that they would automatically save money by enrolling in the U.S. Energy Savings program."[48]

During this same period, the Citizens Utility Board (the "CUB") and AARP filed a formal complaint with the Illinois Commerce Commission (the "ICC") alleging, *inter alia*, that Just Energy told customers they would "save money," and that consumers would not see any gas price increases if they signed up; and that Just Energy presented false and misleading information about its prices.[49] In April 2010, the ICC found that Just Energy's sales and marketing practices were deceptive, issued a US$90,000 fine, and ordered an independent audit of its practices.[50]

In July 2008, New York's Attorney General announced a US$200,000 settlement with Just Energy (then named U.S. Energy Savings) and noted that the Attorney General's "office received hundreds of consumer complaints that sales contractors promised immediate savings on utility bills, but the price of gas was actually more than the price charged by the local utility because the price was locked in for a multi-year period."[51]

In November 2016, Ohio's Public Utilities Commission (the "PUCO") fined Just Energy **for a second time** for misleading marketing practices. An article in the *Columbus Dispatch* notes that Just Energy is an "energy company with a track record of misleading marketing," that it was fined by the PUCO in 2010 for deceptive marketing, and that it "sells energy contracts that often cost more than customers would pay if they received the standard service price."[52]

There are also *thousands* of complaints about Just Energy and its affiliated entities on the internet. Over the last three years alone, Just Energy has had at least 280 complaints filed against it with the Better Business Bureau (the "BBB").[53] Even though Just Energy is listed on the BBB's website as having been in business for 24 years, the BBB clearly declares that "THIS BUSINESS IS NOT BBB ACCREDITED" and displays the following "Pattern of Complaint" warning to the consuming public:

[48] *Id*.

[49] Verified Original Complaint ¶19, Illinois Commerce Commission Docket 08-0175 (March 3, 2008).

[50] Press Release, "Illinois Commerce Commission Fines Just Energy for Deceptive Sales and Marketing Practices, Orders Audit," April 15, 2010.

[51] Press Release, "Attorney General Cuomo Stops WNY Natural Gas Provider From Deceiving Consumers by Misrepresenting Service Contracts," (July 4, 2008).

[52] Gearino, Dan, "Electricity marketer Just Energy fined over complaints,'" The Columbus Dispatch, (Nov. 4, 2016).

[53] Business Profile: Just Energy Group, Inc., BBB.org, https://www.bbb.org/us/tx/houston/profile/electric-companies/just-energy-group-inc-0915-16000393.

> **BBB files indicate that this business has a pattern of complaints concerning door to door sales representatives who are using misleading sales tactics, misrepresenting themselves as the consumer's current energy or gas company, and not being transparent about cancellations fees which may be charged by their current provider for switching their services. Additionally, consumers allege Just Energy's representatives display poor customer service when the business is contacted to resolve billing and contract concerns.**

Media reports about Just Energy are equally troubling. For example, when the confidential results of the Illinois Commerce Commission's audit referenced above were made public, Chicago's CBS affiliate reported that between 2010 and 2011 Just Energy received over 29,729 customer complaints.[54] "There were so many complaints over so many years with so little company oversight on how they were handled that the audit said, '[a]n adequate compliance culture at the top levels of the organization is not evident.'"[55]

A May 8, 2019, article in the *Chicago Reporter* showcased a carpenter who, over the course of 10 years, paid Just Energy over US$20,000 more than he would have paid the utility.[56] This Just Energy customer's experience was used to highlight the then-proposed Illinois Home Energy Affordability & Transparency Act ("HEAT"). On August 27, 2019, Illinois Governor J.B. Pritzker signed HEAT into law. Effective January 1, 2020, HEAT requires *inter alia* ESCOs like Just Energy operating in Illinois to include the utility's comparison price on all marketing materials, during telephone or door-to-door solicitations, and on every consumer's utility bill so consumers can make informed price comparisons.

Here, the factfinder's informed price comparison, will demonstrate over US$2 billion in damages to Just Energy's U.S. customers.

[54] Zekman, Pam, "Alternative Energy Supplier Has Long Record Of Fraud Complaints," *CBS2*, (Jan. 15, 2013).

[55] *Id*.

[56] *Available at:* https://www.chicagoreporter.com/illinois-bill-aims-to-curb-alternative-energy-scams-by-forcing-transparency/.

Tab 23

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---X

FIRA DONIN and INNA GOLOVAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JUST ENERGY GROUP INC., JUST ENERGY NEW YORK CORP., and JOHN DOES 1 TO 100,

Defendants.

---X

<u>DECISION & ORDER</u>
17-CV-5787 (WFK)(SJB)

WILLIAM F. KUNTZ, II, United States District Judge:

On April 27, 2018, Fira Donin and Inna Golovan ("Plaintiffs") filed an Amended Putative Class Complaint ("Amended Complaint") against Just Energy Group, Inc, Just Energy New York Corp., and Johns Does 1 to 100 ("Defendants") setting forth claims for violations of the New York General Business Law, unfair deceptive acts and practices, common law fraud, fraud by concealment, unjust enrichment, breach of contract, and breach of covenant of good faith and fair dealing. ECF No. 17. Defendants now move to dismiss the Amended Complaint in its entirety pursuant to Rules 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure. *See* ECF Nos. 27–30. For the reasons that follow, Defendants' motion to dismiss is GRANTED in part and DENIED in part.

BACKGROUND[1]

Fira Donin and Inna Golovan (together, "Plaintiffs") are residents of Brooklyn, New York who allege they were gas and electricity customers of Just Energy NY from June 2012 through August 2016 and August 2012 through April 2015, respectively. *See* Amended Complaint ("Compl.") ¶¶ 36, 40–41, 44, ECF No. 17. Just Energy Group and Just Energy New York ("JE" and "JENY," respectively, together, "Defendants"), are energy service companies ("ESCOs"), which provide a "free-market alternative" to local utility companies. *See* Def. Mem.

[1] These allegations are either drawn from the Amended Complaint or are properly incorporated into the Amended Complaint and are assumed to be true for the purposes of this motion.

in Support of Mot. to Dismiss ("Def. Mem.") at 2, ECF No 27-1. Just Energy NY "is the corporate entity that supplied Plaintiffs' energy." Compl. ¶ 64. Just Energy NY customers elect not to purchase energy from the local utility provider in their region, like Con Edison, and instead contract to purchase their energy supply from an ESCO. Def. Mem. at 2. Just Energy NY customers enter into a contract, by which Just Energy NY agrees to provide gas and/or electricity to the customer at agreed-upon terms. *Id.* The physical delivery of the gas or electricity to the customer's home, along with the reading of customer meters and determining usage amounts for billing purposes, remain the local utility's responsibility. *Id.* Plaintiffs allege "Defendants John Does 1 to 100 are the shell companies and affiliates similar to Just Energy New York Corp. through which Defendant Just Energy Group Inc. does business in New York and elsewhere. John Does 1 to 100 are also the Just Energy management and employees who perpetrated the unlawful acts described herein." Compl. ¶ 69.

Plaintiffs allege that Just Energy's "deceptive marketing and sales practices are unlawful in multiple ways including:

a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;
b. Failing to adequately disclose that quoted rates are introductory teaser rates;
c. Failing to adequately disclose when Defendants' introductory teaser rates expire;
d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;
e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges;
f. Failing to provide customers advance notice of the variable rate Defendants will charge; and

g. Failing to clearly and conspicuously identify in its contract and marketing materials the variable charges in Defendants' variable energy plans." Compl. ¶ 9; *see also* Compl. ¶¶ 3, 187, 194, 210, 231.

Specifically, Plaintiffs allege they were contacted by representatives associated with Just Energy in 2012, and shown "teaser rates" not reflective of Just Energy's actual rates. Compl. ¶¶ 37–38, 42–43. Plaintiff Donin alleges that after agreeing to switch her gas and electric accounts to Just Energy, she received emails from Just Energy that misrepresented Just Energy's rates. Compl. ¶ 39. Plaintiffs allege Just Energy lures consumers with a marketing campaign that touts low rates and fails to disclose that Just Energy's actual rates will not only be higher than those teaser rates, but will also be consistently and substantially higher than those charged by the utility. *Id.* ¶ 3.

Plaintiffs allege the "company also provides customers a set of documents, including a "welcome email" and "General Terms and Conditions," which together comprise the contract. Def. Mem. at 10. Plaintiffs allege that in this contract, Just Energy promises (1) to charge a specified energy rate, (2) not to increase customers' rates "more than 35% over the rate from the previous billing cycle," *see* Compl. ¶ 5, and (3) to base their variable rates on "business and market conditions," *id.* ¶ 6. Plaintiffs allege Defendants breach all three promises. *Id.* ¶¶ 4–6, 10, 31–35, 142–46, 255–56. Through these practices, Plaintiffs allege Defendants breached New York's General Business Law §§ 349, 349-D(3) and 349-D(7) (Counts I–III); engaged in unfair and deceptive acts and practices (Count IV); committed common law fraud (Count V) and fraud by concealment (Count VI); were unjustly enriched at the consumers' expense (Count VII); breached its contract (VIII); and violated the Covenant of Good Faith and Fair Dealing (Count

IX). For the reasons that follow, the Court GRANTS in part and DENIES in part Defendants' motion to dismiss.

LEGAL STANDARD

To survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A sufficiently pleaded complaint provides "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* Indeed, a complaint that merely offers labels and conclusions, a formulaic recitation of the elements, or "'naked assertions' devoid of 'further factual enhancement,'" will not survive a motion to dismiss. *Id.* (quoting *Twombly,* 550 U.S. at 557). At the motion-to-dismiss stage, this Court accepts all factual allegations in the Amended Complaint as true and draws all reasonable inferences in favor of Plaintiff, the nonmovant. *Harris v. Mills*, 572 F.3d 66, 71 (2d Cir. 2009). But the Court need not credit "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 72 (quoting *Iqbal*, 556 U.S. at 678) (alteration omitted). Rather, legal conclusions must be supported by factual allegations. *Iqbal*, 556 U.S. at 678.

DISCUSSION

Defendants move to dismiss the Complaint in its entirety on the basis that: (1) this Court has no personal jurisdiction over Just Energy, Inc. or the alleged John Does; (2) Plaintiff Donin has no standing; and (3) Plaintiffs otherwise fail to state a claim for which relief can be granted. For the reasons state below, this Court finds it has personal jurisdiction over Just Energy, Inc. and Plaintiff Donin has standing to proceed in this case. Furthermore, Plaintiffs' claims for

breach of contract and breach of the covenant of good faith and fair dealing survive Defendants' motion to dismiss. Plaintiffs' remaining claims are DISMISSED.

I. Personal Jurisdiction

Defendants argue this Court does not have personal jurisdiction over Just Energy, Inc. and John Does #1–100. This Court finds it has personal jurisdiction over Just Energy, Inc., but does not have personal jurisdiction over the John Does.

a. The Court has personal jurisdiction over Just Energy, Inc.

New York's long arm statute, N.Y. C.P.L.R. 302, permits jurisdiction over a non-domiciliary "who in person or through an agent: 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or 2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act[.]" N.Y. C.P.L.R. 302(a)(1)-(2) (McKinney 2018). Courts have emphasized that, in the personal jurisdiction context, "[w]hile a plaintiff may plead facts alleged upon information and belief where the belief is based on factual information that makes the inference of culpability plausible, such allegations must be accompanied by a statement of the facts upon which the belief is founded." *Vista Food Exch., Inc. v. Champion Foodservice, L.L.C.*, 14-CV-804, 2014 WL 3857053, at *9 (S.D.N.Y. Aug. 5, 2014) (Sweet, J.) (internal quotations omitted). Pleadings based on "information and belief" are acceptable as long as they are allegations, not conclusions. *Geo Grp., Inc. v. Cmty. First Servs., Inc.*, 11-CV-1711, 2012 WL 1077846, at *5 (E.D.N.Y. Mar. 30, 2012) (Amon, J.) ("Second Circuit has expressly held that information and belief pleading is permissible for facts 'peculiarly within the possession and control' of the defendant.") (citing *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 121 (2d Cir. 2010))).

This Court has personal jurisdiction over Just Energy, Inc. pursuant to New York's long-arm statute. Plaintiffs have sufficiently alleged JE "transacts any business within the state or contracts anywhere to supply goods or services in the state" and that the instant case arises from that transaction. Pl's Opp. to Def. Mem. ("Pl. Opp.") at 4, ECF No. ECF. Plaintiffs allege that JE itself "states that it sells [energy] in New York," *see* Compl. ¶ 78, "receives payment from New York utilities for it," *see id.* ¶ 77, "issues news releases about New York," *id.* ¶ 65, "sign[ed] up [New York customers] through its advertisements, sales staff, independent sales contractors and website," *id.* ¶¶ 65, 67, 76, its employees "drafted the customer contract at issue," *id.* ¶ 66, and its executives presented an overview of Group's strategies at a conference in New York, *id.* ¶ 75. *See Amorphous v. Morais*, 17-CV-631, 2018 WL 1665233, at *5, 7 (S.D.N.Y. Mar. 15, 2018) (Buchwald, J.) (finding "defendants availed themselves of the privilege of doing business in the New York" when defendants filled orders to New York customers, participated in New York trade shows, and sent representatives to New York and that "not only N.Y. C.P.L.R. § 302(a)(1), but also due process's requirement of sufficient minimum contacts"). These facts directly contrast with Mr. Teixeira's declaration, *see* ECF No. 30-4, that JE "does not engage in any business in New York," *id.* ¶ 9.

Here, Plaintiffs allege specifically "that the subsidiary engaged in purposeful activities in this State, that those activities were for the benefit of and with the knowledge and consent of the defendant, and that the defendant exercised some control over the subsidiary in the matter that is the subject of the lawsuit." *Jensen v Cablevision Sys. Corp.*, 17-CV-00100, 2017 WL 4325829, at *7 (E.D.N.Y. Sept. 27, 2017) (Spatt, J.). Drawing all reasonable inferences in favor of Plaintiffs, the Court is satisfied that Plaintiff has alleged facts showing personal jurisdiction over JE is proper.

Furthermore, this Court's exercise of personal jurisdiction over JE satisfies Constitutional Due Process. Defendants claim the exercise of personal jurisdiction over JE fails to comport with due process "in light of the Supreme Court's recent holding in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773 (2017). Defs.' Mem. at 7–8. However, unlike *Bristol-Myers*, where nonresident plaintiffs suffered harm out of state and tried to join their claims with those of in-state plaintiffs, here, there is a direct "connection between the forum and the specific claims at issue." *Id*. at 1781. Defendant JE allegedly solicited and defrauded customers in *New York* and supplied their energy services to *New York* residents in *New York*. This constitutes sufficient contacts for purposes of due process. *Licci ex rel. Licci v. Lebanese Can. Bank, SAL*, 673 F.3d 50, 62 (2d Cir. 2012) (holding a single in-state act performed by a non-domiciliary is sufficient for long-arm jurisdiction under CPLR §302(a)); *Bradley v. Staubach*, 03-CV-4160, 2004 WL 830066, at *4 (S.D.N.Y. Apr. 13, 2004) (Scheindlin, J.) (holding "[c]ontacts sufficient to establish jurisdiction under C.P.L.R. § 302(a)(1) are sufficient to meet the minimum contacts requirements of the Due Process clause").

b. The Court does not have jurisdiction over John Does 1–100.

However, Plaintiffs have not sufficiently alleged facts to show this Court has jurisdiction over John Does 1 to 100. Plaintiffs describe John Does 1 to 100 as "shell companies and affiliates" through which Just Energy Inc. does business in and outside of New York, as well as "Just Energy management and employees who perpetrated the unlawful acts." Compl. ¶ 69. This vague and conclusory statement, without additional factual support, is insufficient to establish prima facie evidence of jurisdiction. *See, e.g.*, *Yao Wu v. BDK DSD*, 14-CV-5402, 2015 WL 5664256, at *3 (E.D.N.Y. Aug. 31, 2015) (Gold, Mag.) (dismissing complaint *sua sponte* for lack of personal jurisdiction over John Doe defendants where plaintiffs had averred no

factual allegations to support a finding of personal jurisdiction), *report and recommendation adopted*, 14-CV-5402, 2015 WL 5664534 (E.D.N.Y. Sept. 22, 2015) (Amon, J.). Accordingly, the Court hereby DISMISSES all claims against John Does 1–100 for lack of personal jurisdiction.

II. Plaintiff Donin has standing.

To demonstrate standing, the named plaintiff must have (1) suffered a direct personal injury, (2) fairly traceable to the defendant's allegedly unlawful conduct, (3) that is likely to be redressed by the requested relief. *See Crist v. Commn. on Presidential Debates,* 262 F.3d 193, 195 (2d Cir, 2001); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Furthermore, "[t]here must be a direct, personal relationship between the party seeking relief, and the parties to the action for which that relief is sought." *Howard v. Koch*, 575 F. Supp. 1299, 1301 (E.D.N.Y. 1982) (Costantino, J.) (dismissing allegations of misconduct toward plaintiff's girlfriend for lack of standing); *see also Galtieri v. Kelly*, 441 F. Supp. 2d 447, 456 (E.D.N.Y.2006) (Bianco, J.) (holding the wife of a policeman lacked standing to challenge the police department's decision to comply with court order to garnish the policeman's benefits).

Defendants argue Plaintiff Fira Donin has no standing in this case because Defendants sent the emails in question to her husband Stanislav Donin, the accountholder with Just Energy, and because Plaintiff Donin is not a party to the contract at issue. Def. Mem. at 9. This Court disagrees. Plaintiff Donin was the recipient of the "welcome emails," which were sent to her by the Just Energy customer service representative who pitched to her in person. *See* Complaint ¶¶ 28, 39. The addressee of the emails is "fsdonin@juno.com." Pl. Mem. at 8. Furthermore, although Plaintiff Donin is not a signatory to the contract, she is a third-party beneficiary of the contract and can thus assert a claim of breach. *See Logan-Baldwin v. L.S.M. Gen. Contractors,*

Inc., 94 A.D.3d 1466, 1468 (2012) ("Where, as here, performance is rendered directly to the third party, it is presumed that the contract was for his or her benefit."); *see also Mirkin v. Viridian Energy, Inc.*, 15-CV-1057, 2016 WL 3661106, at *2 n.2 (D. Conn. July 5, 2016) (denying motion to dismiss breach of contract claim based on ESCO's alleged overcharges even though plaintiff "Mr. Mirkin is not a party to the agreement with Viridian"). Accordingly, Fira Donin has standing to assert her contractual claims against Defendants.

III. Fraud-Based Claims

Counts V and VI of Plaintiff's Complaint allege common law fraud and fraud by concealment. To state a claim for fraud in New York, a plaintiff must allege "(1) a misrepresentation or omission of material fact; (2) which the defendant knew to be false; (3) which the defendant made with the intention of inducing reliance; (4) upon which the plaintiff reasonably relied; and (5) which caused injury to the plaintiff." *Schwartzco Enterprises LLC v. TMH Mgmt., LLC*, 60 F. Supp. 3d 331, 344 (E.D.N.Y. 2014) (Spatt, J.) (citing *Wynn v. AC Rochester*, 273 F.3d 153, 156 (2d Cir. 2001)). To survive a motion to dismiss, a plaintiff must: "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Id.* Plaintiff must also "allege facts that give rise to a strong inference of fraudulent intent." *Id.* (citing cases). "A cause of action to recover damages for fraud does not lie when . . . the only fraud charged relates to the breach of a contract[.]" *Individuals Sec., Ltd. v. Am. Int'l Grp.*, 34 A.D.3d 643, 644 (2d Dep't 2006) (holding there was "no evidence that the defendants violated any duty extraneous to the bond thereby giving rise to an actionable tort").

Plaintiffs' fraud claims fail because they have not "allege[d] a breach of duty which is collateral or extraneous to the contract between the parties." *Krantz v. Chateau Stores of Canada*

Ltd., 256 A.D.2d 186, 187 (1st Dep't 1998). The relationship between Plaintiffs and Defendants exists solely from their commercial contract. *See* Compl. Additionally, Plaintiffs have not sufficiently alleged a duty to disclose, as is also required for fraudulent concealment. *TVT Records v. Is. Def Jam Music Group*, 412 F.3d 82, 91 (2d Cir. 2005). Again, Plaintiffs plead no special relationship between the parties, outside of the contract that would produce a duty to disclose. *See* Compl. Thus, Plaintiffs' claims for fraud and fraudulent concealment are hereby DISMISSED.

IV. Plaintiff's GBL claims are untimely.

The New York General Business Law ("GBL") has a three-year limitations period for statutory causes of action. *See* N.Y. C.P.L.R. 214 (McKinney 2018); *Gaidon v. Guardian Life Ins. Co. of Am.*, 750 N.E.2d 1078, 1083 (2001) (applying "the three-year period of limitations for statutory causes of action under CPLR 214 (2)" to GBL § 349 claims). An action under the GBL "accrues 'when all of the factual circumstances necessary to establish a right of action have occurred, so that the plaintiff would be entitled to relief.'" *Globe Surgical Supply v. Allstate Ins. Co.*, 31 Misc. 3d 1227(A), 2011 WL 1884729, at *5 (Sup. Ct. Nassau Cnty. Apr. 18, 2011) (citation omitted). If an action is commenced outside the statute of limitations, "it is the plaintiff's burden to 'demonstrate that any delay was caused by fraud, misrepresentation or deception and that his reliance on the asserted misrepresentations was justifiable.'" *Davidson v. Perls*, 42 Misc. 3d 1205(A), 2013 WL 6797665, at *7–8 (Sup. Ct. N.Y. Cnty. Dec. 23, 2013) (collecting cases); *see also Marshall v. Hyundai Motor Am.*, 51 F. Supp. 3d 451, 463 (S.D.N.Y. 2014) (Karas, J.) ("[T]he party seeking to invoke the doctrine bears the burden of demonstrating that it was diligent in commencing the action within a reasonable time after the facts giving rise to the estoppel have ceased to be operational." (internal quotations omitted)).

Plaintiffs' claims accrued in 2012 at the latest, when they first received their energy bills showing the rates they were charged by Defendants. This date predates the filing of the Complaint by over three years. *See Heslin v. Metro. Life Ins. Co.*, 287 A.D.2d 113, 115–16 (3d Dep't 2001) (holding that the statute of limitations for a GBL § 349 action is "three years and accrues when the owner of a 'vanishing premium' life insurance policy s first called upon to pay an additional premium"). Furthermore, an "[a]ccrual of a § 349 claim 'is not dependent upon any date when discovery of the alleged deceptive practice is said to occur.'" And so, Plaintiff's claims cannot be tolled. *Statler v. Dell, Inc.*, 841 F. Supp. 2d 642, 648 (E.D.N.Y. 2012) (Wexler, J.). Plaintiffs' claims began accruing in 2012, either when they purportedly enrolled with Just Energy NY or when they first received their energy bills showing the rates they were charged by Just Energy NY. *See* Compl. ¶ 4. Under either accrual event, Plaintiffs would have had to file their Complaint long before October 2017 to state a timely claim under the controlling statute of limitations. *Pike v. New York Life Ins. Co.*, 72 A.D.3d 1043, 1048 (2d Dep't 2010) ("Although the plaintiffs allege that they were induced to purchase unsuitable policies, and that they were unaware that they would have to pay 'substantial' premiums, they do not point to any specific wrong that occurred each time they paid a premium, other than having to pay it. Thus, any wrong accrued at the time of purchase of the policies, not at the time of payment of each premium."). Accordingly, the Court hereby DISMISSES Plaintiff's GBL claims as untimely.

V. Plaintiffs' claims for unfair and deceptive practices outside of New York are dismissed.

To assert claims on behalf of out-of-state, nonparty class members with claims subject to different state laws, the named plaintiffs' claims must not be time barred. *Langan v. Johnson & Johnson Consumer Companies, Inc.*, 897 F.3d 88, 93 (2d Cir. 2018). Because the named

Plaintiffs' claims are time barred under the GBL, they cannot assert the out-of-state claims on behalf of the out-of-state class members. Furthermore, courts in this district have held that plaintiffs lack standing to "bring claims on behalf of a class under the laws of the states where the named plaintiffs have never lived or resided." *In re HSBC Bank, USA, N.A., Debit Card Overdraft Fee Litig.*, 1 F. Supp. 3d at 50 (holding that the plaintiffs lacked standing to "bring claims under state laws to which Plaintiff have not been subjected" and noting that, even if the plaintiff amended to add representatives from each state, "it would be difficult for the Court to adjudicate claims" under the various state laws); *see also Ellinghaus v. Educ. Testing Serv.*, 15-CV-3442, 2016 WL 8711439, at *9 (E.D.N.Y. Sept. 30, 2016) (Feuerstein, J.) (dismissing non-New York consumer protection claims on a motion to dismiss); *Simington v. Lease Fin. Grp., LLC*, 10-cv-6052, 2012 WL 651130, at *9 (S.D.N.Y. Feb. 28, 2012) (Forrest, J.) ("Where plaintiffs themselves do not state a claim under their respective state's consumer statutes, . . . they do not have standing to bring claims under other state statutes—even where they are named plaintiffs in a purported class action."). Here, the two named Plaintiffs reside not only in the same state, but in the same borough of the city of New York, and—consistent with the holdings of numerous courts in the Second Circuit—are not entitled to bring state law claims asserting violations of consumer protection statutes outside New York. Compl. ¶¶ 36, 41. As such, these claims are DISMISSED.

VI. Plaintiffs have sufficiently stated a breach of contract claim.

To state a claim for breach of contract, a plaintiff must show "(1) the existence of a contract between [plaintiff and defendant]; (2) performance of the plaintiff's obligations under the contract; (3) breach of the contract by that defendant; and (4) damages to the plaintiff caused by that defendant's breach." *Diesel Props S.r.l. v. Greystone Bus. Credit II LLC*, 631 F.3d 42, 52

(2d Cir. 2011). Plaintiffs claim Defendants breached the Agreements "by (a) charging rates higher than the rates set forth in the welcome emails Defendants sent to consumers (b) violating the contract's requirement that Defendants 'will not increase more than 35% over the rate from the previous billing cycle,' and (c) violating the contract's requirement that Defendants charge variable rates 'determined by business and market conditions.'" Compl. ¶ 35.

Defendants argue the Agreement expressly states that the rates charged are "variable," meaning they did not contract to charge Plaintiffs particular rates, and thus they did not breach the contract. However, Defendants ignore Plaintiff's allegations which specify that Defendants "made contractual promises to i) charge a specified energy rate (in Ms. Donin's case, 8¢ per kWh and 63¢ per therm), Compl. ¶ 4, ii) not to increase their rates "more than 35% over the rate from the previous billing cycle," *id.* ¶ 5, and iii) base their variable rates on "business and market conditions," *id.* ¶ 6, and that the Defendants breached these three promises.

First, Plaintiffs have put forth facts showing that Defendant charged them over a specific energy rate. Notwithstanding the contractual promise, Plaintiffs allege Just Energy consistently charged Plaintiff Donin more than 8¢ per kWh. *See* Compl. ¶ 4. Plaintiffs allege they have provided billing data during a four-year period showing there was only one month when Just Energy charged Ms. Donin less than the 8¢ per kWh contractual rate. *Id.* Similarly, Plaintiffs maintain the same allegations regarding her gas account. *Id.* Plaintiff Donin alleges that during the seventeen months of billing, Just Energy's rate was higher than 63¢ per therm. *Id.*

Second, Plaintiffs have put forth facts showing Defendants increased their rates more than 35% from previous billing cycles. Plaintiffs maintain that in August 2013 Defendants raised Plaintiff Donin's electricity price by more than 80% over the prior month's rate. *Id.* ¶ 5.

Similarly, in May 2016, Plaintiffs allege Just Energy increased Ms. Donin's May 2016 gas rate by more than 36% compared to the rate she paid in April 2016. *Id.*

Finally, Plaintiffs have put forward facts to substantiate their claim that Defendant's failed to base their variable rates on "business and market conditions." The Complaint sets forth a month-by-month comparison of what Con Ed would have charged during each of the months for which Plaintiffs' billing data is presently available, showing both the difference and the percent difference between a rate based on "business and market conditions" and the rate Defendants charged. Compl. ¶¶ 142–44. Based on these tables, Plaintiffs show "that Just Energy's variable rate was consistently significantly higher than Con Ed's rates and that the rate did not fluctuate with commodity prices." *Id.* ¶ 147. The Complaint also clearly shows that "Just Energy's variable rate often increased while wholesale costs declined," further substantiating its claim that Defendants' rates are untethered to "business and market conditions." *Id.* ¶¶ 153–56. This is sufficient to state a breach of contract claim for an ESCO's failure to charge contracted-for market-based rates, and thus a claim for breach of contract.

VII. Plaintiffs sufficiently allege a claim for breach of the covenant of good faith and fair dealing.

A "claim for breach of an implied covenant of good faith and fair dealing does not provide a cause of action separate from a breach of contract claim" when based on the same facts. *Atlantis Info. Tech., GmbH v. CA, Inc.*, 485 F. Supp. 2d 224, 230 (E.D.N.Y. 2007) (Spatt, J.); *Esposito v. Ocean Harbor Cas. Ins. Co.*, 13-CV-7073, 2013 WL 6835194, at *2 (E.D.N.Y. Dec. 19, 2013) (Feuerstein, J.). In New York, "all contracts contain an implied covenant of good faith and fair dealing, under which neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Claridge*

v. N. Am. Power & Gas, LLC, 15-CV-1261, 2015 WL 5155934, at *6 (S.D.N.Y. Sept. 2, 2015) (Castel, J.). "Where the contract contemplates the exercise of discretion, this pledge includes a promise not to act arbitrarily or irrationally in exercising that discretion." *Dalton v Educ. Testing Serv.*, 663 N.E.2d 289, 291 (N.Y. 1995). Whether a defendant exercised bad faith is an issue of fact for a jury to decide. *See First Niagara Bank N.A. v Mortg. Builder Software, Inc.*, 13-CV-592, 2016 WL 2962817, at *7 (W.D.N.Y. May 23, 2016) (Skretny, J.).

The Court finds some factual allegations overlap in Plaintiff's claims. However, because Just Energy contests the viability of the contract claim, the Court allows Plaintiffs to alternatively maintain the good faith and fair dealing claim, as is routinely allowed in federal court. *See, e.g.*, *Claridge*, 2015 WL 5155934, at *6 (allowing both claims to proceed and noting that "[g]iven the ambiguous language of the Agreement, the plaintiffs plausibly allege that [defendant ESCO] could have exercised its discretion in a manner contrary to customers' expectations"); *Hamlen v. Gateway Energy Services Corp.*, 16-CV-3526, 2017 WL 892399, at *5 (S.D.N.Y. Mar. 6, 2017) (Briccetti, J.); *Edwards v. N. Am. Power and Gas, LLC*, 120 F. Supp 3d. 132, 147 (D. Conn. 2015) ("[I]n pleading that [defendant's] prices were arbitrarily high and unreasonable, [plaintiff] . . .sufficiently alleged a claim of breach of the covenant of good faith and fair dealing."). Accordingly, Plaintiffs' "claim for breach of an implied covenant of good faith and fair dealing survives Defendants' motion to dismiss.

VIII. Plaintiff's unjust enrichment claim is dismissed.

Unjust enrichment "may not be plead in the alternative alongside a claim that the defendant breached an enforceable contract." *King's Choice Neckwear, Inc. v. Pitney Bowes, Inc.*, 09-CIV-3980, 2009 WL 5033960, at *7 (S.D.N.Y. Dec. 23, 2009) (Cote, J.), *aff'd*, 396 Fed. App'x 736 (2d Cir. 2010) (summary order); *see also Ainbinder v. Money Ctr. Fin. Grp., Inc.*, 10-

CV-5270, 2013 WL 1335997, at *8 (E.D.N.Y. Feb. 28, 2013) (Tomlinson, Mag.) (collecting cases), *report and recommendation adopted,* 10-CV-5270, 2013 WL 1335893 (E.D.N.Y. Mar. 25, 2013) (Feuerstein, J.). Unlike Plaintiffs' claim for breach of covenant of good faith and fair dealing, here all facts of Plaintiff's breach of contract claim overlap with their breach of unjust enrichment claims. There is no dispute as to the existence of a contract, and thus, a claim for unjust enrichment cannot survive. Accordingly, Plaintiff's unjust enrichment claim is DISMISSED.

CONCLUSION

In sum, the Defendants' motion to dismiss is GRANTED in part and DENIED in part. The Court finds it has personal jurisdiction over Defendant Just Energy, Plaintiff Donin has standing, and Plaintiffs have sufficiently alleged their breach of contract and breach of the covenant of good faith and fair dealing claims. All other claims are hereby DISMISSED. The Clerk of Court is respectfully directed to close the motion pending at ECF No. 27 and to remove John Does 1–100 from the caption.

SO ORDERED.

s/ WFK

HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: September 24, 2021
Brooklyn, New York

Tab 24

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

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.

Applicants

AIDE MEMOIRE OF THE APPLICANTS

Case Conference before the Honourable Mr. Justice McEwen
January 31, 2022

A. The Just Energy Group

1. Just Energy Group Inc. ("**Just Energy**") and its subsidiaries (including various partnerships which are not Applicants in these proceedings but which were extended the protections and authorizations of the Initial Order dated March 9, 2021, the "**Just Energy Entities**") are retail energy providers specializing in delivering electricity and natural gas to consumer and commercial customers as well as energy-efficient solutions and renewable energy

options. The Just Energy Entities serve over 950,000 consumer and commercial customers in the United States and Canada who rely on the Just Energy Entities for their energy needs.

2. As a provider of energy and natural gas in Canada and the United States, the Just Energy Entities operate in highly regulated markets. In most jurisdictions where they operate, the Just Energy Entities are subject to significant oversight from public utility commissions or independent electricity system operators. Certain of the Just Energy Entities have received gas and electricity licenses from regulators in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and various jurisdictions across the United States.

3. As at September 8, 2021, the Just Energy Entities employed 1,092 employees and had 29 independent contractors across Canada, the United States and India.

4. During the 2020 fiscal year (ending March 31, 2020) and the 2021 fiscal year (ending March 31, 2021), the Just Energy Entities had sales of more than C$3.15 billion and C$2.7 billion, respectively.

5. The Just Energy Entities' capital structure includes the following secured and unsecured debt (all as at September 30, 2021):

Items	**Approximate Amount (CAD)**
SECURED DEBT	
DIP Facility The US$125 million secured facility provided by the DIP Lenders under the DIP Term Sheet	$158.4 million
Secured Supplier Accounts Payable	$515.8 million
Credit Facility The pre-filing secured revolving credit facilities advanced by a syndicate of lenders to various of the Just Energy Entities under a ninth amended and restated credit agreement (as amended from time to time, the "**Credit Agreement**")	$167.6 million of funded debt $160.5 million of issued letters of credit
TOTAL SECURED DEBT	**$1.0 billion**

Items	Approximate Amount (CAD)
UNSECURED DEBT	
Term Loan The non-revolving term loan established pursuant to the Term Loan Agreement as part of the Recapitalization (the "**Term Loan**") under which various subsidiaries of the DIP Lender are lenders	$290.4 million
Subordinated Notes The unsecured subordinated notes issued by Just Energy in 2020 as part of its Recapitalization (as defined and discussed below)	$13.6 million
Trade Debt and other Unsecured Payables	$37.6 million
TOTAL UNSECURED DEBT	**$341.6 million**

6. The secured debt portion of the Just Energy Entities' capital structure is subject to, and governed by, a complex intercreditor arrangement which defines the relative priorities of the various parties' security interests and specifies the priority of such interests in accordance with the waterfall defined therein. This complex capital structure is one of the significant drivers of the company's current restructuring negotiations.

B. Current Status of the CCAA and Chapter 15 Proceedings

7. Since the granting of the Initial Order, a number of orders have been obtained by the Just Energy Entities to advance the CCAA and Chapter 15 proceedings, including the following:

(a) on March 19, 2021, the Court granted an Amended and Restated Initial Order ("**ARIO**") which, among other thing, extended the Stay Period to June 4, 2021;

(b) on April 2, 2021, the U.S. Court granted a Final Recognition Order which, among other things, recognized the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the

Court, full force and effect on a final basis with respect to the Just Energy Entities' property located within the United States;

(c) on May 26, 2021, the Court granted (i) the Second ARIO which revised certain definitions and incorporated certain limited termination rights for Qualified Commodity/ISO Suppliers, and (ii) an Order extending the Stay Period to September 30, 2021; relieving Just Energy of any obligation to call an annual meeting of shareholders; and authorizing certain intercompany transfers;

(d) on September 15, 2021, the Court granted (i) a Claims Procedure Order approving a process (the "**Claims Process**") for the identification, quantification and resolution of claims against the Just Energy Entities and their respective directors and officers and establishing a Claims Bar Date of November 1, 2021 (the "**Claims Procedure Order**"), and (ii) an Order extending the Stay Period to December 17, 2021 and other miscellaneous relief; and

(e) on November 10, 2021, the Court granted Orders (i) extending the Stay Period to February 17, 2021, (ii) approving a second KERP, and (iii) authorizing and empowering the Just Energy Entities to enter into an amendment to the DIP Term Sheet.

8. The Just Energy Entities have been working in earnest with the most significant participants in their capital structure, including the DIP Lenders (who are also Term Loan Lenders and the assignee of a significant secured supplier claim from BP), the Credit Facility Lenders and Shell (a significant secured supplier), to develop a going concern restructuring plan (the "**Restructuring Plan**") which, among other things, preserves the going concern value of the Just Energy Entities' businesses for the benefit of stakeholders (including the company's approximately 950,000 customers and significant trading partners), maintains the employment of the Just Energy Entities' more than 1000 employees, and supports the long-term viability of the

business upon emergence from these CCAA and Chapter 15 proceedings. These negotiations have been complex due to the nature of the company's business and financial arrangements.

9. As noted by the Court at the last stay extension motion:

> The company has been moving in good faith towards a plan, but the business is of such a complexity that it has taken longer than initially anticipated. This is not surprising. The company is subject to a myriad of regulatory regimes across the United States and Canada. It has complex commercial arrangements with suppliers and a number of secured and unsecured lenders, the integrity of which in turn depends on Just Energy's compliance with regulatory requirements.

10. The company's current intention is to seek a Meeting Order with respect to the Restructuring Plan on March 3, 2022.

11. In addition to developing the Restructuring Plan, the Just Energy Entities have been working with the Monitor to administer the claims process in accordance with the Claims Procedure Order. Currently, the total claims filed against the Just Energy Entities pursuant to the Claims Procedure Order are in excess of $12 billion, including approximately $1 billion in secured claims, including letters of credit. The Just Energy Entities expect that the final amount of accepted unsecured claims will be much lower than the face amount of the filed claims. The Just Energy Entities, in consultation with the Monitor, are in the process of attempting to resolve claims filed in the Claims Process including entering into discussions with certain Claimants to have their Claims withdrawn or settled and issuing Notices of Revision or Disallowance and notices of Claim acceptance to Claimants where appropriate. It is possible that certain claims will be referred for determination to either the CCAA Court or a Claims Officer in accordance with the Claims Procedure Order.

C. Motion for Advice and Directions brought by U.S. Counsel to the Proposed Representative Plaintiffs in 2 Uncertified U.S. Class Actions

12. The position of the Just Energy Entities is that the vast majority of the relief sought in Plaintiffs' Counsels' motion for advice and directions should not be heard on February 9, 2022,

when the company is in the process of negotiating a plan of arrangement with parties that have provided it with approximately $1 billion in financial capital.

13. The moving party is a group of three U.S. based law firms who represent 3 proposed representative plaintiffs in 2 uncertified U.S. Class Actions – the Donin Action and the Jordet Action. Proofs of Claim have been filed by U.S. Counsel on behalf of the proposed representative plaintiffs in the CCAA Claims Process, each in the amount of US$3,662,444,442.00. The Monitor delivered Notices of Revision or Disallowance denying those claims in full as part of the Claims Process. The time for the Claimants to dispute such disallowances has not yet passed.

Communications with and Information Provided to Plaintiffs' Counsel

14. The proposed representative plaintiffs' position regarding information and participation rights starts with a false premise – that a CCAA Debtor is required to provide a contingent, uncertified litigation creditor with confidential information concerning its business or restructuring. There is no statute or rule that requires a CCAA Debtor to do so. Similarly, there is nothing that requires a CCAA Debtor to negotiate a plan with any specific stakeholder or creditor, secured or otherwise, regardless of the amount of influence or leverage that stakeholder may claim to have.

15. The Tannor Affidavit in support of the Plaintiffs' Counsels' motion suggests that the Applicants and the Monitor have not been responsive to information requests over the last twelve weeks. That is simply incorrect.

16. Despite being under no legal obligation to do so, the Just Energy Entities and the Monitor have engaged with Plaintiffs' Counsel since they first contacted the Monitor's legal counsel by email on November 11, 2021. This process included signing a Confidentiality, Non-Disclosure and Non-Use Agreement ("**NDA**"), providing Plaintiffs' Counsel with confidential information and documents, answering numerous written questions, and arranging multiple meetings with

Plaintiffs' Counsel and its financial advisor that have included the Monitor, counsel to the Monitor and the financial advisor to the Just Energy Entities. There is nothing in the NDA that ***requires*** the company to provide any information to Plaintiffs' Counsel, yet the company has responded to those information requests it believes are reasonable and appropriate in the circumstances, considering the nature of the claims of the proposed representative plaintiffs.

17. Plaintiffs' Counsel, through their financial advisor, also state that the financial statements filed by Just Energy demonstrate that "there is equity in the Just Energy Entities". First, this Court accepted that the Just Energy Entities are insolvent when it made the Initial Order. Second, the Tannor Affidavit does not conduct any closer analysis of the financial statements, including adjusting the equity on the balance sheet for the impact of approximately $580 million of unrealized mark-to-market gains on supply contracts recorded in the six months ended September 30, 2021. Applicable accounting rules require these unrealized gains (or losses) to be recorded on the company's financial statements, even though the supply contracts are entered into specifically to lock in the gross margin on fixed price customer contracts for future periods. Consistent with industry practice, Just Energy has historically and consistently noted in its financial statements that these amounts do not impact the long term financial performance of Just Energy and are excluded from its base EBITDA calculation. Similarly, these amounts should be excluded when considering the balance sheet.

18. It is important to not lose sight of the fact that the Second ARIO charged the Applicants with the authority to develop and file a plan of compromise or arrangement with the assistance of the Monitor. The information and documents relating to any proposed transaction must, out of necessity, be confidential to ensure a constructive dialogue with financial participants with proven claims against the company. It is not feasible to have other stakeholders "at the table" to second

guess the Applicants or distract management from the task at hand - particularly contingent creditors who are contributing nothing to the restructuring and have nothing more than a nascent claim against certain of the Just Energy Entities that has yet to be certified or survive a summary judgment motion. The Applicants, in conjunction with the Monitor, must exercise their business judgment to frame the negotiations and parties involved to achieve the desired outcome of a going concern transaction. Should a plan of arrangement be proposed by the Just Energy Entities, all stakeholders will have the ability to participate in the public court process that will be implemented to consider such a plan.

Notices of Revision or Disallowance in respect of the Donin and Jordet Claims

19. The moving parties included copies of the Notices of Revision or Disallowance sent by the Monitor at Exhibits “Q” and “R” of the Tannor Affidavit. The disallowances disallowed the Claims advanced by the proposed representative plaintiffs in full as, among other things, contingent, uncertified, speculative, and remote.

20. The Notices of Revision or Disallowance also set out numerous procedural and substantive issues with the Proofs of Claim filed in the Claims Process, and by implication the adjudication plan put forward by U.S. counsel, including the following:

(a) The motion for advice and directions requests an adjudication schedule that would somehow see a trial for a proposed class action, that first requires (i) discovery in the case of the Jordet Claim; (ii) the exchange of expert reports; (iii) a judicial determination on summary judgement; and (iv) a judicial determination on certification, among other matters, be adjudicated to judgment in February, 2022. Unless and until a proposed class action is certified, it cannot proceed to trial.

(b) The proposed representative plaintiffs are attempting to impermissibly expand the scope of their claims to add new defendants, new customer groups and extended class periods. Their Proofs of Claim purport to advance claims against "All Just Energy Entities" on behalf of both gas and electricity customers, even though (i) the Jordet Claim only names Just Energy Solutions as defendant and is only brought on behalf of natural gas customers; (ii) the Donin Claim is only brought against Just Energy and Just Energy New York Corp and the US Court dismissed all claims against Just Energy's other affiliates; and (iii) the US Court found claims prior to April 6, 2014 were time-barred in the Jordet Action.

(c) Contrary to the plaintiffs' submissions, the defendants were largely successful on the motions to dismiss in both the Donin and Jordet Actions, which significantly narrowed the scope of their claims. For example, in the Motion to Dismiss in Donin dated September 24, 2021 (attached as Exhibit "C" to the Tannor Affidavit), the US Court dismissed all of the plaintiffs' claims, except for breach of contract and the implied covenant of good faith.

(d) Should the plaintiffs' claim survive summary judgement and certification, and liability is then established at trial, the plaintiffs' damages calculations are highly inflated and based on a number of flawed assumptions in a number of respects. To take only one example, the plaintiffs' purported expert report assumes that 50% of residential and commercial natural gas and electricity usage of the Just Energy Entities' customer base is attributable to customers that are parties to variable rate contracts. However, currently only 2.1% and 0.04%, respectively, of natural gas and electricity usage is attributable to customers who are parties to variable rate

contracts with the Just Energy Entities. Other issues with respect to the plaintiffs' purported expert report are outlined in detail on pages 6-10 of both Notices of Revision or Disallowance.

The Proposed Representative Plaintiffs Claims in the Context of the Just Energy Entities' Restructuring

21. The next step in the Applicants' going concerning restructuring efforts is to finalize a Restructuring Plan with its funded debtholders and seek a Meeting Order in connection with such plan. That Restructuring Plan will provide that all contingent litigation creditors are "Affected Creditors" under the Plan, including the proposed representative plaintiffs in the Jordet and Donin Claims. No financial sponsor or "new money" would permit the company to pursue a Restructuring Plan that does not affect litigation claims.

22. For the reasons set out above and in the Notices of Revision or Disallowance, and since the available resources of the company and senior management are entirely focused on the development of a going concern Restructuring Plan (in addition to running a significant and complex commercial enterprise), there is no scenario in which the Proofs of Claim filed in respect of contingent, uncertified class actions could be adjudicated to judgment on their merits before a Creditors' Meeting, and before the company's anticipated exit from these CCAA and Chapter 15 Proceedings as a going concern, without jeopardizing the entire restructuring which rests on the financial support of its funded debtholders.

23. Consistent with other Meeting Orders granted by this Court which provided that unliquidated, unresolved, contingent claims be valued for voting at $1.00, the Just Energy Entities do not intend to propose a plan of arrangement or Meeting Order that would provide the proposed representative plaintiffs in an uncertified class action with an effective veto or unwarranted leverage over its going concern restructuring. It cannot be the case that a contingent unsecure

creditor can hold the company, and all other creditors with ascertainable, proven claims, for ransom, and claim to have a veto over a CCAA plan of arrangement simply but putting a vastly inflated and unsupported number in a Proof of Claim form.

24. In summary, it would be an unnecessary and inappropriate use of the company's resources to litigate the motion for advice and directions in a vacuum of a Restructuring Plan that is currently being developed, and then litigate the Meeting Order. The CCAA has built in mechanisms for all stakeholders to participate in its restructuring initiatives, including in Court at the hearing for the Meeting Order and then the Sanction Order.

25. The Just Energy Entities respectfully request that this Honourable Court accept the guidance of the Monitor as its independent court officer by permitting the Just Energy Entities to continue to negotiate a Restructuring Plan with the funded debt participants and other significant secured creditors in its capital structure with proven claims, and restrict the February 9th court hearing to: (i) seeking a short extension of the stay of proceedings from February 17, 2022 to March 4, 2022 and, if necessary, (ii) a hearing or case conference on the appropriate procedure to litigate the claims of the proposed representative plaintiffs.

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Osler, Hoskin & Harcourt LLP

Tab 25

FILED

OCT 29 2021

By Omni Management Group, Claims Agent
For U.S. Bankruptcy Court
Southern District of Texas

PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES[1]

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

1. Name of Just Energy Entity or Entities (the "Debtor(s)") the Claim is being made against[2]:

Debtor(s): Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: Haidar Omarali, as representative plaintiff on behalf of class members in the action be

Name of Contact: David Rosenfeld

Address

Title: Partner (Lawyer) at Koskie Minsky LLP

Phone #: 416-595-2700

20 Queen Street West, Suite 900

Fax #: 416-204-2894

City: Toronto

Prov /State: Ontario

Email: drosenfeld@kmlaw.ca

Postal/Zip Code: M5H 3R3

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[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

[2] List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "Claims Procedure Order"), a copy of which is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: ____________________

Name of Contact ____________________

Address

____

____

Title ____________________

Phone # ____________________

Fax # ____________________

City ____________________ Prov /State ____________

Email ____________________

Postal/Zip Code ______________

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of Pre-Filing Claim (including interest up to and including March 9, 2021)[3]:	Whether Claim is Secured:	Value of Security Held, if any[4]:
Just Energy Group Inc.	CAD	$105,854,794.52	Yes ☐ No ☒	
Just Energy Corp.	CAD	$105,854,794.52	Yes ☐ No ☒	
Just Energy Ontario L.P.	CAD	$105,854,794.52	Yes ☐ No ☒	

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Restructuring Period Claims

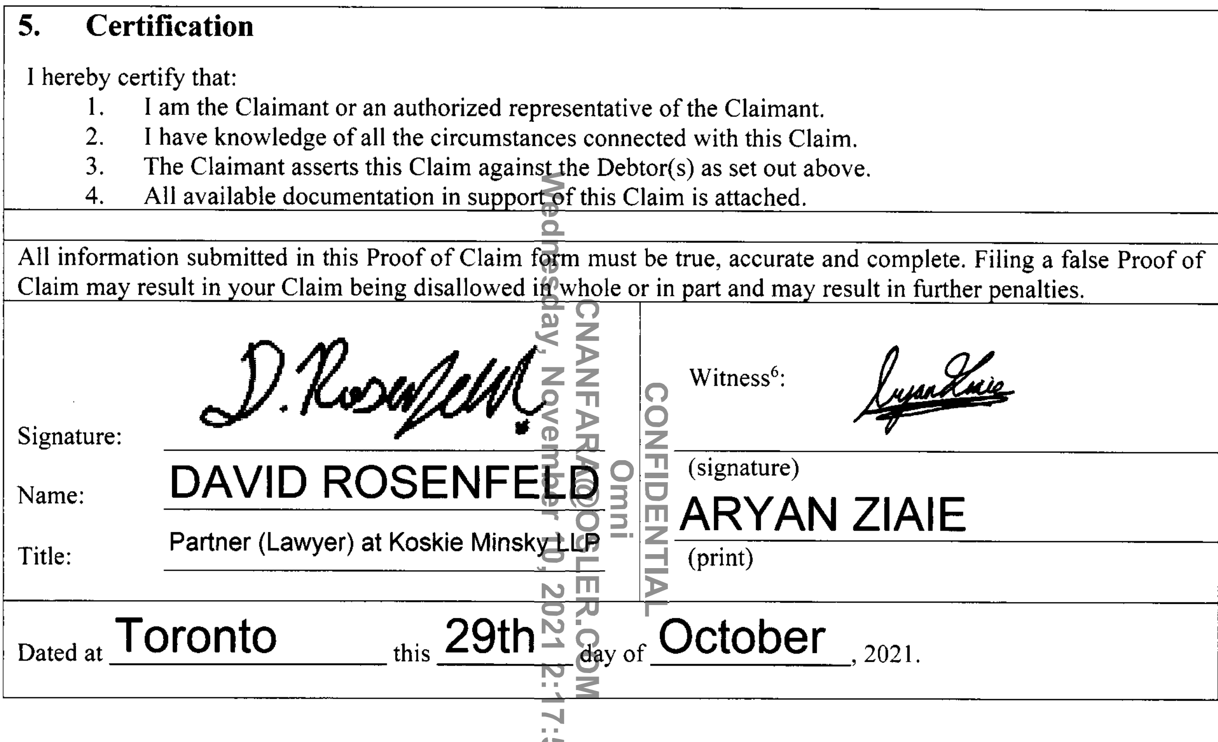
Debtor Name:	Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

[3] Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

[4] If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation[5]

Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.



5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: [signature]	Witness[6]: [signature]
Name: DAVID ROSENFELD	(signature)
Title: Partner (Lawyer) at Koskie Minsky LLP	ARYAN ZIAIE (print)

Dated at Toronto this 29th day of October, 2021.

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6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

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[5] If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

[6] Witnesses are required if an individual is submitting this Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

<u>Attention</u>: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

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In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon <u>actual receipt</u> thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is <u>actually received</u> by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

Schedule "A"

Calculation For Amount Claimed

The amount claimed including pre-filing interest is **$105,854,794.52**. The calculation for this amount is set out below.

The statement of claim for the Omarali v. Just Energy class action was issued on May 4, 2015. The claim amount is $100,000,000. The applicable pre-judgment interest is 1%, which rate is used for pre-filing interest. Annual pre-judgment interest on the claim amount is therefore $1,000,000 (1% of $100,000,000). Daily interest is $2,739.73 ($1,000,000 divided by 365). The number of days between the class action filing date (May 4, 2015) and the CCAA proceeding filing date (March 9, 2021) is 2,137. Accordingly, the full amount of pre-filing interest is $5,854,794.52 ($2,739.73 X 2,137 days). That interest amount, added to $100,000,000, equals $105,854,794.52.

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October 29, 2021

Aryan Ziaie
Direct Dial:416-595-2104
aziaie@kmlaw.ca

BY EMAIL – claims.justenergy@fticonsulting.com

FTI Consulting Canada Inc.
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON M5K 1G8

Attention: Just Energy Claims Process

Dear Monitor:

Re: ***Omarali v. Just Energy Group Inc. et al.***
Court File No. CV-15-52749300 CP
Class Members' Claims in the Just Energy CCAA Proceeding

Our client, Haidar Omarali, is filing a Proof of Claim Form and D&O Proof of Claim Form on behalf of class members in the class proceeding bearing Court File No. CV-15-52749300 CP (*Omarali v. Just Energy*). Both Proof of Claim Forms are enclosed.

You will shortly receive, by TitanFile, the following documentation filed in support of both Proof of Claim Forms (pursuant to section 4 of each form):

1. Amended Statement of Claim;
2. Plaintiff's Motion Record filed in support of a summary judgment motion returnable June 11-13, 2019 (the "**SJM**"), Volumes 1-7;
3. Transcript Brief filed in connection with the SJM; and
4. Moving Factum filed in connection with the SJM.

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Please also note that we have provided: (i) at Schedule "A" to the Just Energy Proof of Claim Form, a calculation explaining the amount claimed; and (ii) at Schedule "C" to the D&O Proof of Claim Form, an explanation of the basis for the claim against the directors.

Yours truly,

KOSKIE MINSKY LLP

Aryan Ziaie
AZ/sr

C James Harnum, David Rosenfeld – Koskie Minsky LLP (by email)

Tab 26

FILED

OCT 29 2021

By Omni Management Group, Claims Agent
For U.S. Bankruptcy Court
Southern District of Texas

D&O PROOF OF CLAIM FORM
FOR CLAIMS AGAINST
DIRECTORS OR OFFICERS OF THE JUST ENERGY ENTITIES[1]

This form is to be used only by Claimants asserting a Claim against any Directors and/or Officers of the Just Energy Entities and NOT for Claims against the Just Energy Entities themselves. For Claims against the Just Energy Entities that are not captured in any Statement of Negative Notice Claim, please use the form titled "Proof of Claim Form for Claims Against the Just Energy Entities", which is available on the Claims Agent's website at https://omniagentsolutions.com/justenergyclaims or the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

Note: Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

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1. Name(s) and Position(s) of Officer(s) and/or Director(s) (the "Debtor(s)") the Claim is being made against:

Debtor(s): See Schedule "A" attached.

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: Haidar Omarali, as representative plaintiff on behalf of class members in the actio

Address: 20 Queen Street West, Suite 900

City: Toronto

Prov /State: Ontario

Postal/Zip Code: M5H 3R3

Name of Contact: David Rosenfeld

Title: Partner (Lawyer) at Koskie Minsky LLP

Phone #: 416-595-2700

Fax #: 416-204-2894

Email: drosenfeld@kmlaw.ca

KM 5005

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "Claims Procedure Order"), a copy of which is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: ______________________

Name of Contact ______________________

Address

____

____

Title ______________________

Phone # ______________________

Fax # ______________________

City ______________ Prov /State __________

Email ______________________

Postal/Zip Code ______________

3. Amount and Type of D&O Claim

The Debtor(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s) and/or Officer(s)		Currency		Amount of Pre-Filing D&O Claim *(including interest, if applicable, up to and including March 9, 2021)*	Amount of Restructuring Period D&O Claim
See Schedule "B" attached.		CAD		$105,854,794.52	

4. Documentation

Provide all particulars of the D&O Claim and all available supporting documentation, including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

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5. Certification	
I hereby certify that: 1. I am the Claimant or an authorized representative of the Claimant. 2. I have knowledge of all the circumstances connected with this Claim. 3. The Claimant asserts this Claim against the Debtor(s) as set out above. 4. All available documentation in support of this Claim is attached.	
All information submitted in this D&O Proof of Claim form must be true, accurate and complete. Filing a false D&O Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.	
Signature: [signature] Name: DAVID ROSENFELD Title: Partner (Lawyer) at Koskie Minsky LLP	Witness[2]: [signature] (signature) ARYAN ZIAIE (print)
Dated at Toronto this 29th day of October, 2021.	

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6. Filing of Claims and Applicable Deadlines

For Pre-Filing D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period D&O Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, D&O Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

[2] Witnesses are required if an individual is submitting this D&O Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your D&O Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your D&O Claims being forever barred and you will be prevented from making or enforcing such D&O Claims against the Directors and Officers of the Just Energy Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such D&O Claims.

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Schedule "A"

Names and Positions of Directors against whom the Claim is being made:

Directors of Just Energy Group Inc.

- R. Scott Gahn – Director;
- Walter Higgins - Director;
- H. Clark Hollands – Director;
- Rebecca MacDonald – Director;
- Dallas H. Ross – Director;
- William F. Weld – Director;
- John A. Brussa – Director;
- Michael Kirby – Director;
- Brennan R. Mulcahy – Director;
- Brian R. D. Smith – Director;
- Patrick McCullough – Director;
- Brett Perlman – Director;
- James Lewis – Director;
- Deborah Merril – Director;
- Ryan Barrington-Foote – Director;
- George Sladoje – Director;
- David F. Wagstaff – Director;
- Hugh D. Segal – Director;
- Gordon D. Giffin – Director;
- Ken Hartwick - Director;
- Brian R. D. Smith – Director;
- R. Roy McMurty – Director

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Directors of Just Energy Corp.

- Jonah Davids - Director
- Michael Carter – Director;
- R. Scott Gahn – Director;
- James Brown – Director;
- Patrick McCullough – Director;
- Deborah Merril – Director;
- James Lewis – Director;
- Beth Summers – Director;
- Ken Hartwick – Director;
- Brian R. D. Smith – Director;
- Bruce Gibson – Director;
- Gordon D. Giffin – Director;
- Hugh D. Segal – Director;

- John Brussa – Director;
- Rebecca MacDonald – Director;
- Michael Kirby – Director;
- R. Roy McMurtry – Director.

To the extent that there may be other individuals who were directors of either Just Energy Group Inc. or Just Energy Corp. from 2012 onwards and are not listed above and therefore unknown to the claimant, this claim is also asserted against those former or current directors.

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Schedule "B"

This claim is made on behalf of the class members in the Omarali v. Just Energy class action (the "Class Members"). The claim is asserted against the following directors of each of Just Energy Group Inc. and Just Energy Corp, who are claimed to be jointly and severally liable for the $105,854,794.52 owing to the Class Members. The total number of Class Members who are creditors is estimated to be 7,900.

Just Energy Group Inc.

Year	**Just Energy Group Inc.** Director and Year of Appointment
2020 (July 7)	• R. Scott Gahn – 2013 • Walter Higgins – 2019 • H. Clark Hollands – 2015 • Rebecca MacDonald – 2001 • Dallas H. Ross – 2017 • William F. Weld – 2012
2019 (May 15)	• John A Brussa – 2001 • R. Scott Gahn – 2013 • H. Clark Hollands – 2015 • Rebecca MacDonald – 2001 • Patrick McCullough – 2018 • Brett Perlman – 2013 • Dallas H. Ross – 2017 • William F. Weld – 2012
2018 (May 25)	• John A. Brussa – 2001 • R. Scott Gahn – 2013 • H. Clark Hollands – 2015 • James Lewis – 2015 • Rebecca MacDonald – 2001 • Patrick McCullough – 2018 • Deborah Merril – 2015 • Brett Perlman 2013 • Dallas H. Ross – 2017 • William F. Weld – 2012
2017 (May 26)	• Ryan Barrington-Foote – 2015 • John A. Brussa – 2001 • R. Scott Gahn – 2013 • H. Clark Hollands – 2015 • James Lewis – 2015 • Rebecca MacDonald – 2001

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	• Deborah Merril – 2015 • Brett Perlman – 2013 • George Sladoje – 2012 • William Weld - 2012
2016 (May 27)	• Rebecca MacDonald – 2001 • James Lewis – 2015 • Deborah Merril – 2015 • John A. Brussa – 2001 • William F. Weld – 2012 • George Sladoje – 2012 • Brett Perlman – 2013 • R. Scott Gahn – 2013 • David F. Wagstaff – 2015 • Ryan Barrington-Foote - 2015 • H. Clark Hollands – 2015
2015 (May 26)	• Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001 • Hon. Michael Kirby – 2001 • John A. Brussa – 2001 • Hon. Gordon D. Giffin – 2006 • William F. Weld – 2012 • George Sladoje – 2012 • Brett Perlman – 2013 • R. Scott Gahn - 2013
2014 (May 28)	• Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001 • Hon. Michael Kirby - 2001 • John A. Brussa – 2001 • Hon. Gordon D. Giffin – 2006 • William F. Weld – 2012 • George Sladoje – 2012 • Brett Perlman – 2013 • R. Scott Gahn – 2013
2013 (May 31)	• Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001 • Hon. Michael Kirby – 2001 • John A. Brussa – 2001 • Hon. Gordon D. Giffin – 2006 • Ken Hartwick – 2008 • William F. Weld – 2012 • George Sladoje - 2012
2012 (May 31)	• Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001

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	• Hon. Michael Kirby – 2001 • John A. Brussa – 2001 • Brian R. D. Smith – 2001 • Hon. Gordon D. Giffin – 2006 • Hon. R. Roy McMurty – 2007 • Ken Hartwick – 2008 • William F. Weld - 2012

Just Energy Corp.

Year	**Just Energy Corporation** Director and Year of Appointment
2021	• Jonah Davids • Michael Carter • Robert Scott Gahn
2020	• James Brown • Jonah Davids • Michael Carter • Robert Scott Gahn
2019	• James Brown • Jonah Davids • Patrick McCullough • Robert Scott Gahn
2018	• Deborah Merril • James Brown • James Lewis • Jonah Davids • Patrick McCullough
2017 (May 26)	• Deborah Merril • Jonah Davids • James Lewis
2016 (May 27)	• Deborah Merril • Jonah Davids • James Lewis
2015	• Deborah Merril • Jonah Davids

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	• James Lewis
2014	• Beth Summers • Deborah Merril • James Lewis • Jonah Davids • Ken Hartwick
2013	• Ken Hartwick • Beth Summers
2012	• Brian Smith • Bruce Gibson • Gordon Giffin • Hugh Segal • John Brussa • Ken Hartwick • Rebecca Madonald • Michael Kirby • Roy McMurtry • Beth Summers

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Schedule "C"

The Basis of the Claim against Directors

1. This claim arises from a class action for unpaid wages brought against Just Energy Group Inc. ("**JE**"), Just Energy Corp. ("**JEC**") and Just Energy Ontario L.P. (collectively the "**Defendants**"), for the period of 2012 to date. The Proof of Claim is filed on behalf of all Class Members by the certified representative plaintiff in the class action (Haidar Omarali, referred to herein as the "**Representative Plaintiff**").

2. JE is a company incorporated under the Canada Business Corporations Act (R.S.C., 1985, c. C-44) ("**CBCA**").

3. JEC is a company incorporated under the Business Corporations Act, R.S.O. 1990, c. B.16 ("**OBCA**").

4. The Defendants misclassified class member employees as independent contractors. All of the Class Members worked for the Defendants in Ontario. As a result of JEC's misclassification, the Class Members were denied minimum protections under the *Employment Standards Act, 2002* ("**ESA**"), including but not limited to minimum wage, overtime, public and holiday pay and vacation pay.

5. The Class Members' employment relationships were with JE, JEC or both. In any event, JE and JEC were common employers of class members, as evidenced by the documentation filed with this Proof of Claim.

6. As set out in the Amended Statement of Claim filed with this Proof of Claim, the Class Members seek recovery from the Defendants for unpaid wages including minimum wage, overtime, holiday and vacation pay, in accordance with the ESA.

7. The Defendants have failed to pay any amounts owing to Class Members.

8. This CCAA proceeding will result in unsatisfied claims of Class Members.

9. In accordance with section 81 of the ESA each of the directors JE and JEC from 2012 onwards are liable for the unpaid wages claimed.

10. In addition, or in the alternative, in accordance with to section 131 of the OBCA, each of the directors of JEC from 2012 onwards are liable for the unpaid wages claimed.

11. In addition, or in the alternative, in accordance with to section 119 of the CBCA, the directors of JE from 2012 onwards are liable for the unpaid wages claimed.

12. The full amount owing by JE and JEC directors, jointly and severally, is **$105,854,794.52**, comprising $100,000,000 for the claim plus pre-judgment interest over a period of 2137 days – commencing May 4, 2015 (claim issuance date) and accruing to March 9, 2021 (CCAA filing

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date) – at a rate of 1% (based on the applicable pre-judgment interest rate at the second quarter of 2015).

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Tab 27

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1]

TO: Haidar Omarali as Representative Plaintiff (the "**Claimant**")

David Rosenfeld (counsel for the Representative Plaintiff)
drosenfeld@kmlaw.ca
Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, Ontario M5H 3R3

RE: Claim Reference Numbers: PC-11127-1, PC-11127-2 & PC-11127-3

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim	Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.	CAD	$105,854,794.52	$0	$0
B. Restructuring Claim	N/A				
C. Total Claim	Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.	CAD	$105,854,794.52	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 2nd day of February, 2022.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Just Energy Entities, and not in its personal or corporate capacity

Per: ______________________________

Jim Robinson
Senior Managing Director

SCHEDULE A

The Claimant advances a claim against Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (the "**Specified JE Entities**") in the amount of $105,854,794.52 based on a certified class action filed in the Ontario Superior Court of Justice on May 4, 2015 (as amended on November 17, 2015), titled *Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.,* Court File No. CV-15-52749300 CP (the "**Class Action**").

The Just Energy Entities, in consultation with the Monitor, disallow the Claim in its entirety.

Status of Litigation

The Class Action was brought against the Specified JE Entities on behalf of a class of "[a]ny person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement" ("**Class Members**"). The Class Action alleges that the Specified JE Entities misclassified the Class Members as independent contractors and improperly denied them the benefits prescribed in the *Employment Standards Act, 2000* (the "**ESA**") (including minimum wage, overtime pay, vacation pay, and public holiday pay), and contributions on the Class Members' behalf pursuant to the *Canada Pension Plan* and the *Employment Insurance Act*. The Claimant also claims punitive, aggravated and exemplary damages.

On July 27, 2016, the Court certified the Class Action and 13 common issues. On June 12, 2019, the Claimant brought a summary judgement motion, which the Court dismissed on the basis that a full trial was necessary. The Class Action has been stayed pursuant to the Initial Order.

Class Members are Not Employees

The Class Members are in both form and substance independent contractors and not employees.

The relationship was governed by an "Independent Contractor Agreement" freely executed by each Class Member pursuant to which the parties expressly agreed that their relationship was that of an independent contractor relationship and not that of an employment relationship.

Further, the Class Members had a significant degree of control in the performance of their work, including by setting their own days of work, hours of work, time off work, work location, sales methods, and whether or not to engage in several forms of sales. Further, Class Members were compensated solely through commission on sales and were responsible for their own business expenses. As such, their opportunity for profit and their risk of loss depended entirely on their individual efforts and choices.

The alleged control that the Specified JE Entities exercised over the Class Members referenced in the documents filed in support of the Claim was primarily exercised by the applicable regulator, the Ontario Electricity Board (the "OEB"), and not the Specified JE Entities. The OEB required Class Members to wear identification badges; follow prescribed content in sales scripts; conduct verification calls to finalize energy contracts; and comply with requirements regarding interacting with consumers in the course of selling energy. The relationship between the Class Members and the Specified JE Entities was not characterized by the Specified JE Entities' control over the Class

Members, for which reason the Class Members are not "employees" of the Specified JE Entities for the purpose of the ESA, CPP or EI.

Class Members Fall Within "Salesperson" Exemption

In the alternative, even if the Class Members are "employees" pursuant to the ESA, they indisputably fall within the "salesperson" exemption in section (2)(h) of Ontario Regulation 285/01 and are therefore ineligible for minimum wage, overtime, public holiday pay and vacation pay. The exemption applies to individuals who satisfy the following: (1) remuneration takes the form of commissions (in whole or in part); (2) those commissions are calculated on sales (or offers to purchase); (3) the sales relate to goods or services; and (4) the sales are made away from the employer's place of business.

The Claimant does not dispute that the first three criteria are met. The fourth criterion – which the Claimant argues is not met – has clearly been satisfied in the present case. Indeed, this very issue has been considered by courts in the United States relative to an analogous "salesperson" exemption pursuant to the *Fair Labor Standards Act* in respect of the Just Energy entities and the courts have repeatedly found that the salespeople in fact made sales away from the employer's place of business. For example, in *Flood v. Just Energy Mktg. Corp*., 904 F.3d 219 (2d Cir. 2018), the Second Circuit Court of Appeals found that the salespeople for Just Energy were not just promoting the products or advertising them; they were trying to persuade specific customers to sign up then-and-there for an energy plan, which the court found constituted making a sale away from the employer's business. The courts reached the same conclusion in *Dailey v. Just Energy Mktg. Corp,* 2015 U.S. Dist. LEX IS 97103 (N.D. Cal.).

Class Members are Not Route Salespersons

The Class Action alleges that the Class Members do not fall within the "salesperson" exemption because they are "route salespersons", which are exceptions to the "salesperson" exemption. This position is not tenable. It is established law that a route salesperson is a worker who drives an employer-owned vehicle to deliver the employer's products to established customers along a specified route on a prescribed schedule, and the sales function is generally ancillary to the delivery function.[2] Such is clearly not the role of the Class Members: the Class Members' sales function was integral, rather than ancillary, to their function which was directed toward non- established customers and undertaken by the Class Members on their own schedules in the location(s) of their choice.

Additional Bases For Denial of Claim

In addition and in any event, the Claim is too contingent, speculative, and remote to permit recovery. Additional bases militating against any recovery include:

- Significant parts of the Claim are barred by operation of the *Limitations Act, 2002* and the time limits under the ESA. In particular, the Class Action was commenced on May 4, 2015.

---

[2] See, e.g., *Decision No. 1724/11*, 201 I O.N.W.S.I.A.T.D. 2860.; *Canadian Union of Operating Engineers and General Workers (CUOE) v. Red Cmpef Food Systems lnc*, 200 I CanLII 5016 (O.L.R.B.); and *Chester v. Pepsi-Cola Canada Ltd.,* 2005 SKQB 110.

Therefore, all claims for amounts to be paid prior to May 4, 2013 are precluded by the two year limitation period prescribed in the *Limitations Act, 2002*.

- There is insufficient supporting documentation in support of the quantification of any damages. By definition, the claim of each Class Member must be quantified through individualized assessments based on each worker's individual circumstances and experience, as a precondition for any recovery. The Claimant has failed to adduce any (let alone adequate) evidence of actual losses or damages for any of the Class Members.

Claim is Vastly Overstated

In the further alternative, even if the Claim has some merit (which is denied), the quantum of damages claimed is vastly overstated. Among other issues, (i) the vast majority (approximately 7,000 of the 7,900) Class Members are clearly statute barred from bringing a claim, and (ii) a significant proportion, if not the majority, of the sales agents with a potentially timely claim performed little or no actual work for the Specified JE Entities following their execution of the independent contractor agreement.

Tab 28

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted D&O Claims against the Directors and/or Officers of the Just Energy Entities[1]

TO: **Haidar Omarali as Representative Plaintiff (the "Claimant")**

David Rosenfeld (counsel for the Representative Plaintiff)
drosenfeld@kmlaw.ca
Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, Ontario M5H 3R3

RE: Claim Reference Number: DO-5005-1

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your D&O Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing D&O Claim	Beth Summers Brennan R. Mulcahy Brett Perlman Brian Smith Brian R. D. Smith Bruce Gibson Dallas H. Ross David F. Wagstaff Deborah Merril George Sladoje H. Clark Hollands Hon. Gordon D Giffin Hon. Hugh D. Segal Hon. Michael Kirby Hon. R. Roy McMurty James Brown James Lewis John A. Brussa Jonah Davids Ken Hartwick Michael Carter Patrick McCullough Rebecca MacDonald Robert Scott Gahn Ryan Barrington-Foote Walter Higgins William F. Weld		$105,854,794.52	$0	$0
B. Restructuring Period D&O Claim			$	$	$
C. Total Claim	As listed above		$105,854,794.52	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 2nd day of February, 2022.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: ______________________________

Jim Robinson
Senior Managing Director

SCHEDULE A

Background

This Claim (the "**D&O Claim**") is advanced in connection with a certified class action filed in the Ontario Superior Court of Justice on May 4, 2015 (as amended on November 17, 2015), titled *Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.*, Court File No. CV-15-52749300 CP (the "**Class Action**"). The representative plaintiff in the Class Action (the "**Claimant**") has also filed an ordinary Proof of Claim in this claims process in respect of the Class Action (the "**Class Action Claim**").

The Class Action was brought against Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (the "**Specified JE Entities**") on behalf of a class of "[A]ny person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement" ("**Class Members**"). The Class Action alleges, among other things, that the Specified JE Entities misclassified the Class Members as independent contractors and have improperly denied them the benefits prescribed in the *Employment Standards Act, 2000* (the "**ESA**") (including minimum wage, overtime pay, vacation pay, and public holiday pay), and contributions on the Class Members' behalf pursuant to the *Canada Pension Plan* and the *Employment Insurance Act*. The Class Action also claims punitive, aggravated and exemplary damages. The directors and officers of the Specified JE Entities (listed in Schedule ● to the Proof of Claim) have not been named as defendants in the Class Action.

The D&O Claim alleges that the directors of the Just Energy Entities named in the Proof of Claim (the "**Directors**") are liable to the Class Members for alleged unpaid wages pursuant to section 81 of the ESA; section 131 of the Ontario *Business Corporations Act* (the "**OBCA**"), and/or section 119 of the *Canada Business Corporations Act* (the "**CBCA**").

For the reasons outlined below, the Just Energy Entities, in consultation with the Monitor, disallow the D&O Claim in its entirety.

D&O Claim is Entirely Contingent on Class Action Claim, Which Has Been Disallowed

The D&O Claim is not independent, but rather entirely contingent on the success of the Class Action Claim. The Class Action Claim has been disallowed in its entirety for the reasons set out in the Notice of Revision or Disallowance in respect of such claim (which reasons are fully adopted and referentially incorporated herein). Therefore, there is no basis for recovery as against the Directors.

D&O Claim is Untimely and Statute Barred / JE Entities and Directors are Materially Prejudiced by Delay

The D&O Claim was filed over six (6) years after the Class Action was filed and the D&O Claim does not assert any "new knowledge" relating to the facts giving rise to the Class Action Claim that was not otherwise known to the Claimant at the time the Class Action Claim was commenced. Accordingly, the D&O Claim is barred by operation of the *Limitations Act, 2002* as well as by the limitations in the applicable statutes and by common law doctrines, including laches and abuse of

process. The Claimant made a strategic choice not to pursue the Directors as part of the Class Action, and must be accountable for that choice.

Further, the excessive and undue delay in advancing a claim against the Directors has caused material prejudice to the JE Entities and to the Directors. For example, given that the Class Action, as filed and subsequently certified, did not assert any claims whatsoever against the Directors or otherwise contemplate the personal liability of directors and officers, the Just Energy Entities rightly did not provide a claim or provide notice to the insurer who underwrote the applicable directors' and officers' coverage when the Class Action was issued or certified. The belated attempt to pursue the Directors personally more than six (6) years later has resulted in prejudice to the JE Entities and the Directors, including a likely coverage dispute.

Several of the named Directors ceased to hold office years ago.

D&O Claim Constitutes Improper Attempt to Expand the Class Action

The D&O Claim amounts to an improper expansion of the scope of the Class Action to add new defendants more than six (6) years after the Class Action was filed. The Class Action was certified as against the Specified JE Entities only in relation to the specified common issues and the damages sought in the Class Action. As a matter of law and equity, the Claimant cannot now, more than half a decade later, properly seek to add the Directors as defendants to the Class Action and to seek to recover a "wages" claim as opposed to a "damages" claim. Amongst other things, the Claimant would need to obtain leave from the Court to amend the pleadings and would need to obtain class certification in respect of such amended pleadings.

D&O Claim is An Abuse of Process and Brought in Bad Faith

The D&O Claim improperly and belatedly seeks to add the Directors to a Class Action that was filed more than six (6) years ago in order to gain leverage in respect of the underlying Class Action Claim, which is indisputably a contingent, unsecured, pre-filing liability. The D&O Claim is a transparent and purely tactical attempt to obtain more favourable treatment of a pre-filing claim to the detriment of other creditors and the estate, and thus amounts to an abuse of process.

Directors Are Not Liable For Amounts Claimed

In addition and/or in the alternative, the Directors are not liable for the amounts claimed. As noted, the D&O Claim is entirely contingent on the amounts claimed in the Class Action. However, the amounts claimed in the Class Action are not for unpaid "wages" pursuant to the ESA or "debts for services performed" pursuant to the CBCA and OBCA for which directors can be *per se* personally liable in certain circumstances by virtue of holding office at the relevant time. Rather, the Class Representative seeks <u>damages</u> in the Class Action resulting from alleged misclassification. Indeed, in connection with the Class Action, the Claimant specifically sought to have "damages" awarded on an aggregate basis. The court rejected the Claimant's argument, determining that *damages* needed to be assessed on an individual basis.

Given that director liability for unpaid wages is an exception to the principles of separate corporate personality, provisions imposing personal liability on directors must be interpreted strictly and narrowly. Individuals who have been misclassified are entitled to seek *damages* resulting from

the misclassification as contemplated by the Class Action itself, and not to *wages* or *debts for services performed.*

While directors may be personally liable for unpaid wages to employees in order to ensure that the directors do not permit the company to continue using the employees' services when the corporation is in financial difficulty and no longer able to pay for them, directors' personal liability does not extend to ensuring all workers are properly classified for statutory and common law purposes or to indemnifying those workers for damages if the corporation is later found to have failed to do so.

Preconditions for Director Liability Have Not Been Met

In addition and in the alternative to the above, and in any event, pursuant to the ESA, OBCA and CBCA, personal liability for directors and officers only arises once the company has been sued with judgment obtained and has failed to pay some or all of the amount owing. The precondition has not been satisfied in these circumstances given that the Class Action has been stayed pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 9, 2021, as amended and restated on March 19, 2021 (the "**Stay**").

Moreover, the alternative preconditions for director and officer liability in the ESA, OBCA and CBCA have plainly not been met in this case, namely:

ESA:

- Section 81(a): the employee must cause a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy and the claim has not been paid. This condition has not been met because the Just Energy Entities have not filed for bankruptcy and there is no appointed receiver or trustee in bankruptcy.
- Section 81(b): an employment standards officer has made an order that the employer is liable for wages. This has condition has not been met.
- Section 81(c): an employment standards officer has made an order that a director is liable for wages. This has condition has not been met.
- Section 81(d): the Ontario Labour Relations Board has issued a prescribed order under section 119. This has condition has not been met.

OBCA:

- Section 131(2): the corporation goes into liquidation, is ordered to be wound up or makes an authorized assignment under the *Bankruptcy and Insolvency Act* (the "BIA"), or a receiving order under the BIA is made against it, and, in any such case, the claim for the debt has been proved. This has condition has not been met.

CBCA:

- Section 119(2)(b): the corporation has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proved within six months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution. This has condition has not been met.

- Section 119(2)(c): the corporation has made an assignment or a bankruptcy order has been made against it under the BIA and a claim for the debt has been proved within six months after the date of the assignment or bankruptcy order. This has condition has not been met.

Additional Issues and Limitations

- In the further alternative, the individual Directors, if liable at all in respect of the D&O Claim (which is denied), could only be liable for the prescribed quantum set out in the ESA, OBCA and CBCA, as applicable, and only in relation to amounts that were actually unpaid in relation to specific individuals who were engaged during their tenure as Directors. It is not legally sustainable to simply name all the Directors who ever held office during the certified class period and seek to affix them with joint and several liability for the entire amount potentially owing to the class, which the Claimant has purported to do in the D&O Claim.
- Pursuant to the OBCA and the ESA, the quantum of any potential liability for the Directors (if all the other preconditions are met) is limited to six months' wages and 12 months' accrued vacation pay. Under the CBCA, liability is limited to 6 months' wages.
- Even if any such amount is properly recoverable from the Directors (which is denied), an individual worker would have to first prove his or her entitlement to unpaid wages, based on an individual assessment of hours worked on a week-by-week basis and the resulting wage and related entitlements. If the corporation then does not pay that amount, the individual would have to assert that amount against those individual directors or officers (and only those individuals), who served in that capacity during the period when the individual worked. And the quantum of any amount that could be recovered from those individual directors or officers who held office at the time would be subject to the above statutory quantum limits.
- Additionally, the Specified JE Entities' independent contractor program terminated in 2017. Therefore, only those individual directors or officers serving prior to 2017 can be liable for any unpaid "wages". The D&O Claim improperly names directors and officers specifically in respect of the years 2018, 2019, 2020 and 2021, and is therefore overly broad.
- The D&O Claim is too contingent, speculative and remote to permit recovery; in the alternative, the D&O Claim is so contingent, speculative and remote that it has an effective value of $0.

Tab 29

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against the Just Energy Entities[1] and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. **Particulars of Claimant:**

Claims Reference Number: PC-11127-1, PC-11127-2, PC-11127-3

Full Legal Name of Claimant (include trade name, if different)

Haidar Omarali as Representative Plaintiff

(the "**Claimant**")

Full Mailing Address of the Claimant:

David Rosenfeld (counsel for the Representative Plaintiff), Koskie Minsky LLP

20 Queen Street West, Suite 900, Box 52, Toronto, Ontario, M5H 3R3

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number: 416-595-2700
Email Address: drosenfeld@kmlaw.ca
Facsimile Number: 416-204-2894
Attention (Contact Person): David Rosenfeld

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐ No: ■

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): ________________

3. **Dispute of Revision or Disallowance of Claim:**

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated February 2, 2022, and asserts a Claim as follows:

Type of Claim	Applicable Debtor(s)	Amount allowed by the Just Energy Entities		Amount claimed by Claimant	
		Amount allowed as secured:	Amount allowed as unsecured:	Secured:	Unsecured:
A. Pre-Filing Claim	Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.	$	$	$	$ 105,854,794.52
B. Restructuring Period Claim		$	$	$	$
C. Pre-Filing D&O Claim		$	$	$	$
D. Restructuring Period D&O Claim		$	$	$	$
E. Total Claim	Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.	$	$	$	$ 105,854,794.52

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. **Reasons for Dispute:**

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

The Claimant relies on the same reasons and materials provided in his original proof of claim dated October 29, 2021 and served by TitanFile on that same date, but necessarily reserves the right to lead additional evidence and argument at any claims hearing or other form of adjudication arising from the disallowance of his claim and this Notice of Dispute. The original proof of claim and supporting materials can be re-sent on request.

5. **Certification**

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: [signature]	Witness: [signature]
	(signature)
Name: David Rosenfeld	Aryan Ziaie
Title: Partner (Lawyer) at Koskie Minsky LLP	(print)

Dated at Toronto, Ontario this 24 day of February, 2022

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Tab 30

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against the Just Energy Entities[1] and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. **Particulars of Claimant:**

Claims Reference Number: DO-5005-1

Full Legal Name of Claimant (include trade name, if different)

Haidar Omarali as Representative Plaintiff

(the "**Claimant**")

Full Mailing Address of the Claimant:

David Rosenfeld (counsel for the Representative Plaintiff), Koskie Minsky LLP

20 Queen Street West, Suite 900, Box 52, Toronto, Ontario, M5H 3R3

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number: 416-595-2700
Email Address: drosenfeld@kmlaw.ca
Facsimile Number: 416-204-2894
Attention (Contact Person): David Rosenfeld

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐ No: ■

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): ______________________

3. **Dispute of Revision or Disallowance of Claim:**

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated February 2, 2022, and asserts a Claim as follows:

Type of Claim	**Applicable Debtor(s)**	**Amount allowed by the Just Energy Entities**		**Amount claimed by Claimant**	
		Amount allowed as secured:	**Amount allowed as unsecured:**	**Secured:**	**Unsecured:**
A. Pre-Filing Claim	See Schedule "A" to the original proof of claim dated October 29, 2021	$	$	$	$ 105,854,794.52
B. Restructuring Period Claim		$	$	$	$
C. Pre-Filing D&O Claim		$	$	$	$
D. Restructuring Period D&O Claim		$	$	$	$
E. Total Claim	See Schedule "A" to the original proof of claim dated October 29, 2021	$	$	$	$ 105,854,794.52

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. Reasons for Dispute:

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

The Claimant relies on the same reasons and materials provided in his original proof of claim dated October 29, 2021 and served by TitanFile on that same date, but necessarily reserves the right to lead additional evidence and argument at any claims hearing or other form of adjudication arising from the disallowance of his claim and this Notice of Dispute. The original proof of claim and supporting materials can be re-sent on request.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: D. Rosenfeld	Witness: Aryan Ziaie (signature)
Name: David Rosenfeld	Aryan Ziaie (print)
Title: Partner (Lawyer) at Koskie Minsky LLP	

Dated at Toronto, Ontario this 24 day of February, 2022

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Tab 31

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1]

TO: **The Individuals listed in the attached Schedule B** (the "**Claimants**")
Ian P. Cloud (Attorney for the Claimants)
Saima Khan
Robins Cloud LLP
2000 West Loop South,
Suite 2200
Houston, TX 77027
United States
icloud@robinscloud.com
skhan@robinscloud.com

RE: Claim Reference Number: See Schedule B.

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim	All brought against Just Energy Group Inc., Just Energy Corp., Just Energy Texas I Corp, Just Energy Texas LP; 25 also brought against Fulcrum Retail Energy LLC and Fulcrum Retail Holdings LLC; 7 also brought against Fulcrum Retail Holdings LLC and Tara Energy LLC; 1 also brought against Just Solar Holdings Corp; 1 also brought against Hudson Energy Services, LLC, Hudson Energy Corp., and Hudson Parent Holdings LLC		$N/A	$0	$0
B. Restructuring Period Claim			$	$	$
C. Total Claim	As listed above		$N/A	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or**

Disallowance is deemed to have been received by you (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 18th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: ______________________________
Jim Robinson
Senior Managing Director

SCHEDULE A

The firm of Robins Cloud LLP has filed purported claims (the "**Claims**") on behalf of 104 alleged claimants whom they represent and who authorized them to do so (the "**Claimants**"). The Claimants are alleging a broad variety of personal injury, property damage, and business interruption claims arising from power outages that occurred in Texas due to winter storm Uri in February 2021.

All of the Claims were brought as against Just Energy Group Inc., Just Energy Corp., Just Energy Texas I Corp, Just Energy Texas LP, with certain of the Claims also naming the following additional Just Energy Entities:

Number of Claims	Additional Entities Named in Claims
25	Fulcrum Retail Energy LLC and Fulcrum Retail Holdings LLC
7	Fulcrum Retail Holdings LLC and Tara Energy LLC
1	Just Solar Holdings Corp.
1	Hudson Energy Services, LLC, Hudson Energy Corp., and Hudson Parent Holdings LLC

The Just Energy Entities, in consultation with the Monitor, disallow the Claims in their entirety. The Claims are contingent, speculative, remote, unproven, unliquidated and are devoid of merit for numerous reasons, including those set out below.

Claims Were Brought Improperly

As a threshold issue, a search of the Just Energy Entities' records has confirmed that 40 of the 104 alleged Claimants were not Just Energy customers during the relevant time period (February 13-20, 2021). Only 46 of the Claimants' names and addresses match those found in Just Energy's customer records for that time period, with a further 18 instances where the customer name at the address provided by the Claimant does not match the Claimant's name. The inclusion of more than 50% Claims of non-customers indicates that these Claims were filed improperly, without conducting adequate due diligence. These non-customer Claims are therefore rejected outright. This improper filing necessarily casts considerable doubt and skepticism on the remainder of the Claims filed. The Just Energy Entities reserve the right to claim costs against these alleged Claimants and their advisors with respect to the filing of these non-customer Claims.

The Relevant Just Energy Entities, Like All Retail Electric Providers in Texas, Are Not Responsible for Generation or Delivery of Electricity

In any event, the Claimants have not adduced any evidence to establish that any of the Just Energy Entities are liable for their Claims, and retail electric providers in Texas are not legally responsible for the transmission and distribution of energy. No Claimant has provided any evidence whatsoever to refute that fact and on that basis alone all of the Claims are rejected.

The Texas Public Utility Regulatory Act ("**PURA**") required that, no later than January 1, 2002, all utilities operating in Texas separate their business activities into three distinct units:

- Power Generation Companies ("**PGCs**"), which own and operate electric generation facilities and sell their power to REPs (defined below) at wholesale;

- Transmission and Distribution Utilities ("**TDUs**"), which own and operate the facilities necessary to transmit and distribute energy; and

- Retail Electric Providers ("**REPs**"), which buy electricity wholesale and sell such electricity to retail customers.

Under PURA, REPs are prohibited from owning the generation and transmission assets necessary to physically generate electricity and deliver electricity to customers. REPs buy electricity from PGCs. The electricity they purchase from PGCs is transmitted over the transmission and distribution facilities owned by TDUs, and delivered to the REPs' customers by the TDUs.

The relevant Just Energy Entities – Just Energy Texas LP ("**JE Texas**"), Tara Energy LLC ("**Tara Energy**"), and Fulcrum Retail Energy LLC d/b/a Amigo Energy ("**Amigo Energy**", and collectively with JE Texas and Tara Energy, the "**Texas Entities**") **–** are REPs in the state of Texas certified by the Public Utility Commission of Texas ("**PUCT**"). Their business consists of securing wholesale energy products from the ERCOT[2] market and re-selling such energy to their customers. The Texas Entities own no generation, transmission or distribution facilities, and have no control whatsoever over the actual generation or transmission of electricity, or the delivery of such electricity to their customers.

Transmission, distribution, and delivery of electricity in Texas is controlled by the TDUs. Each TDU in Texas is required to file with the PUCT a tariff to govern its retail delivery service to REPs (such as the Texas Entities) using the pro forma tariff codified at 16 Tex. Admin. Code § 25.214(d). The regulations provide that the provisions of the tariff "are requirements that shall be complied with and offered to all REPs and Retail Customers unless otherwise specified." The tariff provides that:

- The REP has no ownership, right of control, or duty to a retail customer, or third party, regarding the design, construction, or operation of the TDU's Delivery System.

- The REP will not be liable to any person or entity for any damages, direct, indirect, or consequential, including, but without limitation, loss of business, loss of profits or revenue, or loss of production capacity, occasioned by any fluctuations or interruptions of delivery caused, in whole or in part, by the design, construction, or operation of the TDU's delivery system.

During any outage event, customers are directed to contact their local TDU (such as Oncor or CenterPoint) for outage notification and repairs. In fact, monthly invoices sent to the Texas Entities' customers set forth the contact information for their local TDU explicitly in case of emergencies and power outages.

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[2] Electric Reliability Council of Texas, Inc.

The Texas Entities simply procure energy on the market, resell it to their customers, keep track of how much electricity is used, and charge their customers accordingly. The Texas Entities had (and have) no control over, or relationship to, the actual delivery of electricity to customers' homes or businesses, during winter storm Uri, or otherwise. If the Claimants experienced a disruption in their electricity service on account of the storm, and such disruption caused any damages, it was entirely outside of the Texas Entities' control, power or legal responsibility.

There is no causal relationship between the unproven damages alleged in these Claims and the Texas Entities' activities and business model.

Contractual Provisions Exclude Liability

The Claimants' contracts[3] are consistent with the regulatory structure outlined above, as the Texas Entities did not contract with the Claimants to provide power or guarantee uninterrupted supply of power. Contracts with JE Texas provide that:

- Customer "understands that Just Energy is not a transmission or distribution utility or any other retail electric provider."[4]

- Our liability under this Agreement is limited to direct actual damages. We are not liable for incidental, consequential, punitive, or indirect damages, lost profits or lost business **or for any act or omission of your Utility**."[5] (emphasis added)

Similarly, contracts with Tara Energy and Amigo Energy provide that:

- Customer "understands that [Amigo/Tara] Energy is not a transmission or distribution utility or any other retail electric provider."[6]

- "[Amigo/Tara] Energy is your Retail Electric Provider ("REP"). [Amigo/Tara] Energy sets the charges you pay for retail electric service. The electricity that [Amigo/Tara] Energy sells to you must be transported to your service location over transmission and distribution systems which will continue to be regulated by the Public Utility Commission of Texas ("PUCT") and owned by a Transmission and Distribution Service Provider ("TDSP"). […]"[7]

- CUSTOMER ACKNOWLEDGES AND AGREES THAT [AMIGO/TARA] ENERGY DOES NOT PRODUCE, TRANSMIT OR DISTRIBUTE POWER AND, AS A

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3 Contracts were in place only with Claimants that were in fact customers of a Just Energy Entity during the relevant time period.

4 JE Texas Electricity Plan Agreement, "Appointment & Authority" (attached).

5 JE Texas Terms of Service, p. 3, para 19, "Limitation of Liability" (attached).

6 Amigo Energy Electricity Pl an Agreement, "Appointment & Authority" (attached); Tara Energy Electricity Plan Agreement, "Appointment & Authority" (attached).

7 Tara Energy Terms of Service, p. 1, para 2 (attached); Amigo Energy Terms of Service, p. 1, para 2 (attached).

RESULT, [AMIGO/TARA] ENERGY CANNOT WARRANT, AND DOES NOT WARRANT IN ANY MANNER, THE ELECTRICITY PROVIDED […] [AMIGO/TARA] ENERGY MAKES NO REPRESENTATION AS TO THE SUFFICIENCY, QUALITY OR CONTINUATION OF THE SERVICES PROVIDED HEREIN.[8]

- THE REMEDY IN ANY CLAIM OR SUIT BY YOU AGAINST [AMIGO/TARA] ENERGY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES. BY ENTERING INTO THIS AGREEMENT, YOU WAIVE ANY RIGHT TO ANY OTHER REMEDY. IN NO EVENT WILL EITHER TARA ENERGY OR YOU BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES.[9]

These provisions clearly informed the Claimants that the Texas Entities would not be liable for any interruption of power as a result of acts or omissions of a customer's TDU or otherwise.

In addition to the above, the relevant contracts contain provisions that excuse the Texas Entities from performance of the contracts for the duration of any *force majeure* event:

- **JE Texas:** "You accept that certain events beyond our control, including "force majeure" events declared by our direct or indirect suppliers, may affect our ability to supply electricity or JustGreen at your Energy Charge or JustGreen Charge. If this happens, we may, without liability: (a) temporarily supply them to you at the market price available to us; or (b) suspend this Agreement until as soon as we are reasonably able to resume performance. This Agreement will otherwise remain in full effect."

- **Amigo Energy and Tara Energy:** If an event occurs which makes it impossible for [Amigo/Tara] Energy to perform under this Agreement (a "Force Majeure Event"), including but not limited to (i) a failure of any wholesale supplier and/or TDSP to perform any contract with [Amigo/Tara] Energy, (ii) force majeure or similar event as declared by our wholesale supplier(s) and/or the TDSP(s), (iii) act of God, (iv) extraordinary weather occurrence, (v) fire or explosion, (vi) any governmental action, prohibition or regulation, or (vii) war, civil disturbance or other national emergency, our performance under this Agreement shall be excused for the duration of such event. [Amigo/Tara] Energy shall promptly notify Customer of the Force Majeure Event, any resulting contingency, and the contemplated effect thereof on the provision of service. Upon elimination or cessation of the Force Majeure Event and any contingency, the obligations herein of [Amigo/Tara] Energy to provide service to Customer shall be reinstated. [Amigo/Tara] Energy reserves the right to terminate this Agreement should

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[8] Tara Energy Terms of Service, p. 3, "WARRANTY"; Amigo Energy Terms of Service, p. 4, "WARRANTY".

[9] Tara Energy Terms of Service, pp. 3-4, "LIMITATION OF REMEDIES, LIABILITY AND DAMAGES"; Amigo Energy Terms of Service, p. 4, "LIMITATION OF REMEDIES, LIABILITY AND DAMAGES".

the event or the need for contingency not be eliminated within forty-five (45) days after the occurrence.[10]

Amounts Claimed not Specified or Supported

In any event, none of the Claims specify the amount being claimed and there is insufficient supporting documentation in support of the Claims from either a quantum or liability perspective. That is a further basis to disallow all of the Claims outright. Where there is any documentation provided at all, it is usually only a very basic "individual statement" with a few sentences about the alleged losses. In the few instances where Claimants have provided some evidence of damages, it is generally very limited.[11]

The Just Energy Entities reserve all rights to assert additional legal or factual defences and waive none.

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[10] Tara Energy Terms of Service, p. 4, "Force Majeure Event"; Amigo Energy Terms of Service, p. 4, "Force Majeure Event".

[11] As an accommodation granted by the Just Energy Entities, the Claimants were not required to file medical documentation with their Proofs of Claim. Even if those Claimants who may be asserting a personal injury claim were to submit medical documentation in support of their Claims, they have failed to submit any documentation or information to support a causal relationship between the alleged damages and the Texas Entities' activities and business model.

Tab 32

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted D&O Claims against the Directors and/or Officers of the Just Energy Entities[1]

TO: **Individuals named in the attached Schedule B** (the "**Claimants**")

Ian P. Cloud (Attorney for the Claimants)
Saima Khan
Robins Cloud LLP
2000 West Loop South,
Suite 2200
Houston, TX 77027
United States
icloud@robinscloud.com
skhan@robinscloud.com

RE: Claim Reference Number: See Schedule B.

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim or D&O Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing D&O Claim	Tony Horton; Robert S. Gahn; Michael Carter; Scott Fordham; Jim Brown; Amir Andani; Dallas Ross; Steve Schaefer; Marci Zlotnick; Jim Bell; Steven Murray; Pat McCullough; Debt Merrill; James Lewis; James Pickren; Rebecca McDonald; William Weld; Walter Higgins; Clark Hollands; John Brussa; Brett Perlman; Ryan Barrington-Foote; Geroge Sladoje; David Wagstaff.		$N/A	$0	$0
B. Restructuring Period D&O Claim			$	$	$
C. Total Claim	As listed above		$N/A	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor

(by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 18th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Just Energy Entities, and not in its personal or corporate capacity

Per: ______________________________
Jim Robinson
Senior Managing Director

SCHEDULE A

The firm of Robins Cloud LLP has filed claims against certain directors and officers [2] of the Just Energy Entities (the "**Claims**") on behalf of 37 claimants who they represent and who authorized them to do so (the "**Claimants**"). The Claimants are alleging a broad variety of personal injury, property damage, and business interruption claims arising from power outages that occurred in Texas due to winter storm Uri in February 2021.

The Just Energy Entities, in consultation with the Monitor, disallow the Claims in their entirety.

Firstly, the Claims are contingent, speculative, remote, unproven, unliquidated and devoid of merit for all of the reasons set out in the Notice of Disallowance with respect to the underlying claims brought against the Just Energy Entities, attached at Schedule C.

Additionally, based on the information provided, these Claims are insufficiently articulated and insufficiently particularized against any of the individual officers and directors of the relevant Just Energy Entities at the relevant time. There is no legal basis under Canadian or U.S. law for imposing personal liability on directors and officers for these contractual or tort Claims. In particular, the Claims fail to allege any independent acts taken by any of the individual directors and officers at any relevant time for which they may be personally liable at law.

The inclusion of these meritless Claims with no basis in law confirms that these Claims have been brought improperly and without conducting sufficient (or any) due diligence. The Just Energy Entities reserve the right to claim costs against these alleged Claimants and their advisors with respect to the filing of these Claims.

[2] Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director).

Tab 33

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1]

TO: **The Individuals listed in the attached Schedule B** (the "**Claimants**")

Gibbs Henderson (Attorney for the Claimants)
Brandy Wills
Fears Nachawati PLCC, Watts Guerrra, LLP and Parker Waichman LLP
powerfailure@wattsguerra.com
ghenderson@fnlawfirm.com
bwills@wattsguerra.com

RE: Claim Reference Number: See Schedule B.

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

Type of Claim	**Applicable Debtor(s)**	**Amount as submitted**		**Amount allowed by the Just Energy Entities**	
		Original Currency		**Amount allowed as secured:**	**Amount allowed as unsecured:**
A. Pre-Filing Claim	All brought against "Just Energy";		Where an amount is	$0	$0

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

	97 also brought against "Just Energy Texas"; 41 also brought against "Amigo Energy"; 6 also brought against "Tara Energy"; 2 also brought against "Hudson Energy"		specified, it is set out in Schedule B.		
B. Restructuring Period Claim			$	$	$
C. Total Claim	As listed above		See Schedule B.	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention:	Just Energy Claims Process
Email:	claims.justenergy@fticonsulting.com
Fax:	416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 18th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Just Energy Entities, and not in its personal or corporate capacity

Per: ______________________________

Jim Robinson
Senior Managing Director

SCHEDULE A

The law firms of Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP have collectively filed purported claims (the "**Claims**") on behalf of 260 alleged claimants whom they represent and who authorized them to do so (the "**Claimants**"). While no particulars were submitted with respect to these Claims, and in certain instances even the nature of individual Claims is listed as "undetermined", it appears they are alleging a broad variety of personal injury, property damage, and business interruption claims arising from power outages that occurred in Texas due to winter storm Uri in February 2021.

It is unclear which of the Just Energy Entities are being claimed against by the Claimants. All of the Claims were brought as against "Just Energy", with certain of them also naming the following additional entities:

Number of Claims	Additional Entities Named in Claims
97	Just Energy Texas
41	Amigo Energy
6	Tara Energy
2	Hudson Energy

The Just Energy Entities, in consultation with the Monitor, disallow the Claims in their entirety. The Claims are contingent, speculative, remote, unproven, unliquidated and are devoid of merit for numerous reasons, including those set out below.

Claims Were Brought Improperly

As a threshold issue, a search of the Just Energy Entities' records has confirmed that 106 of the 260 alleged Claimants were not Just Energy customers during the relevant time period (February 13-20, 2021). Only 126 of the Claimants' names and addresses match those found in Just Energy's customer records for that time period, with a further 28 instances where the customer name at the address provided by the Claimant does not match the Claimant's name. The inclusion of more than 50% Claims of non-customers indicates that these Claims were filed improperly, without conducting adequate due diligence. These non-customer Claims are therefore rejected outright. This improper filing necessarily casts considerable doubt and skepticism on the remainder of the Claims filed. The Just Energy Entities reserve the right to claim costs against these alleged Claimants and their advisors with respect to the filing of these non-customer Claims.

The Relevant Just Energy Entities, Like All Retail Electric Providers in Texas, Are Not Responsible for Generation or Delivery of Electricity

In any event, the Claimants have not adduced any evidence to establish that any of the Just Energy Entities are liable for their Claims, and retail electric providers in Texas are not legally responsible for the transmission and distribution of energy. No Claimant has provided any evidence whatsoever to refute that fact and on that basis alone all of the Claims are rejected.

The Texas Public Utility Regulatory Act ("**PURA**") required that, no later than January 1, 2002, all utilities operating in Texas separate their business activities into three distinct units:

- Power Generation Companies ("**PGCs**"), which own and operate electric generation facilities and sell their power to REPs (defined below) at wholesale;

- Transmission and Distribution Utilities ("**TDUs**"), which own and operate the facilities necessary to transmit and distribute energy; and

- Retail Electric Providers ("**REPs**"), which buy electricity wholesale and sell such electricity to retail customers.

Under PURA, REPs are prohibited from owning the generation and transmission assets necessary to physically generate electricity and deliver electricity to customers. REPs buy electricity from PGCs. The electricity they purchase from PGCs is transmitted over the transmission and distribution facilities owned by TDUs, and delivered to the REPs' customers by the TDUs.

The relevant Just Energy Entities – Just Energy Texas LP ("**JE Texas**"), Tara Energy LLC ("**Tara Energy**"), and Fulcrum Retail Energy LLC d/b/a Amigo Energy ("**Amigo Energy**", and collectively with JE Texas and Tara Energy, the "**Texas Entities**") – are REPs in the state of Texas certified by the Public Utility Commission of Texas ("**PUCT**"). Their business consists of securing wholesale energy products from the ERCOT[2] market and re-selling such energy to their customers. The Texas Entities own no generation, transmission or distribution facilities, and have no control whatsoever over the actual generation or transmission of electricity, or the delivery of such electricity to their customers.

Transmission, distribution, and delivery of electricity in Texas is controlled by the TDUs. Each TDU in Texas is required to file with the PUCT a tariff to govern its retail delivery service to REPs (such as the Texas Entities) using the pro forma tariff codified at 16 Tex. Admin. Code § 25.214(d). The regulations provide that the provisions of the tariff "are requirements that shall be complied with and offered to all REPs and Retail Customers unless otherwise specified." The tariff provides that:

- The REP has no ownership, right of control, or duty to a retail customer, or third party, regarding the design, construction, or operation of the TDU's Delivery System.

- The REP will not be liable to any person or entity for any damages, direct, indirect, or consequential, including, but without limitation, loss of business, loss of profits or revenue, or loss of production capacity, occasioned by any fluctuations or interruptions of delivery caused, in whole or in part, by the design, construction, or operation of the TDU's delivery system.

During any outage event, customers are directed to contact their local TDU (such as Oncor or CenterPoint) for outage notification and repairs. In fact, monthly invoices sent to the Texas Entities' customers set forth the contact information for their local TDU explicitly in case of emergencies and power outages.

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[2] Electric Reliability Council of Texas, Inc.

The Texas Entities simply procure energy on the market, resell it to their customers, keep track of how much electricity is used, and charge their customers accordingly. The Texas Entities had (and have) no control over, or relationship to, the actual delivery of electricity to customers' homes or businesses, during winter storm Uri, or otherwise. If the Claimants experienced a disruption in their electricity service on account of the storm, and such disruption caused any damages, it was entirely outside of the Texas Entities' control, power or legal responsibility.

There is no causal relationship between the unproven damages alleged in these Claims and the Texas Entities' activities and business model.

Contractual Provisions Exclude Liability

The Claimants' contracts[3] are consistent with the regulatory structure outlined above, as the Texas Entities did not contract with the Claimants to provide power or guarantee uninterrupted supply of power. Contracts with JE Texas provide that:

- Customer "understands that Just Energy is not a transmission or distribution utility or any other retail electric provider."[4]

- Our liability under this Agreement is limited to direct actual damages. We are not liable for incidental, consequential, punitive, or indirect damages, lost profits or lost business **or for any act or omission of your Utility**."[5] (emphasis added)

Similarly, contracts with Tara Energy and Amigo Energy provide that:

- Customer "understands that [Amigo/Tara] Energy is not a transmission or distribution utility or any other retail electric provider."[6]

- "[Amigo/Tara] Energy is your Retail Electric Provider ("REP"). [Amigo/Tara] Energy sets the charges you pay for retail electric service. The electricity that [Amigo/Tara] Energy sells to you must be transported to your service location over transmission and distribution systems which will continue to be regulated by the Public Utility Commission of Texas ("PUCT") and owned by a Transmission and Distribution Service Provider ("TDSP"). […]"[7]

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[3] Contracts were in place only with Claimants that were in fact customers of a Just Energy Entity during the relevant time period.

[4] JE Texas Electricity Plan Agreement, "Appointment & Authority" (attached).

[5] JE Texas Terms of Service, p. 3, para 19, "Limitation of Liability" (attached).

[6] Amigo Energy Electricity Plan Agreement, "Appointment & Authority" (attached); Tara Energy Electricity Plan Agreement, "Appointment & Authority" (attached).

[7] Tara Energy Terms of Service, p. 1, para 2 (attached); Amigo Energy Terms of Service, p. 1, para 2 (attached).

- CUSTOMER ACKNOWLEDGES AND AGREES THAT [AMIGO/TARA] ENERGY DOES NOT PRODUCE, TRANSMIT OR DISTRIBUTE POWER AND, AS A RESULT, [AMIGO/TARA] ENERGY CANNOT WARRANT, AND DOES NOT WARRANT IN ANY MANNER, THE ELECTRICITY PROVIDED […] [AMIGO/TARA] ENERGY MAKES NO REPRESENTATION AS TO THE SUFFICIENCY, QUALITY OR CONTINUATION OF THE SERVICES PROVIDED HEREIN.[8]

- THE REMEDY IN ANY CLAIM OR SUIT BY YOU AGAINST [AMIGO/TARA] ENERGY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES. BY ENTERING INTO THIS AGREEMENT, YOU WAIVE ANY RIGHT TO ANY OTHER REMEDY. IN NO EVENT WILL EITHER TARA ENERGY OR YOU BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES.[9]

These provisions clearly informed the Claimants that the Texas Entities would not be liable for any interruption of power as a result of acts or omissions of a customer's TDU or otherwise.

In addition to the above, the relevant contracts contain provisions that excuse the Texas Entities from performance of the contracts for the duration of any *force majeure* event:

- **JE Texas:** "You accept that certain events beyond our control, including "force majeure" events declared by our direct or indirect suppliers, may affect our ability to supply electricity or JustGreen at your Energy Charge or JustGreen Charge. If this happens, we may, without liability: (a) temporarily supply them to you at the market price available to us; or (b) suspend this Agreement until as soon as we are reasonably able to resume performance. This Agreement will otherwise remain in full effect."

- **Amigo Energy and Tara Energy:** If an event occurs which makes it impossible for [Amigo/Tara] Energy to perform under this Agreement (a "Force Majeure Event"), including but not limited to (i) a failure of any wholesale supplier and/or TDSP to perform any contract with [Amigo/Tara] Energy, (ii) force majeure or similar event as declared by our wholesale supplier(s) and/or the TDSP(s), (iii) act of God, (iv) extraordinary weather occurrence, (v) fire or explosion, (vi) any governmental action, prohibition or regulation, or (vii) war, civil disturbance or other national emergency, our performance under this Agreement shall be excused for the duration of such event. [Amigo/Tara] Energy shall promptly notify Customer of the Force Majeure Event, any resulting contingency, and the contemplated effect thereof on the provision of service. Upon elimination or cessation of the Force Majeure Event and any contingency, the obligations herein of [Amigo/Tara] Energy to provide service to Customer shall be reinstated. [Amigo/Tara] Energy reserves the right to terminate this Agreement should

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[8] Tara Energy Terms of Service, p. 3, "WARRANTY"; Amigo Energy Terms of Service, p. 4, "WARRANTY".

[9] Tara Energy Terms of Service, pp. 3-4, "LIMITATION OF REMEDIES, LIABILITY AND DAMAGES"; Amigo Energy Terms of Service, p. 4, "LIMITATION OF REMEDIES, LIABILITY AND DAMAGES".

the event or the need for contingency not be eliminated within forty-five (45) days after the occurrence.[10]

Amounts Claimed not Specified or Supported

Only 100 of the 260 Claimants have specified the amounts of their Claims. However, none of the Claimants have provided any documentation whatsoever in support of their Claims.[11] This is a further basis to disallow all of the Claims outright.

The Just Energy Entities reserve all rights to assert additional legal or factual defences and waive none.

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[10] Tara Energy Terms of Service, p. 4, "Force Majeure Event"; Amigo Energy Terms of Service, p. 4, "Force Majeure Event".

[11] As an accommodation granted by the Just Energy Entities, the Claimants were not required to file medical documentation with their Proofs of Claim. Even if those Claimants who may be asserting a personal injury claim were to submit medical documentation in support of their Claims, they have failed to submit any documentation or information to support a causal relationship between the alleged damages and the Texas Entities' activities and business model.

Tab 34

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted D&O Claims against the Directors and/or Officers of the Just Energy Entities[1]

TO: **Individuals named in the attached Schedule B** (the "**Claimants**")

Gibbs Henderson (Attorney for the Claimants)
Brandy Wills
Fears Nachawati PLCC, Watts Guerrra, LLP and Parker Waichman LLP
powerfailure@wattsguerra.com
ghenderson@fnlawfirm.com
bwills@wattsguerra.com

RE: Claim Reference Number: See Schedule B.

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim or D&O Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

Type of Claim	Applicable Debtor(s)	Amount as submitted	Amount allowed by the Just Energy Entities

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

		Original Currency		**Amount allowed as secured:**	**Amount allowed as unsecured:**
A. Pre-Filing D&O Claim	Not Specified		Where amount specified, it is set out in Schedule B.	$0	$0
B. Restructuring Period D&O Claim			$	$	$
C. Total Claim	Not Specified		See Schedule B.	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 18th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: ______________________________
Jim Robinson
Senior Managing Director

SCHEDULE A

The law firms of Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP have collectively filed claims against the directors and officers of the Just Energy Entities (the "**Claims**") on behalf of 260 claimants who they represent and who authorized them to do so (the "**Claimants**"). The Claimants have not specified the names any of the officers and directors against whom they are directing these claims.

While no particulars were submitted with respect to these Claims, and at times even the nature of individual Claims is listed as "undetermined", we understand they are alleging a broad variety of personal injury, property damage, and business interruption claims arising from power outages that occurred in Texas due to winter storm Uri in February 2021.

The Just Energy Entities, in consultation with the Monitor, disallow the Claims in their entirety.

Firstly, the Claims are contingent, speculative, remote, unproven, unliquidated and devoid of merit for all of the reasons set out in the Notice of Disallowance with respect to the underlying claims brought against the Just Energy Entities, attached at Schedule C.

Additionally, based on the information provided, these Claims are insufficiently articulated and insufficiently particularized against any of the individual officers and directors of the relevant Just Energy Entities at the relevant time. There is no legal basis under Canadian or U.S. law for imposing personal liability on directors and officers for these contractual or tort Claims. In particular, the Claims fail to allege any independent acts taken by any of the individual directors and officers at any relevant time for which they may be personally liable at law.

The inclusion of these meritless Claims with no basis in law confirms that these Claims have been brought improperly and without conducting sufficient (or any) due diligence. The Just Energy Entities reserve the right to claim costs against these alleged Claimants and their advisors with respect to the filing of these Claims.

Tab 35

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against the Just Energy Entities[1]

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. **Particulars of Claimant:**

Claims Reference Number: See Schedules B and C.

Full Legal Name of Claimant (include trade name, if different)

Group of Claimants Represented by Fears Nachawati, Watts Guerra, Parker Waichman and Robins Cloud. See Schedules B and C.

Full Mailing Address of the Claimant:

See Schedules B and C.

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant: See Schedules B and C.

Telephone Number: ______
Email Address: ______
Facsimile Number: ______
Attention (Contact Person): ______

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐ No: ☒

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): ______

3. **Dispute of Revision or Disallowance of Claim:** See Schedule A

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated January 18, 2022, and asserts a Claim as follows:

Type of Claim	Applicable Debtor(s)	Amount allowed by the Just Energy Entities		Amount claimed by Claimant	
		Amount allowed as secured:	Amount allowed as unsecured:	Secured:	Unsecured:
A. Pre-Filing Claim	See Schedules B and C	$	$	$	$
B. Restructuring Period Claim		$	$	$	$
C. Pre-Filing D&O Claim		$	$	$	$
D. Restructuring Period D&O Claim		$	$	$	$
E. Total Claim		$	$	$	$

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. Reasons for Dispute:

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

See attached Schedule A.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: [signature]	Witness: Erin M. Wood (signature)
Name: Gibbs Henderson	Erin M. Wood (print)
Title: Partner, Fears Nachawati	

Dated at 2:47 pm this 17th day of February, 2022

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

SCHEDULE A

On November 1, 2021, the law firms of Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP collectively and timely filed claims on behalf of 260 claimants against the Just Energy Entities. In addition, the law firm of Robins Cloud LLP filed claims on behalf of 104 claimants. These claims and claimants are referred to herein as the "Claims" and "Claimants", respectively. All of these Claims arise out of loss of business, property damage and/or personal injuries suffered by Claimants due to the loss of power during winter storm Uri in February 2021.

In their Notices of Revision or Disallowance for Persons who have asserted Claims against the Just Energy Entities (the "**Disallowance Notices**"), which were submitted on January 18, 2022, the Just Energy Entities stated that they would "disallow the Claims in their entirety" because they "are devoid of merit for numerous reasons . . . ." Disallowance Notice at Schedule A, p. 1. More specifically, the Just Energy Entities asserted in their Notice that Claimants' Claims should be disallowed on the grounds that: (1) Claims were asserted by non-customers; (2) "amounts claimed [by Claimants were] not specified or supported"; (3) "the relevant Just Energy Entities . . . are not responsible for generation or delivery of electricity"; and (4) certain "contractual provisions exclude liability." *Id.* at 4, 6, 8. Each of these arguments is addressed below.

1. **Claimants' New List of Claimants Reflects Newly-Obtained Customer Information.**

In the state of Texas, "control of the state's entire electricity delivery [rests with] a **market-based patchwork** of private generators, transmission companies and energy retailers." Clifford Krauss, et al., *How Texas' Drive for Energy Independence Set It Up for Disaster*, N.Y. Times, Feb. 21, 2021, at https://www.nytimes.com/2021/02/21/us/texas-electricity-ercot-blackouts.html (emphasis added). Due to this "patchwork" approach, it is not always clear to Texans who their electricity provider is. With this in mind, and out of abundance of caution for the protection of the rights of Claimants, some claims were filed against Just Energy Entities on behalf of Claimants who were uncertain about their provider on the bar date for the submission of claims in this bankruptcy.

On February 15, 2022, the Just Energy Entities provided for the first time a list of Claimants that they maintain were non-customers during the relevant dates. A revised and current list of Claimants is attached to this submission as Schedule B, which takes this new information, as well as additional information provided by Claimants, into account.

2. **Claimants Are Providing Additional Information and Documentation to Support Their Claims.**

In response to the Just Energy Entities' Notice, Claimants are providing additional information about their Claims in Schedule B and supporting documentation at the following links:

(a) https://fearsnachawati.box.com/s/gp9f7zs8iuvfhnpg3l1w45hbvivtscqt
(b) https://spaces.hightail.com/space/v1fLhH9L92

3. The Responsibility of Texas Retail Providers Has Not Been Adjudicated and Should be Determined by the Texas MDL.

FT Consulting Canada Inc. (the "Monitor") has raised several arguments that hinge on uninterpreted Texas laws. Specifically, the Monitor makes the sweeping, unsupported claim that the Just Energy Entities are not liable for Claims related to outages occurring during Winter Storm Uri. Further, the Monitor contends that "retail electric providers are not legally responsible for the transmission and distribution of energy," and because "[n]o claimant has provided any evidence whatsoever to refute that fact and on that basis alone all of the claims are rejected." Disallowance Notice at Schedule A, p. 4. The Monitor also claims that the Just Energy Entities phrased their contracts such that they cannot be held liable for any interruption of power.

As a threshold matter, in the normal course, the proper venue for evaluation of the merits of these arguments based in Texas law is a Texas court. Texas law permits claims against an out-of-state business in Texas under the long-arm statute, which allows Texas courts to exercise jurisdiction over any nonresident defendant including, but not limited to, a corporation, partnership, or limited liability company (LLC) that "does business" in the state. Tex. Civ. Prac. & Rem. Code Ann. § 17.042. In other words, nonresident defendants, including the Just Energy Entities, are subject to personal jurisdiction in Texas where, as here, the contract was to be performed entirely in Texas and defendant's activities were purposefully directed at Texas residents. Therefore, Texas courts have specific jurisdiction over the Just Energy Entities for, and Texas law applies to, the Claims because Texas is where the contracts were entered into, where the contracts were to be performed, and where the harms caused by the Just Energy Entities occurred. The Just Energy Entities consented to jurisdiction in Texas by entering into contracts with Texans for services provided in Texas.

The Texas Judicial system has already established the proper venue for the resolution of the arguments raised by The Monitor:

> In an Order dated June 10, 2021, the Panel on Multi-District Litigation (the "Panel") granted a motion to transfer to establish an MDL court for cases alleging that wrongful conduct of ERCOT and other defendants caused power shortages and electrical outages during Winter Storm URI and damaged the plaintiffs. See MDL No. 21-0313. On June 30, 2021, pursuant to Administrative Rule 13.6(a), Chief Justice Nathan L. Hecht of The Supreme Court of Texas authorized the Honorable Sylvia A. Matthews, former district judge, to serve as a pretrial judge upon assignment by the Panel. By Order dated July 7, 2021, the Panel designated the 281st District Court of Harris County, Texas as the Pretrial Court and assigned the Honorable Sylvia A. Matthews to serve as the Pretrial Judge.

See Order dated Jul 13, 2021, attached hereto as **<u>Attachment 1</u>**.

Additionally, under Texas law, venue is proper, *inter alia*, in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. As several claimants resided in Harris County during winter storm Uri, the location of the current Multi-District Litigation Court ("MDL Court") was assigned to the Winter Storm Uri cases.

Despite the commencement of the CCAA proceedings and the concurrent Chapter 15 proceedings, it is appropriate for the adjudication of the Claim to be referred to the MDL Court, with the results of such decision to be used to finalize the Claimants' right to a distribution in the CCAA/Chapter 15 proceedings.

As noted below, the adjudication of the Claims will require a comprehensive review and consideration of the energy regulatory regime in Texas as well as the intersection of that regulatory regime with the Texas civil law. This will require the adjudicator to understand not only the complex regulatory regime and the breadth of Texas regulatory and civil law, but also consider these issues in the context of matters of first impression. This complexity is far beyond what can reasonably and efficiently be dealt with by the CCAA Court or claims officer through the use of expert evidence to prove, as fact, matters of foreign law.

Although the Claims are claims provable in bankruptcy, they raise the types of foreign law issues that Canadian courts typically refuse to consider. For example, although the revenue rule does not apply to the Claims (since the Claims are made by an individual against a private company), the adjudication of the Claims will require the adjudicator to consider the State of Texas's regime for electricity regulation and to adjudge whether regulators and other actors were liable for damages suffered in the Winter Storm Uri. These are the types of inquiries into the affairs of foreign states that the revenue rule provides should not be undertaken. (See: United States v. Harden, 1963 CanLII 42 (SCC), [1963] SCR 366; Pro Swing Inc. v. Elta Golf Inc., 2006 SCC 52; and Prince et al. v. ACE Aviation Holdings Inc. et al., 2014 ONCA 285). Accordingly, given that the international restructuring regime under the CCAA and Chapter 15 are about coordination and not subordination, it is appropriate for the MDL Court to hear and determine the value of the claims. (See Holt Cargo Systems v. ABC Containerline, 2001 SCC 90).

Furthermore, many of the arguments raised by the Monitor are matters of first impression in the specific context of energy providers – in other words, no court has previously ruled on these issues. As such, the Canadian adjudicator will not have the benefit of Texas law to be guided by in making findings of fact as to what is the law of Texas, and it is therefore appropriate for the designated Texas court to hear and rule on these important matters of first impression raised under Texas law.

Finally, allowing the Texas MDL Court to exercise jurisdiction over these matters also comports with the principles of *forum non conveniens* as they are typically applied. The Supreme Court of Canada has held that a party must show that an alternative forum is clearly more appropriate for a court to decline to exercise jurisdiction. *See Van Breda v. Village Resorts Ltd.*, 2012 Carswell Ont 4268 (S.C.C.). This is to ensure that the parties are treated fairly and that the process for resolving their litigation is efficient. Factors to be considered in determining whether to stay a proceeding vary from case to case but can include:

- The locations of parties and witnesses;
- The cost of transferring the case to another jurisdiction or of declining the stay;
- The impact of a transfer on the conduct of the litigation or on related or parallel proceedings;
- The possibility of conflicting judgments;
- Problems related to the recognition and enforcement of judgments;
- The relative strengths of the connections of the two parties; and

- Ultimately, it is an exercise of discretion entitled to deference.

In this case, the above factors weigh in the favor of permitting the Texas MDL Court to exercise jurisdiction:

- the claimants and witnesses to the power outages are all from Texas;
- the outages themselves occurred in Texas;
- the President/CEO/Director, Chief Operating Officer, and multiple Senior Vice Presidents of Just Energy (US) Corp. are based out of Houston, Texas, in Harris County;[1]
- The issues raised in this litigation are matters of first impression, properly resolved in the first instance by Texas courts; and
- a Canadian court's ruling on the instant matters would impede the previously established Texas MDL Court's proceedings.

For these reasons, these Claims should be referred to the MDL Court for adjudication, and if necessary, the stay lifted for the limited purpose of allowing the claims to be adjudicated by the MDL Court, and then such decision can be used for the purposes of the CCAA proceedings.

4. The Relevant Just Energy Entities Are Liable for Failing to Meet Their Obligations in their Provision of Electricity

The Monitor argues in conclusory fashion that by "simply procur[ing] energy on the market, resell[ing] it to their customers, keep[ing] track of how much electricity is used, and charg[ing] their customers accordingly," the Just Energy Entities have no liability for the injuries of any of their customers caused by the Just Energy Entities failure to provide power as agreed upon. In making this argument, the Monitor cites to tariffs it claims are required to be filed by Transmission and Distribution Utilities without actually identifying which, if any, such tariffs apply to Just Energy by its specific TDUs. Furthermore, the Monitor's argument directly conflicts with established Texas law that electricity is a product that can be subject to common law, regulatory duties, and strict liability and negligence law, therefore, as the seller of that product, the Just Energy Entities may be held liable.

i. Just Energy Entities' Common Law and Regulatory Duties

Electric Providers in Texas have a "legal obligation to serve all comers on an equal basis . . . ." [*Hand v. Dean Witter Reynolds Inc.*, 889 S.W.2d 483, 494 (Tex. App. 1994)][2] and because these

[1] *See* Business Organizations Inquiry - Management, Just Energy (U.S.) Corp, attached hereto as **Attachment 2**.

[2] *N. Belt 28.019, Ltd. v. Wildwood Constr.*, No. A14-88-00001-CV, 1989 Tex. App. LEXIS 1733, at *8 (Tex. App. June 29, 1989). ["The *utility's obligation to serve* all customers in its certificated area obviously does not carry with it the kind of extra agreements made in the contract… the trial court correctly concluded the contract at issue was valid and the evidence is legally sufficient to support the trial court's implied finding that the contract encompassed non-utility "extras" . . . ."]; *Sw. Pub. Serv. Co. v. Pub. Util. Com.*, 578 S.W.2d 507, 512 (Tex. Civ. App. 1979) [". . . it was error to deprive Southwestern of its "vested … obligation to serve the area annexed by the City of Lubbock."]; *Hand v. Dean Witter Reynolds Inc.*, 889 S.W.2d 483, 494 (Tex. App. 1994) ["Brokers, despite the regulations to which they are subject are not public utilities with the legal obligation to serve all comers on an equal basis. They are permitted to exercise business judgment in the acceptance of clients and clients' orders."]; *Ball v. Texarkana Water Corp.*, 127 S.W. 1068, 1071 (Tex. Civ. App. 1910) [Public utilities have a public franchise.

providers are performing a "proprietary function"[3] each has liability for a "failure to follow prudent utility practice." *See, e.g., Mirant Peaker, LLC v. S. Md. Elec. Coop., Inc. (In re Mirant Corp.)*, Nos. 03-46590 (DML) , 04-4073, 2005 Bankr. LEXIS 2309 (Bankr. N.D. Tex. Nov. 22, 2005).[4]

The "Tex. Util. Code. Ann. § 31.002(17) (2007) defines retail electric provider as a person that *sells electric energy* to retail customers in this state but does not own or operate generation assets." *Ellis v. Reliant Energy Retail Servs., L.L.C.,* 418 S.W.3d 235, 240 (Tex. App. 2013) [Emphasis Added]. *Ellis v. Reliant Energy* explains further the nature of the REP as a "seller" of the electric product and service:

> 16 Tex. Admin. Code § 25.5(115) (2010) defines retail electric provider as a person that sells electric energy to retail customers in this state but may not own or operate generation assets. 16 Tex. Admin. Code § 25.107 (2009) defines retail electric provider as a person that sells electric energy to retail customers in this state. Tex. Util. Code. Ann. § 31.002(6) & (6)(H) defines electric utility as a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state but does not include retail electric providers. 16 Tex. Admin. Code § 25.5(41) & (41)(H) provides the same. *Id.* at 240.
> …
> Reliant claimed and acknowledged that it was ". . . a retail electric provider ("REP"). *See* HN7 Tex. Util. Code. Ann. § 31.002(17) (West 2007) (defining "retail electric provider" as "a person that sells electric energy to retail customers in this state" but "does not own or operate generation assets"); *see also* 16 Tex. Admin. Code § 25.5(115) (2010) (Pub. Util. Comm'n, Definitions) (defining "retail electric provider as "[a] person that sells electric energy to retail customers in this state" but "may not own or operate generation assets); 16 Tex. Admin. Code § 25.107 (2009) (Pub. Util. Comm'n, Certification of Retail [**14] Electric Providers (REPs)) (defining "retail electric provider" as "[a] person that sells electric energy to retail customers in this state").

The Just Energy Entities' duties and obligations arise from its sale of a product and service, by common law, Restatement, and the Texas Utility Code. As a seller the Just Energy Entities had several tort duties, which they violated.

"The conferring of this privilege imposes upon it the obligation to serve the public in a reasonable way for a reasonable compensation … a public agency created to promote the public comfort and welfare . . . ."].

[3] *Douglas Energy Relief Ass'ns (DERA) v. City of Douglas,* No. CV 510-083, 2012 U.S. Dist. LEXIS 124496, at *4 (S.D. Ga. Aug. 31, 2012) ["A publicly owned utility engaged in the service of providing gas and electricity to inhabitants is a 'Proprietary Function.'"

[4] *Mirant Peaker* dealt with the public utility and the cooperative entered into agreements by which the cooperative was to cause the construction of a power generating facility on the public utility's property. A facility and capacity credit agreement (FCC) provided that the facility would be operated and maintained by the public utility. "PEPCO shall *operate and maintain* the Facility according to ***Prudent Utility Practice*** throughout the term of this Agreement…" *Id.* *1 (Emphasis added).

ii. Products Liability / Negligent Failure to Warn

Under Texas law, electricity is a "product" for strict liability purposes because it is a commodity that can be manufactured, transported, marketed, and sold like other goods. *Houston Light & Power Co. v. Reynolds*, 765 SW2d 784, 785 (Tex. 1988). Under Texas law, a product, such as electricity, may be defective: (1) in its manufacture; (2) in its design; or (3) there may be a defect because of a failure to provide adequate warnings or instructions relative to that product. *Am. Tobacco Co. v. Grinnell*, 951 SW2d 420, 426 (Tex. 1997).

While the Just Energy Entities may argue that the electricity to be provided was not in and of itself defective, Texas law recognizes that a lack of adequate warnings and/or instructions can render an otherwise adequate product unreasonably dangerous and defective. *Caterpillar, Inc., v. Shears*, 911 SW2d 379, 382 (Tex. 1995); *Hanus v. Texas Utilities Co.*, 71 SW3d 874, 878-879 (Tex. App. – Ft. Worth, 2002).

As relevant to the facts and circumstances of the issues now before this Court, Subparts 4 and 5 of Section 82.003 of the Texas Civil Practices and Remedies Code sets out the elements of a cause of action against a "seller" of the product (electricity), such as the Just Energy Entities, for failing to issue adequate warnings about the electricity which was being provided under its agreement with its customers:

> *Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. (a) A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:*
>
> . . . .
>
> *(4) that:*
>
> *(A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product;*
>
> *(B) the warning or instruction was inadequate; and*
>
> *(C) the claimant's harm resulted from the inadequacy of the warning or instruction;*
>
> *(5) that:*
>
> *(A) the seller made an express factual representation about an aspect of the product;*
>
> *(B) the representation was incorrect;*
>
> *(C) the claimant relied on the representation in obtaining or using the product; and*
>
> *(D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm; . . . .*

In addition to the elements of the causes of action defined in Tex. Civ. Pract & Rem. Code, Section 82.003, it is also the law of the State of Texas that, where an entity such as the Just Energy Entities voluntarily undertakes to perform services for another, through actions such as:

> mandating that it be provided contact information for its customers so that it could issue "disconnection warnings" or warning its customers of potential rolling blackouts and service interruption, that entity must provide those services and provide them in a reasonable and prudent manner.

The Claimants, who sustained physical injuries, property damage, and injuries to their businesses, have filed and will continue to pursue, in good faith, their Claims including claims that: (1) Just Energy Entities voluntarily undertook to perform services (providing information and warnings about their electric service) that the Just Energy Entities knew or should have known were necessary for their protection; (2) Just Energy Entities failed to exercise reasonable care in performing those services; and either (a) these customers relied upon the Just Energy Entities performance or (b) Just Energy Entities' performance increased the plaintiff's risk of harm. *See Torrington Co., v. Stutzman*, 46 S.W.3d 829, at 837-838 (Tex. 2000); *Torres v. FCA US, LLC*, 2020 WL 1809835 (SD Tex., 2020).

The Claimants reserve their rights to file further, additional and supplementary evidence. Furthermore, the Claimants rely upon the evidence of the Just Energy Entities' breach of duty that is solely within the power, possession and control of the Just Energy Entities.

5. Contractual Provisions Do Not Bar the Claimants' Claims.

The Just Energy Entities' customers who sustained property loss, business losses, and physical injuries during and as a result of Winter Storm Uri have viable causes of action against the Just Energy Entities. The contractual provisions cited by the Monitor do not absolve the Just Energy Entities of Liability.

While the Monitor cites the provisions within the Just Energy Entities' "Electricity Plan Agreements" that purport to claim they would not be liable for interruption of power, it admits that the Just Energy Entities acknowledges liability for "direct actual damages". Schedule A, p. 6. The Claimants *are* seeking direct actual damages. Additionally, the Just Energy Entities' overlook the provisions in their own "Your Rights as a Customer" documents that were clearly violated. Specifically, the "Your Rights as a Customer" document from Just Energy identifies the only circumstances during which a disconnection of service is contemplated:

> The PUCT has provided that under certain dangerous circumstances (such as unsafe electric line situations) any REP, including the POLR, may authorize your utility to disconnect your electric service without prior notice to you. Additionally, Just Energy may seek to have your electric service disconnected for any of the reasons listed below.
> • Failure to pay a bill owed to Just Energy or to make a deferred payment arrangement by the disconnection date set out in the disconnection notice;

• Failure to comply with the terms of a deferred payment agreement made with Just Energy or the POLR;
• Using service in a manner that interferes with the service of others or the operation of nonstandard equipment
• Failure to pay a deposit required by Just Energy or the POLR; or
• Failure of the guarantor to pay the amount guaranteed when Just Energy or the POLR has a written agreement, signed by the guarantor; which allows for the disconnection of the guarantor's service.

See "Your Rights as a Consumer", Just Energy, attached hereto as **Attachment 3**.

Furthermore, the document from Just Energy clearly states that "prior to disconnecting your service, Just Energy or POLR must provide you a disconnection notice." *See* "Your Rights as a Consumer", Just Energy, attached hereto as Attach. 3.

The unannounced and devastatingly lengthy power outages to the clients of the Just Energy Entities was a breach by the Just Energy Entities' contracts with and duties to their clients. Claimants' Pre-Filing Claims are based on the Just Energy Entities' failure to fulfill their various statutory and common law duties owed to the Claimants, including centrally the strict liability that accompanies the failure to warn Just Energy Entities' Customers in the marketing[5] and contracting of this "product"[6] sold, coupled with the services[7] rendered by the Just Energy Entities, of the known and potentially life-threatening dangers. Just Energy Entities' duties to its customers arose not just days before or during the February storm, but months and years before the storm, and the Just Energy Entities' breach of those duties occurred not just days before or during the storm, but months and years before the storm.

The Just Energy Entities sold a product – electricity. Well recognized in Texas law is a duty owed to a buyer in a sales transaction involving a product or rendering of a service, entails the

[5] "A product may be unreasonably dangerous … because of a failure to provide adequate warnings or instructions (marketing defect), *citing Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 426 (Tex.1997); *Caterpillar, Inc. v. Shears*, 911 S.W.2d 379, 382 (Tex.1995)." *Houston Light & Power Co. v. Reynolds*, 765 SW2d 784, 785 (Tex. 1988); *Armstrong Rubber Co. v. Urquidez*, 570 S.W.2d 374, 376 (Tex.1978).

[6] *Houston Light & Power Co. v. Reynolds*, 765 SW2d 784, 785 (Tex. 1988): "Because it is a commodity that can be manufactured, transported, and sold like other goods, ***electricity is considered a product for strict liability purposes*** after it has been converted, as it had been here, to a form usable by consumers. Because it is a commodity that can be manufactured, transported, and sold like other goods, electricity is considered a product for strict liability purposes after it has been converted, as it had been here, to a form usable by consumers."

[7] *Centerpoint Builders GP, LLC v. Trussway, Ltd.*, 496 S.W.3d 33, 56 (Tex. 2016)

> It begins with the unremarkable principle: "**Services**, even when provided commercially, are not products." RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 19 (1998). But it rejects the notion that one who provides a service is not a seller of products used in the provision of the service. To the contrary, the Restatement explains, "When a building contractor sells a building that contains a variety of appliances or other manufactured equipment, the builder, together with the equipment manufacturer and other distributors, are held as product sellers with respect to such equipment notwithstanding the fact that the built-in equipment may have become, for other legal purposes, attachments to and thus part of the underlying real property." *Id.* § 19 cmt. e.

duty to warn by an electric utility that the product[8] or service use may be restricted or withdrawn with life threatening consequences.[9] In a marketing-defect suit, an unreasonably dangerous product must present a threat of a harm that would elude the common perception of the product. *See Joseph E. Seagram & Sons, Inc. v. McGuire*, 814 S.W.2d 385, 387-88 (Tex. 1991). *Hanus v. Tex. Utils. Co.* 71 S.W.3d 874, 880 (Tex. App. Ft. Worth 2002). Of course, there was no "common perception" among utility customers that the electricity they rely on for everyday use, and especially in extreme weather conditions, was produced by unreliable power generating companies whose ability to deliver such product, through the Just Energy Entities, would be disabled when needed most - during a winter storm of sub-freezing temperatures for three days or more, leaving them freezing in the dark.

The misconception that the duty to warn of dangerous condition arising from a dangerous event is not actionable if the warning would not stop the event simply is not the law. In fact, that is precisely why the warning is given – to stop an injury that could occur from a dangerous event or condition that the marketing agent has no ability to stop, only to warn. Just like the warnings on ladders may not prevent an injury *if ignored*, but then again it may if heeded, the importance of the warning is so that, at least, the Just Energy Entities, the seller, and its Customer, the Claimants, would have equal knowledge of the dangers well in advance of the extreme weather event and have an opportunity to be prepared in time to protect themselves, whether through the acquisition of back-up power sources, preparation of the home for extreme weather, back-up plans to tend to vulnerable relatives or relocate to safer circumstances, and of the various protective measures consumers could have taken to protect themselves in the event of, and well in advance of, extended loss of power.

The elements of a breach of contract claim under Texas Law are: 1) existence of a valid contract; 2) performance or tendered performance by the plaintiff; 3) material breach by the defendant; and 4) damages sustained by the plaintiff as a result of that breach. *Paragon Gen. Contractors, Inc. v. Larco Constr., Inc.,* 227 S.W.3d 876, 882 (Tex. App.--Dallas 2007, no pet.). As a result, the Claimants possess breach of contract claims for the Just Energy Entities' violation of their own contractual assertions identified above. To be clear, by failing to warn their clients of the possibility of catastrophic and lengthy failure to provide energy, failing to notify their clients of the outages in advance, and failing to provide power for reasons other than those listed their representations to their clients, the Just Energy Entities breached their contracts with Claimants.

Finally, since the Claimants assert valid breach of contract claims, additional discovery is necessary regarding the specific contracts entered into by the individual claimants.

[8] *Houston Light & Power Co. v. Reynolds*, 765 SW2d 784, 785 (Tex. 1988): "Because it is a commodity that can be manufactured, transported, and sold like other goods, ***electricity is considered a product for strict liability purposes*** after it has been converted, as it had been here, to a form usable by consumers. Because it is a commodity that can be manufactured, transported, and sold like other goods, electricity is considered a product for strict liability purposes after it has been converted, as it had been here, to a form usable by consumers."

[9] *Houston Light & Power Co. v. Reynolds*, 765 SW2d 784, 785 (Tex. 1988): "A product may be unreasonably dangerous . . . because of a failure to provide adequate warnings or instructions (marketing defect), *citing Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 426 (Tex.1997); *Caterpillar, Inc. v. Shears*, 911 S.W.2d 379, 382 (Tex.1995)."

Understandably, while the Claimants possess evidence of being customers of the Just Energy Entities, many are not in possession of the individual contracts entered into with the Just Energy Entities due to the destructive events of Winter Storm Uri. Without these contracts, which are well-within the control of the Just Energy Entities, and with only the Monitor's bare assertions to go by, the record is grossly insufficient to make a determination as to liability based in breach of contract.

6. All Rights Reserved

The Claimants' investigation into these matters, and the Claimants reserve the right to add to, amend, supplement and otherwise revise its Claims and its supporting evidence as described herein and in the Proof of Claim.

Tab 36

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to D&O Claims against the Directors and/or Officers of the Just Energy Entities[1]

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. **Particulars of Claimant:**

Claims Reference Number: See Schedules B and C

Full Legal Name of Claimant (include trade name, if different)

Group of Claimants Represented by Fears Nachawati, Watts Guerra, Parker Waichman and Robins Cloud. See Schedules B and C.

Full Mailing Address of the Claimant:

See Schedules B and C.

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant: See Schedules B and C.

Telephone Number: ______________________

Email Address: ______________________

Facsimile Number: ______________________

Attention (Contact Person): ______________________

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐ No: ☒

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): ______________________

3. **Dispute of Revision or Disallowance of Claim:** See Schedule A

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated January 18, 2022, and asserts a Claim as follows:

Type of Claim	Applicable Debtor(s)	Amount allowed by the Just Energy Entities		Amount claimed by Claimant	
		Amount allowed as secured:	Amount allowed as unsecured:	Secured:	Unsecured:
A. Pre-Filing Claim		$	$	$	$
B. Restructuring Period Claim		$	$	$	$
C. Pre-Filing D&O Claim	See Schedules B and C	$	$	$	$
D. Restructuring Period D&O Claim		$	$	$	$
E. Total Claim		$	$	$	$

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. **Reasons for Dispute:**

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

See attached Schedule A.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: [signature]	Witness: Erin M. Wood (signature)
Name: Gibbs Henderson	Erin M. Wood (print)
Title: Partner, Fears Nachawati	

Dated at 2:47 pm this 17th day of February, 2022

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

SCHEDULE A

On November 1, 2021, the law firms of Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP collectively and timely filed D&O claims on behalf of 260 claimants against the Just Energy Entities. In addition, the law firm of Robins Cloud LLP filed D&O claims on behalf of 37 claimants. These claims and claimants are referred to herein as the "**D&O Claims**" and "Claimants", respectively, All of these Claims arise out of loss of business, property damage and/or personal injuries suffered by Claimants due to the loss of power during winter storm Uri in February 2021.

In their Notices of Revision or Disallowance for Persons who have asserted Claims against the Directors and/or Officers of the Just Energy Entities (the "**Disallowance Notices**"), which were submitted on January 18, 2022, the Just Energy Entities stated that they would "disallow the Claims in their entirety" because they "are devoid of merit for numerous reasons . . . ." Notice at Schedule A at 1. More specifically, the Just Energy Entities asserted in their Notice that Claimants' Claims should be disallowed on the grounds that: (1) "the underlying claims brought against the Just Energy Entities" are "devoid of merit"; and (2) "[t]here is no legal basis under Canadian or U.S. law for imposing personal liability on directors and officers" for Claimants' Claims. Each of these arguments is addressed below.

I. Dispute to Notice of Revision or Disallowance Regarding Pre-Filing Claims Incorporated By Reference Hereto

Just Energy has justified its disallowance of the Claimants' D&O Claims on the basis that the claims are "contingent, speculative, remote, unproven, unliquidated, and devoid of merit", and references Schedule C to the **Disallowance Notice** in support of its position.

Schedule C of the Disallowance Notice does not set out any particular response or basis for the Company's refusal of the D&O Claims. Rather, Schedule C is not specifically related to the D&O Claims but rather is only an incorporation by reference of the Company's Notice of Disallowance of the Claimants' Pre-Filing Claims. Accordingly, the Claimants adopt and incorporate by reference hereto the Dispute to Notice of Revision or Disallowance filed in respect of the Claimants' Pre-Filing Claims.

II. Reason For Dispute Specifically Related To Director And Officer Claims

A. The Company Has Disregarded Relevant and Material Facts

The reasons set out in the Disallowance Notice makes it clear that the Company has failed to consider a number of relevant and material facts that demonstrate that certain of the Company's directors and offices are liable to the Claimants as set out in the Proof of Claim.

1. ERCOT Issued Numerous Advisory Notices That The D&Os Failed To Act Upon:

With regard to the systemic failure of the electric industry during and before the arrival of Winter Storm Uri in February, 2021, the Claimants repeat and adopt the positions of fact set out in *In re*

Winter Storm Uri Litigation, pending before the 281st Judicial District Court of Harris County Texas, as follows:

- Electric Reliability Council Of Texas ("**ERCOT**") oversees the power grid which, with a few exceptions, supplies electricity to residents/consumers/businesses in the State of Texas;
- On February 3, 2021, ERCOT meteorologists were aware of the oncoming severe weather storm approaching the State of Texas, and warned its market participants (including Just Energy and its officers and directors) to brace for the coldest weather of the year (See e.g. *Plaintiff's Amended Petition* at paragraph 24, attached hereto as Attachment "__");
- On February 8, 2021, ERCOT issued a formal Operating Conditions Notice ("**OCN**") to its market participants for an extreme cold weather system approaching Thursday, February 11, through Monday, February 15, 2021, with temperatures anticipated to remain 32° F or below, *Id*;
- On February 10, 2021, ERCOT issued an Advisory its market participants for the predicted extreme weather for the ERCOT Region, *Id*;
- February 11, 2021: ERCOT issued a watch for cold weather event for extreme weather expected its market participants, *Id*;
- The Just Energy Entities and their officers and directors at the relevant times (identified at Appendix A hereto) (the "**D&Os**") had a duty to review such notices and advisories from ERCOT or otherwise ensure that the necessary, appropriate and sufficient systems and measures were in place to ensure that the Just Energy Entities would receive, consider and act upon such warnings from ERCOT, including ensuring they were prepared to, or had taken all reasonable steps to, continue to provide its customers with electricity at the contract rates. Given the centrality and critical nature of the provision of electricity for the safety and well-being of residents of a modern state such as Texas, the D&Os owed a duty to Just Energy's customers to ensure that they would conduct Just Energy's affairs so as to protect to the extent possible Just Energy's customers from the effects of such weather events;
- As stated in the *In re Winter Storm Uri Litigation*, the Retail Electric Providers such as Just Energy who were similarly situated to Just Energy, were negligent and grossly negligent as a result of their failure to warn their customers of the severity of the impending winter storm and of the power outages that the storm was almost certain to cause (See e.g. *Plaintiff's Amended Petition* at paragraphs 180 - 188, attached hereto as Attachment "__"). The Claimants adopt and repeat those statement of position herein; and
- Similarly, the Just Energy Entities's D&Os were also negligent in failing to ensure that Just Energy would receive, consider and act upon such warnings from ERCOT, including ensuring that Just Energy was prepared to, or had taken all reasonable steps to, continue to provide its customers with electricity at the contract rates, and are therefore liable to the Claimants.

2. <u>Vanessa Anesetti-Parra: Vice President (Regulatory Affairs) Of Just Energy & ERCOT Board Member</u>

At all relevant times leading up to Winter Storm Uri's effect on the lives of millions of Texans, including the dates on which ERCOT issued the notices and warnings to the energy industry regarding the severity of Winter Storm Uri and the disastrous effect that it might have on the electric grid (as noted above), Vanessa Anesetti-Parra, a Vice President of Just Energy, sat on the ERCOT Board of Directors. Accordingly, the knowledge that Vanessa Anesetti-Parra had regarding the dangers and consequences of Winter Storm Uri is imputed to and formed part of Just Energy's knowledge and the knowledge of its directors and officers. In the alternative, even if Vanessa Anesetti-Parra's knowledge is not imputed to the other D&Os (which is not admitted), Vanessa Anesetti-Parra herself remains liable to the Claimants.

Almost immediately after Winter Storm Uri moved past the State of Texas, in a filing with the Texas Public Utilities Commission, ERCOT notified the Tx. PUC that Mrs. Anesetti-Parra, one of five non-Texas residents on the ERCOT Board, was resigning her position on the ERCOT Board effective February 24, 2021. See *Notice of Electric Reliability Council Of Texas, Inc. Regarding The Resignation Of Four Unaffiliated Directors*, at footnote 1, attached hereto as Attachment "__". The immediacy of the resignation is evidence of scienter.

B. Particulars of Other Evidence Solely Within Knowledge of D&Os and Company

The full details and particulars of the evidence demonstrating the D&Os negligence and other wrongful acts are, given their nature, solely in the power, possession and control of the D&Os (including, but not limited to, Vaness Anesetti-Para) and the Just Energy Entities. Accordingly, the Claimants reserve the right to provide further and additional evidence in support of its D&O Claim within the claims resolution process. As a result of the D&O's and the Just Energy Entities' sole control of such evidence, there is no basis for the D&O Claims to have been disallowed in full as opposed to provision a revision of the D&O Claim to account for any contingency that might be associated with the nature of the claims. Nonetheless, and notwithstanding the foregoing, the Claimants state and the fact is that there is no basis to apply any contingency factor to the value of the D&O Claims and the D&Os are liable for the full amount of the D&O Claims.

C. Just Energy Misstates The Relevant Law Regarding D&O Liability For Contract And Tort Claims

The Disallowance Notice is based on a misstatement of the applicable law regarding the liability or potential liability of the D&Os.

Contrary to the position taken by the Just Energy Entities, the applicable law regarding the liability of the D&Os is not solely the law of Ontario and the law of Canada applicable therein. Rather, given that the Just Energy Entities, with the D&Os knowledge, consent and acquiescence, was directly or indirectly conducting business in the State of Texas, Texas law also applies to the liability of the directors and officers of the companies and their parent

companies doing business in Texas, particularly as it pertains to the participating in the regulated and critical electricity markets.

Texas law provides that the directors and officers in the position of the Just Energy Entities' D&Os are (or may be) personally liable for the type of claims asserted by the Claimants.

In a recent decision of The Honorable Bill Parker, Chief United States Bankruptcy Judge for the United States Bankruptcy Court for the Eastern District Of Texas, the Court directly dispelled the very notion put forward here by Just Energy, that officers and directors of a corporation cannot be held accountable for their own actions when taken on behalf of the corporation:

> *Without reference to any alter ego theory, however, Texas common law has long recognized that a corporate officer who knowingly participates in tortious or fraudulent acts may be held individually liable to third persons even though he performed the act as an agent of the corporation and is acting with the course and scope of his employment. Miller v. Keyser, 90 S.W.3d 712, 717 (Tex. 2002); Leyendecker & Assocs., Inc. v. Wechter, 683 S.W.2d 369, 375 (Tex.1984); Cage v. WorldFab, Inc. (In re Technicool Sys., Inc.), 594 B.R. 663, 671 (Bankr. S.D. Tex. 2018).*
>
> *Under such circumstances, Texas common law has traditionally held it unnecessary that the "corporate veil" be pierced in order to impose personal liability upon that officer, as long as it is shown that the corporate officer knowingly participated in the wrongdoing. Kingston, 82 S.W.3d at 758; Walker v. Anderson, 232 S.W.3d 899, 918 (Tex. App. – Dallas 2007, no pet.); Kwasneski v. Williams (In re Williams), 2011 WL 240466, at *1 (Bankr. W.D. Tex., Jan. 24, 2011). . . .*
>
> *Absent a decision by the Supreme Court of Texas to address the impact of § 21.223 upon the common law jurisprudence in this area,* Miller *and* Leyendecker *remain sound law and the common law principle that an individual acting as a corporate agent may be held individually liable for knowingly engaging in tortious conduct retains its viability.*

See *In Re Jamieson,* 2021 WL 438868 (Bankr. E.D. Tex. February 8, 2021).

The Company's position that Texas law does not recognize claims or causes of action asserted against officers and directors or a corporation is simply not accurate. The fact of the matter is that under Texas law any director or officer participating in a negligent act that causes damage may be held liable for such damages.

For the reasons stated above, the fact is the D&Os failed to the steps necessary to ensure that the Just Energy Entities could or would take the steps necessary to protect the Claimants from the damages that would foreseeably flow from a weather event such as Winter Storm Uri. Further particulars of such failures are detailed in Claimants' Pre-Filing Proof of Claim and their Dispute to Notice of Revision or Disallowance filed in respect of the Claimants' Pre-Filing Claims.

D. All Rights Reserved

The Claimants' investigation into these matters, and the Claimants reserve the right to add to, amend, supplement and otherwise revise its D&O Claim and its supporting evidence as described herein and in the Proof of Claim.

Tab 37

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 15
JUST ENERGY GROUP INC., *et al.*,	)	Case No. 21-30823 (MI)
Debtors in a Foreign Proceeding.[1]	)	
	)	(Jointly Administered)

FOREIGN REPRESENTATIVE'S MOTION FOR ENTRY OF (I) AN ORDER (A) APPLYING SECTION 502 OF THE BANKRUPTCY CODE TO THESE CHAPTER 15 CASES, (B) SCHEDULING A HEARING AND RELATED DEADLINES FOR THE ADJUDICATION OF CERTAIN CLAIMS, AND (C) GRANTING RELATED RELIEF AND (II) AN ORDER (A) DISALLOWING CERTAIN CLAIMS PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE AND (B) GRANTING RELATED RELIEF

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.uscourts.gov/ within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on June 22, 2022 at 1:30 p.m. (prevailing Central Time) in Courtroom 404, 4th Floor, 515 Rusk Street, Houston, TX 77002. You may participate in the hearing either in person or by audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "JudgeIsgur". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Isgur's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

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[1] The identifying four digits of Debtor Just Energy Group Inc.'s local Canadian tax identification number are 0469. Due to the large number of debtor entities in these chapter 15 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at www.omniagentsolutions.com/justenergy. The location of the Debtors' service address for purposes of these chapter 15 cases is: 100 King Street West, Suite 2360, Toronto, ON, M5X 1E1.

Just Energy Group Inc. ("Just Energy"), in its capacity as the authorized foreign representative (the "Foreign Representative") of the above-captioned debtors (the "Debtors"), which are the subject of proceedings under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "CCAA") in the Ontario Superior Court of Justice, Commercial List (the "Canadian Proceedings,"[2] and such court, the "Canadian Court"), respectfully requests:

(a) entry of an order, substantially in the form attached hereto (the "Procedures Order"):

(i) applying section 502 of title 11 of the United States Code (the "Bankruptcy Code") to these chapter 15 cases;

(ii) scheduling a hearing (the "Winter Storm Claims Hearing") and related deadlines for the adjudication of the Winter Storm Claims (as defined herein); and

(iii) granting related relief; and

(b) at the conclusion of the Winter Storm Claims Hearing, entry of an order, substantially in the form attached hereto (the "Disallowance Order," and together with the Procedures Order, the "Orders"):

(i) disallowing the Winter Storm Claims pursuant to section 502 of the Bankruptcy Code; and

(ii) granting related relief.

In support of this motion (this "Motion"),[3] the Foreign Representative respectfully incorporates the following herein by reference: (a) *Declaration of Michael Carter in Support of the Foreign Representative's Motion for Entry of (I) an Order (A) Applying Section 502 of the*

[2] Information on the Canadian Proceedings and documents filed in connection therewith, including reports from the Monitor (as defined herein) and motion materials, can be found at the website of the Monitor at http://cfcanada.fticonsulting.com/justenergy/default.htm.

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the CCAA Claims Procedures Order (as defined herein).

Bankruptcy Code to These Chapter 15 Cases, (B) Scheduling a Hearing and Related Deadlines for the Adjudication of Certain Claims, and (C) Granting Related Relief and (II) an Order (A) Disallowing Certain Claims Pursuant to Section 502 of the Bankruptcy Code and (B) Granting Related Relief (the "Carter Declaration"); and (b) *Declaration of Karin Sachar in Support of the Foreign Representative's Motion for Entry of (I) an Order (A) Applying Section 502 of the Bankruptcy Code to These Chapter 15 Cases, (B) Scheduling a Hearing and Related Deadlines for the Adjudication of Certain Claims, and (C) Granting Related Relief and (II) an Order (A) Disallowing Certain Claims Pursuant to Section 502 of the Bankruptcy Code and (B) Granting Related Relief* (the "Sachar Declaration").[4] In further support of this Motion, the Foreign Representative respectfully states the following:[5]

Preliminary Statement

1. The Debtors submit that the Court is the appropriate forum to adjudicate the Winter Storm Claims and that such relief is appropriate and permitted pursuant to the Bankruptcy Code. The Winter Storm Claims allege that certain of the Debtors (operating as retail electric providers) located in Texas and subject to the Texas legal framework have contractual, common law, or statutory responsibility for damages allegedly caused by interruptions to the Specified Claimants' (as defined below) electricity service during the Weather Event (as defined below). The Winter

[4] The Carter Declaration and the Sachar Declaration will be filed prior to the objection deadline with respect to this Motion.

[5] A detailed description of the Debtors and their businesses and the facts and circumstances surrounding these chapter 15 cases are set forth in (a) the *Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* [Docket No. 17] (together with the official form petitions filed concurrently therewith, the "Petition"), (b) the *Declaration of Michael Carter in Support of Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* [Docket No. 3], and (c) the *Declaration of Shawn T. Irving in Support of Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* [Docket No. 5], incorporated by reference herein.

Storm Claims are uniquely Texas-based because they are filed by Texas-based claimants with alleged customer contracts governed by Texas state law and allege damages caused by a storm in Texas and the discontinuance of utility services by Texas-based utilities. The Court has an intimate understanding of the Weather Event, the Winter Storm Claims are uniquely Texas-based, and the interests of all parties, including the Specified Claimants, will be protected if such relief is granted. Therefore, this Court is the appropriate forum to adjudicate the Winter Storm Claims, as further discussed below.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Venue is proper pursuant to 28 U.S.C. §§ 1410(1) and (3).

4. The statutory bases for the relief requested herein are sections 105, 502, 1507, 1521, and 1527(3) of the Bankruptcy Code, rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-4 and 9013-1(a) of the Local Bankruptcy Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

Background

5. The Debtors are retail energy providers ("REPs") specializing in providing electricity and natural gas, as well as energy-efficient solutions and renewable energy options, to consumer and commercial customers. The Debtors currently serve approximately 950,000 customers in the United States and Canada through their more than 1,000 employees, over 350 of which are located in Texas. Just Energy is the largest independent REP in Texas and is licensed by the Public Utility Commission of Texas (the "PUCT"). Just Energy's common shares were

previously listed on the Toronto Stock Exchange and the New York Stock Exchange and, in June 2021, were listed on the TSX Venture Exchange and trade under the symbol "JE." As of May 20, 2022, the listing of Just Energy's common shares on the TSX Venture Exchange were transferred to the NEX, a subset of the TSX Venture Exchange, and commenced trading under the symbol "JE.H."

6. On March 9, 2021, the Foreign Representative properly commenced these chapter 15 cases under sections 1504 and 1509 of the Bankruptcy Code by the filing of a petition for recognition of the Canadian Proceedings under section 1515 of the Bankruptcy Code. On the same day, the Court entered an order [Docket No. 26] authorizing the joint administration and procedural consolidation of these chapter 15 cases pursuant to Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1. On April 2, 2021, the Court entered an order [Docket No. 82] (the "Recognition Order") granting, among other things, recognition of the Canadian Proceedings as a "foreign main proceeding" pursuant to chapter 15 of the Bankruptcy Code.[6]

The CCAA Claims Procedures Order

7. The Court set forth in the Recognition Order that "[a]ll parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding[s]." Recognition Order, ¶ 31. Accordingly, the Debtors are conducting a thorough claims process in the Canadian Proceedings.[7]

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[6] To not burden the Court or other parties in interest with a re-listing of the extensive findings in the Recognition Order, including that the Debtors had satisfied the applicable requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code with respect to the relief granted therein, the Foreign Representative incorporates such findings herein and at the hearing on the Motion.

[7] In addition to the requirement that all claims against the Debtors be filed in the Canadian Proceedings as set forth in the Recognition Order, the Debtors filed contemporaneously herewith the *Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing (A) the CCAA Authorization Order, (B) the Solicitation Procedures and the CCAA Creditors' Meeting Order, and (C) the CCAA Claims Procedures Order and (II) Granting Related Relief* (the "PSA Recognition Motion"), which requests that the Court recognize and

8. On September 15, 2021, after a hearing and with full and proper notice provided to all parties in interest, the Canadian Court issued an order (the "CCAA Claims Procedures Order") approving the procedures in the Canadian Court for the identification, quantification, and resolution of certain claims against the Debtors and their directors and officers.[8] *See* Sachar Declaration. The CCAA Claims Procedures Order, among other things, established a general claims bar date of November 1, 2021. *See* CCAA Claims Procedures Order, ¶ 3. The Monitor or the Claims Agent have caused at least 835 Statements of Negative Notice Claim to be issued to certain claimants. *See* Carter Declaration,. As of the date hereof, at least 520 proofs of claim (at least fourteen of which were not timely filed) have been filed in the Canadian Proceedings. *See id.*

9. The CCAA Claims Procedures Order also provides that the Debtors, in consultation with the Canadian Court's independent monitor (the "Monitor"),[9] shall accept, revise, or reject each claim set out in a proof of claim filed in the Canadian Proceedings. *See* CCAA Claims Procedures Order, ¶ 33. It further provides that if the Debtors and the Monitor intend to revise or reject a claim, the Monitor shall notify the applicable claimant by sending a notice of revision or disallowance, and a claimant shall have 30 days to object to the notice of revision or disallowance. *Id.* at ¶¶ 36–37. If a claim cannot be resolved consensually, it may be referred to the claims officer or the Canadian Court for adjudication. *Id.* at ¶ 39.

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enforce, among other things, the CCAA Claims Procedures Order (as defined herein and as amended), including the bar dates and claims procedures contained therein.

8 A copy of the CCAA Claims Procedures Order is attached to the PSA Recognition Motion, as Exhibit C to the proposed form of order.

9 The Monitor in the Canadian Proceedings is FTI Consulting Canada Inc. Canadian counsel to the Monitor is Thornton Grout Finnigan LLP and U.S. counsel to the Monitor is Porter Hedges LLP.

10. The Debtors have been, and will continue to be, actively engaged with the Monitor and its counsel in reviewing the claims filed in the Canadian Proceedings. As part of this process, the Debtors identified a group of claims (the "Winter Storm Claims") that are uniquely United States-based, and in particular, Texas-based. The Winter Storm Claims were filed by Texas claimants with alleged customer contracts governed by Texas law, and allege damages caused by a storm in Texas and the discontinuance of utility services by United States-based entities. *See* Carter Declaration. Notably, as further described below, the REP liability alleged in the Winter Storm Claims is governed by a unique framework of laws specific to the State of Texas. The Winter Storm Claims consist of:

a. 364 claims filed by certain claimants (the "Damages Claimants") against certain of the Debtors alleging a broad variety of personal injury, property damage, and business interruption claims arising from power outages that occurred in Texas due to the Weather Event (the "Damages Claims") as set forth in Schedule 1 of the Disallowance Order; and

b. 297 claims filed by certain claimants (collectively with the Damages Claimants, the "Specified Claimants") against the officers and directors of the Debtors in the Canadian Proceedings on the same basis (the "Winter Storm D&O Claims"), as set forth on Schedule 2 of the Disallowance Order. *See id.*[10]

11. The Winter Storm Claims stem from the extreme cold weather and devastating winter storm that the State of Texas experienced in February 2021, which led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021 (the "Weather Event"). *See id*. The Weather Event forced significant electricity market supply offline in the Electricity Reliability Council of Texas, Inc. ("ERCOT") market. *See id*. The Winter Storm Claims allege that Just Energy, as a REP located in Texas and subject to the Texas legal

[10] As of the filing of this Motion, 92 of the Damages Claims and 92 of the Winter Storm D&O Claims have been withdrawn. Accordingly, 272 Damages Claims and 205 Winter Storm D&O Claims remain unresolved.

framework, has contractual, common law, or statutory responsibility for damages allegedly caused by interruptions to the Specified Claimants' electricity service during the Weather Event. *See id.*

12. After careful review, in consultation with the Monitor and its counsel, the Debtors determined that they do not have any liability with respect to the Winter Storm Claims. The limitations of liability for REPs, the Debtors' contractual relationship with its customers limiting the Debtors' liability for interruptions in power supply, the underlying factual allegations made by the Specified Claimants, and the fact that many of the Winter Storm Claims were brought improperly or present procedural infirmities—including, notably, the fact that many of the Specified Claimants were not customers of Just Energy during the relevant time period—in each case as discussed in greater detail herein, among other things, preclude any such liability. Indeed, the Winter Storm Claims are devoid of merit, speculative, remote, and unproven, and the Debtors believe such claims should be disallowed.[11]

13. In light of the fact that the Winter Storm Claims are uniquely Texas-based and governed by a unique framework of laws specific to the State of Texas with respect to REP liability, and the Debtors' and Monitor's analysis of their objections to the Winter Storm Claims, the Debtors, in consultation with the Monitor, determined that the Court is best positioned to adjudicate, and would provide the most efficient resolution to, the Winter Storm Claims. As such, the Debtors have requested an amendment to the CCAA Claims Procedures Order in the Canadian Proceedings to permit the Debtors, in consultation with the Monitor, to request, in their sole discretion, to have the Winter Storm Claims adjudicated and determined by the Court.

[11] Accordingly, as part of the Canadian Proceedings, the Monitor sent a Notice of Revision or Disallowance to the Specified Claimants on January 18, 2022 (the "Notices of Revision or Disallowance"), wherein such Specified Claimants were informed that their claims had been revised or rejected, along with the reasons therefor, pursuant to the CCAA Claims Procedures Order. *See* Carter Declaration.

The Debtors have provided full and proper notice to all parties of the requested amendment to the CCAA Claims Procedures Order, and there will be a related hearing, currently scheduled for June 7, 2022, allowing all parties a full and fair opportunity to be heard with respect to the amendment. *See* Sachar Declaration. The amendment, as set forth in the proposed order for consideration by the Canadian Court and if granted, will allow the Winter Storm Claims to be heard by the Court as set forth above.[12]

14. The Debtors, in consultation with the Monitor, submit that the Court is a uniquely appropriate forum to adjudicate the Winter Storm Claims and that such relief is appropriate and permitted pursuant to the Bankruptcy Code, as further discussed below. The Court has an intimate understanding of the Weather Event, the Winter Storm Claims are uniquely Texas-based, and the interests of all parties, including the Specified Claimants, will be protected if such relief is granted.

15. The Foreign Representative respectfully submits that adjudication of the Winter Storm Claims by the Court is with respect to a specific and narrow scope of claims, does not transfer the entirety of the claims administration process to the Court, and is appropriate for the reasons set forth herein.

[12] The CCAA Claims Procedures Order, as amended by the proposed order in the Canadian Proceedings, will provide that: "[T]he Just Energy Entities, in consultation with the Monitor and any applicable Directors or Officers, may, at their election, have any Winter Storm Claim . . . adjudicated and determined by the U.S. Bankruptcy Court, at its discretion, . . . and the Monitor shall send written notice of such election to the applicable parties."

The Debtors will file the order amending the CCAA Claims Procedures Order upon entry (if applicable) of such order by the Canadian Court and, if applicable, blacklines to the proposed orders to show changes, if any, to the versions served with this Motion. The Debtors expect such order will be entered in advance of the objection deadline with respect to this Motion.

Basis for Relief

I. Section 502 of the Bankruptcy Code Should be Applied to these Chapter 15 Cases Pursuant to Sections 105(a), 1507, and 1521(a) of the Bankruptcy Code for Purposes of Adjudicating the Winter Storm Claims.

16. Application of section 502 of the Bankruptcy Code to adjudicate the Winter Storm Claims is consistent with, and permissible under, sections 1507 and 1521(a), and if necessary, section 105(a), of the Bankruptcy Code. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, protect and maximize the value of a debtor's assets, and facilitate the rehabilitation and reorganization of businesses. 11 U.S.C. § 1501(a). It empowers courts with "broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter in accordance with comity." *In re Rede Energia S.A.*, 515 B.R. 69, 91 (Bankr. S.D.N.Y. 2014); *see also In re Vitro S.A.B. de CV*, 701 F.3d 1031, 1043–44 (5th Cir. 2012) (stating that, within the context of chapter 15, comity is a "principal objective"); *In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006) ("[C]hapter 15 maintains—and in some respects enhances—the 'maximum flexibility' . . . that section 304 provided bankruptcy courts in handling ancillary cases in light of principles of international comity and respect for the laws and judgments of other nations.") (internal citations omitted); *In re Sino-Forest Corp.*, 501 B.R. 655, 664 (Bankr. S.D.N.Y. 2013) (stating that post-recognition relief in a chapter 15 case "is largely discretionary and turns on subjective factors that embody principles of comity").

17. Additionally, pursuant to section 105(a) of the Bankruptcy Code, this Court has broad authority in its administration of cases under the Bankruptcy Code, and is empowered to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions [of the Bankruptcy Code]." 11 U.S.C. § 105(a). Although the equitable authority bestowed onto bankruptcy courts under section 105(a) is not unfettered, it provides the court with the flexibility

necessary to ensure that it is able to serve the purposes of the Bankruptcy Code within the constructs of its specific provisions. As it is necessary and appropriate to carry out the provisions of chapter 15, the Court is authorized to grant the requested relief under section 105(a).

18. Under this framework, sections 105(a), 1507, and 1521(a) of the Bankruptcy Code provide a statutory basis for a court overseeing a chapter 15 proceeding to provide relief to a foreign representative following the recognition of a foreign proceeding. Here, the Foreign Representative submits that the Court should exercise its discretion and power pursuant to sections 1507 and 1521, and if necessary, section 105(a), of the Bankruptcy Code and, consistent with principles of comity, apply section 502 of the Bankruptcy Code to these chapter 15 cases as set forth herein.

19. Further, the Recognition Order expressly grants leave to the Foreign Representative to request from the Court "any additional relief in the chapter 15 cases." Recognition Order, ¶ 35. The Canadian Court has also specifically requested the assistance of this Court in carrying out the claims process in the CCAA Claims Procedures Order. *See* CCAA Claims Procedures Order, ¶ 55 ("This [c]ourt hereby requests the aid and recognition of . . . the United States Bankruptcy Court for the Southern District of Texas . . . to assist the [Debtors] . . . in carrying out the terms of this Order. All courts . . . are hereby respectfully requested to make such orders and provide assistance to the [Debtors] . . . as may be necessary or desirable to give effect to this Order . . . and to assist the [Debtors] . . . in carrying out the terms of this Order."). Importantly, as described above, with the Debtors having provided full and proper notice to all parties in interest, including the Specified Claimants,[13] there will be a hearing on June 7, 2022 to consider the amendment to the CCAA

[13] The Debtors' Canadian counsel served all parties with email addresses listed on the service list maintained and updated by the Monitor on May 12, 2022 with respect to the amendment to the CCAA Claims Procedures Order. *See* Sachar Declaration.

Claims Procedures Order, which, if granted, will expressly allow the Debtors, in consultation with the Monitor, to elect, in their sole discretion, to have the Winter Storm Claims adjudicated and determined by the Court.[14]

20. Pursuant to the statutory framework and given the Canadian Court's request for assistance from the Court in carrying out the claims process as necessary, in addition to the anticipated express approval by the Canadian Court of the Debtors seeking adjudication of claims by the Court pursuant,[15] the Debtors respectfully submit that application of section 502 of the Bankruptcy Code for the adjudication of the Winter Storm Claims and others is warranted and permissible, and promotes comity between this Court and the Canadian Court.

A. The Application of Section 502 of the Bankruptcy Code is Appropriate and Warranted Pursuant to Section 1521 of the Bankruptcy Code.

21. Under section 1521 of the Bankruptcy Code, upon recognition of a foreign main proceeding and at the request of the foreign representative, the court may grant "any appropriate relief" to "effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1521(a). Relief under section 1521(a) of the Bankruptcy Code may only be granted if the interests of "the creditors and the other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a). "The analysis under [section] 1522 is one of balancing the respective interests based on the relative harms and benefits in light of the

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[14] The Debtors will file the amendment to the CCAA Claims Procedures Order upon entry of such order in the Canadian Proceedings. The Debtors expect the amended order will be entered in advance of the objection deadline with respect to this Motion.

[15] The Debtors expect the June 7, 2022 hearing before the Canadian Court to be contested. The Debtors will promptly notify the Court and parties in interest if the relief requested from the Canadian Court is not granted in substantially the form requested.

circumstances presented." *In re Better Place, Inc.*, 2018 Bankr. LEXIS 322, at *19 (Bankr. D. Del. Feb. 5, 2018) (citations omitted).

22. Applying section 502 to these chapter 15 cases with respect to the Winter Storm Claims is consistent with, and permissible under, section 1521(a) of the Bankruptcy Code. Relief pursuant to section 1521(a) of the Bankruptcy Code is "appropriate" when it is the type of "relief previously available under chapter 15's predecessor, [section] 304." *Vitro S.A.B. de CV*, 701 F.3d at 1054. For a court to grant "appropriate relief" under the now-repealed section 304 of the Bankruptcy Code, the court was to "be guided by what w[ould] best assure an economical and expeditious administration of such estate" including consideration of "just treatment of all holders of claims against or interest in such estate[,] protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding," and "prevention of preferential or fraudulent dispositions of property of such estate." 11 U.S.C. § 304 (Repealed Apr. 20, 2005, 119 Stat. 146).

23. The Court is well-positioned to adjudicate the Winter Storm Claims and the due process rights of the Specified Claimants are not impacted in any respect. The Specified Claimants have been properly noticed with respect to this Motion, have received full and proper notice in the Canadian Proceedings with respect to the CCAA Claims Procedures Order and the proposed amendment thereto, and will have a full and fair opportunity to be heard with respect to their Winter Storm Claims. *See* Sachar Declaration. The Court is a particularly convenient forum for the Specified Claimants, who are individuals—as opposed to sophisticated, large financial institutions—based in Texas. *See* Carter Declaration. The Winter Storm Claims are uniquely United States-based, and in particular, Texas-based, as they are filed by Texas-based claimants with alleged customer contracts governed by Texas state law, and such Specified Claimants allege

damages caused by a storm in Texas and the discontinuance of utility services by Texas-based utilities. *See id.* Notably, as discussed below, the REP liability alleged in the Winter Storm Claims is governed by a unique framework of laws specific to the State of Texas. Further, the Court is currently considering a number of other proceedings arising from the Weather Event. Given the Texas-based statutory framework and the Court's particularized knowledge in these circumstances, the Court is well-situated to adjudicate the Winter Storm Claims. As such, adjudication of the Winter Storm Claims before the Court would promote judicial efficiency and assist the Debtors in effectively administering their claims process, all while preserving the rights of all parties with respect thereto. Additionally, application of section 502 of the Bankruptcy Code would protect the Debtors' assets and ensure fair recovery for the Debtors' stakeholders, as the Debtors do not have any liability for the alleged damages that occurred in connection with the Winter Storm Claims.

24. Bankruptcy courts have granted similar requests for application of various provisions of the Bankruptcy Code as "appropriate relief" under 1521(a). *See, e.g.*, *In re Markus,* 610 B.R. 64, 84 (Bankr. S.D.N.Y. 2019) (applying sections 542 and 543 of the Bankruptcy Code as "appropriate relief" to authorize turnover of trust assets); *In re Irish Bank Resolution Corp. Ltd.*, 2014 WL 1759609, at *5 (Bankr. D. Del. 2014) (applying sections 365 and 502(c) of the Bankruptcy Code for purposes of claims estimation in a sale pursuant to section 1521); *Jaffe v. Samsung Elecs. Co.*, 737 F.3d 14, 18 (4th Cir. 2013) (finding that protections under section 365(n) of the Bankruptcy Code should be afforded pursuant to section 1521 of the Bankruptcy Code); *In re ABC Learning Centres Ltd*., 445 B.R. 318, 341 (Bankr. D. Del. 2010) (applying sections 542 and 543 of the Bankruptcy Code, among other relief, pursuant to section 1521 of the Bankruptcy Code).

25. Additionally, granting the relief requested pursuant to the Procedures Order satisfies the requirement under section 1522 of the Bankruptcy Code that the interests of creditors, the debtor, and other interested parties be "sufficiently protected." 11 U.S.C. § 1522(a). Although the Bankruptcy Code does not define "sufficient protection," it "requires a balancing of the interests of [d]ebtors, creditors, and other interested parties." *In re Petroforte Brasileiro de Petroleo Ltda.*, 542 B.R. 899, 909 (Bankr. S.D. Fla. 2015); *see also* H.R. Rep. No. 109-31, pt. 1, at 116 (2005) (providing that such protection is lacking where "it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors").

26. Here, granting the relief requested pursuant to the Procedures Order is appropriate because the interests of all parties will be protected by the adjudication of the Winter Storm Claims in the United States, and in particular, Texas. Notably, the Specified Claimants agree that a Texas court is the appropriate forum to adjudicate the Winter Storm Claims. As part of the Canadian Proceedings, counsel for the Specified Claimants sent a Notice of Dispute of Revision or Disallowance to the Debtors on February 17, 2022, which stated therein that, among other things, "the proper venue for evaluation of the merits of these arguments based in Texas law [regarding the Winter Storm Claims] is a Texas court." *See* Sachar Declaration. The Specified Claimants noted that the unique framework of laws specific to the State of Texas underlying the Winter Storm Claims "is far beyond what can reasonably and efficiently be dealt with by the [Canadian] Court or claims officer through the use of expert evidence to prove, as fact, matters of foreign law." *See id.* Since the Winter Storm Claims are not currently pending in any Texas forum (*i.e.*, the Specified Claimants have merely filed proofs of claim in the Canadian Proceedings but have not commenced any lawsuit), ***the Court is presently the sole Texas-based forum involving the parties*** available to hear the dispute.

27. The Specified Claimants will be afforded the opportunity to be heard by the Court, a forum uniquely familiar with the events leading up to the Winter Storm Claims. Therefore, the relief requested herein will "assist in the efficient administration of [the] cross-border insolvency proceeding . . . [while] not harm[ing] the interest of the debtors or their creditors." *In re Grant Forest Prods., Inc.*, 440 B.R. 616, 621 (Bankr. D. Del. 2010). Accordingly, applying section 502(a) to these chapter 15 cases as requested herein is consistent with the well-established principles underlying the section 1521(a) of the Bankruptcy Code and is appropriate under the circumstances.

B. The Application of Section 502 of the Bankruptcy Code is Appropriate and Warranted Pursuant to Section 1507 of the Bankruptcy Code.

28. The Foreign Representative respectfully submits that the relief requested pursuant to the Procedures Order is also warranted as "additional assistance" under section 1507 of the Bankruptcy Code. 11 U.S.C. § 1507; *Vitro SAB de CV*, 701 F.3d at 1057 (explaining that section 1507's "broad grant of assistance is intended to be a catch-all"); *see also* H.R. Rep. No. 109-31, pt. 1, at 109 (2005) (noting that section 1507 authorizes "additional relief" beyond that available under section 1521 of the Bankruptcy Code). Section 1507(b) of the Bankruptcy Code, in relevant part for this Motion, directs the court to consider "whether such additional assistance, consistent with the principles of comity, will reasonably assure" the:

> (1) just treatment of all holders of claims against or interests in the debtor's property;
>
> (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding; [and]
>
> (3) prevention of preferential or fraudulent dispositions of property of the debtor[.]

11 U.S.C. § 1507.

29. As discussed above, application of section 502 of the Bankruptcy Code to these chapter 15 cases as requested herein reasonably assures the fair and just treatment of all holders of claims, including, specifically, the Specified Claimants who are located in Texas, as such parties will have a full and fair opportunity to be heard before the Court. Given the significant connection of the Winter Storm Claims and the Specified Claimants to the State of Texas, including the fact that any applicable contracts are governed by Texas state law and the REP liability alleged in the Winter Storm Claims is governed by a unique framework of laws specific to the State of Texas, the Court provides a more convenient and recognizable forum to the Specified Claimants and the Debtors in adjudicating the Winter Storm Claims. The second factor—requiring a reasonable assurance of the "protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding"—is satisfied where "creditors are given adequate notice of the timing and procedures for filing claims, and such procedures do not create additional procedures for a foreign creditor seeking to file a claim." *In re Oi S.A.*, 587 B.R. 253, 268 (Bankr. S.D.N.Y. 2018). Here, potential holders of claims were given full and proper notice of the hearings on the CCAA Claims Procedures Order and any amendments with respect thereto, and will have a full and fair opportunity to be heard at such hearings. *See* Sachar Declaration. Further, with respect to adjudication of the Winter Storm Claims before the Court, the "processing of claims" will not occur in the foreign proceeding, so United States-based creditors, including the Specified Claimants who are Texas-based, are necessarily protected from any "prejudice or inconvenience" resulting from their claims not being heard in the United States, and in particular, Texas. The Specified Claimants will have a full and fair opportunity to be heard at the Winter Storm Claims Hearing with respect to the adjudication

of the Winter Storm Claims. No additional procedural burdens will be created, and no substantive right will be eliminated, by applying section 502 to these chapter 15 cases as requested herein.

30. Finally, the requested relief will allow the Court to provide additional assistance to, among other things, prevent fraudulent dispositions of the Debtor's property, thus satisfying the third factor in section 1507(b)(3) of the Bankruptcy Code. More than one-third of the Specified Claimants were not customers of the Debtors at the time of the Weather Event, as previously noted and discussed in further detail below. There is consequently no possible legal, factual, or contractual basis to support their Winter Storm Claims and there is clearly no duty owed by the Debtors given a lack of privity. As such, their Winter Storm Claims, if allowed, would result in an improper disposition of the Debtor's property. Accordingly, sections 1507(b)(3) and 502 of the Bankruptcy Code support the relief requested herein to disallow such Winter Storm Claims and prevent the fraudulent transfer.

C. The Application of Section 502 of the Bankruptcy Code is not Contrary to United States Public Policy.

31. A court may deny a request for any chapter 15 relief that would be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. Courts have emphasized that the "public policy exception" in section 1506 of the Bankruptcy Code is narrow, and its application should be restricted to the most fundamental policies of the United States. *Vitro S.A.B de CV*, 701 F.3d at 1069; *In re Ran*, 607 F.3d 1017, 1021 (5th Cir. 2010); *see also Collins v. Oilsands Quest Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012). Notably, the Fifth Circuit has held that United States courts assessing the fairness of a foreign proceeding under the section 1506 public policy exception "need not engage in an independent determination about the propriety of individual acts of a foreign court," and may not employ the public policy exception simply because some procedural or constitutional rights are absent from the foreign proceeding. *Id.* (noting, for

example, that "[f]ederal courts have enforced against U.S. citizens foreign judgments rendered by foreign courts for whom the very idea of a jury trial is foreign") (quoting *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006)).

32. The Court's application of section 502 to these chapter 15 cases as set forth in the Procedures Order does not violate United States public policy because claims administration is a foundational part of the United States bankruptcy process. The fundamental standards of fairness and due process generally require that each interested party has notice of proceedings and an opportunity to be heard by a neutral court that contends with each party's arguments. Here, any claimant whose claim would be adjudicated by the Court, including the Specified Claimants, will be provided full and proper notice and will have a full and fair opportunity to be heard on account of their claims.[16] Further, the CCAA Claims Procedures Order, as amended, will expressly provide that the Debtors, in consultation with the Monitor, "may, at their election, have any Winter Storm Claim adjudicated and determined by . . . the U.S. Bankruptcy Court, at its discretion." *See* CCAA Claims Procedures Order (as proposed). Parties in interest in the Canadian Proceedings were provided full and proper notice and will have an opportunity to be heard prior to such amendment. *See* Sachar Declaration. As such, application of section 502 of the Bankruptcy Code to these chapter 15 cases as requested herein does not contravene United States public policy and should be granted.

II. The Winter Storm Claims Should be Disallowed Pursuant to Section 502(b) of the Bankruptcy Code.

33. If the Court grants the application of section 502 of the Bankruptcy Code to these chapter 15 cases as requested herein, the Winter Storm Claims should be disallowed pursuant

[16] The Debtors will coordinate with the Specified Claimants on a briefing and adjudication schedule that is agreeable to all parties and the Court.

thereto. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: "[a] claim or interest, proof of which is filed under section 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502.

34. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See, e.g.*, *In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010). A proof of claim loses the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.,* 837 F.2d 696, 698 (5th Cir. 1988). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id*. Despite this shifting burden during the claim objection process, "the ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

35. Importantly, section 502(b)(1) of the Bankruptcy Code also provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. § 502(b)(1). As set forth herein and in the Carter Declaration, and as supported by the Monitor,[17] the Debtors are not liable for the damages alleged in the Winter Storm Claims.

[17] *See* Carter Declaration.

A. The Debtors are Not Responsible for Generation or Delivery of Electricity.

36. The Debtors are not liable for any damages alleged under the Winter Storm Claims because, under applicable Texas state law, REPs are not legally responsible for either the transmission and distribution of energy or a utility's discontinuance of related service.

i. Applicable Statutory Framework.

37. The statutory structure in the Public Utility Regulatory Act ("PURA") limits the liability of REPs, like Just Energy, for fluctuations in power delivery. PURA required that, no later than January 1, 2002, all utilities separate their business activities into three separate units: (a) power generation companies ("PGCs"), which own and operate electric generation facilities and sell their power at wholesale; (b) transmission and distribution utilities ("TDUs"), which own and operate the facilities necessary to transmit and distribute energy; and (c) REPs, which sell electricity to retail customers. PURA § 39.051(b). Under PURA, REPs are prohibited from owning the generation and transmission assets necessary to physically generate electricity and deliver electricity to customers. PURA §§ 31.002(17), 39.105(a). Instead, REPs generally buy electricity from wholesalers, including PGCs. The electricity purchased by REPs is then transmitted over the transmission and distribution facilities owned by TDUs, and delivered to the REP's customers by the TDU.

38. Each TDU in Texas must file with the PUCT a tariff to govern its retail delivery service using the pro forma tariff codified at 16 Tex. Admin. Code § 25.214. The provisions of the pro forma tariff "are requirements that shall be complied with and offered to all REPs and [r]etail [c]ustomers unless otherwise specified." *Id.* The pro forma retail electric tariff includes a number of limitations on liability, including, but not limited to, that: (a) the REP has no ownership, right of control, or duty to a retail customer, or third party, regarding the design, construction, or operation of the TDU's delivery system; and (b) the REP will not be liable to any person or entity

for any damages, direct, indirect, or consequential, including, but without limitation, loss of business, loss of profits or revenue, or loss of production capacity, occasioned by any fluctuations or interruptions of delivery caused, in whole or in part, by the design, construction, or operation of the TDU's delivery system. 16 Tex. Admin. Code § 25.43.

39. Applicable legislation is clear that REPs are not considered public utilities. REPs in Texas are not public utilities under the Federal Power Act by virtue of their sales to retail customers in Texas, and are furthermore explicitly carved out of the definition of "public utility" and "electric utility" under PURA. *See* PURA §§ 11.04, 31.002(6). Consequently, REPs do not have any of the common law or regulatory duties to serve customers that apply to public utilities. Under PURA, it is the electric utility, not the REP, that holds a certificate for a service area and must: "(1) serve every consumer in the utility's certificated area; and (2) provide continuous and adequate service in that area." PURA § 37.151.

ii. *Under the Statutory Framework, The Debtors Have No Liability Under the Winter Storm Claims.*

40. In light of the aforementioned limitations on liability for REPs, the Debtors do not have any liability with respect to the Winter Storm Claims. The relevant Debtor entities (the "Texas Entities")—including, among others, Just Energy Texas LP ("JE Texas"), Tara Energy LLC ("Tara Energy"), and Fulcrum Retail Energy LLC d/b/a Amigo Energy ("Amigo Energy")—are REPs in the state of Texas certified by the PUCT. Their business consists of securing wholesale energy products from the ERCOT market and reselling such energy to their customers. The Texas Entities do not own generation, transmission, or distribution facilities, and have no control over the generation or transmission of electricity, or the delivery of such electricity to their customers, and therefore cannot be liable for the damages asserted in the Winter Storm Claims.

41. Indeed, as noted above, under PURA, REPs, such as the Texas Entities, are prohibited from owning the generation and transmission assets necessary to physically generate electricity and deliver electricity to customers. Instead, transmission, distribution, and delivery of electricity in Texas is controlled by the TDUs, and during any outage event, customers are directed to contact their local TDU for outage notification and repairs. Monthly invoices sent to the Texas Entities' customers explicitly set forth the contact information for the customers' local TDU in case of emergencies and power outages. *See* Carter Declaration.

42. As REPs, the Texas Entities' business is to procure energy on the market, resell it to their customers, keep track of how much electricity is used, and charge their customers accordingly. The Texas Entities had, and currently have, no control over, or relationship to, the actual delivery of electricity to customers' homes or businesses, during the Weather Event or otherwise. As such, if the Specified Claimants experienced a disruption in their electricity service on account of the Weather Event, and such disruption did in fact cause the alleged damages, it was outside of the Texas Entities' control and such entities are not liable for any damages related thereto. There is no causal relationship between the unproven damages alleged in the Winter Storm Claims and the Texas Entities' activities and business model.

iii. *Under Texas Law, the Debtors Have No Liability for Electricity that Was Never Delivered.*

43. It should be noted that the Specified Claimants allege damages with respect to disruption in their electricity service (*i.e.*, where electricity was *not* delivered). As detailed in the foregoing paragraphs, electricity was never delivered to the Specified Claimants during the Weather Event, as service was disconnected by the public transmission and distribution utility companies responsible for such delivery. ***First***, as it relates to strict product liability, under Texas law such liability "applies only if a product is expected to and ***does reach the user*** without

substantial change in the condition in which it is sold." *Houston Light & Power Co. v. Reynolds*, 765 S.W. 2d 784, 786 (Tex. 1989) (emphasis added). ***Second***, as it relates to failure-to-warn product liability, "Texas law does not impose product liability upon a defendant ***that did not supply the product*** that allegedly caused a plaintiff's injuries." *Willis v. Schwarz-Pharma, Inc.*, 62 F. Supp. 3d 560, 567 (E.D. Tex. 2014) (emphasis added); *see also id.* ("[T]here is no liability for a product a manufacturer did not create."). As noted above, by law the Debtors may not generate or deliver electricity to the Specified Claimants. Further, the basis of the Specified Claimants' allegations is that electricity was not supplied or delivered by any party, thus precluding products liability under Texas law.

B. The Debtors' Contractual Provisions Exclude Liability With Respect to the Winter Storm Claims.

44. The Debtors also are excluded from liability with respect to the Winter Storm Claims pursuant to their contractual relationship, if any, with the Specified Claimants (to the extent such Specified Claimant was a customer at the time the events underlying the Winter Storm Claims occurred). The contracts between the Texas Entities and their customers are consistent with the statutory framework outlined herein and do not provide that the Texas Entities will provide power or guarantee an uninterrupted supply of power.

45. For example, contracts with JE Texas provide, among other things, that:

> (1) the customer "understands that Just Energy is not a transmission or distribution utility or any other retail electric provider";
>
> (2) "[o]ur liability under this Agreement is limited to direct actual damages. We are not liable for incidental, consequential, punitive, or indirect damages, lost profits or lost business **<u>or for any act or omission of your Utility</u>**." (emphasis added). Carter Declaration.

46. Similarly, contracts with Tara Energy and Amigo Energy provide, among other things, that:

(1) "[Amigo/Tara] Energy is your Retail Electric Provider ("REP"). [Amigo/Tara] Energy sets the charges you pay for retail electric service. The electricity that [Amigo/Tara] Energy sells to you must be transported to your service location over transmission and distribution systems which will continue to be regulated by the Public Utility Commission of Texas ("PUCT") and owned by a Transmission and Distribution Service Provider ("TDSP") . . . .";

(2) "CUSTOMER ACKNOWLEDGES AND AGREES THAT [AMIGO/TARA] ENERGY DOES NOT PRODUCE, TRANSMIT OR DISTRIBUTE POWER AND, AS A RESULT, [AMIGO/TARA] ENERGY CANNOT WARRANT, AND DOES NOT WARRANT IN ANY MANNER, THE ELECTRICITY . . . [AMIGO/TARA] ENERGY MAKES NO REPRESENTATION AS TO THE SUFFICIENCY, QUALITY OR CONTINUATION OF THE SERVICES PROVIDED HEREIN"; and

(3) "THE REMEDY IN ANY CLAIM OR SUIT BY YOU AGAINST [AMIGO/TARA] ENERGY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES. BY ENTERING INTO THIS AGREEMENT, YOU WAIVE ANY RIGHT TO ANY OTHER REMEDY. IN NO EVENT WILL EITHER TARA ENERGY OR YOU BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES." Carter Declaration.

47. These provisions clearly informed the Specified Claimants that the Texas Entities would not be liable for any interruption of power as a result of acts or omissions of a customer's TDU or otherwise. Further, the Texas Entities' contracts contain clauses that excuse the Texas Entities from performance of the contracts during the duration of any *force majeure* event. *See* Carter Declaration. Accordingly, pursuant to the Debtors' contractual relationship with their customers, the Debtors are not liable for any damages alleged in the Winter Storm Claims.

C. The Winter Storm Claims were Brought Improperly or Present Procedural Infirmities.

48. The Debtors deny any liability on the substance of the Winter Storm Claims and the Debtors' statutory and contractual relationship with its customers. In addition to a lack of merit, several of the Winter Storm Claims are procedurally defective or were brought improperly in the Canadian Proceedings in violation of the CCAA Claims Procedures Order. Notably, only 103 of the Winter Storm Claims specify the amount being claimed, and none of the Specified Claimants provided sufficient documentation supporting their claims. *See id.* The limited documentation provided with respect to only certain Winter Storm Claims is usually only a very basic "individual statement" with a few sentences about the alleged losses. *See id.* While counsel for the Specified Claimants provided supplemental information with respect to certain Winter Storm Claims after the Winter Storm Claims were filed, solely in response to the Notices of Revision or Dispute, the fact remains that the Winter Storm Claims are inadequately supported and, in any event, devoid of merit.

49. Further, a search of the Debtors' records has confirmed that at least 141 of alleged Damages Claimants were not customers of the Debtors during the time period in which the Winter Storm Claims allege the damages occurred—February 13, 2021 to February 20, 2021. *See id.* There were a further 50 instances where the customer name at the address provided by the Damages Claimant does not match the Damages Claimant's name. *See id.* The Winter Storm Claims with respect to non-customers are therefore improper and should be disallowed for that reason as well, and necessarily raise considerable doubt with respect to the integrity of the remainder of the Winter Storm Claims.

D. The Debtors' Directors and Officers are Not Liable for the Winter Storm Claims.

50. Given the Debtors' lack of liability with respect to the Winter Storm Claims, their directors and officers have no liability either and the Winter Storm D&O Claims should be disallowed.

51. Additionally, based on the information provided, the Winter Storm D&O Claims are insufficiently articulated and insufficiently particularized against any of the individual officers and directors of the relevant Debtors at the time they are alleged to have occurred. There is no legal basis under Canadian or United States law for imposing personal liability on directors and officers for the contractual or statutory claims brought forth in the Winter Storm D&O Claims. In particular, the Winter Storm D&O Claims fail to allege any independent acts taken by any of the individual directors and officers at any relevant time for which they may be personally liable.

52. The Debtors have reviewed all relevant information to determine that each of the Winter Storm Claims (a) fails to establish any legal or factual basis for a valid claim against the Debtors, (b) seeks recovery for unsubstantiated amounts for which the Debtors are not liable, (c) was improperly asserted against a Debtor that is not obligated, and/or (d) is inconsistent with the Debtors' books and records. As such, the Foreign Representative respectfully requests that the Court apply section 502(b) of the Bankruptcy Code and, after the Winter Storm Claims Hearing, disallow the Winter Storm Claims in their entirety as set forth in the Orders.

53. As the Winter Storm Claims are invalid as a matter of law and contractual interpretation, the Debtors request the Winter Storm Claims Hearing to determine whether the Winter Storm Claims should be disallowed as a threshold issue of law. The Foreign Representative respectfully submits that the Winter Storm Claims Hearing will avoid an unnecessary waste of judicial resources and the expense by the parties on unnecessary discovery. In their proofs of

claim, the Specified Claimants have not established that their claims have any indicia of validity. The Debtors, on the other hand, posit that there is no possible set of facts or legal argument to support any Winter Storm Claim for many of the Specified Claimants, as they were not customers of the Debtors at the time of the Weather Event and had no contractual or other relationship with the Debtors at the time of the harm alleged in the Winter Storm Claims. For the remaining Specified Claimants who were customers at the time of the Weather Event, the Debtors argue that the law is clear—REPs have no liability whatsoever, as a simple matter of law, for a transmission and distribution utility's discontinuance of service. The threshold issue here is akin to a hearing on whether a statute of limitations has expired. If so, the claims cannot go forward in any capacity and allowing discovery or an evidentiary trial would be unnecessary and a waste of significant resources. Accordingly, the Foreign Representative, on behalf of the Debtors, requests that the Court grant the requested relief scheduling the Winter Storm Claims Hearing and expedited briefing on the single threshold issue of law—whether a REP can be held liable for another party's (*i.e.*, the utility provider's) discontinuance of service during a storm.

Notice[18]

54. The Foreign Representative will provide notice of this Motion to: (a) the Office of the United States Trustee; (b) the United States Attorney's Office for the Southern District of Texas; (c) the administrative agent to the Senior Secured Credit Facility and counsel thereto; (d) the administrative agent to the Term Loan; (e) the administrative agent to the Subordinated Notes; (f) all persons or bodies authorized to administer the Canadian Proceedings; (g) any other parties of which the Foreign Representative becomes aware that are required to receive notice

[18] Capitalized terms used but not otherwise defined in this section shall have the meanings ascribed to them in the Petition.

pursuant to Bankruptcy Rule 2002(q); (h) the Specified Claimants; and (i) such other entities as this Court may direct satisfies the requirements of Bankruptcy Rule 2002(q). The Foreign Representative submits that, in light of the nature of the relief requested, no other or further notice need be given.

Conclusion

55. The Foreign Representative, on behalf of the Debtors, respectfully requests that the Court enter the Orders, granting the relief requested herein and such other and further relief as may be just and proper.

Houston, Texas
May 31, 2022

Respectfully Submitted,

/s/ Matthew D. Cavenaugh
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Certificate of Service

I certify that on May 31, 2022, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavenaugh
Matthew D. Cavenaugh

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	)	Chapter 15
	)	
JUST ENERGY GROUP INC., *et al.*,	)	Case No. 21-30823 (MI)
	)	
Debtors in a Foreign Proceeding,[1]	)	
	)	(Jointly Administered)
	)	

ORDER (I) APPLYING SECTION 502 OF THE BANKRUPTCY CODE TO THESE CHAPTER 15 CASES, (II) SCHEDULING A HEARING AND RELATED DEADLINES FOR THE ADJUDICATION OF CERTAIN CLAIMS, AND (III) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] filed by the Foreign Representative as the "foreign representative" of the Debtors, pursuant to sections 105, 502, 1507, 1521, and 1527(3) of the Bankruptcy Code, for entry of an order (this "Order"), in relevant part: (a) applying section 502 of the Bankruptcy Code to these chapter 15 cases; (b) scheduling a hearing and related deadlines for the adjudication of the Winter Storm Claims; and (c) granting related relief, all as more fully set forth in the Motion; and upon consideration of the Carter Declaration and Sachar Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 109 and 1501; and venue being proper before this Court pursuant to § 1410(1) and (3); and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order

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[1] The identifying four digits of Debtor Just Energy Group Inc.'s local Canada tax identification number are 0469. Due to the large number of debtor entities in these chapter 15 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at www.omniagentsolutions.com/justenergy. The location of the Debtors' service address for purposes of these chapter 15 cases is: 100 King Street West, Suite 2360, Toronto, ON, M5X 1E1.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and this Court having held a hearing to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY FOUND AND DETERMINED THAT**:

A. This Court previously entered the Recognition Order [Docket No. 82] on April 2, 2021, where findings were made that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein and such Recognition Order shall continue in effect in all respects except to the extent this Order directly modifies or directly contradicts such Recognition Order.

B. The Recognition Order provided, in paragraph 34, that: "All parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding." On September 15, 2021, the Canadian Court entered the CCAA Claims Procedures Order, which, among other things, approved the claims procedures for the identification, quantification, and resolution of certain claims of creditors of the Debtors and their directors and officers and established a general claims bar date. On [June 7], 2022, the Canadian Court entered an order amending the CCAA Claims Procedures Order. As amended, the CCAA Claims Procedures Order permits the Debtors, in consultation with the Monitor, to request, in their sole discretion, to have certain disputed claims adjudicated and determined by this Court. Following the applicable procedures in the CCAA Claims Procedures Order, the

Debtors have, with the support of the Monitor, requested to have the Winter Storm Claims adjudicated and determined by this Court pursuant to the procedures set forth below.

C. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15 of the Bankruptcy Code to protect the Debtors and the interests of their creditors and other parties in interest, is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted.

D. Absent the requested relief, the efforts of the Debtors, the Canadian Court, and the Foreign Representative in conducting the Canadian Proceedings and effectuating the restructuring under Canadian law may be frustrated, a result contrary to the purposes of chapter 15 of the Bankruptcy Code.

E. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on, the Motion was given, which notice is adequate for all purposes, and no further notice need be given.

F. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the grant of relief ordered hereby. The relief granted herein will, in accordance with sections 1507(b) and 1521 of the Bankruptcy Code, reasonably assure: (a) the just treatment of all applicable holders of claims against or interests in the Debtors' property; and (b) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Canadian Proceedings, in light of the unique laws specifically governing REP liability in the State of Texas and the specific facts and circumstances of the Winter Storm Claims.

G. The Specified Claimants are all located within the United States and the Winter Storm Claims are based on a storm that occurred within the United States and related alleged harms that occurred within the United States and are governed solely by the laws of the State of Texas and the United States and/or by contracts governed by United States laws. Accordingly, this Court accepts the Foreign Representative's request, and the Canadian Court's endorsement, to have the Winter Storm Claims adjudicated and determined by this Court in these chapter 15 cases in accordance with section 502 of the Bankruptcy Code and on the terms and procedures set forth herein.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is granted.

2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits.

3. The Debtors are authorized to, in accordance with the CCAA Claims Procedures Order, as amended, have the Winter Storm Claims adjudicated and determined by this Court. Section 502 of the Bankruptcy Code shall apply to these chapter 15 cases with respect to such adjudication. The Winter Storm Claims shall be adjudicated and determined by this Court in accordance with section 502 of the Bankruptcy Code on the terms and procedures set forth herein.

4. The parties shall brief the following threshold issue (the "Threshold Issue") in a memorandum of law (a "Memorandum"): whether the Debtors can be held liable as a matter of contract or applicable law for the discontinuance of utility services to any of the Specified Claimants which occurred as a result of the Winter Storm Event which occurred from

February 13, 2021 through February 20, 2021. The Specified Claimants shall file their Memorandum with the Clerk of the United States Bankruptcy Court for the Southern District of Texas by no later than **[●], 2022, at 5:00 p.m. (prevailing Central Time)** and serve a copy of the Memorandum so as to be ***actually received*** by no later than **[●], 2022 at 5:00 p.m. (prevailing Central Time)** to each of: (a) the Debtors; (b) counsel to the Debtors, (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Brian Schartz, P.C. (brian.schartz@kirkland.com) and Allyson B. Smith (allyson.smith@kirkland.com), and (ii) Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn: Matthew D. Cavenaugh (mcavenaugh@jw.com) and Genevieve M. Graham (ggraham@jw.com); (c) the Monitor, FTI Consulting Canada Inc., Just Energy Monitor, P.O. Box 104, TD South Tower, 79 Wellington Street West, Toronto Dominion Centre, Suite 2010, Toronto, Ontario, M5K 1G8, Attn: Paul Bishop (paul.bishop@fticonsulting.com) and Jim Robinson (jim.robinson@fticonsulting.com); (d) counsel to the Monitor, (i) Thornton Grout Finnigan LLP, 100 Wellington St W, Suite 3200 Toronto, ON M5K 1K7, Attn: Robert Thornton (rthornton@tgf.ca) and Rebecca Kennedy (rkennedy@tgf.ca), and (ii) Porter Hedges LLP, 1000 Main St, 36th Floor Houston, TX 77002, Attn: John F. Higgins (jhiggins@porterhedges.com). Any party wishing to respond to the Memorandum of the Specified Claimants may file a responsive Memorandum by **[●], 2022, at 5:00 p.m. (prevailing Central Time)**, and serve a copy of their Memorandum upon counsel to the Specified Claimants so as to be ***actually received*** by no later than **[●], 2022 at 5:00 p.m. (prevailing Central Time)**.

5. A hearing to consider the Threshold Issue and oral argument related thereto shall be conducted on **[●], 2022 at [●] [a.m./p.m.] (prevailing Central Time)** by [virtual electronic hearing] at the United States Bankruptcy Court for the Southern District of Texas.

No evidentiary evidence shall be submitted or presented at the initial hearing on the Threshold Issue.

6. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Houston, Texas
Dated: ___________, 2022

____
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 15
JUST ENERGY GROUP INC., *et al.*,	)	Case No. 21-30823 (MI)
Debtors in a Foreign Proceeding,[1]	)	(Jointly Administered)

ORDER (I) DISALLOWING CERTAIN CLAIMS PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] filed by the Foreign Representative as the "foreign representative" of the Debtors, pursuant to sections 105, 502, 1507, and 1521 of the Bankruptcy Code, for entry of an order (this "Order"), in relevant part: (a) disallowing the Winter Storm Claims pursuant to section 502 of the Bankruptcy Code; and (b) granting related relief, all as more fully set forth in the Motion; and upon consideration of the Carter Declaration and Sachar Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 109 and 1501; and venue being proper before this Court pursuant to § 1410(1) and (3); and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief

[1] The identifying four digits of Debtor Just Energy Group Inc.'s local Canada tax identification number are 0469. Due to the large number of debtor entities in these chapter 15 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at www.omniagentsolutions.com/justenergy. The location of the Debtors' service address for purposes of these chapter 15 cases is: 100 King Street West, Suite 2360, Toronto, ON, M5X 1E1.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

requested in the Motion is necessary and beneficial to the Debtors; and this Court having held a hearing to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY FOUND AND DETERMINED THAT**:

A. This Court previously entered the Recognition Order [Docket No. 82] on April 2, 2021, where findings were made that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein and such Recognition Order shall continue in effect in all respects except to the extent this Order directly modifies or directly contradicts such Recognition Order.

B. The Recognition Order provided, in paragraph 34, that: "All parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding." On September 15, 2021, the Canadian Court entered the CCAA Claims Procedures Order, which, among other things, approved the claims procedures for the identification, quantification, and resolution of certain claims of creditors of the Debtors and their directors and officers and established a general claims bar date. On [June 7], 2022, the Canadian Court entered an order amending the CCAA Claims Procedures Order. As amended, the CCAA Claims Procedures Order permits the Debtors, in consultation with the Monitor, to request, in their sole discretion, to have certain disputed claims adjudicated and determined by this Court. Following the applicable procedures in the CCAA Claims Procedures Order, the Debtors, with the support of the Monitor, requested to have the Winter Storm Claims adjudicated

and determined by this Court pursuant to the procedures set forth below. On [June 22], 2022, this Court granted the Debtors' request [Docket No. [●]].

C. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15 of the Bankruptcy Code to protect the Debtors and the interests of their creditors and other parties in interest, is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted.

D. Absent the requested relief, the efforts of the Debtors, the Canadian Court, and the Foreign Representative in conducting the Canadian Proceedings and effectuating the restructuring under Canadian law may be frustrated, a result contrary to the purposes of chapter 15 of the Bankruptcy Code.

E. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on, the Motion was given, which notice is adequate for all purposes, and no further notice need be given.

F. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the grant of relief ordered hereby. The relief granted herein will, in accordance with sections 1507(b) and 1521 of the Bankruptcy Code, reasonably assure: (a) the just treatment of all applicable holders of claims against or interests in the Debtors' property; and (b) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Canadian Proceedings, in light of the unique framework of laws specific to the State of Texas governing REP liability and the specific facts and circumstances surrounding the Winter Storm Claims.

G. The Specified Claimants are all located within the United States and the Winter Storm Claims are based on a storm that occurred within the United States and related alleged harms that occurred within the United States and are governed solely by the laws of the State of Texas and the United States and/or by contracts governed by United States laws.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is granted.

2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

3. Each of the Damages Claims listed on **Schedule 1** attached hereto is disallowed and expunged in its entirety. The Debtors do not have any liability with respect to the Damages Claims and such Damages Claims shall not be recognized for purposes of the Canadian Proceedings. The Specified Claimants shall not receive any distribution on account of the Damages Claims.

4. Each of the Winter Storm D&O Claims listed on **Schedule 2** attached hereto is disallowed and expunged in its entirety. The Debtors' directors and officers do not have any liability with respect to the Winter Storm D&O Claims and such Winter Storm D&O Claims shall not be recognized for purposes of the Canadian Proceedings. The Specified Claimants shall not receive any distribution on account of the Winter Storm D&O Claims.

5. Omni Agent Solutions, as the Debtors' claims, noticing, and solicitation agent, and the Monitor are authorized to update the claims register in the Canadian Proceedings to reflect the relief granted in this Order, subject to compliance with any requirements in the Canadian Proceedings with respect to updates to the claims register.

6. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Houston, Texas
Dated: ___________, 2022

____
UNITED STATES BANKRUPTCY JUDGE

Schedule 1[1]

Damages Claims

[1] All dollar values listed herein are in USD.

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11141	Jesus Morales	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11143	Wardrick Atkins	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11144	Tamera Munoz	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11146	Uncle Chuck's Barbershop	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11148	Aniyah Poelinitz	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11150	Whysomuchmoney Entertainment	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11151	Mark Wade	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11152	John England	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11153	Stacy Brannon	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11156	Veronica Lara on behalf of minor child EG	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11157	Veronica Lara	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11159	Aleida Escuadra	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11161	Bridget Carroll	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11163	Abel Flores	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas L.P.	N/A
PC-11166	Jennifer Box	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11168	Wesley Curry	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11169	Wendy Dosewell	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11171	Marion Fortin	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11176	Robert Frick	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11178	Marjorie Green	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11179	Charlotte Hamlett	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11180	Martha Hodges	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11182	Dede African Food Factory	Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP., Tara Energy, LLC	N/A
PC-11183	Cynthia Morris	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11185	Emmanuel Onwichekwa	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11186	Joanna Palacios	Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP., Tara Energy, LLC	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11189	Byron Shaw	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11190	Petronila Torres	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11192	Sandra Alonzo	Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP., Tara Energy, LLC	N/A
PC-11194	Leler Sanders	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11195	Gaye Allen	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11197	Mysterys&More	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11198	Tiffany Bailey	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11199	Dulce Bobadilla	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11200	Dulce Bobadilla and Alfredo Bobadilla, Individually and as heirs of the Estate of Ana Luisa Lara	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11201	Dora Brown	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11202	John Davis	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11204	Shalea Finch	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11205	Cheryl Frazier	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11207	Theobaldo Garcia	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11209	Robert Hickson	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11210	Gas and Grease Automotive Repair	Hudson Energy Corp., Hudson Energy Services LLC, Hudson Parent Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11211	David Nesbett	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11212	Cynthia Ruiz	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11213	Melissa Schroth	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11214	Carla Taramona	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11215	Timothy Thomas	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11216	America Aida Avila	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11217	Johanns Crupi	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11218	Tom Rajan	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11219	Jeffery Stiles	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11220	Modern Back and Neck Clinic	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11221	Richard Davidson	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11222	Matthew Haughton	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11223	Daniel Davis	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11224	Luz Paoli	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11225	John Mather	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11226	Carl Smith Individually and as heir of The Estate of Sundae McCann and on behalf of minor children B	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11227	Zephyr Jones	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11228	Cindy Tippins	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11229	Cheryl Hayes Anthony Clark Timothy Clark and Cynthia Clark Individually and as heirs of the Estate o	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11230	Santiago Pena Designs	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11231	Santiago Pena	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11232	Renee Devillier	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11233	Gabrielle Guillory-Davis	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11234	Luxury Medical Solutions	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11235	James Schultz	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11236	Stephen Hooks	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11237	Cindy Moreland	Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP., Tara Energy, LLC	N/A
PC-11238	Miguel Angel Vargas	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11239	Edelmira Garza	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11240	Sheree Alvarado	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11241	Bernardo Gomez	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11242	Donald Leindecker	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11243	Roxanna Palacios	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11244	Mohamed Selim	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11245	Wind Global	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11246	Kyisha Wright	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11247	Charlene Adams	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11248	Lee Lee's Creations	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11249	Sheila Lofton	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11250	RIGOR Reaching Individual Goals Through Online Readiness	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11251	Patricia Nichols	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11252	Muzette Pace	Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP., Tara Energy, LLC	N/A
PC-11253	Cynthia Renee Olivari	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11254	Carneisha Sims	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11255	Jamie Jackson	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11256	Maria Trinidad Martinez	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11257	Maria Trinidad, Laura Salvador Rodriguez, Norma Martin Aguirre, Isaias Salazar, Mario E Martinez, Jo	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11258	Shelby Rodriguez	Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP., Tara Energy, LLC	N/A
PC-11259	Adelfa Parrish	Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas L.P., Tara Energy, LLC	N/A
PC-11260	Michael Shannon	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP., Just Solar Holdings Corp.	N/A
PC-11261	Ryan Blakeney	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11262	Nathan McCormick	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11263	Sharon Diane Thomas	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11264	Ausino Lavan	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11265	Danny Molina	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11266	Betty Ann Leonard	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11267	Lisa Honorable	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11268	Leeann Brewer	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11269	Robert Forrest McDaniel	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11270	Annette Williams	Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11271	Annie Matthews	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11272	Robbie Ruff, Samiel Taft and Tammy Riggs, Individually and as Heirs of the Estate of Patricia Taft	Just Energy Corp., Just Energy Group Inc., Just Energy Texas I Corp., Just Energy Texas LP.	N/A
PC-11288-1	Tammy Lynette Tepera	Just Energy, Amigo Energy	$ 300.00
PC-11289-1	Christine Lamb	Just Energy, Amigo Energy	$ 3,000.00
PC-11290-1	Edward Meader	Just Energy, Amigo Energy	$ 4,500.00
PC-11291-1	Kristin Adams	Just Energy, Amigo Energy	$ 4,900.00
PC-11292-1	Jorge A Ramírez	Just Energy, Amigo Energy	$ 3,680.00
PC-11293-1	George w brown	Just Energy, Amigo Energy	$ 360.00
PC-11294-1	Donna Adibe	Just Energy, Amigo Energy	$ 60,000.00
PC-11295-1	David W. Jolivette Sr.	Just Energy, Amigo Energy	$ 2,000.00
PC-11296-1	Shawn C Gunter	Just Energy, Amigo Energy	$ 2,000.00
PC-11297-1	Vanessa Hacker	Just Energy, Amigo Energy	Undetermined
PC-11298-1	Brandon Gaston	Just Energy, Amigo Energy	$ 5,000.00
PC-11299-1	Shunda Wooden	Just Energy, Amigo Energy	$ 2,500.00
PC-11300-1	Juan Miguel Torres	Just Energy, Amigo Energy	$ 4,000.00
PC-11301-1	Gordon Stangl	Just Energy, Amigo Energy	$ 630.00
PC-11302-1	Michael Evans	Just Energy, Amigo Energy	Undetermined
PC-11303-1	Penny Hawkins	Just Energy, Amigo Energy	$ 500.00
PC-11304-1	Charles Randell Gray	Just Energy, Amigo Energy	$ 5,000.00
PC-11305-1	Rigoberto Vazquez	Just Energy, Amigo Energy	$ 500.00
PC-11306-1	Reuben ramdeo	Just Energy, Amigo Energy	$ 8,000.00
PC-11307-1	Esteban Rodriguez	Just Energy, Amigo Energy	$ 5,000.00
PC-11308-1	Marisol Valdes	Just Energy, Amigo Energy	$ 16,000.00
PC-11309-1	Charles Choice	Just Energy, Amigo Energy	$ 23,700.00
PC-11310-1	Danny D Gonzales	Just Energy, Amigo Energy	$ 280.00
PC-11311-1	Laroya Compton	Just Energy	$ 1,000.00
PC-11312-1	Cherrilyn Nedd	Just Energy	$ 185,000.00
PC-11313-1	Leonard Ware	Just Energy	$ 3,292.00
PC-11314-1	Keith Gipson	Just Energy	$ 81,000.00
PC-11315-1	Erma D Hurd	Just Energy	$ 900.00
PC-11316-1	John M Jones	Just Energy	$ 18.00
PC-11317-1	Xzayvier Brown	Just Energy	$ 10,000.00
PC-11318-1	La'Tyya M Moore	Just Energy	$ 2,200.00
PC-11319-1	Roseanna Zapata	Just Energy	$ 3,055.00
PC-11320-1	Tiffany Franke	Just Energy	$ 14,700.00
PC-11321-1	Martha Collins	Just Energy	$ 135.00
PC-11322-1	Henry Jackson	Just Energy	$ 2,000.00

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11323-1	Charlie Millican	Just Energy	$ 12,000.00
PC-11324-1	Debra Franklin	Just Energy	$ 2,000.00
PC-11325-1	Hollis Townsend	Just Energy	Undetermined
PC-11326-1	Shavonte Wonzer	Just Energy	$ 1,500.00
PC-11327-1	Jenessa Carr	Just Energy	$ 2,000.00
PC-11328-1	Diane Parker	Just Energy	Undetermined
PC-11329-1	Fabiola Aguilar	Just Energy	$ 400.00
PC-11330-1	Judith Yarbro	Just Energy	Undetermined
PC-11331-1	Brenda Carol Eubanks	Just Energy	$ 3,926.00
PC-11332-1	Debra Johnson chapple	Just Energy	$ 2,800.00
PC-11333-1	Debra Franklin	Just Energy	$ 2,500.00
PC-11334-1	Nicole Kubes	Just Energy	Undetermined
PC-11335-1	Beyoncé Franklin	Just Energy	$ 2,500.00
PC-11336-1	Taj Tucker	Just Energy	$ 8,500.00
PC-11337-1	Brandy Thorn	Just Energy	$ 10,000.00
PC-11338-1	Felicia Frazier	Just Energy	$ 50,000.00
PC-11339-1	James Roy Franklin	Just Energy	$ 2,500.00
PC-11340-1	Aaron Franklin	Just Energy	$ 2,500.00
PC-11341-1	Catherine Rebecca Fisher	Just Energy	$ 4,000.00
PC-11342-1	Leonard Clements	Just Energy	$ 5,000.00
PC-11343-1	Irvina Lord	Just Energy	$ 500.00
PC-11344-1	Francisca Zamago	Just Energy	$ 1,000.00
PC-11345-1	Vivian Hanchett	Just Energy	$ 5,000.00
PC-11346-1	Garth E. Allmond	Just Energy	$ 3,500.00
PC-11347-1	Miss. Gladys Sims	Just Energy	$ 40,000.00
PC-11348-1	Arthur & Sandra Hypolite	Just Energy	$ 67,740.78
PC-11349-1	Linda	Just Energy	$ 4,300.00
PC-11350-1	Patricia Chaney	Just Energy	Undetermined
PC-11351-1	Camellia R. Ordia	Just Energy	$ 20,000.00
PC-11352-1	Carlos A Martínez	Just Energy	$ 1,800.00
PC-11353-1	Tery & Kary Smith	Just Energy	$ 4,441.17
PC-11354-1	Judith Ann Gordon	Just Energy	$ 900.00
PC-11355-1	Camani J Rigmaiden	Just Energy	$ 12,000.00
PC-11356-1	Lanita Edwards	Just Energy	$ 10,000.00
PC-11357-1	Tashla Curry	Just Energy	$ 20,000.00
PC-11358-1	Carol Ann Davis	Just Energy	$ 7,000.00
PC-11359-1	Michael Ward	Just Energy	$ 1,500.00
PC-11360-1	Alfred Loya	Just Energy	$ 90,000.00
PC-11361-1	Teresa Sanchez	Just Energy	$ 1,500.00
PC-11362-1	Halima Ahmed	Just Energy	$ 17,000.00
PC-11363-1	Cindy chase	Just Energy	$ 44,000.00
PC-11364-1	Leda Lewis	Just Energy	$ 1,500.00
PC-11365-1	Margie Knoxson	Just Energy	$ 500.00
PC-11366-1	Reginald Johnson	Just Energy	$ 208.00
PC-11367-1	Mary Thomas	Just Energy	$ 33,000.00
PC-11368-1	Jennifer Smith	Just Energy	Undetermined
PC-11369-1	Regina Brown	Just Energy	$ 567.00
PC-11370-1	Jazman Jackson	Just Energy	$ 9,000.00
PC-11371-1	Mark Landois	Just Energy	$ 1,500.00
PC-11372-1	Kim Ngo	Just Energy	$ 1,300.00
PC-11373-1	Crystal D.Crawford	Just Energy	$ 300.00
PC-11374-1	Jeff Wager	Just Energy	Undetermined
PC-11375-1	Celia Crecy	Just Energy	$ 2,500.00
PC-11376-1	Color Station LLC	Just Energy	$ 44,900.00
PC-11377-1	Banner R. Stanley	Just Energy	$ 10,700.00

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11378-1	Jennifer Williams	Just Energy	$ 1,000.00
PC-11379-1	Rosendo Reyna jr.	Just Energy	$ 700.00
PC-11380-1	Brenda Sue Robinson	Just Energy	$ 10,000.00
PC-11381-1	Amy Ponce	Just Energy	$ 2,075.00
PC-11382-1	Verneisha Polk	Just Energy	$ 4,000.00
PC-11383-1	Juanita R. Martinez	Just Energy	$ 1,000.00
PC-11384-1	Shirley Yvonne Mack	Just Energy	$ 26,200.00
PC-11385-1	Adrianna Shaw	Just Energy	Undetermined
PC-11386-1	Audrey Shaw	Just Energy	Undetermined
PC-11387-1	Lakisha Crew	Just Energy	$ 1,224.00
PC-11388-1	Susan Donnell	Just Energy	Undetermined
PC-11389-1	Edward Daniel Puente	Just Energy, Tara Energy	$ 65,000.00
PC-11390-1	Paulette Primes	Just Energy, Tara Energy	Undetermined
PC-11391-1	Susan Polk Clark	Just Energy, Tara Energy	$ 6,225.00
PC-11392-1	Santiago Pena	Just Energy, Just Energy Texas	$ 650,000.00
PC-11393-1	Stellavolta LLC	Just Energy, Just Energy Texas	$ 40,000.00
PC-11394-1	Lynn Wesbrooks	Just Energy, Amigo Energy	$ 48,000.00
PC-11395-1	Amalia Bankhead	Just Energy, Amigo Energy	$ 150.00
PC-11396-1	Rahim Bhamani	Just Energy	$ 1,000.00
PC-11397-1	Velma Kimble	Just Energy	$ 4,000.00
PC-11398-1	Rosiland Meeks	Just Energy	$ 11,000.00
PC-11399-1	Elizabeth Montemayor	Just Energy	$ 3,000.00
PC-11400-1	Randy Childers	Just Energy, Hudson Energy	$ 170,000.00
PC-11401-1	Wesley Anthony Conner III	Just Energy	Undetermined
PC-11402-1	Marcus Johnson	Just Energy	Undetermined
PC-11403-1	Josè Carreon	Just Energy, Amigo Energy	Undetermined
PC-11404-1	Beltine Koh	Just Energy, Amigo Energy	Undetermined
PC-11405-1	Wanda Dodson	Just Energy, Amigo Energy	Undetermined
PC-11406-1	Homero Olivarez Jr	Just Energy, Amigo Energy	Undetermined
PC-11407-1	Hilda Garcia	Just Energy, Amigo Energy	Undetermined
PC-11408-1	Guadalupe Sanchez	Just Energy, Amigo Energy	Undetermined
PC-11409-1	Maria Sanchez	Just Energy, Amigo Energy	Undetermined
PC-11410-1	Benjamin Colon	Just Energy, Amigo Energy	Undetermined
PC-11411-1	Lisseth Garza	Just Energy, Amigo Energy	Undetermined
PC-11412-1	Natalia Pena	Just Energy, Amigo Energy	Undetermined
PC-11413-1	Mario Delgado	Just Energy, Amigo Energy	Undetermined
PC-11414-1	Thery Graham	Just Energy, Amigo Energy	Undetermined
PC-11415-1	Felipe Moreno	Just Energy, Amigo Energy	Undetermined
PC-11416-1	Lisa Egan	Just Energy, Hudson Energy	Undetermined
PC-11417-1	Dolores Lowe	Just Energy	Undetermined
PC-11418-1	Shawmona Johnson	Just Energy, Just Energy Texas	Undetermined
PC-11419-1	Deryk Jones	Just Energy, Just Energy Texas	Undetermined
PC-11420-1	Steven Matthews	Just Energy, Just Energy Texas	Undetermined
PC-11421-1	Meagan Jones	Just Energy, Just Energy Texas	Undetermined
PC-11422-1	Andre West	Just Energy, Just Energy Texas	Undetermined
PC-11423-1	Maria Romo	Just Energy, Just Energy Texas	Undetermined
PC-11424-1	Jennette Addison	Just Energy, Just Energy Texas	Undetermined
PC-11425-1	Robert Rush	Just Energy, Just Energy Texas	Undetermined
PC-11426-1	Robert Rush	Just Energy, Just Energy Texas	Undetermined
PC-11427-1	James Wilson	Just Energy, Just Energy Texas	Undetermined
PC-11428-1	Takesha Owens	Just Energy, Just Energy Texas	Undetermined
PC-11429-1	Mekisha Mims	Just Energy, Just Energy Texas	Undetermined
PC-11430-1	Shirley Dorsey	Just Energy, Just Energy Texas	Undetermined
PC-11431-1	Richard Crampton	Just Energy, Just Energy Texas	Undetermined
PC-11432-1	Renda Justice	Just Energy, Just Energy Texas	Undetermined
PC-11433-1	Pearline Harper	Just Energy, Just Energy Texas	Undetermined

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11434-1	Leroy Delgado	Just Energy, Just Energy Texas	Undetermined
PC-11435-1	Jennifer Smith	Just Energy, Just Energy Texas	Undetermined
PC-11436-1	Claudia Snow	Just Energy, Just Energy Texas	Undetermined
PC-11437-1	Phyllis Hawkins	Just Energy, Just Energy Texas	Undetermined
PC-11438-1	Antonio Franco	Just Energy, Just Energy Texas	Undetermined
PC-11439-1	Kendra Vega	Just Energy, Just Energy Texas	Undetermined
PC-11440-1	Shenae Sarabia	Just Energy, Just Energy Texas	Undetermined
PC-11441-1	Arthur Lord	Just Energy, Just Energy Texas	Undetermined
PC-11442-1	William Lord	Just Energy, Just Energy Texas	Undetermined
PC-11443-1	Yolanda Yvonne Williams	Just Energy, Just Energy Texas	Undetermined
PC-11444-1	Dannette Owens	Just Energy, Just Energy Texas	Undetermined
PC-11445-1	Nick Dilley	Just Energy, Just Energy Texas	Undetermined
PC-11446-1	Francis Zamago	Just Energy, Just Energy Texas	Undetermined
PC-11447-1	Alfred Garcia	Just Energy, Just Energy Texas	Undetermined
PC-11448-1	Vicky Humbarger	Just Energy, Just Energy Texas	Undetermined
PC-11449-1	Lamanda Capehart	Just Energy, Just Energy Texas	Undetermined
PC-11450-1	Rosie Scurry	Just Energy, Just Energy Texas	Undetermined
PC-11451-1	Victoria Salgado	Just Energy, Just Energy Texas	Undetermined
PC-11452-1	Cruz Talavera	Just Energy, Just Energy Texas	Undetermined
PC-11453-1	Wilfredo Talavera	Just Energy, Just Energy Texas	Undetermined
PC-11454-1	Cynthia Garcia	Just Energy, Just Energy Texas	Undetermined
PC-11455-1	Robert Rodriguez	Just Energy, Just Energy Texas	Undetermined
PC-11456-1	Alyssa Mendez	Just Energy, Just Energy Texas	Undetermined
PC-11457-1	Tiffany Zambrano	Just Energy, Just Energy Texas	Undetermined
PC-11458-1	Julian Gonzales	Just Energy, Just Energy Texas	Undetermined
PC-11459-1	Ernest Mendez	Just Energy, Just Energy Texas	Undetermined
PC-11460-1	Luisa Williams	Just Energy, Just Energy Texas	Undetermined
PC-11461-1	Pamela Statzer	Just Energy, Just Energy Texas	Undetermined
PC-11462-1	Richard Garza	Just Energy, Just Energy Texas	Undetermined
PC-11463-1	Brandy Thorn	Just Energy, Just Energy Texas	Undetermined
PC-11464-1	Lisa Viser	Just Energy, Just Energy Texas	Undetermined
PC-11465-1	Cassandra Brown	Just Energy, Just Energy Texas	Undetermined
PC-11466-1	Yamen Ayed	Just Energy, Just Energy Texas	Undetermined
PC-11467-1	Oneshia Nunn	Just Energy, Just Energy Texas	Undetermined
PC-11468-1	Melissa Anz	Just Energy, Just Energy Texas	Undetermined
PC-11469-1	Maria Nely Perez	Just Energy, Just Energy Texas	Undetermined
PC-11470-1	Larry Spencer	Just Energy, Just Energy Texas	Undetermined
PC-11471-1	Lucille Harris	Just Energy, Just Energy Texas	Undetermined
PC-11472-1	Elisa Segura	Just Energy, Just Energy Texas	Undetermined
PC-11473-1	Leticia Reyes	Just Energy, Just Energy Texas	Undetermined
PC-11474-1	Janis Kimling	Just Energy, Just Energy Texas	Undetermined
PC-11475-1	Randy Hall	Just Energy, Just Energy Texas	Undetermined
PC-11476-1	Juan Torres	Just Energy, Just Energy Texas	Undetermined
PC-11477-1	Juan Torres	Just Energy, Just Energy Texas	Undetermined
PC-11478-1	Jonathan L Gregory	Just Energy, Just Energy Texas	Undetermined
PC-11479-1	Roderick Johnson	Just Energy, Just Energy Texas	Undetermined
PC-11480-1	Lauren Thomas	Just Energy, Just Energy Texas	Undetermined
PC-11481-1	Mary Thomas	Just Energy, Just Energy Texas	Undetermined
PC-11482-1	Lauren Thomas	Just Energy, Just Energy Texas	Undetermined
PC-11483-1	Ray Salazar	Just Energy, Just Energy Texas	Undetermined
PC-11484-1	Jane Kannin	Just Energy, Just Energy Texas	Undetermined
PC-11485-1	Emanuel Henry	Just Energy, Just Energy Texas	Undetermined
PC-11486-1	Michael Nelson	Just Energy, Just Energy Texas	Undetermined
PC-11487-1	Joseph Barnes	Just Energy	Undetermined
PC-11488-1	George Carnahan	Just Energy, Just Energy Texas	Undetermined
PC-11489-1	Robert Parker	Just Energy, Just Energy Texas	Undetermined

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11490-1	Johanna Crupi	Just Energy, Just Energy Texas	Undetermined
PC-11491-1	Jarmarcquers Pitts	Just Energy, Just Energy Texas	Undetermined
PC-11492-1	Fransisco Escobedo	Just Energy, Just Energy Texas	Undetermined
PC-11493-1	Joyce Keimg	Just Energy, Just Energy Texas	Undetermined
PC-11494-1	Dorothy Couch	Just Energy, Just Energy Texas	Undetermined
PC-11495-1	Nina Berlanga-aleman	Just Energy, Just Energy Texas	Undetermined
PC-11496-1	Tarodney Robertson	Just Energy, Just Energy Texas	Undetermined
PC-11497-1	Paula Vanwinkle	Just Energy, Just Energy Texas	Undetermined
PC-11498-1	Jordan Honea	Just Energy, Just Energy Texas	Undetermined
PC-11499-1	Johnathan Vanwinkle	Just Energy, Just Energy Texas	Undetermined
PC-11500-1	Monty Vanwinkle	Just Energy, Just Energy Texas	Undetermined
PC-11501-1	Sandra McKnew	Just Energy, Just Energy Texas	Undetermined
PC-11502-1	Levi Frazier	Just Energy, Just Energy Texas	Undetermined
PC-11503-1	Shondalh Richard	Just Energy, Just Energy Texas	Undetermined
PC-11504-1	Meredith Jones	Just Energy, Just Energy Texas	Undetermined
PC-11505-1	Frank Marquez	Just Energy, Just Energy Texas	Undetermined
PC-11506-1	Julia Green	Just Energy, Just Energy Texas	Undetermined
PC-11507-1	Jasmine Hernandez	Just Energy	Undetermined
PC-11508-1	Everardo Rodriguez	Just Energy	Undetermined
PC-11509-1	Anna Hernandez	Just Energy	Undetermined
PC-11510-1	Joseph Araujo	Just Energy, Just Energy Texas	Undetermined
PC-11511-1	Darla Adams	Just Energy	Undetermined
PC-11512-1	Esther Benjamin	Just Energy	Undetermined
PC-11513-1	Roslyn Thompson	Just Energy	Undetermined
PC-11514-1	Delores Bassett	Just Energy, Tara Energy	Undetermined
PC-11515-1	Sandra Lewis	Just Energy	Undetermined
PC-11516-1	UnKnown UnKnown	Just Energy, Amigo Energy	Undetermined
PC-11517-1	Gabriel Hernandez	Just Energy, Amigo Energy	Undetermined
PC-11518-1	Jose Hernandez	Just Energy, Amigo Energy	Undetermined
PC-11519-1	Sharon White	Just Energy, Just Energy Texas	Undetermined
PC-11520-1	Esteban Noriega	Just Energy, Just Energy Texas	Undetermined
PC-11521-1	Felicia Johnson	Just Energy, Just Energy Texas	Undetermined
PC-11522-1	Gracie Bernal	Just Energy, Just Energy Texas	Undetermined
PC-11523-1	Willie Sherman	Just Energy, Just Energy Texas	Undetermined
PC-11524-1	Samir Savjani	Just Energy, Just Energy Texas	Undetermined
PC-11525-1	Odessa Emory	Just Energy, Tara Energy	Undetermined
PC-11526-1	Mumtaz Jesani	Just Energy, Tara Energy	Undetermined
PC-11527-1	Terrance Woods	Just Energy	Undetermined
PC-11528-1	Francisca A. Villalobos	Just Energy	Undetermined
PC-11529-1	Elzie Dwayne Ford	Just Energy	Undetermined
PC-11530-1	Janie Hernandez	Just Energy	Undetermined
PC-11531-1	Jesse Montoya	Just Energy	Undetermined
PC-11532-1	Lauralene Jackson	Just Energy	Undetermined
PC-11533-1	James Newman Harkness, Jr.	Just Energy	Undetermined
PC-11534-1	Doyle Austin	Just Energy	Undetermined
PC-11535-1	Robert Berwold	Just Energy	Undetermined
PC-11536-1	Lauren Hoff	Just Energy	Undetermined
PC-11537-1	Rickie Liggett	Just Energy	Undetermined
PC-11538-1	Brandon Duckett	Just Energy	Undetermined
PC-11539-1	June Clark	Just Energy	Undetermined
PC-11540-1	Adrian Bryant	Just Energy	Undetermined
PC-11541-1	Rodrick Draper	Just Energy	Undetermined
PC-11542-1	Dora Herrera	Just Energy	Undetermined
PC-11543-1	Thomas Rangel	Just Energy	Undetermined
PC-11544-1	Joyce Thames	Just Energy	Undetermined
PC-11545-1	Nieves Barrientos	Just Energy	Undetermined

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
PC-11546-1	Dennis Rodarte	Just Energy	Undetermined
PC-11547-1	Abelino Guzman	Just Energy	Undetermined

Schedule 2[1]

Winter Storm D&O Claims

[1] All dollar values listed herein are in USD.

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5008-1	Tamera Munoz	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5009-1	Aniyah Poelinitz	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5010-1	Mark Wade	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5011-1	Veronica Lara on behalf of minor child EG	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5012-1	Aleida Escuadra	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5013-1	Wendy Dosewell	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5014-1	Martha Hodges	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5015-1	Joanna Palacios	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5016-1	Tiffany Bailey	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5017-1	Dulce Bobadilla and Alfredo Bobadilla, Individually and as heirs of the Estate of Ana Luisa Lara	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5018-1	Shalea Finch	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5019-1	Robert Hickson	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5020-1	David Nesbett	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5021-1	Cynthia Ruiz	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5022-1	Timothy Thomas	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5023-1	Jeffery Stiles	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5024-1	Matthew Haughton	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5025-1	John Mather	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5026-1	Carl Smith, Individually and as Heigh of the Estate of Sundae McCann, and on behalf of minor childre	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5027-1	Zephyr Jones	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5028-1	Cindy Tippins	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5029-1	Cheryl Hayes, Anthony Clark, Timothy Clark and Cynthia Clark Individually and as Heirs of The Estate	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5030-1	Santiago Pena	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5031-1	Gabrielle Guillory-Davis	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5032-1	James Schultz	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5033-1	Bernardo Gomez	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5034-1	Charlene Adams	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5035-1	Patricia Nichols	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5036-1	Cynthia Renee Olivari	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5037-1	Carneisha Sims	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5038-1	Maria Trinidad, Laura Salvador Rodriguez, Norma Martin Aguirre, Isaias Salazar, Mario E Martinez, Jo	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5039-1	Shelby Rodriguez	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5040-1	Nathan McCormick	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5041-1	Danny Molina	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5042-1	Leeann Brewer	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5043-1	Robert Forrest McDaniel	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5044-1	Robbie Ruff, Samiel Taft and Tammy Riggs, Individually and as Heirs of the Estate of Patricia Taft	Tony Horton (Executive Chair); Robert S. Gahn (CEO); Michael Carter (CFO); Scott Fordham (COO); Jim Brown (Chief Commercial Officer and former CFO); Amir Andani (Chief Risk Officer); Dallas Ross (Director); Steve Schaefer (Director); Marci Zlotnick (Director); Jim Bell (Director); Steven Murray (Director); Pat McCullough (former CEO); Debt Merrill (former CEO); James Lewis (former CEO); James Pickren (former COO); Rebecca McDonald (former Chairwoman); William Weld (former Lead Director); Walter Higgins (former Director); Clark Hollands (former Director); John Brussa (former Director); Brett Perlman (former Director); Ryan Barrington-Foote (former Director); Geroge Sladoje (former Director); David Wagstaff (former Director)	N/A
DO-5047-1	Tammy Lynette Tepera	Not Specified	$ 300.00
DO-5048-1	Christine Lamb	Not Specified	$ 3,000.00
DO-5049-1	Edward Meader	Not Specified	$ 4,500.00
DO-5050-1	Kristin Adams	Not Specified	$ 4,900.00
DO-5051-1	Jorge A Ramírez	Not Specified	$ 3,680.00
DO-5052-1	George w brown	Not Specified	$ 360.00
DO-5053-1	Donna Adibe	Not Specified	$ 60,000.00
DO-5054-1	David W. Jolivette Sr.	Not Specified	$ 2,000.00
DO-5055-1	Shawn C Gunter	Not Specified	$ 2,000.00
DO-5056-1	Vanessa Hacker	Not Specified	Undetermined
DO-5057-1	Brandon Gaston	Not Specified	$ 5,000.00
DO-5058-1	Shunda Wooden	Not Specified	$ 2,500.00
DO-5059-1	Juan Miguel Torres	Not Specified	$ 4,000.00
DO-5060-1	Gordon Stangl	Not Specified	$ 630.00
DO-5061-1	Michael Evans	Not Specified	Undetermined
DO-5062-1	Penny Hawkins	Not Specified	$ 500.00
DO-5063-1	Charles Randell Gray	Not Specified	$ 5,000.00
DO-5064-1	Rigoberto Vazquez	Not Specified	$ 500.00
DO-5065-1	Reuben ramdeo	Not Specified	$ 8,000.00
DO-5066-1	Esteban Rodriguez	Not Specified	$ 5,000.00
DO-5067-1	Marisol Valdes	Not Specified	$ 16,000.00
DO-5068-1	Charles Choice	Not Specified	$ 23,700.00
DO-5069-1	Danny D Gonzales	Not Specified	$ 280.00
DO-5070-1	Laroya Compton	Not Specified	$ 1,000.00
DO-5071-1	Cherrilyn Nedd	Not Specified	$ 185,000.00
DO-5072-1	Leonard Ware	Not Specified	$ 3,292.00
DO-5073-1	Keith Gipson	Not Specified	$ 81,000.00
DO-5074-1	Erma D Hurd	Not Specified	$ 900.00
DO-5075-1	John M Jones	Not Specified	$ 18.00

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5076-1	Xzayvier Brown	Not Specified	$ 10,000.00
DO-5077-1	La'Tyya M Moore	Not Specified	$ 2,200.00
DO-5078-1	Roseanna Zapata	Not Specified	$ 3,055.00
DO-5079-1	Tiffany Franke	Not Specified	$ 14,700.00
DO-5080-1	Martha Collins	Not Specified	$ 135.00
DO-5081-1	Henry Jackson	Not Specified	$ 2,000.00
DO-5082-1	Charlie Millican	Not Specified	$ 12,000.00
DO-5083-1	Debra Franklin	Not Specified	$ 2,500.00
DO-5084-1	Hollis Townsend	Not Specified	Undetermined
DO-5085-1	Shavonte Wonzer	Not Specified	$ 1,500.00
DO-5086-1	Jenessa Carr	Not Specified	$ 2,000.00
DO-5087-1	Diane Parker	Not Specified	Undetermined
DO-5088-1	Fabiola Aguilar	Not Specified	$ 400.00
DO-5089-1	Judith Yarbro	Not Specified	Undetermined
DO-5090-1	Brenda Carol Eubanks	Not Specified	$ 3,926.00
DO-5091-1	Debra Johnson chapple	Not Specified	$ 2,800.00
DO-5092-1	Debra Franklin	Not Specified	$ 2,000.00
DO-5093-1	Nicole Kubes	Not Specified	Undetermined
DO-5094-1	Beyoncé Franklin	Not Specified	$ 2,500.00
DO-5095-1	Taj Tucker	Not Specified	$ 8,500.00
DO-5096-1	Brandy Thorn	Not Specified	$ 10,000.00
DO-5097-1	Felicia Frazier	Not Specified	$ 50,000.00
DO-5098-1	James Roy Franklin	Not Specified	$ 2,500.00
DO-5099-1	Aaron Franklin	Not Specified	$ 2,500.00
DO-5100-1	Catherine Rebecca Fisher	Not Specified	$ 4,000.00
DO-5101-1	Leonard Clements	Not Specified	$ 5,000.00
DO-5102-1	Irvina Lord	Not Specified	$ 500.00
DO-5103-1	Francisca Zamago	Not Specified	$ 1,000.00
DO-5104-1	Vivian Hanchett	Not Specified	$ 5,000.00
DO-5105-1	Garth E. Allmond	Not Specified	$ 3,500.00
DO-5106-1	Miss. Gladys Sims	Not Specified	$ 40,000.00
DO-5107-1	Arthur & Sandra Hypolite	Not Specified	$ 67,740.78
DO-5108-1	Linda	Not Specified	$ 4,300.00
DO-5109-1	Patricia Chaney	Not Specified	Undetermined
DO-5110-1	Camellia R. Ordia	Not Specified	$ 20,000.00
DO-5111-1	Carlos A Martínez	Not Specified	$ 1,800.00
DO-5112-1	Tery & Kary Smith	Not Specified	$ 4,441.17
DO-5113-1	Judith Ann Gordon	Not Specified	$ 900.00

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5114-1	Camani J Rigmaiden	Not Specified	$ 12,000.00
DO-5115-1	Lanita Edwards	Not Specified	$ 10,000.00
DO-5116-1	Tashla Curry	Not Specified	$ 20,000.00
DO-5117-1	Carol Ann Davis	Not Specified	$ 7,000.00
DO-5118-1	Michael Ward	Not Specified	$ 1,500.00
DO-5119-1	Alfred Loya	Not Specified	$ 90,000.00
DO-5120-1	Teresa Sanchez	Not Specified	$ 1,500.00
DO-5121-1	Halima Ahmed	Not Specified	$ 17,000.00
DO-5122-1	Cindy chase	Not Specified	$ 44,000.00
DO-5123-1	Leda Lewis	Not Specified	$ 1,500.00
DO-5124-1	Margie Knoxson	Not Specified	$ 500.00
DO-5125-1	Reginald Johnson	Not Specified	$ 208.00
DO-5126-1	Mary Thomas	Not Specified	$ 33,000.00
DO-5127-1	Jennifer Smith	Not Specified	Undetermined
DO-5128-1	Regina Brown	Not Specified	$ 567.00
DO-5129-1	Jazman Jackson	Not Specified	$ 9,000.00
DO-5130-1	Mark Landois	Not Specified	$ 1,500.00
DO-5131-1	Kim Ngo	Not Specified	$ 1,300.00
DO-5132-1	Crystal D.Crawford	Not Specified	$ 300.00
DO-5133-1	Jeff Wager	Not Specified	Undetermined
DO-5134-1	Celia Crecy	Not Specified	$ 2,500.00
DO-5135-1	Color Station LLC	Not Specified	$ 44,900.00
DO-5136-1	Banner R. Stanley	Not Specified	$ 10,700.00
DO-5137-1	Jennifer Williams	Not Specified	$ 1,000.00
DO-5138-1	Rosendo Reyna jr.	Not Specified	$ 700.00
DO-5139-1	Brenda Sue Robinson	Not Specified	$ 10,000.00
DO-5140-1	Amy Ponce	Not Specified	$ 2,075.00
DO-5141-1	Verneisha Polk	Not Specified	$ 4,000.00
DO-5142-1	Juanita R. Martinez	Not Specified	$ 1,000.00
DO-5143-1	Shirley Yvonne Mack	Not Specified	$ 26,200.00
DO-5144-1	Adrianna Shaw	Not Specified	Undetermined
DO-5145-1	Audrey Shaw	Not Specified	Undetermined
DO-5146-1	Lakisha Crew	Not Specified	$ 1,224.00
DO-5147-1	Susan Donnell	Not Specified	Undetermined
DO-5148-1	Edward Daniel Puente	Not Specified	$ 65,000.00
DO-5149-1	Paulette Primes	Not Specified	Undetermined
DO-5150-1	Susan Polk Clark	Not Specified	$ 6,225.00
DO-5151-1	Santiago Pena	Not Specified	$ 650,000.00
DO-5152-1	Stellavolta LLC	Not Specified	$ 40,000.00
DO-5153-1	Lynn Wesbrooks	Not Specified	$ 48,000.00
DO-5154-1	Amalia Bankhead	Not Specified	$ 150.00
DO-5155-1	Rahim Bhamani	Not Specified	$ 1,000.00

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5156-1	Velma Kimble	Not Specified	$ 4,000.00
DO-5157-1	Rosiland Meeks	Not Specified	$ 11,000.00
DO-5158-1	Elizabeth Montemayor	Not Specified	$ 3,000.00
DO-5159-1	Randy Childers	Not Specified	$ 170,000.00
DO-5160-1	Wesley Anthony Conner III	Not Specified	Undetermined
DO-5161-1	Marcus Johnson	Not Specified	Undetermined
DO-5162-1	Josè Carreon	Not Specified	Undetermined
DO-5163-1	Beltine Koh	Not Specified	Undetermined
DO-5164-1	Wanda Dodson	Not Specified	Undetermined
DO-5165-1	Homero Olivarez Jr	Not Specified	Undetermined
DO-5166-1	Hilda Garcia	Not Specified	Undetermined
DO-5167-1	Guadalupe Sanchez	Not Specified	Undetermined
DO-5168-1	Maria Sanchez	Not Specified	Undetermined
DO-5169-1	Benjamin Colon	Not Specified	Undetermined
DO-5170-1	Lisseth Garza	Not Specified	Undetermined
DO-5171-1	Natalia Pena	Not Specified	Undetermined
DO-5172-1	Mario Delgado	Not Specified	Undetermined
DO-5173-1	Thery Graham	Not Specified	Undetermined
DO-5174-1	Felipe Moreno	Not Specified	Undetermined
DO-5175-1	Lisa Egan	Not Specified	Undetermined
DO-5176-1	Dolores Lowe	Not Specified	Undetermined
DO-5177-1	Shawmona Johnson	Not Specified	Undetermined
DO-5178-1	Deryk Jones	Not Specified	Undetermined
DO-5179-1	Steven Matthews	Not Specified	Undetermined
DO-5180-1	Meagan Jones	Not Specified	Undetermined
DO-5181-1	Andre West	Not Specified	Undetermined
DO-5182-1	Maria Romo	Not Specified	Undetermined
DO-5183-1	Jennette Addison	Not Specified	Undetermined
DO-5184-1	Robert Rush	Not Specified	Undetermined
DO-5185-1	Robert Rush	Not Specified	Undetermined
DO-5186-1	James Wilson	Not Specified	Undetermined
DO-5187-1	Takesha Owens	Not Specified	Undetermined
DO-5188-1	Mekisha Mims	Not Specified	Undetermined
DO-5189-1	Shirley Dorsey	Not Specified	Undetermined
DO-5190-1	Richard Crampton	Not Specified	Undetermined
DO-5191-1	Renda Justice	Not Specified	Undetermined
DO-5192-1	Pearline Harper	Not Specified	Undetermined
DO-5193-1	Leroy Delgado	Not Specified	Undetermined
DO-5194-1	Jennifer Smith	Not Specified	Undetermined
DO-5195-1	Claudia Snow	Not Specified	Undetermined
DO-5196-1	Phyllis Hawkins	Not Specified	Undetermined
DO-5197-1	Antonio Franco	Not Specified	Undetermined
DO-5198-1	Kendra Vega	Not Specified	Undetermined
DO-5199-1	Shenae Sarabia	Not Specified	Undetermined
DO-5200-1	Arthur Lord	Not Specified	Undetermined
DO-5201-1	William Lord	Not Specified	Undetermined
DO-5202-1	Yolanda Yvonne Williams	Not Specified	Undetermined

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5203-1	Dannette Owens	Not Specified	Undetermined
DO-5204-1	Nick Dilley	Not Specified	Undetermined
DO-5205-1	Francis Zamago	Not Specified	Undetermined
DO-5206-1	Alfred Garcia	Not Specified	Undetermined
DO-5207-1	Vicky Humbarger	Not Specified	Undetermined
DO-5208-1	Lamanda Capehart	Not Specified	Undetermined
DO-5209-1	Rosie Scurry	Not Specified	Undetermined
DO-5210-1	Victoria Salgado	Not Specified	Undetermined
DO-5211-1	Cruz Talavera	Not Specified	Undetermined
DO-5212-1	Wilfredo Talavera	Not Specified	Undetermined
DO-5213-1	Cynthia Garcia	Not Specified	Undetermined
DO-5214-1	Robert Rodriguez	Not Specified	Undetermined
DO-5215-1	Alyssa Mendez	Not Specified	Undetermined
DO-5216-1	Tiffany Zambrano	Not Specified	Undetermined
DO-5217-1	Julian Gonzales	Not Specified	Undetermined
DO-5218-1	Ernest Mendez	Not Specified	Undetermined
DO-5219-1	Luisa Williams	Not Specified	Undetermined
DO-5220-1	Pamela Statzer	Not Specified	Undetermined
DO-5221-1	Richard Garza	Not Specified	Undetermined
DO-5222-1	Brandy Thorn	Not Specified	Undetermined
DO-5223-1	Lisa Viser	Not Specified	Undetermined
DO-5224-1	Cassandra Brown	Not Specified	Undetermined
DO-5225-1	Yamen Ayed	Not Specified	Undetermined
DO-5226-1	Oneshia Nunn	Not Specified	Undetermined
DO-5227-1	Melissa Anz	Not Specified	Undetermined
DO-5228-1	Maria Nely Perez	Not Specified	Undetermined
DO-5229-1	Larry Spencer	Not Specified	Undetermined
DO-5230-1	Lucille Harris	Not Specified	Undetermined
DO-5231-1	Elisa Segura	Not Specified	Undetermined
DO-5232-1	Leticia Reyes	Not Specified	Undetermined
DO-5233-1	Janis Kimling	Not Specified	Undetermined
DO-5234-1	Randy Hall	Not Specified	Undetermined
DO-5235-1	Juan Torres	Not Specified	Undetermined
DO-5236-1	Juan Torres	Not Specified	Undetermined
DO-5237-1	Jonathan L Gregory	Not Specified	Undetermined
DO-5238-1	Roderick Johnson	Not Specified	Undetermined
DO-5239-1	Lauren Thomas	Not Specified	Undetermined
DO-5240-1	Mary Thomas	Not Specified	Undetermined
DO-5241-1	Lauren Thomas	Not Specified	Undetermined
DO-5242-1	Ray Salazar	Not Specified	Undetermined
DO-5243-1	Jane Kannin	Not Specified	Undetermined
DO-5244-1	Emanuel Henry	Not Specified	Undetermined
DO-5245-1	Michael Nelson	Not Specified	Undetermined
DO-5246-1	Joseph Barnes	Not Specified	Undetermined
DO-5247-1	George Carnahan	Not Specified	Undetermined
DO-5248-1	Robert Parker	Not Specified	Undetermined

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5249-1	Johanna Crupi	Not Specified	Undetermined
DO-5250-1	Jarmarcquers Pitts	Not Specified	Undetermined
DO-5251-1	Fransisco Escobedo	Not Specified	Undetermined
DO-5252-1	Joyce Keimg	Not Specified	Undetermined
DO-5253-1	Dorothy Couch	Not Specified	Undetermined
DO-5254-1	Nina Berlanga-aleman	Not Specified	Undetermined
DO-5255-1	Tarodney Robertson	Not Specified	Undetermined
DO-5256-1	Paula Vanwinkle	Not Specified	Undetermined
DO-5257-1	Jordan Honea	Not Specified	Undetermined
DO-5258-1	Johnathan Vanwinkle	Not Specified	Undetermined
DO-5259-1	Monty Vanwinkle	Not Specified	Undetermined
DO-5260-1	Sandra McKnew	Not Specified	Undetermined
DO-5261-1	Levi Frazier	Not Specified	Undetermined
DO-5262-1	Shondalh Richard	Not Specified	Undetermined
DO-5263-1	Meredith Jones	Not Specified	Undetermined
DO-5264-1	Frank Marquez	Not Specified	Undetermined
DO-5265-1	Julia Green	Not Specified	Undetermined
DO-5266-1	Jasmine Hernandez	Not Specified	Undetermined
DO-5267-1	Everardo Rodriguez	Not Specified	Undetermined
DO-5268-1	Anna Hernandez	Not Specified	Undetermined
DO-5269-1	Joseph Araujo	Not Specified	Undetermined
DO-5270-1	Darla Adams	Not Specified	Undetermined
DO-5271-1	Esther Benjamin	Not Specified	Undetermined
DO-5272-1	Roslyn Thompson	Not Specified	Undetermined
DO-5273-1	Delores Bassett	Not Specified	Undetermined
DO-5274-1	Sandra Lewis	Not Specified	Undetermined
DO-5275-1	UnKnown UnKnown	Not Specified	Undetermined
DO-5276-1	Gabriel Hernandez	Not Specified	Undetermined
DO-5277-1	Jose Hernandez	Not Specified	Undetermined
DO-5278-1	Sharon White	Not Specified	Undetermined
DO-5279-1	Esteban Noriega	Not Specified	Undetermined
DO-5280-1	Felicia Johnson	Not Specified	Undetermined
DO-5281-1	Gracie Bernal	Not Specified	Undetermined
DO-5282-1	Willie Sherman	Not Specified	Undetermined
DO-5283-1	Samir Savjani	Not Specified	Undetermined
DO-5284-1	Odessa Emory	Not Specified	Undetermined
DO-5285-1	Mumtaz Jesani	Not Specified	Undetermined
DO-5286-1	Terrance Woods	Not Specified	Undetermined
DO-5287-1	Francisca A. Villalobos	Not Specified	Undetermined
DO-5288-1	Elzie Dwayne Ford	Not Specified	Undetermined
DO-5289-1	Janie Hernandez	Not Specified	Undetermined
DO-5290-1	Jesse Montoya	Not Specified	Undetermined

Claim Number	Claimant	Debtor Entities	Claim Dollar Value
DO-5291-1	Lauralene Jackson	Not Specified	Undetermined
DO-5292-1	James Newman Harkness, Jr.	Not Specified	Undetermined
DO-5293-1	Doyle Austin	Not Specified	Undetermined
DO-5294-1	Robert Berwold	Not Specified	Undetermined
DO-5295-1	Lauren Hoff	Not Specified	Undetermined
DO-5296-1	Rickie Liggett	Not Specified	Undetermined
DO-5297-1	Brandon Duckett	Not Specified	Undetermined
DO-5298-1	June Clark	Not Specified	Undetermined
DO-5299-1	Adrian Bryant	Not Specified	Undetermined
DO-5300-1	Rodrick Draper	Not Specified	Undetermined
DO-5301-1	Dora Herrera	Not Specified	Undetermined
DO-5302-1	Thomas Rangel	Not Specified	Undetermined
DO-5303-1	Joyce Thames	Not Specified	Undetermined
DO-5304-1	Nieves Barrientos	Not Specified	Undetermined
DO-5305-1	Dennis Rodarte	Not Specified	Undetermined

Tab 38

2008 NBBR 144, 2008 NBQB 144
New Brunswick Court of Queen's Bench

Atlantic Yarns Inc., Re

2008 CarswellNB 195, 2008 CarswellNB 750, 2008 NBBR 144, 2008 NBQB 144,
169 A.C.W.S. (3d) 20, 333 N.B.R. (2d) 143, 42 C.B.R. (5th) 107, 855 A.P.R. 143

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

And IN THE MATTER OF ATLANTIC YARNS INC., a body
corporate and ATLANTIC FINE YARNS INC., a body corporate

RE: GE CANADA FINANCE HOLDING COMPANY MOTION

P.S. Glennie J.

Heard: April 1, 2008
Judgment: April 1, 2008
Written reasons: April 11, 2008
Docket: S/M/92/07

Counsel: Orestes Pasparakis, M. Robert Jette Q.C. for GE Canada Finance Holding Company
Joshua J.B. McElman, Rodney E. Larsen for Atlantic Yarns Inc., Atlantic Fine Yarns Inc.
James H. Grout, Sara Wilson for Integrated Private Debt Fund Inc., First Treasury Financial Inc.
John B.D. Logan for Province of New Brunswick
William C. Kean for Paul Reinhart Inc., Staple Cotton Co-operative

***P.S. Glennie J.*:**

1 Atlantic Yarns Inc. ("AY") and Atlantic Fine Yarns Inc. ("AFY") obtained relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c-36, as amended (the "CCAA") by order of this Court dated October 26, 2007 (the "Initial Order").

2 On December 18, 2007, this Court issued a Claims Procedure Order (the "Claims Procedure Order") and on February 20, 2008 it issued a Creditors Meeting Order (the "Meeting Order").

3 Subsequent to the issuance of the Meeting Order the parties determined whether there could be a global resolution of all outstanding issues. When no resolution could be realized, one of the secured creditors of AY and AFY (collectively "the Companies"), GE Canada Finance Holding Company ("GE"), brought this motion to address the manner in which voting on the proposed Plan of Arrangement is to be conducted. On April 1, 2008 I denied GE's motion with reasons to follow. These are those reasons.

4 GE's submission is that the voting procedures set out in the Meeting Order are improper in that they violate the express provisions of both the Initial Order and the Claims Procedure Order; in that the procedures are manifestly unfair and unreasonable; and in that they appear to be designed to silence GE's objections by gerrymandering the voting and diluting GE's voting rights.

5 In particular, GE asserts that there should be no consolidation of the creditors of the Companies for voting purposes. GE says each of AY and AFY should hold separate meetings with their creditors. As well, GE argues that the current treatment

of the secured creditor class is flawed. It says that either GE ought to be in a separate class or the secured claims ought to be valued and voted in accordance with their value.

6 The Companies filed a consolidated plan of compromise and arrangement (the "proposed Plan") with this Court on February 19, 2008. The proposed Plan includes two classes of creditors for the purposes of voting on the proposed Plan: a Secured Class (all creditors of each of the Companies holding any security regardless of the value of their security) and an Unsecured Class (all unsecured creditors of each of the Companies).

7 The Court Appointed Monitor of the Companies, Pricewaterhouse Coopers Inc., delivered a report to the Companies' creditors dated February 21, 2008 which report contains the following:

The Plan

The Applicants have filed a Joint Plan of Arrangement the key Financial Elements of which are:

• Unsecured creditors will received up to 90% of their claim over a relatively short period of time; and

• Secured Creditors will be afforded payments in respect of their claims based on an amount that in all cases exceeds the liquidation value of the assets held as security.

Alternatives to the Plan

These Companies operate in northern New Brunswick, and the filing of this Plan was in response to a notice from a secured creditor of its intention to appoint a Receiver. It is a virtual certainty that if this plan is not approved, the secured creditor will appoint a receiver and will liquidate the assets subject to its charges by a sale, possibly under Court supervision.

There is a little likelihood that any other party will purchase these assets to operate in situ.

Liquidation Ananlysis

The Monitor has considered and reviewed a series of different liquidation analysis, and there is one common theme — the unsecured creditors will receive nothing under any realization plan.

Counsel to the Companies and the Monitor have reviewed the security held by the various secured creditors and concluded that the various security interests are duly registered, filed and recorded, and accordingly create valid and enforceable security against the Applicants.

As can be seen from the Plan terms and conditions, the Secured Creditors holding first charges on the assets of the Companies are being asked to take write downs in their positions. Each of these Secured Creditors has prepared their own analysis which has generally been shared with the Monitor and in the event of a liquidation the Monitor believes that each of such secured creditors will receive a shortfall greater than the alternative provided for in the Plan.

Accordingly, there would be nothing available for distribution to the Unsecured Creditors.

The Secured Creditors will likely wish to consider a sale on a going concern basis. It is the opinion of the Monitor that such a sale is unlikely (except perhaps back to the existing owner) and regardless, the value of the assets that will be realized will be close to the liquidation values.

Consequences of Rejecting the Plan

As noted above, if the Plan is rejected by the Creditors or the Court, the assets will be liquidated and:

• Approximately 400 direct jobs will be lost in a largely export oriented business located in a high unemployment area of Canada;

• Approximately 600 indirect jobs will be lost in Canada, with great impact on the remote communities of Atholville and Pokemouche, New Brunswick;

• The Unsecured Creditors will receive nothing on their claims, which in some cases will result in further hardship and business closures.

Monitor's Recommendation

It is the recommendation of the Monitor that ALL affected creditors should approve the Plan.

As a result, creditors are encouraged to send in positive voting ballots and/or proxies as soon as possible.

8 GE argues that from the start of these CCAA proceedings the Initial Order directed that each of the AY and AFY convene separate creditors' meetings. Paragraph 24 of the Initial Order provides as follows:

> Each Applicant shall, subject to the direction of this Court, summon and convene meetings between each Applicant and its secured and unsecured creditors under the Plan to consider and approve the Plan (collectively, the "Meetings").

9 GE says the Claims Procedure Order directed the valuation of secured claims and required all secured claims to be valued in accordance with the realizable value of the property subject to security. Paragraph 9 of the Claims Procedure Order provides:

> 9. THIS COURT ORDERS that any Person who wishes to assert a Claim against the Applicants, other than an Excluded Claim, must file a properly completed Proof of Claim, together with all supporting documentation, including copies of any security documentation and a valuation of such Creditor's security if a Secured Claim is being asserted, with the Monitor by 5:00 p.m. on January 15, 2008 (defined herein as the Claims Bar Date). The Applicants will be allowed to review the Proofs of Claim and Monitor will provide copies to the Applicants of any Proofs of Claim that they may request from time to time.

10 The Claims Procedure Order defines 'Secured Claims' as follows:

> ...any Claim or portion thereof, other than the Excluded Claim, which is secured by a validly attached and existing security interest...which was duly and properly registered or perfected in accordance with applicable legislation at the Filing date or in accordance with the Initial Order, to the extent of the realizable value of the property of the Applicants subject to such security having regard to, among other things, the priority of such security.

11 The Proof of Claim form approved in the Claims Procedure Order required creditors to submit an estimate of the value of their security with their claim, and the approved Notice of Disallowance/Revision indicates that secured claims are to be recognized:

> to the extent of the value of the assets encumbered by such security and subject to any prior encumbrances or security interests.

12 On January 22, 2008, the Monitor accepted GE's claim and valuation regarding AFY but delivered a Notice of Disallowance in respect of part of GE's claim against AY. The Notice of Disallowance reserved the Monitor's right to value GE's security in respect of this claim if an agreement could not be reached.

13 On January 31, 2008, for the first time, GE challenged the Companies' CCAA process and sought an alternative course to the Companies' restructuring efforts. GE sought a parallel sales process for the Companies, either on a turn key or piecemeal basis. GE was also critical of the Companies and their failures to meet certain deadlines previously promised by them under the CCAA process. As a consequence, GE withdrew its support of the Companies' CCAA process.

14 As mentioned, on February 19, 2008 AY and AFY filed a consolidated plan of compromise and arrangement with this Court. The proposed Plan is on a joint and consolidated basis for the purpose of voting on the proposed Plan and receiving

distributions under the proposed Plan. The proposed Plan consolidated the Creditors of AY and AFY and allowed all secured claims to be recognized in accordance with their face amount, not their actual value.

15 GE asserts that the Companies' attempt to fundamentally change the Court's mandated process "came on the heels of GE's opposition the Companies' plans."

16 Subsequent to the issuance of the Initial Order and the Claims Procedure Order, the Meeting Order was issued by this Court on February 20, 2008 and provides that only two classes of creditors for voting on the proposed Plan: a secured class of all creditors of both Companies and an unsecured class of all unsecured creditors of both Companies; that secured creditors be permitted to vote the face amount of their claim, regardless of the value of their claims; and that GE be classified with all of the other secured creditors.

17 GE asserts that the effect of the Meeting Order is to consolidate all of the Creditors and permit them to vote the face amount of their claims which GE asserts "serves to swamp GE's vote."

18 GE has a first charge over the equipment of each of AY and AFY. It obtained an expert valuation report early on in the CCAA process and has provided that valuation to the Companies and the Monitor. Based on the valuation GE says it would recover the full amount of its claims plus accrued interest and costs in an orderly liquidation of the equipment.

19 GE says its position is very different form the other creditors being compromised under the proposed Plan. GE has security over the Companies' equipment which ought to cover its claims. GE asserts that no other creditor has the same relationship with the Companies or their assets.

20 Thus, the CCAA process in this case essentially involves two differing interests. On the one hand there are stakeholders, including the Province of New Brunswick, which collectively appear to have lost tens of millions of dollars, as well as the hundreds of employees who currently have no employment. These stakeholders have already suffered a loss. On the other hand, there is GE, which had sufficient security at the time of filing to cover its claims.

21 In spite of its unique interest, GE asserts that the Companies have placed GE in a class of creditors where there is no commonality of interest. GE argues that the Companies have gerrymandered the process to try to prevent GE from properly exercising its voting rights.

22 It is obvious that GE wants to be able to vote down, or veto, the Companies' proposed consolidated Plan of Arrangement on its own. It wants the right to jettison the proposed Plan. No other stakeholder supports GE's position.

23 The Court appointed Monitor says the proposed Plan of Arrangement and the process which is now in place for the creditors' meeting and the voting process are fair and equitable. In this regard, the Monitor has confirmed that even if this Court were to order two separate creditors meetings with an unconsolidated vote, GE would not be able to veto the proposed consolidated Plan of Arrangement on its own. It should also be noted that GE does not object to the actual proposed Plan of AY and AFY being made on a consolidated basis. It is the voting process that it has a problem with. GE asserts that by consolidating the votes of the Companies' creditors, an "enormous" prejudice to GE is created. However, the Court appointed Monitor has confirmed that there is no prejudice resulting in this regard because GE could not vote down the proposed Plan on its own even if there were two separate meetings and creditors' votes were not consolidated.

24 It is clear that GE no longer supports the Companies and wants to immediately enforce its security and get paid out now rather than waiting until later.

25 As mentioned, the Monitor has confirmed that the voting process as it is now structured for the April 2nd meeting of creditors is equitable. The Monitor is of the opinion that the proposed Plan is fair to all parties.

26 According to its Fourth Report dated March 27, 2008, the Monitor says it is not aware of any creditor, other than GE, which would be voting against the proposed Plan.

27 GE's position is dealt with in the proposed Plan of Arrangement in paragraph 4.3(b) as follows:

> **b) GE Canada Finance Holding Company**
>
> GE shall receive 100% of the amount of its Proven Distribution Claim excluding any Claim for costs, penalties, accelerated payments or increased interest rates resulting from any default of either of the Atlantic Yarn Companies occurring prior to the Plan Implementation Date as follows:
>
> > (i) All accrued interest not paid as of the Plan Implementation Date shall be paid within 30 days of the Sanction order;
> >
> > (ii) Interest shall accrue at the non-default rate and be paid monthly in arrears;
> >
> > (iii) Principle repayment shall be deferred until and commence on January 31, 2009 and continue in 48 equal monthly installments until paid in full; and
> >
> > (iv) The Proven Distribution Claims of GE shall be secured by the existing Charges held by GE subject to the February DIP Order.

28 The Monitor says that the Province of New Brunswick revisions which have been made to the proposed Plan improve the position of GE by virtue of increasing cash flow and deferring cash expenditures until after GE is repaid.

Consolidation of Creditors

29 GE wants separate creditors meetings for each of the Companies and that there not be a consolidation of the Companies' creditors for the purpose of voting on the proposed Plan.

30 AY and AFY are affiliated debtor companies within the meaning of section 3 of the CCAA.

31 Although the Companies are distinct legal entities, they are intertwined in that they are both wholly owned subsidiaries of Sunflag Canada Inc.; there is a commingling of business functions between the Companies in that the marketing divisions, upper employee management, finance management and most suppliers for the Companies are the same, and the employees of both Companies are represented by the same union. As well, AY has guaranteed certain indebtedness of AFY.

32 In addition, for the purposes of its security, GE treated the Companies as intertwined or linked by virtue of cross default provisions contained in the security held by GE from each of the Companies.

33 In *Rescue! The Companies' Creditors Arrangement Act*, by Dr. Janis Sarra, Carswell 2007, the author writes at page 242:

> The court will allow a consolidated plan of arrangement or compromise to be filed for two or more related companies in appropriate circumstances. For example, in *PSINet Ltd.* the Court allowed consolidation of proceedings for four companies that were intertwined and essentially operated as one business. The Court found the filing of a consolidated plan avoided complex issues regarding the allocation of the proceeds realized from the sale of the assets, and that although consolidation by its nature would benefit some creditors and prejudice others, the prejudice had been ameliorated by concessions made by the parent corporation, which was also the major creditor. Other cases of consolidated proceedings such as *Philip Services Canadian Airlines, Air Canada and Stelco*, all proceeded without issues in respect of consolidation.
>
> Generally, the courts will determine whether to consolidate proceedings by assessing whether the benefits will outweigh the prejudice to particular creditors if the proceedings are consolidated. In particular, the court will examine whether the assets and liabilities are so intertwined that it is difficult to separate them for purposes of dealing with different entities. The court will also consider whether consolidation is fair and reasonable in the circumstances of the case.

34 In *Northland Properties Ltd., Re*, [1988] B.C.J. No. 1210 (B.C. S.C.) Justice Trainor writes:

In *Baker and Getty Financial Services Inc.*, U.S. Bankruptcy Court, N.D. Ohio (1987) 78 B.R. 139, the court said:

> The propriety of ordering substantive consolidation is determined by a balancing of interests. The relevant enquiry asks whether the creditors will suffer greater prejudice in the absence of consolidation than the debtors (and any objecting creditors) will suffer from its imposition.

The Court then went on to list seven factors which had been developed to assist in the balancing of interests. Those factors are:

1. difficulty in segregating assets;
2. presence of consolidated financial statements;
3. profitability of consolidation at a single location;
4. commingling of assets and business functions;
5. unity of interests in ownership;
6. existence of intercorporate loan guarantees; and
7. transfer of assets without observance of corporate formalities.

35 In *PSINET Ltd., Re* (2002), 33 C.B.R. (4th) 284 (Ont. S.C.J. [Commercial List]) Justice Farley noted that consolidation of creditors may be appropriate in certain cases where, for example, the nature of the businesses was intertwined, the businesses were operated as a single business or where the allocation of value and claims between the businesses would be burdensome. He discusses consolidation at paragraph 11 as follows:

> In the circumstances of this case, the filing of a consolidated plan is appropriate given the intertwining elements discussed above. See *Northland Properties Ltd., Re*, 69 C.B.R. (N.S.) 266 (B.C. S.C.), affirmed (B.C.C.A.), *supra*, at p. 202; *Lehndorff General Partner Ltd., Re*, 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]) at p.31. While consolidation by its very nature will benefit some creditors and prejudice others, it is appropriate to look at the overall general effect. Here as well the concessions of Inc. have ameliorated that prejudice. Further I am of the view if consolidation is appropriate (and not proceeded with by any applicant for tactical reasons of minimizing valid objections), then it could be inappropriate to segregate the creditors into classes by corporation which would not naturally flow with the result that one or more is given a veto absent very unusual circumstances (and not present here).

36 In my opinion the nature of the businesses of AY and AFY were intertwined and, looking at the overall general effect, consolidation is fair and reasonable in the circumstances of this case.

Voting Value of Assets Secured versus Voting Value of Claim

37 GE wants the claims of secured creditors to be allowed only to the extent of the realizable value of the property of the Companies subject to the security underlying the claim and that any portion of a claim in excess of the underlying security should be listed as an unsecured claim.

38 Section 12 of the CCAA provides as follows:

> 12.(1) For the purposes of this Act, "claim" means any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.
>
> (2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(a) the amount of an unsecured claim shall be the amount

(i) in the case of a company in the course of being wound up under the *Windings-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim shall be the amount, proof of which might be made in respect thereof under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company shall, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act*, as the case may be, and in the case of any other company the amount shall be determined by the court on summary application by the company or the creditor.

(3) Notwithstanding subsection (2), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

39 In my view, the amount of a secured claim is the amount admitted by the company governed by the CCAA after receiving a proof of the claim. This was the legislative intent. Nowhere in section 12, or anywhere else in the CCAA, is the limit of the value of a secured creditor's claim to be the realizable value of the assets secured. Where a company governed by the CCAA has developed a plan for its reorganization, the value of a claim should be determined in accordance with paragraph 12(2)(b). The CCAA does not establish a requirement or a procedure for valuing claims. The CCAA is broad and flexible so that Courts can apply the legislation with the overall purpose of restructuring in the context of the facts for any given company.

40 The value of a secured creditor's claim is the amount outstanding. In my opinion, to require a valuation based on realizable value for voting ignores the value of the security in reorganization and the legislative intent of the CCAA.

41 I am of the view that the relief sought by GE in this regard is an attempt to maneuver for a better voting position amoung the Companies' secured creditors. It is attempting to fortify its bargaining position in order to negotiate with the Companies for a better deal pursuant to the proposed Plan.

42 If GE's request in this regard is granted and the claims of the Companies' secured creditors are limited to the realizable value of their security, GE would be able to trump the interests of other stakeholders who would benefit from a plan of arrangement or continuation of the Companies' business. The Quebec Superior Court in *Boutiques San Francisco Inc., Re* (2004), 5 C.B.R. (5th) 174 (C.S. Que.), notes as follows:

Surely, maintaining the status quo involves balancing the interests of all affected parties and avoiding advantages to some of the others. Under the CCAA, the restructuring process and general interest of all creditors should always be preferred over the particular interests of individual ones.

43 In *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]), the Court notes:

> The CCAA is intended to provide a structured environment for the negotiation of compromises between a debtor company and its creditors for the benefit of both. Where a debtor company realistically plans to continue operating or to otherwise deal with its assets but it requires the protection of the court in order to do so and it is otherwise too early for the court to determine whether the debtor company will succeed, relief should be granted under the CCAA. **It has been held that the intention of the CCAA is to prevent any manoeuvres for positioning amoung the creditors during the period required to develop a plan and obtain approval of creditors. Such manoeuvres could give an aggressive creditor an advantage to the prejudice of others who are less aggressive and would undermine the company's financial position making it even less likely that the plan will succeed.** The possibility that one or more creditors may be prejudiced should not affect the court's exercise of its authority to grant a stay of proceedings under the CCAA because this affect is offset by the benefit to all creditors and to the company of facilitating a reorganization. **The court's primary concerns under the CCAA must be for the debtor and all of the creditors:** *Chef Ready Foods Ltd. v. Hongkong Bank of Canada* (1990), 4 C.B.R. (3d) 311 at pp 315-318. [Emphasis Added]

44 In my opinion, GE is clearly an aggressive creditor maneuvering for positioning in order to get itself into a position to veto the proposed Plan.

45 I am satisfied that the purpose of the proposed Plan is to provide a fair recovery to the creditors of AY and AFY and to successfully restructure the Companies as a going concern. The Monitor has confirmed that the Companies have acted in good faith.

46 The Monitor says it was never its intention that the Proof of Claim forms were being completed by creditors of the Companies for voting purposes. Counsel for GE says what the Monitor had "in its minds eye" is irrelevant.

47 Counsel for GE goes on to say that he does not understand how there could be any misunderstanding with respect to the purpose of the Order being to determine the value of creditors claim for the purpose of voting. At the hearing of this Motion counsel for GE asked: "*If a creditor was under a misunderstanding whose lookout was it? Is it somebody who reads the reasonable words and relies on them, GE, or is it somebody whose interpretation seems to be contrary to the words of this document?"*

48 Counsel for Integrated Private Debt Fund Inc. and First Treasury Financial Inc. counters by saying that GE's interpretation is inconsistent with the wording of the Order and inconsistent with CCAA practice.

49 In my opinion, given the overall purpose and intent of the CCAA, the relief sought by GE with this Motion is not fair and reasonable. It is an attempt by GE to obtain a better voting position and to trump the rights of other secured creditors, none of which support GE's Motion. No other secured creditor supports the voting scheme sought by GE. The purpose of the proposed Plan is to provide a fair recovery to the creditors of AY and AFY and to successfully restructure the Companies as a going concern.

50 In the result, GE's request that the claims of the Companies' secured creditors be allowed only to the extent of the realizable value of the property of the Companies subject to the security underlying the claim, and that any portion of a claim in excess of the value of the underlying security be listed as and unsecured claim, is denied.

Classification of Creditors

51 GE also wants to be put in a separate class of creditors by itself for the purposes of voting on the proposed Plan.

52 Madam Justice Paperny of the Alberta Court of Queen's Bench set out the starting point for determining the classification of creditors under the CCAA in *Canadian Airlines Corp., Re*, [2000] A.J. No. 1693 (Alta. Q.B.) at paragraph 14 where she writes:

> The starting point in determining classification is the statue under which the parties operating and from which the court obtains its jurisdiction. The primary purpose of the C.C.A.A. is to facilitate the re-organization of insolvent companies,

and this goal must be given proper consideration at every stage of the C.C.A.A. process, including classification of claims. See for example, *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20 (Alta Q.B.).

53 Classification of creditors must be based on a commonality of interest and is a fact driven determination that is unique to the particular circumstances of every case. In *Canadian Airlines Corp., Re*, *supra*, Justice Paperny writes at paragraphs 16-18:

> 16 A frequently cited description of the method of classification of creditors for the purposes or voting on a plan, under the C.C.A.A., is *Sovereign Life Assurance Co. v. Dodd* (1891) [1892] 2 Q.B. 573, (Eng. C.A.).
>
> 17 At page 583 (Q.B.), Bowen L.J. writes:
>
>> The word 'class' is vague and to find out what is meant by it, we must look at the scope of the section which is a section enabling, the court to order a meeting of a class of creditors to be called. It seems plain that we must give such a meaning to the term 'class' as will prevent the section, being so worked as to result in confiscation and injustice, and that it must be confined to those persons, whose rights are not so dissimilar as to make it impossible for them to consult together with the view to their common interest.
>
> This test has been described as the "commonality of interest" test. All counsel agree that this is the test to apply to classification of claims under the C.C.A.A. However, there is a dispute on the types of interests that are to be considered in determining commonality.
>
> 18 Generally, the cases hold that classification is a fact-driven determination unique to the circumstances of every case upon which the court should be loathe to impose rules for universal application, particularly in light of the flexible, and remedial jurisdiction involved: see, for example, *Re Fairview Industries Ltd.* (1991) 11 C.B.R. (3d) 71 (N.S.T.D.)

54 Justice Blair writing for the Ontario Court of Appeal in *Stelco Inc., Re* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.) discussed the principles to be considered by the courts with respect to the question of commonality of interest as follows:

> 22 These views have been applied in the CCAA context. But what comprises those "not so dissimilar" rights and what are the components of the "common interest" have been the subject of debate and evolution over time. It is clear that classification is a fact-driven exercise, dependent upon the circumstances of each particular case. Moreover, given the nature of the CCAA process and the underlying flexibility of that process — a flexibility which is its genius — there can be no fixed rules that must apply in all cases.
>
> 23 In *Re Canadian Airlines Corp.* (2000), 19 C.B.R. (4th) 12 (Alta. Q.B.), Paperny J. nonetheless extracted a number of principles to be considered by the courts in dealing with the commonality of interest test. At para. 31 she said:
>
>> In summary, the cases establish the following principles applicable to assessing commonality of interest:
>>
>>> 1. Commonality of interest should be viewed based on the non-fragmentation test, not on an identity of interest test;
>>>
>>> 2. The interests to be considered are the legal interest that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as liquidation.
>>>
>>> 3. The commonality of interests are to be viewed purposively, bearing in mind the object of the C.C.A.A., namely to facilitate reorganizations if possible.
>>>
>>> 4. In placing a broad and purposive interpretation on the C.C.A.A., the court should be careful to resist classification approaches that would potentially jeopardize viable plans.
>>>
>>> 5. Absent bad faith, the motivations of creditors to approve or disapprove [of the Plan] are irrelevant.

> 6. The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan in a similar manner.

55 In my opinion, the proposed classification of creditors as set forth in the proposed Plan should not be amended. GE should not be placed in its own class of creditors. I am of the view that the Companies' secured creditors, including GE, should remain together in the proposed secured creditor class. All of the Companies' secured creditors have commonality of interests when viewed in light of both the non-fragmentation approach and the object of the CCAA, which is to facilitate reorganizations in a way that is fair and reasonable, and for the benefit of all stakeholders. The secured creditors have similar interests in relation to the Companies, which include: the nature of the debt owed to the secured creditors by the Companies, that is money advanced as a loan; the type of security held by the secured creditors, that is priority in the Companies' assets and property; the secured creditors all generally have the same enforcement remedies under their security; the secured creditors are all sophisticated lenders who are in the business and aware of the gains and possible risk, and the secured creditors have all dealt with the Companies over an extended period of time.

56 Moreover, the Companies' secured creditors' rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interests. There are inter-creditor agreements that were clearly negotiated among the majority of secured creditors. There is no evidence that the secured creditors will be unable to consult together with a view to their common interests under the proposed Plan, or that they will be unable to assess their legal entitlement as creditors after the proposed Plan.

57 GE is the only secured creditor which opposes the proposed classification scheme. However, Counsel for the Companies argues that under the proposed Plan GE stands to recover the most of any secured creditor. Under the proposed Plan GE will receive almost the entire amount due to it. The Monitor is of the view that GE is being treated fairly and will not be prejudiced as a result of the proposed classification.

58 It must be remembered that the relief GE seeks, namely that it be placed in its own class, stems from its disapproval of the proposed Plan and its apparent goal to position itself to veto power in order to defeat the proposed Plan.

59 In my view, the classification GE seeks would result in a fragmented approach that could jeopardize and likely defeat the proposed Plan. It would empower GE with the ability to veto the proposed Plan so that it may immediately liquidate its security, to the detriment of all stakeholders of the Companies. As Justice Blair, writing for the Ontario Court of Appeal in *Stelco Inc., Re*, supra, explained:

> Finally, to hold the classification and voting process hostage to the vagaries of a potentially infinite variety of disputes as between already disgruntled creditors who have been caught in the maelstrom of a CCAA restructuring, runs the risk of hobbling that process unduly. It could lead to the very type of fragmentation and multiplicity of discrete classes or subclasses of classes that judges and legal writers have warned might well defeat the purpose of the Act: see Stanley Edwards "Reorganizations under the Companies Creditors Arrangement Act"; Ronald N. Robertson Q.C., "Legal Problems on Reorganization of Major Financial and Commercial Debtors", Canadian Bar Association — Ontario Continuing Legal Education; Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd., supra, at para 27; Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada, supra; Sklar-Peppler, supra; Re Woodwards Ltd., supra.
>
> In the end, it is important to remember that classification of creditors, like most other things pertaining to the CCAA, must be crafted with the underlying purpose of the CCAA in mind, namely facilitation of the reorganization of an insolvent company through the negotiation and approval of a plan of compromise or arrangement between the debtor company and its creditors, so that the debtor company can continue to carry on its business to the benefit of all concerned. As Paperny J. noted in Re Canadian Airlines, the Court should be careful to resist classification approaches that would potentially jeopardize viable Plans.

60 In my view, the proposed classification in this case as drafted by the Companies and the Monitor, namely a division between secured and unsecured creditors, is both fair and reasonable. It is the most appropriate classification scheme based

on commonality of interest and the non-fragmentation approach. Moreover, the proposed scheme is in accordance with the underlying purpose of the CCAA, namely the successful reorganization of companies.

61 In *Federal Gypsum Co., Re*, [2007] N.S.J. No. 559 (N.S. S.C.) Justice McAdam writes at paragraph 21:

> The flexibility afforded the Court, in respect to CCAA applications, is to ensure that Plans of Arrangement and compromise are fair and reasonable as well as designed to facilitate debtor reorganization. Justice Romaine, in *Ontario v. Canadian Airlines Corporation*, [2001] A.J. No. 1457, 2001 ABQB 983, at paras. 36-38 stated:
>
> > [36] The aim of minimizing prejudice to creditors embodied in the CCAA is a reflection of the cardinal principle of insolvency law: that relative entitlements created before insolvency are preserved: *R. v. Goode*, *Principles of Corporate Insolvency Law*, 2nd ed. (London: Sweet & Maxwell, 1997) at 54. While the CCAA may qualify this principle, it does so only when it is consistent with the purpose of facilitating debtor reorganization and ongoing survival, and in the spirit of what is fair and reasonable.
> >
> > [37] Paperny J. (as she then was) also discussed the purpose of the CCAA in *Re Canadian Airlines Corp.* (2000), 265 A.R. 201 (Q.B.), aff'd [2000] A.J. No. 1028 leave refused 2001 S.C.C.A No. 60. At para. 95, she stated that the purpose of the CCAA is to facilitate the reorganization of debtor companies for the benefit of a broad range of constituents.
> >
> > [38] Paperny J. also noted in para. 95 that, in dealing with applications under the CCAA, the court has a wide discretion to ensure the objectives of the CCAA are met. At para. 94, she identified guidance for the exercise of the discretion in *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Gen. Div.) at p. 9 as follows:
> >
> > > Fairness' and 'reasonableness' are, in my opinion, the two keynote concepts underscoring the philosophy and workings of the Companies' Creditors Arrangement Act. Fairness is the quintessential expression of the court's equitable jurisdiction — although the jurisdiction is statutory, the broad discretionary powers given to the judiciary by the legislation which makes its exercise in equity — and 'reasonableness' is what lends to objectivity to the process.

62 A plan under the CCAA can be more generous to some creditors but still be fair to all creditors. Where a particular creditor has invested considerable money in the debtor to keep the debtor afloat, that creditor is entitled to special treatment in the plan, provided that the overall plan is fair to all creditors: *Uniforêt inc., Re* (2003), 43 C.B.R. (4th) 254 (C.S. Que.).

63 The classification of classes of secured creditors must take into account variations tailored to the situations of various creditors within a particular class. Equality of treatment, as opposed to equitable treatment, is not a necessary, nor even a desirable goal: *Keddy Motor Inns Ltd., Re* (1992), 13 C.B.R. (3d) 245 (N.S. C.A.); *Minds Eye Entertainment Ltd. v. Royal Bank*, 2004 CarswellSask 192 (Sask. C.A.).

64 It is clear that the objective of GE in this case is to defeat the proposed Plan and in order to have the ability to do so it wants to gain veto power. Allowing GE's motion would, in my opinion, doom the proposed Plan because GE wants to be in a position to veto it and have it fail.

65 Counsel for GE suggested at the hearing of this Motion that if the relief sought by GE is granted, "*the Companies are going to have to rethink and in the next couple of days they're either going to come to a deal that's going to work, and if it's a viable company they'll be able to do it, or they're not, and it just was never meant to be*." In other words, if GE's motion is granted, its negotiating power would be fortified.

66 In *San Francisco Gifts Ltd., Re*, [2004] A.J. No. 1062 (Alta. Q.B.), Madam Justice Topoloniski writes at paragraphs 11 and 12:

The commonality of interest test has evolved over time and now involves application of the following guidelines that are neatly summarized by Paperny J. (as she then was) in Resurgence *Asset Management LLS v. Canadian Airlines Corp.* ("Canadian Airlines"):

1. Commonality of interest should be viewed based on the non-fragmentation test, not on an identity of interest test;

2. The interests to be considered are the legal interest that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as liquidation.

3. The commonality of interests are to be viewed purposively, bearing in mind the object of the C.C.A.A., namely to facilitate reorganizations if possible.

4. In placing a broad and purposive interpretation on the C.C.A.A., the court should be careful to resist classification approaches that would potentially jeopardize viable plans.

5. Absent bad faith, the motivations of creditors to approve or disapprove [of the Plan] are irrelevant.

6. The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan in a similar manner.

67 Justice Topoloniski goes on to write:

To this pithy list, I would add the following considerations:

(i) Since the CCAA is to be given a liberal and flexible interpretation classification hearings should be dealt with on a fact specific basis and the court should avoid rigid rules of general application.

(ii) In determining commonality of interests, the court should also consider factors like the plan's treatment of creditors, the business situation of the creditors, and the practical effect on them of a failure of a plan.

68 I agree with Madam Justice Topoloniski's analysis including her additional considerations. In the case at bar, the Monitor in its Report dated March 27, 2008 states that on balance the proposed Plan is fair to all parties subject to the proposed Plan. The March 27, 2008 Monitor's Report states as follows with respect to the major benefit of a successful restructuring:

The major benefit of a successful restructuring will be significant, including:

(a) The continuing employment of approximately 400 direct employees with high paying jobs in New Brunswick and Ontario;

(b) The continuing employment of a further approximately 600 indirect jobs as a result of a high export content of the sales of the Companies;

(c) The payment of a significant portion of the outstanding unsecured debt of the Companies owed to its suppliers; and

(d) The future expenditure of significant amounts other than payroll in Canada and New Brunswick, which expenditures and payroll are of significance to the economy of the areas around the mills and the Province of New Brunswick.

69 With respect to the practical effect of a failure of the proposed Plan, the Monitor has stated "*the unsecured creditors will receive nothing on their claims which in some cases will result in further hardship and business closures*."

70 In my opinion, a reclassification of the Companies' creditors for the purposes of voting on the proposed Plan so that GE is in a separate class of creditors could potentially jeopardize a viable plan of arrangement. Bearing in mind that the object of the CCAA to facilitate reorganizations, if possible, I am attracted to the additional consideration referenced by Madam Justice Topoloniski in *San Francisco Gifts Ltd., Re*, supra, namely that in determining commonality of interests, the Court should also consider factors such as a plan's treatment of creditors, the business situation of the creditors and the practical effect on them of a failure of the plan. In my view, the practical effect in this case of a failure of the proposed Plan on the Companies' creditors, other than GE, would be significantly negative and adverse.

71 In my opinion, for these reasons, GE ought not to be placed in a separate class of creditors and accordingly this request is denied.

Disposition

72 For these reasons, the motion of GE is denied.

Motion dismissed.

Tab 39

1990 CarswellOnt 139
Ontario Court of Appeal

Nova Metal Products Inc. v. Comiskey (Trustee of)

1990 CarswellOnt 139, 1 C.B.R. (3d) 101, 1 O.R. (3d) 289, 23 A.C.W.S. (3d) 1192, 41 O.A.C. 282

ELAN CORPORATION et al. v. COMISKEY (TRUSTEE OF) et al.

Finlayson, Krever and Doherty JJ.A.

Heard: October 30 and 31, 1990
Judgment: November 2, 1990
Docket: Doc. Nos. CA 684/90 and CA 685/90

Counsel: *F.J.C. Newbould*, Q.C., and *G.B. Morawetz*, for appellant The Bank of Nova Scotia.
John Little, for respondents Elan Corporation and Nova Metal Products Inc.
Michael B. Rotsztain, for RoyNat Inc.
Kim Twohig and *Mel Olanow*, for Ontario Development Corp.
K.P. McElcheran, for monitor Ernst & Young.

***FINLAYSON J.A. (KREVER J.A.* concurring) (orally):**

1 This is an appeal by the Bank of Nova Scotia (the "bank") from orders made by Mr. Justice Hoolihan [(11 September 1990), Doc. Nos. Toronto RE 1993/90 and RE 1994/90 (Ont. Gen. Div.)] as hereinafter described. The Bank of Nova Scotia was the lender to two related companies, namely, Elan Corporation ("Elan") and Nova Metal Products Inc. ("Nova"), which commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), for the purposes of having a plan of arrangement put to a meeting of secured creditors of those companies.

2 The orders appealed from are:

(i) An order of September 11, 1990, which directed a meeting of the secured creditors of Elan and Nova to consider the plan of arrangement filed, or other suitable plan. The order further provided that for 3 days until September 14, 1990, the bank be prevented from acting on any of its security or paying down any of its loans from accounts receivable collected by Elan and Nova, and that Elan and Nova could spend the accounts receivable assigned to the bank that would be received.

(ii) An order dated September 14, 1990, extending the terms of the order of September 11, 1990, to remain in effect until the plan of arrangement was presented to the Court no later than October 24, 1990. This order continued the stay against the bank and the power of Elan and Nova to spend the accounts receivable assigned to the bank. Further orders dated September 27, 1990, and October 18, 1990, have extended the stay, and the power of Elan and Nova to spend the accounts receivable that have been assigned to the bank. The date of the meetings of creditors has been extended to November 9, 1990. The application to sanction the plan of arrangement must be heard by November 14, 1990.

(iii) An order dated October 18, 1990, directing that there be two classes of secured creditors for the purposes of voting at the meeting of secured creditors. The first class is to be comprised of the bank, RoyNat Inc. ("RoyNat"), the Ontario Development Corporation ("O.D.C."), the city of Chatham and the village of Glencoe. The second class is to be comprised of persons related to Elan and Nova that acquired debentures to enable the companies to apply under the CCAA.

3 There is very little dispute about the facts in this matter, but the chronology of events is important and I am setting it out in some detail.

4 The bank has been the banker to Elan and Nova. At the time of the application in August 1990, it was owed approximately $1,900,000. With interest and costs, including receivers' fees, it is now owed in excess of $2,300,000. It has a first registered charge on the accounts receivable and inventory of Elan and Nova, and a second registered charge on the land, buildings and equipment. It also has security under s. 178 of the *Bank Act*, R.S.C. 1985, c. B-1, as am. R.S.C. 1985 (3rd Supp.), c. 25, s. 26. The terms of credit between the bank and Elan as set out in a commitment agreement provide that Elan and Nova may not encumber their assets without the consent of the bank.

5 RoyNat is also a secured creditor of Elan and Nova, and it is owed approximately $12 million. It holds a second registered charge on the accounts receivable and inventory of Elan and Nova, and a first registered charge on the land, buildings and equipment. The bank and RoyNat entered into a priority agreement to define with certainty the priority which each holds over the assets of Elan and Nova.

6 The O.D.C. guaranteed payment of $500,000 to RoyNat for that amount lent by RoyNat to Elan. The O.D.C. holds debenture security from Elan and secure the guarantee which it gave to RoyNat. That security ranks third to the bank and RoyNat. The O.D.C. has not been called upon by RoyNat to pay under its guarantee. O.D.C. has not lent any money directly to Elan or Nova.

7 Elan owes approximately $77,000 to the City of Chatham for unpaid municipal taxes. Nova owes approximately $18,000 to the Village of Glencoe for unpaid municipal taxes. Both municipalities have a lien on the real property of the respective companies in priority to every claim except the Crown under s. 369 of the *Municipal Act*, R.S.O. 1980, c. 302.

8 On May 8, 1990, the bank demanded payment of all outstanding loans owing by Elan and Nova to be made by June 1, 1990. Extensions of time were granted and negotiations directed to the settlement of the debt took place thereafter. On August 27, 1990, the bank appointed Coopers & Lybrand Limited as receiver and manager of the assets of Elan and Nova, and as agent under the bank's security to realize upon the security. Elan and Nova refused to allow the receiver and manager to have access to their premises, on the basis that insufficient notice had been provided by the bank before demanding payment.

9 Later on August 27, 1990, the bank brought a motion in an action against Elan and Nova (Court File No. 54033/90) for an order granting possession of the premises of Elan and Nova to Coopers & Lybrand. On the evening of August 27, 1990, at approximately 9 p.m., Mr. Justice Saunders made an order adjourning the motion on certain conditions. The order authorized Coopers & Lybrand access to the premises to monitor Elan's business, and permitted Elan to remain in possession and carry on its business in the ordinary course. The bank was restrained in the order, until the motion could be heard, from selling inventory, land, equipment or buildings or from notifying account debtors to collect receivables, but was not restrained from applying accounts receivable that were collected against outstanding bank loans.

10 On Wednesday, August 29, 1990, Elan and Nova each issued a debenture for $10,000 to a friend of the principals of the companies, Joseph Comiskey, through his brother Michael Comiskey as trustee, pursuant to a trust deed executed the same day. The terms were not commercial and it does not appear that repayment was expected. It is conceded by counsel for Elan that the sole purpose of issuing the debentures was to qualify as a "debtor company" within the meaning of s. 3 of the CCAA. Section 3 reads as follows:

> 3. This Act does not apply in respect of a debtor company unless
>
> (a) the debtor company has outstanding an issue of secured or unsecured bonds of the debtor company or of a predecessor in title of the debtor company issued under a trust deed or other instrument running in favour of a trustee; and
>
> (b) the compromise or arrangement that is proposed under section 4 or 5 in respect of the debtor company includes a compromise or an arrangement between the debtor company and the holders of an issue referred to in paragraph (a).

11 The debentures conveyed the personal property of Elan and Nova as security to Michael Comiskey as trustee. No consent was obtained from the bank as required by the loan agreements, nor was any consent obtained from the receiver. Cheques for $10,000 each, representing the loans secured in the debentures, were given to Elan and Nova on Wednesday, August 29, 1990,

but not deposited until 6 days later on September 4, 1990, after an interim order had been made by Mr. Justice Farley in favour of Elan and Nova staying the bank from taking proceedings.

12 On August 30, 1990 Elan and Nova applied under s. 5 of the CCAA for an order directing a meeting of secured creditors to vote on a plan of arrangement. Section 5 provides:

> 5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

13 The application was heard by Farley J. on Friday, August 31, 1990, at 8 a.m. Farley J. dismissed the application on the grounds that the CCAA required that there be more than one debenture issued by each company. Later on the same say, August 31, 1990, Elan and Nova each issued two debentures for $500 to the wife of the principal of Elan through her sister as trustee. The debentures provided for payment of interest to commence on August 31, 1992. Cheques for $500 were delivered that day to the companies but not deposited in the bank account until September 4, 1990. These debentures conveyed the personal property in the assets of Elan and Nova to the trustee as security. Once again it is conceded that the debentures were issued for the sole purpose of meeting the requirements of s. 3 of the CCAA. No consent was obtained from the bank as required by the loan terms, nor was any consent obtained from the receiver.

14 On August 31, 1990, following the creation of the trust deeds and the issuance of the debentures, Elan and Nova commenced new applications under the CCAA which were heard late in the day by Farley J. He adjourned the applications to September 10, 1990, on certain terms, including a stay preventing the bank from acting on its security and allowing Elan to spend up to $321,000 from accounts receivable collected by it.

15 The plan of arrangement filed with the application provided that Elan and Nova would carry on business for 3 months, that secured creditors would not be paid and could take no action on their security for 3 months, and that the accounts receivable of Elan and Nova assigned to the bank could be utilized by Elan and Nova for purposes of its day-to-day operations. No compromise of any sort was proposed.

16 On September 11, 1990, Hoolihan J. ordered that a meeting of the secured creditors of Elan and Nova be held no later than October 22, 1990, to consider the plan of arrangement that had been filed, or other suitable plan. He ordered that the plan of arrangement be presented to the secured creditors no later than September 27, 1990. He made further orders effective for 3 days until September 14, 1990, including orders:

> (i) that the companies could spend the accounts receivable assigned to the bank that would be collected in accordance with a cash flow forecast filed with the Court providing for $1,387,000 to be spent by September 30, 1990; and
>
> (ii) a stay of proceedings against the bank acting on any of its security or paying down any of its loans from accounts receivable collected by Elan and Nova.

17 On September 14, 1990, Hoolihan J. extended the terms of his order of September 11, 1990, to remain in effect until the plan of arrangement was presented to the Court no later than October 24, 1990 for final approval. This order continued the power of Elan and Nova to spend up to $1,387,000 of the accounts receivable assigned to the bank in accordance with the projected cash flow to September 30, 1990, and to spend a further amount to October 24, 1990, in accordance with a cash flow to be approved by Hoolihan J. prior to October 1, 1990. Further orders dated September 27 and October 18 have extended the power to spend the accounts receivable to November 14, 1990.

18 On September 14, 1990, the bank requested Hoolihan J. to restrict his order so that Elan and Nova could use the accounts receivable assigned to the bank only so long as they continued to operate within the borrowing guidelines contained in the terms of the loan agreements with the bank. These guidelines require a certain ratio to exist between bank loans and the book value

of the accounts receivable and inventory assigned to the bank, and are designed in normal circumstances to ensure that there is sufficient value in the security assigned to the bank. Hoolihan J. refused to make the order.

19 On October 18, 1990, Hoolihan J. ordered that the composition of the classes of secured creditors for the purposes of voting at the meeting of secured creditors shall be as follows:

(a) The bank, RoyNat, O.D.C., the City of Chatham and the Village of Glencoe shall comprise one class.

(b) The parties related to the principal of Elan that acquired their debentures to enable the companies to apply under the CCAA shall comprise a second class.

20 On October 18, 1990, at the request of counsel for Elan and Nova, Hoolihan J. further ordered that the date for the meeting of creditors of Elan and Nova be extended to November 9, 1990, in order to allow a new plan of arrangement to be sent to all creditors, including unsecured creditors of those companies. Elan and Nova now plan to offer a plan of compromise or arrangement to the unsecured creditors of Elan and Nova as well as to the secured creditors.

21 There are five issues in this appeal.

(1) Are the debentures issued by Elan and Nova for the purpose of permitting the companies to qualify as applicants under the CCAA debentures within the meaning of s. 3 of the CCAA?

(2) Did the issue of the debentures contravene the provisions of the loan agreements between Elan and Nova and the bank? If so, what are the consequences for CCAA purposes?

(3) Did Elan and Nova have the power to issue the debentures and make application under the CCAA after the bank had appointed a receiver and after the order of Saunders J.?

(4) Did Hoolihan J. have the power under s. 11 of the CCAA to make the interim orders that he made with respect to the accounts receivable?

(5) Was Hoolihan J. correct in ordering that the bank vote on the proposed plan of arrangement in a class with RoyNat and the other secured creditors?

22 It is well established that the CCAA is intended to provide a structured environment for the negotiation of compromises between a debtor company and its creditors for the benefit of both. Such a resolution can have significant benefits for the company, its shareholders and employees. For this reason the debtor companies, Elan and Nova, are entitled to a broad and liberal interpretation of the jurisdiction of the Court under the CCAA. Having said that, it does not follow that in exercising its discretion to order a meeting of creditors under s. 5 of the CCAA that the Court should not consider the equities in this case as they relate to these companies and to one of its principal secured creditors, the bank.

23 The issues before Hoolihan J. and this Court were argued on a technical basis. Hoolihan J. did not give effect to the argument that the debentures described above were a "sham" and could not be used for the purposes of asserting jurisdiction. Unfortunately, he did not address any of the other arguments presented to him on the threshold issue of the availability of the CCAA. He appears to have acted on the premise that if the CCAA can be made available, it should be utilized.

24 If Hoolihan J. did exercise any discretion overall, it is not reflected in his reasons. I believe, therefore, that we are in a position to look at the uncontested chronology of these proceedings and exercise our own discretion. To me, the significant date is August 27, 1990 when the bank appointed Coopers & Lybrand Limited as receiver and manager of the undertaking, property and assets mortgaged and charged under the demand debenture and of the collateral under the general security agreement, both dated June 20, 1979. On the same date, it appointed the same company as receiver and manager for Nova under a general security agreement dated December 5, 1988. The effect of this appointment is to divest the companies and their boards of directors of their power to deal with the property comprised in the appointment: Raymond Walton, *Kerr on the Law and Practice as to Receivers*, 16th ed. (London: Sweet & Maxwell, 1983), p. 292. Neither Elan nor Nova had the power to create further

indebtedness, and thus to interfere with the ability of the receiver to manage the two companies: *Alberta Treasury Branches v. Hat Development Ltd.* (1988), 71 C.B.R. (N.S.) 264, 64 Alta. L.R. (2d) 17 (Q.B.), aff'd (1989), 65 Alta. L.R. (2d) 374 (C.A.).

25 Counsel for the debtor companies submitted that the management powers of the receiver were stripped from the receiver by Saunders J. in his interim order, when he allowed the receiver access to the companies' properties but would not permit it to realize on the security of the bank until further order. He pointed out that the order also provided that the companies were entitled to remain in possession and "to carry on business in the ordinary course" until further order.

26 I do not agree with counsel's submission covering the effect of the order. It certainly restricted what the receiver could do on an interim basis, but it imposed restrictions on the companies as well. The issue of these disputed debentures in support of an application for relief as insolvent companies under the CCAA does not comply with the order of Saunders J. This is not carrying on business in the ordinary course. The residual power to take all of these initiatives for relief under the CCAA remained with the receiver, and if trust deeds were to be issued, an order of the Court in Action 54033/90 was required permitting their issuance and registration.

27 There is another feature which, in my opinion, affects the exercise of discretion, and that is the probability of the meeting achieving some measure of success. Hoolihan J. considered the calling of the meeting at one hearing, as he was asked to do, and determined the respective classes of creditors at another. This latter classification is necessary because of the provisions of s. 6(a) of the CCAA, which reads as follows:

> 6. Where a majority in number representing three-fourths in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding
>
> (a) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company.

28 If both matters had been considered at the same time, as in my view they should have been, and if what I regard as a proper classification of the creditors had taken place, I think it is obvious that the meeting would not be a productive one. It was improper, in my opinion, to create one class of creditors made up of all the secured creditors save the so-called "sham" creditors. There is no true community of interest among them, and the motivation of Elan and Nova in striving to create a single class is clearly designed to avoid the classification of the bank as a separate class.

29 It is apparent that the only secured creditors with a significant interest in the proceeding under the CCAA are the bank and RoyNat. The two municipalities have total claims for arrears of taxes of less than $100,000. They have first priority in the lands of the companies. They are in no jeopardy whatsoever. The O.D.C. has a potential liability in that it can be called upon by RoyNat under its guarantee to a maximum of $500,000, and this will trigger default under its debentures with the companies, but its interests lie with RoyNat.

30 As to RoyNat, it is the largest creditor with a debt of some $12 million. It will dominate any class it is in because, under s. 6 of the CCAA, the majority in a class must represent three-quarters in value of that class. It will always have a veto by reason of the size of its claim, but requires at least one creditor to vote for it to give it a majority in number (I am ignoring the municipalities). It needs the O.D.C.

31 I do not base my opinion solely on commercial self-interest, but also on the differences in legal interest. The bank has first priority on the receivables referred to as the "quick assets", and RoyNat ranks second in priority. RoyNat has first priority on the buildings and realty, the "fixed assets", and the bank has second priority.

32 It is in the commercial interests of the bank, with its smaller claim and more readily realizable assets, to collect and retain the accounts receivable. It is in the commercial interests of RoyNat to preserve the cash flow of the business and sell the enterprise as a going concern. It can only do that by overriding the prior claim of the bank to these receivables. If it can vote

with the O.D.C. in the same class as the bank, it can achieve that goal and extinguish the prior claim of the bank to realize on the receivables. This it can do, despite having acknowledged its legal relationship to the bank in the priority agreement signed by the two. I can think of no reason why the legal interest of the bank as the holder of the first security on the receivables should be overridden by RoyNat as holder of the second security.

33 The classic statement on classes of creditors is that of Lord Esher M.R. in *Sovereign Life Assurance Co. v. Dodd*, [1892] 2 Q.B. 573, [1891-4] All E.R. 246 (C.A.), at pp. 579-580 [Q.B.]:

> The Act [*Joint Stock Companies Arrangement Act, 1870*] says that the persons to be summoned to the meeting (all of whom, be it said in passing, are creditors) are persons who can be divided into different classes — classes which the Act of Parliament recognises, though it does not define them. This, therefore, must be done: they must be divided into different classes. What is the reason for such a course? It is because the creditors composing the different classes have different interests; and, therefore, if we find a different state of facts existing among different creditors which may differently affect their minds and their judgment, they must be divided into different classes.

34 The *Sovereign Life* case was quoted with approval by Kingstone J. in *Re Wellington Building Corp.*, [1934] O.R. 653, 16 C.B.R. 48, [1934] 4 D.L.R. 626, [1934] O.W.N. 562 (S.C.), at p. 659 [O.R.]. He also quoted another English authority at p. 658:

> In *In re Alabama, New Orleans, Texas and Pacific Junction Ry. Co.*, [1891] 1 Ch. 213, a scheme and arrangement under the Joint Stock Companies Arrangement Act (1870), was submitted to the Court for approval. Lord Justice Bowen, at p. 243, says:
>
> > Now, I have no doubt at all that it would be improper for the Court to allow an arrangement to be forced on any class of creditors, if the arrangement cannot reasonably be supposed by sensible business people to be for the benefit of that class as such, otherwise the sanction of the Court would be a sanction to what would be a scheme of confiscation. The object of this section is not confiscation ... Its object is to enable compromises to be made which are for the common benefit of the creditors as creditors, or for the common benefit of some class of creditors as such.

35 Kingstone J. set aside a meeting where three classes of creditors were permitted to vote together. He said at p. 660:

> It is clear that Parliament intended to give the three-fourths majority of any class power to bind that class, but I do not think the Statute should be construed so as to permit holders of subsequent mortgages power to vote and thereby destroy the priority rights and security of a first mortgagee.

36 We have been referred to more modern cases, including two decisions of Trainor J. of the British Columbia Supreme Court, both entitled *Re Northland Properties Ltd.* One case is reported in (1988), 73 C.B.R. (N.S.) 166, 31 B.C.L.R. (2d) 35, and the other in the same volume at p. 175 [C.B.R.]. Trainor J. was upheld on appeal on both judgments. The first judgment of the British Columbia Court of Appeal is unreported (16 September, 1988) [Doc. No. Vancouver CA009772, Taggart, Lambert and Locke JJ.A.]. The judgment in the second appeal is reported at 73 C.B.R. (N.S.) 195, [1989] 3 W.W.R. 363, 34 B.C.L.R. (2d) 122.

37 In the first *Northland* case, Trainor J. held that the difference in the terms of parties to and priority of different bonds meant that they should be placed in separate classes. He relied upon *Re Wellington Building Corp.*, supra. In the second *Northland* case, he dealt with 15 mortgagees who were equal in priority but held different parcels of land as security. Trainor J. held that their relative security positions were the same, notwithstanding that the mortgages were for the most part secured by charges against separate properties. The nature of the debt was the same, the nature of the security was the same, the remedies for default were the same, and in all cases they were corporate loans by sophisticated lenders. In specifically accepting the reasoning of Trainor J., the Court of Appeal held that the concern of the various mortgagees as to the quality of their individual securities was "a variable cause arising not by any difference in legal interests, but rather as a consequence of bad lending, or market values, or both" (p. 203).

38 In *Re NsC Diesel Power Inc.* (1990), 79 C.B.R. (N.S.) 1, 97 N.S.R. (2d) 295, 258 A.P.R. 295 (T.D.), the Court stressed that a class should be made up of persons "'whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest'" (p. 8 [of C.B.R.]).

39 My assessment of these secured creditors is that the bank should be in its own class. This being so, it is obvious that no plan of arrangement can succeed without its approval. There is no useful purpose to be served in putting a plan of arrangement to a meeting of creditors if it is known in advance that it cannot succeed. This is another cogent reason for the Court declining to exercise its discretion in favour of the debtor companies.

40 For all the reasons given above, the application under the CCAA should have been dismissed. I do not think that I have to give definitive answers to the individual issues numbered (1) and (2). They can be addressed in a later case, where the answers could be dispositive of an application under the CCAA. The answer to (3) is that the combined effect of the receivership and the order of Saunders J. disentitled the companies to issue the debentures and bring the application under the CCAA. It is not necessary to answer issue (4), and the answer to (5) is no.

41 Accordingly, I would allow the appeal, set aside the three orders of Hoolihan J., and, in their place, issue an order dismissing the application under the CCAA. The bank should receive its costs of this appeal, the applications for leave to appeal, and the proceedings before Farley and Hoolihan JJ., to be paid by Elan, Nova and RoyNat.

42 Ernst & Young were appointed monitor in the order of Hoolihan J. dated September 14, 1990, to monitor the operations of Elan and Nova and give effect to and supervise the terms and conditions of the stay of proceedings in accordance with Appendix "C" appended to the order. The monitor should be entitled to be paid for all services performed to date, including whatever is necessary to complete its reports for past work, as called for in Appendix "C".

DOHERTY J.A. **(dissenting in part):**

I Background

43 On November 2, 1990, this Court allowed the appeal brought by the Bank of Nova Scotia (the "bank") and vacated several orders made by Hoolihan J. Finlayson J.A. delivered oral reasons on behalf of the majority. At the same time, I delivered brief oral reasons dissenting in part from the conclusion reached by the majority and undertook to provide further written reasons. These are those reasons.

44 The events relevant to the disposition of this appeal are set out in some detail in the oral reasons of Finlayson J.A. I will not repeat that chronology, but will refer to certain additional background facts before turning to the legal issues.

45 Elan Corporation ("Elan") owns the shares of Nova Metal Products Inc. ("Nova Inc."). Both companies have been actively involved in the manufacture of automobile parts for a number of years. As of March 1990, the companies had total annual sales of about $30 million, and employed some 220 people in plants located in Chatham and Glencoe, Ontario. The operation of these companies no doubt plays a significant role in the economy of these two small communities.

46 In the 4 years prior to 1989, the companies had operated at a profit ranging from $287,000 (1987) to $1,500,000 (1986). In 1989, several factors, including large capital expenditures and a downturn in the market, combined to produce an operational loss of about $1,333,000. It is anticipated that the loss for the year ending June 30, 1990, will be about $2.3 million. As of August 1, 1990, the companies continued in full operation, and those in control anticipated that the financial picture would improve significantly later in 1990, when the companies would be busy filling several contracts which had been obtained earlier in 1990.

47 The bank has provided credit to the companies for several years. In January 1989, the bank extended an operating line of credit to the companies. The line of credit was by way of a demand loan that was secured in the manner described by Finlayson J.A. Beginning in May 1989, and from time to time after that, the companies were in default under the terms of the loan advanced by the bank. On each occasion, the bank and the companies managed to work out some agreement so that the bank continued as lender and the companies continued to operate their plants.

48 Late in 1989, the companies arranged for a $500,000 operating loan from RoyNat Inc. It was hoped that this loan, combined with the operating line of $2.5 million from the bank, would permit the company to weather its fiscal storm. In March 1990, the bank took the position that the companies were in breach of certain requirements under their loan agreements, and warned that if the difficulties were not rectified the bank would not continue as the company's lender. Mr. Patrick Johnson, the president of both companies, attempted to respond to these concerns in a detailed letter to the bank dated March 15, 1990. The response did not placate the bank. In May 1990, the bank called its loan and made a demand for immediate payment. Mr. Spencer, for the bank, wrote: "We consider your financial condition continues to be critical and we are not prepared to delay further making formal demand." He went on to indicate that, subject to further deterioration in the companies' fiscal position, the bank was prepared to delay acting on its security until June 1, 1990.

49 As of May 1990, Mr. Johnson, to the bank's knowledge, was actively seeking alternative funding to replace the bank. At the same time, he was trying to convince the union which represented the workers employed at both plants to assist in a co-operative effort to keep the plants operational during the hard times. The union had agreed to discuss amendment of the collective bargaining agreement to facilitate the continued operation of the companies.

50 The June 1, 1990 deadline set by the bank passed without incident. Mr. Johnson continued to search for new financing. A potential lender was introduced to Mr. Spencer of the bank on August 13, 1990, and it appeared that the bank, through Mr. Spencer, was favourably impressed with this potential lender. However, on August 27, 1990, the bank decided to take action to protect its position. Coopers & Lybrand was appointed by the bank as receiver-manager under the terms of the security agreements with the companies. The companies denied the receiver access to their plants. The bank then moved before the Honourable Mr. Justice E. Saunders for an order giving the receiver possession of the premises occupied by the companies. On August 27, 1990, after hearing argument from counsel for the bank and the companies, Mr. Justice Saunders refused to install the receivers and made the following interim order:

> 1. THIS COURT ORDERS that the receiver be allowed access to the property to monitor the operations of the defendants but shall not take steps to realize on the security of The Bank of Nova Scotia until further Order of the Court.
>
> 2. THIS COURT ORDERS that the defendants shall be entitled to remain in possession and to carry on business in the ordinary course until further Order of this Court.
>
> 3. THIS COURT ORDERS that until further order the Bank of Nova Scotia shall not take steps to notify account debtors of the defendants for the purpose of collecting outstanding accounts receivable. This Order does not restrict The Bank of Nova Scotia from dealing with accounts receivable of the defendants received by it.
>
> 4. THIS COURT ORDERS that the motion is otherwise adjourned to a date to be fixed.

51 The notice of motion placed before Saunders J. by the bank referred to "an intended action" by the bank. It does not appear that the bank took any further steps in connection with this "intended action."

52 Having resisted the bank's efforts to assume control of the affairs of the companies on August 27, 1990, and realizing that their operations could cease within a matter of days, the companies turned to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "Act"), in an effort to hold the bank at bay while attempting to reorganize their finances. Finlayson J.A. has described the companies' efforts to qualify under that Act, the two appearances before the Honourable Mr. Justice Farley on August 31, 1990, and the appearances before the Honourable Mr. Justice Hoolihan in September and October 1990, which resulted in the orders challenged on this appeal.

II The Issues

53 The dispute between the bank and the companies when this application came before Hoolihan J. was a straightforward one. The bank had determined that its best interests would be served by the immediate execution of the rights it had under its various agreements with the companies. The bank's best interest was not met by the continued operation of the companies as

going concerns. The companies and their other two substantial secured creditors considered that their interests required that the companies continue to operate, at least for a period which would enable the companies to place a plan of reorganization before its creditors.

54 All parties were pursuing what they perceived to be their commercial interests. To the bank, these interests entailed the "death" of the companies as operating entities. To the companies, these interests required "life support" for the companies through the provisions of the Act to permit a "last ditch" effort to save the companies and keep them in operation.

55 The issues raised on this appeal can be summarized as follows:

(i) Did Hoolihan J. err in holding that the companies were entitled to invoke the Act?

(ii) Did Hoolihan J. err in exercising his discretion in directing that a meeting of creditors should be held under the Act?

(iii) Did Hoolihan J. err in directing that the bank and RoyNat Inc. should be placed in the same class of creditors for the purposes of the Act?

(iv) Did Hoolihan J. err in the terms of the interim orders he made pending the meeting of creditors and the submission to the court of a plan of reorganization?

III The Purpose and Scheme of the Act

56 Before turning to these issues, it is necessary to understand the purpose of the Act, and the scheme established by the Act for achieving that purpose. The Act first appeared in the midst of the Great Depression (S.C. 1932-33, c. 36). The Act was intended to provide a means whereby insolvent companies could avoid bankruptcy and continue as ongoing concerns through a reorganization of their financial obligations. The reorganization contemplated required the cooperation of the debtor companies' creditors and shareholders: *Re Avery Construction Co.*, 24 C.B.R. 17, [1942] 4 D.L.R. 558 (Ont. S.C.); Stanley E. Edwards, "Reorganizations under the Companies' Creditors Arrangement Act" (1947) 25 Can. Bar Rev. 587, at pp. 592-593; David H. Goldman, "Reorganizations Under the Companies' Creditors Arrangement Act (Canada)" (1985) 55 C.B.R. (N.S.) 36, at pp. 37-39.

57 The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy- or creditor-initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

58 The purpose of the Act was artfully put by Gibbs J.A., speaking for the British Columbia Court of Appeal, in *Hongkong Bank of Canada v. Chef Ready Foods Ltd.*, an unreported judgment released October 29, 1990 [Doc. No. Vancouver CA12944, Carrothers, Cumming and Gibbs JJ.A., now reported [1991] 2 W.W.R. 136, 51 B.C.L.R. (2d) 84], at pp. 11 and 6 [unreported, pp. 91 and 88 B.C.L.R.]. In referring to the purpose for which the Act was initially proclaimed, he said:

> Almost inevitably liquidation destroyed the shareholders' investment, yielded little by way of recovery to the creditors, and exacerbated the social evil of devastating levels of unemployment. The government of the day sought, through the C.C.A.A. ['the Act'], to create a regime whereby the principals of the company and the creditors could be brought together under the supervision of the court to attempt a reorganization or compromise or arrangement under which the company could continue in business.

59 In an earlier passage, His Lordship had said:

> The purpose of the C.C.A.A. is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue in business.

60 Gibbs J.A. also observed (at p. 13) that the Act was designed to serve a "broad constituency of investors, creditors and employees." Because of that "broad constituency", the Court must, when considering applications brought under the Act, have

regard not only to the individuals and organizations directly affected by the application, but also to the wider public interest. That interest is generally, but not always, served by permitting an attempt at reorganization: see S.E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act," at p. 593.

61 The Act must be given a wide and liberal construction so as to enable it to effectively serve this remedial purpose: *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12; *Hongkong Bank of Canada v. Chef Ready Foods Ltd.*, supra, at p. 14 [unreported, p. 92 B.C.L.R.].

62 The Act is available to all insolvent companies, provided the requirements of s. 3 of the Act are met. That section provides:

> 3. This Act does not apply in respect of a debtor company unless
>
> (a) the debtor company has outstanding an issue of secured or unsecured bonds of the debtor company or of a predecessor in title of the debtor company issued under a trust deed or other instrument running in favour of a trustee; and
>
> (b) the compromise or arrangement that is proposed under section 4 or 5 in respect of the debtor company includes a compromise or an arrangement between the debtor company and the holders of an issue referred to in paragraph (a).

63 A debtor company, or a creditor of that company, invokes the Act by way of summary application to the Court under s. 4 or s. 5 of the Act. For present purposes, s. 5 is the relevant section:

> 5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

64 Section 5 does not require that the Court direct a meeting of creditors to consider a proposed plan. The Court's power to do so is discretionary. There will no doubt be cases where no order will be made, even though the debtor company qualifies under s. 3 of the Act.

65 If the Court determines that a meeting should be called, the creditors must be placed into classes for the purpose of that meeting. The significance of this classification process is made apparent by s. 6 of the Act:

> 6. Where a majority in number representing three-fourths in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding
>
> (a) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; and
>
> (b) in the case of a company that has made an authorized assignment or against which a receiving order has been made under the *Bankruptcy Act* or is in the course of being wound up under the *Winding-up Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

66 If the plan of reorganization is approved by the creditors as required by s. 6, it must then be presented to the Court. Once again, the Court must exercise a discretion, and determine whether it will ap prove the plan of reorganization. In exercising that discretion, the Court is concerned not only with whether the appropriate majority has approved the plan at a meeting held in accordance with the Act and the order of the Court, but also with whether the plan is a fair and reasonable one: *Re Northland Properties Ltd.* (1988), 73 C.B.R. (N.S.) 175 at 182-185 (S.C.), aff'd 73 C.B.R. (N.S.) 195, [1989] 3 W.W.R. 363, 34 B.C.L.R. (2d) 122 (C.A.).

67 If the Court chooses to exercise its discretion in favour of calling a meeting of creditors for the purpose of considering a plan of reorganization, the Act provides that the rights and remedies available to creditors, the debtor company, and others during the period between the making of the initial order and the consideration of the proposed plan may be suspended or otherwise controlled by the Court.

68 Section 11 gives a court wide powers to make any interim orders:

> 11. Notwithstanding anything in the *Bankruptcy Act* or the *Winding-up Act*, whenever an application has been made under this Act in respect of any company, the court, on the application of any person interested in the matter, may, on notice to any other person or without notice as it may see fit,
>
> (a) make an order staying, until such time as the court may prescribe or until any further order, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy Act* and the *Winding-up Act* or either of them;
>
> (b) restrain further proceedings in any action, suit or proceeding against the company on such terms as the court sees fit; and
>
> (c) make an order that no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the court and subject to such terms as the court imposes.

69 Viewed in its totality, the Act gives the Court control over the initial decision to put the reorganization plan before the creditors, the classification of creditors for the purpose of considering the plan, conduct affecting the debtor company pending consideration of that plan, and the ultimate acceptability of any plan agreed upon by the creditors. The Act envisions that the rights and remedies of individual creditors, the debtor company and others may be sacrificed, at least temporarily, in an effort to serve the greater good by arriving at some acceptable reorganization which allows the debtor company to continue in operation: *Icor Oil & Gas Co. v. Canadian Imperial Bank of Commerce* (1989), 102 A.R. 161 at p. 165 (Q.B.).

IV Did Hoolihan J. Err in Holding that the Debtor Companies were Entitled to Invoke the Act?

70 The appellant advances three arguments in support of its contention that Elan and Nova Inc. were not entitled to seek relief under the Act. It argues first that the debentures issued by the companies after August 27, 1990, were "shams" and did not fulfil the requirements of s. 3 of the Act. The appellant next contends that the issuing of the debentures by the companies contravened their agreements with the bank, in which they undertook not to further encumber the assets of the companies without the consent of the bank. Lastly, the appellant maintains that once the bank had appointed a receiver-manager over the affairs of the companies on August 27, 1990, the companies had no power to create further indebtedness by way of debentures or to bring an application on behalf of the companies under the Act.

(i) Section 3 and "Instant" Trust Deeds

71 The debentures issued in August 1990, after the bank had moved to install a receiver-manager, were issued solely and expressly for the purpose of meeting the requirements of s. 3 of the Act. Indeed, it took the companies two attempts to meet those requirements. The debentures had no commercial purpose. The transactions did, however, involve true loans in the sense that moneys were advanced and debt was created. Appropriate and valid trust deeds were also issued.

72 In my view, it is inappropriate to refer to these transactions as "shams." They are neither false nor counterfeit, but rather are exactly what they appear to be, transactions made to meet jurisdictional requirements of the Act so as to permit an application for reorganization under the Act. Such transactions are apparently well known to the commercial Bar: B. O'Leary, "A Review of the Companies' Creditors Arrangement Act" (1987) 4 Nat. Insolvency Rev. 38, at p. 39; C. Ham, " 'Instant' Trust Deeds Under the C.C.A.A." (1988) 2 Commercial Insolvency Reporter 25; G.B. Morawetz, "Emerging Trends in the Use of the Companies' Creditors Arrangement Act" (1990) Proceedings, First Annual General Meeting and Conference of the Insolvency Institute of Canada.

73 Mr. Ham writes, at pp. 25 and 30:

> Consequently, some companies have recently sought to bring themselves within the ambit of the C.C.A.A. by creating 'in stant' trust deeds, i.e., trust deeds which are created solely for the purpose of enabling them to take advantage of the C.C.A.A.

74 Applications under the Act involving the use of "instant" trust deeds have been before the Courts on a number of occasions. In no case has any court held that a company cannot gain access to the Act by creating a debt which meets the requirements of s. 3 for the express purpose of qualifying under the Act. In most cases, the use of these "instant" trust deeds has been acknowledged without comment.

75 The decision of Chief Justice Richard in *Re United Maritime Fishermen Co-op.* (1988), 67 C.B.R. (N.S.) 44, 84 N.B.R. (2d) 415, 214 A.P.R. 415 (Q.B.), varied on reconsideration (1988), 68 C.B.R. (N.S.) 170, 87 N.B.R. (2d) 333, 221 A.P.R. 333 (Q.B.), at 55-56 [67 C.B.R.], speaks directly to the use of "instant" trust deeds. The Chief Justice refused to read any words into s. 3 of the Act which would limit the availability of the Act depending on the point at which, or the purpose for which, the debenture or bond and accompanying trust deed were created. He accepted [at p. 56 C.B.R.] the debtor company's argument that the Act:

> does not impose any time restraints on the creation of the conditions as set out in s. 3 of the Act, nor does it contain any prohibition against the creation of the conditions set out in s. 3 for the purpose of obtaining jurisdiction.

76 It should, however, be noted that in *Re United Maritime Fishermen Co-op.*, supra, the debt itself was not created for the purpose of qualifying under the Act. The bond and the trust deed, however, were created for that purpose. The case is therefore factually distinguishable from the case at Bar.

77 The Court of Appeal reversed the ruling of the Chief Justice ((1988), 69 C.B.R. (N.S.) 161, 51 D.L.R. (4th) 618, 88 N.B.R. (2d) 253, 224 A.P.R. 253) on the basis that the bonds required by s. 3 of the Act had not been issued when the application was made, so that on a precise reading of the words of s. 3 the company did not qualify. The Court did not go on to consider whether, had the bonds been properly issued, the company would have been entitled to invoke the Act. Hoyt J.A., for the majority, did, however, observe without comment that the trust deeds had been created specifically for the purpose of bringing an application under the Act.

78 The judgment of MacKinnon J. in *Re Stephanie's Fashions Ltd.*, unreported, Doc. No. Vancouver A893427, released January 24, 1990 (B.C. S.C.) [now reported 1 C.B.R. (3d) 248], is factually on all fours with the present case. In that case, as in this one, it was acknowledged that the sole purpose for creating the debt was to effect compliance with s. 3 of the Act. After considering the judgment of Chief Justice Richard in *Re United Maritime Fishermen Co-op.*, supra, MacKinnon J. held, at p. 251:

> The reason for creating the trust deed is not for the usual purposes of securing a debt but, when one reads it, on its face, it does that. I find that it is a genuine trust deed and not a fraud, and that the petitioners have complied with s. 3 of the statute.

79 *Re Metals & Alloys Co.* (16 February 1990) is a recent example of a case in this jurisdiction in which "instant" trust deeds were successfully used to bring a company within the Act. The company issued debentures for the purpose of permitting the company to qualify under the Act, so as to provide it with an opportunity to prepare and submit a reorganization plan. The company then applied for an order, seeking, inter alia, a declaration that the debtor company was a corporation within the meaning of the Act. Houlden J.A., hearing the matter at first instance, granted the declaration request in an order dated February 16, 1990. No reasons were given. It does not appear that the company's qualifications were challenged before Houlden J.A.; however, the nature of the debentures issued and the purpose for their issue was fully disclosed in the material before him. The requirements of s. 3 of the Act are jurisdictional in nature, and the consent of the parties cannot vest a court with jurisdiction it does not have. One must conclude that Houlden J.A. was satisfied that "instant" trust deeds suffice for the purposes of s. 3 of the Act.

80 A similar conclusion is implicit in the reasons of the British Columbia Court of Appeal in *Hongkong Bank of Canada v. Chef Ready Foods Ltd.*. In that case, a debt of $50, with an accompanying debenture and trust deed, was created specifically

to enable the company to make application under the Act. The Court noted that the debt was created solely for that purpose in an effort to forestall an attempt by the bank to liquidate the assets of the debtor company. The Court went on to deal with the merits, and to dismiss an appeal from an order granting a stay pending a reorganization meeting. The Court could not have reached the merits without first concluding that the $50 debt created by the company met the requirements of s. 3 of the Act.

81 The weight of authority is against the appellant. Counsel for the appellant attempts to counter that authority by reference to the remarks of the Minister of Justice when s. 3 was introduced as an amendment to the Act in the 1952-53 sittings of Parliament (House of Commons Debates, 1-2 Eliz. II (1952-53), vol. II, pp. 1268-1269). The interpretation of words found in a statute, by reference to speeches made in Parliament at the time legislation is introduced, has never found favour in our Courts: *Reference Re Residential Tenancies Act (Ontario)*, [1981] 1 S.C.R. 714, 123 D.L.R. (3d) 554, 37 N.R. 138, at 721 [S.C.R.], 561 [D.L.R.]. Nor, with respect to Mr. Newbould's able argument, do I find the words of the Minister of Justice at the time the present s. 3 was introduced to be particularly illuminating. He indicated that the amendment to the Act left companies with complex financial structures free to resort to the Act, but that it excluded companies which had only unsecured mercantile creditors. The Minister does not comment on the intended effect of the amendment on the myriad situations between those two extremes. This case is one such situation. These debtor companies had complex secured debt structures, but those debts were not, prior to the issuing of the debentures in August 1990, in the form contemplated by s. 3 of the Act. Like Richard C.J.Q.B. in *Re United Maritime Fishermen Co-op.*, supra, at pp. 52-53, I am not persuaded that the comments of the Minister of Justice assist in interpreting s. 3 of the Act in this situation.

82 The words of s. 3 are straightforward. They require that the debtor company have, at the time an application is made, an outstanding debenture or bond issued under a trust deed. No more is needed. Attempts to qualify those words are not only contrary to the wide reading the Act deserves, but can raise intractable problems as to what qualifications or modifications should be read into the Act. Where there is a legitimate debt which fits the criteria set out in s. 3, I see no purpose in denying a debtor company resort to the Act because the debt and the accompanying documentation was created for the specific purpose of bringing the application. It must be remembered that qualification under s. 3 entitles the debtor company to nothing more than consideration under the Act. Qualification under s. 3 does not mean that relief under the Act will be granted. The circumstances surrounding the creation of the debt needed to meet the s. 3 requirement may well have a bearing on how a court exercises its discretion at various stages of the application, but they do not alone interdict resort to the Act.

83 In holding that "instant" trust deeds can satisfy the requirements of s. 3 of the Act, I should not be taken as concluding that debentures or bonds which are truly shams, in that they do not reflect a transaction which actually occurred and do not create a real debt owed by the company, will suffice. Clearly, they will not. I do not, however, equate the two. One is a tactical device used to gain the potential advantages of the Act. The other is a fraud.

84 Nor does my conclusion that "instant" trust deeds can bring a debtor company within the Act exclude considerations of the good faith of the debtor company in seeking the protection of the Act. A debtor company should not be allowed to use the Act for any purpose other than to attempt a legitimate reorganization. If the purpose of the application is to advantage one creditor over another, to defeat the legitimate interests of creditors, to delay the inevitable failure of the debtor company, or for some other improper purpose, the Court has the means available to it, apart entirely from s. 3 of the Act, to prevent misuse of the Act. In cases where the debtor company acts in bad faith, the Court may refuse to order a meeting of creditors, it may deny interim protection, it may vary interim protection initially given when the bad faith is shown, or it may refuse to sanction any plan which emanates from the meeting of the creditors: see Lawrence J. Crozier, "Good Faith and the Companies' Creditors Arrangement Act" (1989) 15 Can. Bus. L.J. 89.

(ii) Section 3 and the Prior Agreement with the Bank Limiting Creation of New Debt

85 The appellant also argues that the debentures did not meet the requirements of s. 3 of the Act because they were issued in contravention of a security agreement made between the companies and the bank. Assuming that the debentures were issued in contravention of that agreement, I do not understand how that contravention affects the status of the debentures for the purposes of s. 3 of the Act. The bank may well have an action against the debtor company for issuing the debentures, and it may have remedies against the holders of the debentures if they attempted to collect on their debt or enforce their security.

Neither possibility, however, negates the existence of the debentures and the related trust deeds. Section 3 does not contemplate an inquiry into the effectiveness or enforceability of the s. 3 debentures, as against other creditors, as a condition precedent to qualification under the Act. Such inquiries may play a role in a judge's determination as to what orders, if any, should be made under the Act.

(iii) Section 3 and the Appointment of a Receiver-Manager

86 The third argument made by the bank relies on its installation of a receiver-manager in both companies prior to the issue of the debentures. I agree with Finlayson J.A. that the placement of a receiver, either by operation of the terms of an agreement or by court order, effectively removes those formerly in control of the company from that position, and vests that control in the receiver-manager: *Alberta Treasury Branches v. Hat Development Ltd.* (1988), 71 C.B.R. (N.S.) 264, 64 Alta. L.R. (2d) 17 (Q.B.), aff'd without deciding this point (1989), 65 Alta. L.R. (2d) 374 (C.A.). I cannot, however, agree with his interpretation of the order of Saunders J. I read that order as effectively turning the receiver into a monitor with rights of access, but with no authority beyond that. The operation of the business is specifically returned to the companies. The situation created by the order of Saunders J. can usefully be compared to that which existed when the application was made in *Hat Development Ltd.* Forsyth J., at p. 268 C.B.R., states:

> The receiver-manager in this case and indeed in almost all cases is charged by the court with the responsibility of managing the affairs of a corporation. It is true that it is appointed pursuant, in this case, to the existence of secured indebtedness and at the behest of a secured creditor to realize on its security and retire the indebtedness. Nonetheless, this receiver-manager was court-appointed and not by virtue of an instrument. As a court-appointed receiver it owed the obligation and the duty to the court to account from time to time and to come before the court for the purposes of having some of its decisions ratified or for receiving advice and direction. *It is empowered by the court to manage the affairs of the company and it is completely inconsistent with that function to suggest that some residual power lies in the hands of the directors of the company to create further indebtedness of the company and thus interfere, however slightly, with the receiver-manager's ability to manage*.

[Emphasis added.]

87 After the order of Saunders J., the receiver-manager in this case was not obligated to manage the companies. Indeed, it was forbidden from doing so. The creation of the "instant" trust deeds and the application under the Act did not interfere in any way with any power or authority the receiver-manager had after the order of Saunders J. was made.

88 I also find it somewhat artificial to suggest that the presence of a receiver-manager served to vitiate the orders of Hoolihan J. Unlike many applications under s. 5 of the Act, the proceedings before Hoolihan J. were not ex parte and he was fully aware of the existence of the receiver-manager, the order of Saunders J., and the arguments based on the presence of the receiver-manager. Clearly, Hoolihan J. considered it appropriate to proceed with a plan of reorganization despite the presence of the receiver-manager and the order of Saunders J. Indeed, in his initial order he provided that the order of Saunders J. "remains extant." Hoolihan J. did not, as I do not, see that order as an impediment to the application or the granting of relief under the Act. Had he considered that the receiver-manager was in control of the affairs of the company, he could have varied the order of Saunders J. to permit the applications under the Act to be made by the companies: *Hat Development Ltd.*, at pp. 268-269 C.B.R. It is clear to me that he would have done so had he felt it necessary. If the installation of the receiver-manager is to be viewed as a bar to an application under this Act, and if the orders of Hoolihan J. were otherwise appropriate, I would order that the order of Saunders J. should be varied to permit the creation of the debentures and the trust deeds and the bringing of this application by the companies. I take this power to exist by the combined effect of s. 14(2) of the Act and s. 144(1) of the *Courts of Justice Act*, 1984, S.O. 1984, c. 11.

89 In my opinion, the debentures and "instant" trust deeds created in August 1990 sufficed to bring the company within the requirements of s. 3 of the Act, even if in issuing those debentures the companies breached a prior agreement with the bank. I am also satisfied that, given the terms of the order of Saunders J., the existence of a receiver-manager installed by the bank did not preclude the application under s. 3 of the Act.

V Did Hoolihan J. Err in Exercising his Discretion in Favour of Directing that a Creditors' Meeting be Held to Consider the Proposed Plan of Reorganization?

90 As indicated earlier, the Act provides a number of points at which the Court must exercise its discretion. I am concerned with the initial exercise of discretion contemplated by s. 5 of the Act, by which the Court may order a meeting of creditors for purposes of considering a plan of reorganization. Hoolihan J. exercised that discretion in favour of the debtor companies. The factors relevant to the exercise of that discretion are as variable as the fact situations which may give rise to the application. Finlayson J.A. has concentrated on one such factor, the chance that the plan, if put before a properly constituted meeting of the creditors, could gain the required approval. I agree that the feasibility of the plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors: S.E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act," at pp. 594-595. I would not, however, impose a heavy burden on the debtor company to establish the likelihood of ultimate success from the outset. As the Act will often be the last refuge for failing companies, it is to be expected that many of the proposed plans of reorganization will involve variables and contingencies which will make the plan's ultimate acceptability to the creditors and the Court very uncertain at the time the initial application is made.

91 On the facts before Hoolihan J., there were several factors which supported the exercise of his discretion in favour of directing a meeting of the creditors. These included the apparent support of two of the three substantial secured creditors, the companies' continued operation, and the prospect (disputed by the bank) that the companies' fortunes would take a turn for the better in the near future, the companies' ongoing efforts — that eventually met with some success — to find alternate financing, and the number of people depending on the operation of the company for their livelihood. There were also a number of factors pointing in the other direction, the most significant of which was the likelihood that a plan of reorganization acceptable to the bank could not be developed.

92 I see the situation which presented itself to Hoolihan J. as capable of a relatively straightforward risk-benefit analysis. If the s. 5 order had been refused by Hoolihan J., it was virtually certain that the operation of the companies would have ceased immediately. There would have been immediate economic and social damage to those who worked at the plants, and those who depended on those who worked at the plants for their well-being. This kind of damage cannot be ignored, especially when it occurs in small communities like those in which these plants are located. A refusal to grant the application would also have put the investments of the various creditors, with the exception of the bank, at substantial risk. Finally, there would have been obvious financial damage to the owner of the companies. Balanced against these costs inherent in refusing the order would be the benefit to the bank, which would then have been in a position to realize on its security in accordance with its agreements with the companies.

93 The granting of the s. 5 order was not without its costs. It has denied the bank the rights it had bargained for as part of its agreement to lend substantial amounts of money to the companies. Further, according to the bank, the order has put the bank at risk of having its loans become undersecured because of the diminishing value of the accounts receivable and inventory which it holds as security and because of the ever-increasing size of the companies' debt to the bank. These costs must be measured against the potential benefit to all concerned if a successful plan of reorganization could be developed and implemented.

94 As I see it, the key to this analysis rests in the measurement of the risk to the bank inherent in the granting of the s. 5 order. If there was a real risk that the loan made by the bank would become undersecured during the operative period of the s. 5 order, I would be inclined to hold that the bank should not have that risk forced on it by the Court. However, I am unable to see that the bank is in any real jeopardy. The value of the security held by the bank appears to be well in excess of the size of its loan on the initial application. In his affidavit, Mr. Gibbons of Coopers & Lybrand asserted that the companies had overstated their cash flow projections, that the value of the inventory could diminish if customers of the companies looked to alternate sources for their product, and that the value of the accounts receivable could decrease if customers began to claim set-offs against those receivables. On the record before me, these appear to be no more than speculative possibilities. The bank has had access to all of the companies' financial data on an ongoing basis since the order of Hoolihan J. was made almost 2 months ago. Nothing was placed before this Court to suggest that any of the possibilities described above had come to pass.

95 Even allowing for some overestimation by the companies of the value of the security held by the bank, it would appear that the bank holds security valued at approximately $4 million for a loan that was, as of the hearing of this appeal, about $2.3 million. The order of Hoolihan J. was to terminate no later than November 14, 1990. I am not satisfied that the bank ran any real risk of having the amount of the loan exceed the value of the security by that date. It is also worth noting that the order under appeal provided that any party could apply to terminate the order at any point prior to November 14. This provision provided further protection for the bank in the event that it wished to make the case that its loan was at risk because of the deteriorating value of its security.

96 Even though the chances of a successful reorganization were not good, I am satisfied that the benefits flowing from the making of the s. 5 order exceeded the risk inherent in that order. In my view, Hoolihan J. properly exercised his discretion in directing that a meeting of creditors should be held pursuant to s. 5 of the Act.

VI Did Hoolihan J. Err in Directing that the Bank and RoyNat Inc. Should be Placed in the Same Class for the Purposes of the Act?

97 I agree with Finlayson J.A. that the bank and RoyNat Inc., the two principal creditors, should not have been placed in the same class of secured creditors for the purposes of ss. 5 and 6 of the Act. Their interests are not only different, they are opposed. The classification scheme created by Hoolihan J. effectively denied the bank any control over any plan of reorganization.

98 To accord with the principles found in the cases cited by Finlayson J.A., the secured creditors should have been grouped as follows:

— Class 1 — The City of Chatham and the Village of Glencoe

— Class 2 — The Bank of Nova Scotia

— Class 3 — RoyNat Inc., Ontario Development Corporation, and those holding debentures issued by the company on August 29 and 31, 1990.

VII Did Hoolihan J. Err in Making the Interim Orders He Made?

99 Hoolihan J. made a number of orders designed to control the conduct of all of the parties, pending the creditors' meeting and the placing of a plan of reorganization before the Court. The first order was made on September 11, 1990, and was to expire on or before October 24, 1990. Subsequent orders varied the terms of the initial order somewhat, and extended its effective date until November 14, 1990.

100 These orders imposed the following conditions pending the meeting:

(a) all proceedings with respect to the debtor companies should be stayed, including any action by the bank to realize on its security;

(b) the bank could not reduce its loan by applying incoming receipts to those debts;

(c) the bank was to be the sole banker for the companies;

(d) the companies could carry on business in the normal course, subject to certain very specific restrictions;

(e) a licensed trustee was to be appointed to monitor the business operations of the companies and to report to the creditors on a regular basis; and

(f) any party could apply to terminate the interim orders, and the orders would be terminated automatically if the companies defaulted on any of the obligations imposed on them by the interim orders.

101 The orders placed significant restrictions on the bank for a 2-month period, but balanced those restrictions with provisions limiting the debtor companies' activities, and giving the bank ongoing access to up-to-date financial information concerning the companies. The bank was also at liberty to return to the Court to request any variation in the interim orders which changes in financial circumstances might merit.

102 These orders were made under the wide authority granted to the court by s. 11 of the Act. L.W. Houlden and C.H. Morawetz, in *Bankruptcy Law of Canada*, 3d ed. (Toronto: Carswell, 1989), at pp. 2-102 to 2-103, describe the purpose of the section:

> The legislation is intended to have wide scope and allows a judge to make orders which will effectively maintain the status quo for a period while the insolvent company attempts to gain the approval of its creditors for a proposed arrangement which will enable the company to remain in operation for what is, hopefully, the future benefit of both the company and it creditors. This aim is facilitated by s. 11 of the Act, which enables the court to restrain further proceedings in any action, suit or proceeding against the company upon such terms as the court sees fit.

103 A similar sentiment appears in *Hongkong Bank of Canada v. Chef Ready Foods Ltd.*. Gibbs J.A., in discussing the scope of s. 11, said at p. 7 [unreported, pp. 88-89 B.C.L.R.]:

> When a company has recourse to the C.C.A.A. the court is called upon to play a kind of supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure. Obviously time is critical. Equally obviously, if the attempt at compromise or arrangement is to have any prospect of success, there must be a means of holding the creditors at bay, hence the powers vested in the court under s. 11.

104 Similar views of the scope of the power to make interim orders covering the period when reorganization is being attempted are found in *Meridian Developments Inc. v. Toronto-Dominion Bank; Meridian Developments Inc. v. Nu-West Ltd.*, 52 C.B.R. (N.S.) 109, [1984] 5 W.W.R. 215, 32 Alta. L.R. (2d) 150, 11 D.L.R. (4th) 576, 53 A.R. 39 (Q.B.) at 114-118 [C.B.R.]; *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 1, 63 Alta. L.R. (2d) 361, 92 A.R. 81 (Q.B.) at 12-15 [C.B.R.]; *Quintette Coal Ltd. v. Nippon Steel Corp.*, an unreported judgment of Thackray J., released June 18, 1990 [since reported (1990), 47 B.C.L.R. (2d) 193 (S.C.)], at pp. 5-9 [pp. 196-198 B.C.L.R.]; and B. O'Leary, "A Review of the Companies' Creditors Arrangement Act," at p. 41.

105 The interim orders made by Hoolihan J. are all within the wide authority created by s. 11 of the Act. The orders were crafted to give the company the opportunity to continue in operation, pending its attempt to reorganize, while at the same time providing safeguards to the creditors, including the bank, during that same period. I find no error in the interim relief granted by Hoolihan J.

VIII Conclusion

106 In the result, I would allow the appeal in part, vacate the order of Hoolihan J. of October 18, 1990, insofar as it purports to settle the class of creditors for the purpose of the Act, and I would substitute an order establishing the three classes referred to in Part VI of these reasons. I would not disturb any of the other orders made by Hoolihan J.

Appeal allowed.

Tab 40

2020 BCSC 1845
British Columbia Supreme Court

Quest University Canada (Re)

2020 CarswellBC 3030, 2020 BCSC 1845, 325 A.C.W.S. (3d) 466, 84 C.B.R. (6th) 226

In the Matter of the COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

And In the Matter of the SEA TO SKY UNIVERSITY ACT, S.B.C. 2002, c. 54

And In the Matter of A PLAN OF COMPROMISE AND
ARRANGEMENT OF QUEST UNIVERSITY CANADA (Petitioner)

Fitzpatrick J.

Heard: November 3, 2020
Judgment: November 26, 2020
Docket: Vancouver S200586

Counsel: J.R. Sandrelli, T. Jeffries, for Petitioner
V.L. Tickle, for Monitor PricewaterhouseCoopers Inc.
P. Rubin, G. Umbach, for Primacorp Ventures Inc.
K. Jackson, for RCM Capital Management Ltd. and SESA-BC Holdings Ltd.
P. Reardon, K. Strong, for Southern Star Developments Ltd.
C.D. Brousson, for Vanchorverve Foundation
D. Lawrenson, for Halladay Education Group
K. Mak, for Capilano University
G. Barr, R. McKenna, for Confidential Party (Development Partner #1)
J. Sanders, for Quest University Faculty Union
S.A. Poisson, for Bank of Montreal
A. Welch, for Her Majesty The Queen In Right of Province of British Columbia and the Ministry of Advanced Education Skills and Training
K.E. Siddall, for 1114586 B.C. Ltd.
L. Hiebert, for Association for the Advancement of Scholarship

***Fitzpatrick J.*:**

INTRODUCTION

1 The petitioner, Quest University Canada ("Quest"), seeks a number of orders on this application, all steps toward what it considers will be a successful restructuring of its affairs under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the "*CCAA*").

2 Quest seeks: a Claims Process Order, to identify and determine claims against it; a Meeting Order, to allow Quest to present a plan of arrangement to its creditors; and, a Transaction Approval and Vesting Order ("TAVO") to approve the proposed purchase and sale transaction between it and Primacorp Ventures Inc. ("Primacorp").

3 There is minor opposition to the granting of the Claims Process Order and Meeting Order.

4 There is substantial opposition to the granting of the TAVO. To allow the opposing parties further time to develop their materials, the Court adjourned that aspect of the application to November 12 — 13, 2020. In the meantime, however, Quest seeks approval of its agreement to pay Primacorp a Break Up Fee and that the Court grant a Break Up Fee Charge to secure those amounts. Various parties oppose this relief.

5 At the conclusion of this hearing, I granted the Claims Process Order and the Meeting Order. I also approved Quest's agreement to pay the Break Up Fee and granted the Break Up Fee Charge. These are my reasons for those orders.

BACKGROUND FACTS

6 On January 16, 2020, these proceedings began with the granting of the Initial Order.

7 Quest's restructuring has been unique in many respects. Quest is a not-for-profit post-secondary educational institution, a status that bears on its options in this proceeding. Quest has never really been self-sustaining financially; rather, it has historically relied on donations, secured loans and land sales to supplement its revenue.

8 Quest's asset holdings are complex. The campus, which includes the main buildings and residences, is located in Squamish, BC. Initially, Quest held substantial development lands that surrounded the campus lands; however, over the years, Quest sold some of those lands to generate revenue. Even so, a significant amount of development land remains.

9 Given Quest's history, its debt structure is also complex. There are many secured creditors, including Vanchorverve Foundation and Capilano University ("CapU"), with the latter holding a right of first refusal over certain lands. In addition, I approved Quest obtaining secured interim financing to assist its refinancing efforts in these *CCAA* proceedings: *Quest University Canada (Re)*, 2020 BCSC 318 (B.C. S.C.) and *Quest University Canada (Re)*, 2020 BCSC 860 (B.C. S.C.).

10 Quest also has complex financial agreements concerning four residence buildings on the campus, as discussed in *Quest University Canada (Re)*, 2020 BCSC 921 (B.C. S.C.) (the "Rent Deferral Reasons"). Other agreements entered into by Quest, such as leases and naming rights agreements, potentially affect any disposition of its assets.

11 Quest has faced numerous challenges in these proceedings in continuing its educational endeavours, particularly arising from the impact of the COVID-19 pandemic beginning in March 2020. Nevertheless, Quest has continued throughout these proceedings to pursue some form of partnership, including an academic partnership that would see a continuation of its education services. Quest has also engaged with various development partners to determine if that option would resolve its financial difficulties, either alone or in conjunction with a transaction with an academic partner.

12 Quest has been disappointed along the way. In March 2020, a development partner withdrew from the process after submitting a bid. On May 28, 2020, I granted an order extending the stay until August 10, 2020, to allow Quest to pursue an agreement with the party identified as "Academic Partner". Unfortunately, a transaction with the Academic Partner did not materialize by June 2020: Rent Deferral Reasons at paras. 20 — 22.

13 On August 7, 2020, I granted an order extending the stay to December 24, 2020 to allow Quest to pursue another transaction over that time, while also offering an uninterrupted fall term to its students. Over this last extension period, Quest has chosen to enter into a transaction with Primacorp.

14 It is a condition precedent of the Primacorp transaction that the Court grant the TAVO and that Quest obtain creditor and this Court's approval of a plan of arrangement. Other conditions precedent also arise. Quest is required to disclaim subleases held by Southern Star Developments Ltd. ("Southern Star"). Quest has already delivered those disclaimers. As a result, Southern Star is opposing the granting of the TAVO and challenging the disclaimers, with both matters to be addressed at the later hearing. Other conditions precedent relate to various agreements and charges and litigation claims relating to Quest's assets, including its lands.

15 Having reached this stage in the sales process, Quest now seeks the Claims Process Order and the Meeting Order, and will shortly seek the TAVO, as the first steps toward a conclusion to these proceedings. Quest takes the position that the Primacorp transaction maximizes the value of its assets and offers the greatest benefit to its stakeholders.

16 It is not necessary at this stage to consider the sales process in detail, since that will be relevant to Quest's later application for the TAVO. Having said that, it is of note that the Monitor, in its Fourth Report dated November 2, 2020, describes that process as "thorough". In that Report, the Monitor also supports the Primacorp transaction as the one most beneficial to Quest's creditors.

17 Writ large, the Primacorp transaction, or more accurately described as a series of transactions, provides for:

a) Sufficient funds to pay all Quest's secured creditors' claims, including claims secured by the *CCAA* charges;

b) Funding for a plan of arrangement to be voted on by Quest's unsecured creditors;

c) Funds for these insolvency proceedings; and

d) A working capital facility, and marketing and recruiting support to permit Quest to become self-sustaining as a post-secondary institution.

18 The main and subsidiary agreements executed between Quest and Primacorp in September/October 2020 are complex. They include, as defined in the Monitor's Fourth Report, the Primacorp Purchase and Sale Agreement (the "Primacorp PSA"), the Campus Lease, an Operating Loan Agreement and an Operating Agreement. Significant terms include that Primacorp will:

a) Purchase substantially all of Quest's lands and related assets, including the Campus Lands, the Development Lands, the Residence Lands, chattels and vehicles;

b) Lease specific Campus Lands back to Quest under a long-term lease arrangement;

c) Provide marketing and recruiting expertise and sufficient working capital to allow Quest to continue as a university;

d) Fund sufficient monies to pay the lesser of the Unsecured Creditor Claims and $1.35 million under a plan of arrangement. In addition, the Purchase Price will satisfy all of Quest's secured lenders and any commissions on sales; and

e) Provide Quest with a $20 million secured credit facility.

19 All of the transaction documents are in settled form and the signed documents are in escrow. Primacorp and Quest are working towards a closing date in late December 2020.

CLAIMS PROCESS

20 The remedial objective of the *CCAA* is to facilitate a restructuring of a debtor company. Section 11 of the *CCAA* imbues the supervising judge with a broad statutory authority to make such orders as are appropriate toward achieving that objective: *Bul River Mineral Corp., Re*, 2014 BCSC 1732 (B.C. S.C.) at para. 29 ("*Bul River #2*").

21 Establishing a claims process toward determining claims to be advanced under the *CCAA* is a recognized step in proceedings across Canada: *ScoZinc Ltd., Re*, 2009 NSSC 136 (N.S. S.C.) at para. 23; and *Bul River #2* at paras. 31-32.

22 In *Timminco Ltd., Re*, 2014 ONSC 3393 (Ont. S.C.J.) at paras. 41 — 44, Regional Senior Justice Morawetz (as he then was) discussed "first principles" from the *CCAA* in relation to claims process orders and the establishment of a claims bar date. He stated:

> [41] It is also necessary to return to first principles with respect to claims-bar orders. The *CCAA* is intended to facilitate a compromise or arrangement between a debtor company and its creditors and shareholders. For a debtor company engaged

in restructuring under the *CCAA*, which may include a liquidation of its assets, it is of fundamental importance to determine the quantum of liabilities to which the debtor and, in certain circumstances, third parties are subject. It is this desire for certainty that led to the development of the practice by which debtors apply to court for orders which establish a deadline for filing claims.

23 Quest submits that a claims process is necessary to enable it to implement a plan and close the Primacorp transaction.

24 Quest indicates that there are five secured creditors holding approximately $30.7 million in debt. Quest estimates that there are 446 unsecured creditors holding approximately $2 million in debt. If the Court upholds the Southern Star disclaimers, Southern Star will also be entitled to advance a claim against Quest as an unsecured creditor.

25 Quest developed the proposed claims process with input and support from the Monitor. The features of the proposed claims process are:

a) The claims process will not address claims arising post-filing, save for a Restructuring Claim and amounts secured by *CCAA* Charges;

b) The claims process addresses claims against Governors and Officers in relation to a pre-filing claim or Restructuring Claims;

c) The claims process requires that secured creditors prove their claims;

d) The claims bar date for claims is November 24, 2020; the claims bar date for Restructuring Claims is the later of November 24, 2020 and ten days after the date on which a Creditor receives a Notice of Disclaimer or Resiliation;

e) To facilitate creditor participation in the Claims Process, Quest designed a negative claims process for almost all vendors, students and employees. As such, after receipt of a claims package indicating Quest's determination of the claim, that creditor need only respond if there is disagreement as to the amount of its claim set out in the notice; and

f) Disputes will be handled in the usual fashion, but by the Monitor. After consultation with Quest, the Monitor will deliver any Notices of Revision or Disallowance. Creditors may then deliver a Notice of Dispute to the Monitor. Failing settlement of a dispute, the Monitor may refer the matter to the Court for a determination after a hearing *de novo*.

26 I agree that the timeline set for the claims process is ambitious. As noted by the Monitor, it is relatively short. However, in my view, the negative claims process in relation to many of the unsecured creditors ameliorates any concerns. In addition, the secured creditors have been aware of these proceedings since the outset; those secured creditors who might have more complicated claims have been actively involved. I can only presume that the secured creditors are well aware of their own claims. The requirement that secured creditors file proof of claims will flush out any issues well ahead of the intended closing of the Primacorp transaction later this year, if approved.

27 The Quest University Faculty Union (the "Union") was the only party who objected to the granting of the Claims Process Order. In October 2019, the Union was certified as the bargaining agent of Quest employees although no bargaining has yet occurred. The Union indicates that the employees are entitled to compensation in relation to accrued credits. The Union is uncertain as to whether this is a pre- or post-filing claim, with only the former giving rise to the need to file a proof of claim.

28 I agree with Quest that this uncertainty is not an appropriate basis upon which to delay this relief. Clearly, the Union can engage with Quest toward clarifying this issue as to whether or not the Union needs to file a proof of claim. Under the Primacorp transaction, Quest intends to continue to operate as an entity and will, presumably, retain most, if not all, current employees.

29 I agree that approval of a claims process is an important step forward allowing Quest to identify and quantify claims against it and members of its Board of Governors and Officers. Whether or not this Court ultimately approves the TAVO, this process will assist in the implementation of any later plan and any distributions to creditors.

THE MEETING ORDER

30 Quest has developed a plan of compromise and arrangement dated November 1, 2020 (the "Plan"). It is a requirement of the Primacorp transaction that Quest do so and that Quest seek and obtain approval of the Plan by its creditors and this Court.

31 The *CCAA* expressly allows the court to order a meeting of the secured and unsecured creditors to consider a plan of arrangement:

> Compromise with unsecured creditors
>
> 4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
>
> Compromise with secured creditors
>
> 5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company, or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

32 It is not the role of the Court at this stage to consider or rule on the fairness or reasonableness of the Plan. Rather, I adopt the discussion in *ScoZinc Ltd., Re*, 2009 NSSC 163 (N.S. S.C.) at para. 7; namely, that I should only exercise my discretion to refuse to refer the Plan to the creditors if the plan is doomed to fail at either the creditor or court approval stage.

33 The Plan provides for one class of creditors for the purposes of voting, namely the Affected Creditor Class. The Plan provides for payment in full of Convenience Creditors (Creditors with Affected Claims that are less than or equal to $1,000). The Plan also allows Affected Creditors with a Proven Claim greater than $1,000 to make a Cash Election to receive $1,000 in satisfaction of their Claim. These latter provisions will significantly affect approximately 250 students who have claims within these limits.

34 All Convenience Creditors and Cash Election Creditors are deemed to vote in favour of the Plan.

35 Affected Creditors who are not Convenience Creditors or Cash Election Creditors (the "Remaining Creditors") shall receive fifty cents ($0.50) for every dollar of their Affected Claim, up to a maximum total disbursement of $1.35 million for Convenience Claims, Cash Election Claims and the Affected Claims of Remaining Creditors (the "Maximum Claim Pool"). In the event the Affected Claims exceed the Maximum Claim Pool, Convenience Creditors will receive the lesser of their Affected Claim and $1,000; Cash Election Creditors will receive the sum of $1,000; and, the Remaining Creditors will receive their *pro rata* share of the Maximum Claim Pool after deduction of the amounts payable to Convenience Creditors and Cash Election Creditors.

36 The Plan is premised on payment in full of all secured creditors to the extent of their claims, upon closing of the Primacorp transaction. The Plan provides for the payment of such amounts owed to Her Majesty in Right of Canada and employees, as required by the *CCAA*.

37 The Plan will not compromise Unaffected Claims that include: post-filing claims (other than certain Restructuring and Governor/Officer Claims); secured claims; claims secured by *CCAA* Charges; claims against any Governor and Officer that cannot be compromised pursuant to the *CCAA*; and, claims in respect of payments referred to in s. 6 of the *CCAA*.

38 The Monitor assisted in the development of the Plan and it supports the Plan. The Monitor's Fourth Report indicates that the Monitor considers the Plan fair and reasonable.

39 The Meeting Order authorizes Quest to convene a meeting on December 2, 2020. Due to the COVID-19 pandemic, the Monitor has arranged to hold the Creditors' Meeting virtually in accordance with the Electronic Meeting Protocol.

40 Another matter for consideration is whether the Plan has properly established the classes of creditors for voting at the proposed meeting. The Plan provides that all Affected Creditors will be placed into one creditor class at the meeting.

41 Section 22(1) of the *CCAA* provides:

> A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

42 Section 22(2) of the *CCAA* lists the factors to be considered when taking into account placing all the creditors in the same class:

> 22(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account
>
> > a) the nature of the debts, liabilities or obligations giving rise to their claims;
> >
> > b) the nature and rank of any security in respect of their claims;
> >
> > c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
> >
> > d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

43 The test to determine the classification of creditors is known as the "commonality of interests" test: *Canadian Airlines Corp., Re*, [2000] A.J. No. 1693 (Alta. Q.B.) at paras. 17 — 19.

44 No stakeholder objects to the classification of the creditors under the Plan.

45 I agree that the Plan properly classifies the creditors — namely, the Affected Creditors — in one class for voting purposes. They all hold unsecured claims against Quest and they all rank the same in priority. While the Convenience and Cash Election Creditors will be treated slightly differently, practical reasons justify this approach, and they are common in *CCAA* plans: *Nelson Financial Group Ltd., Re*, 2011 ONSC 2750 (Ont. S.C.J.) at para. 14 and *Angiotech Pharmaceuticals Inc., Re*, 2011 BCSC 450 (B.C. S.C. [In Chambers]) at para. 6.

46 The classification of the creditors under the Plan is appropriate in the circumstances. I concur with the Monitor that Quest has a reasonable chance of obtaining approval of the Plan from the creditors and the Court. Quest's Plan meets the low threshold at this stage. The Plan should be put before the creditors, and if approved, before the Court.

THE BREAK UP FEE / CHARGE

47 The Primacorp PSA executed by Quest requires, as a condition precedent, that Quest obtain court approval of its agreement to pay Primacorp what is defined as a "Break Up Fee". In addition, the Primacorp PSA requires that Quest obtain a court ordered charge (the "Break Up Fee Charge" or "Charge") against Quest's assets to secure the Break Up Fee, ranking only behind the Administration Charge, the Interim Lender's Charge and Directors and Officers Charge ("D&O") (as defined in the Amended and Restated Initial Order ("ARIO")).

48 The Primacorp PSA provides:

> 10.13 Expense Reimbursement. In consideration of [Primacorp] having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Purchased Assets, if the transactions do not close . . . [Quest] shall pay to [Primacorp] . . . an amount equal to [Primacorp's] actual out of pocket fees incurred in connection with the transactions contemplated by this Agreement together with the preparation, negotiation and execution of delivert of this Agreement . . . (the "Break Up Fee") . . .
>
> [Emphasis added.]

49 The agreed upon Break Up Fee was initially limited to $500,000 to a certain stage of the negotiations. At this point, that limit no longer applies.

50 Quest's obligation to pay the Break Up Fee is engaged where the Primacorp transaction fails to close as a result of (i) Quest materially breaching the Primacorp PSA; (ii) Quest refusing to work in good faith towards negotiating, execution or delivery of the required closing documents; or (iii) Quest executing and delivering a letter of intent or purchase agreement with another person that is inconsistent with and prevents the completion of the Primacorp transaction.

51 Quest is not be obligated to pay the Break Up Fee if this Court does not approve the Primacorp transaction in accordance with the application for the TAVO to be heard next week.

52 Quest submits that the Break Up Fee is commercially reasonable in the circumstances, consistent with other transactions that have been approved in *CCAA* proceedings. Quest's request for approval of the Break Up Fee and Charge is supported by the Monitor.

53 Section 11 of the *CCAA* allows this Court to exercise its discretion to grant orders as are appropriate toward achieving the broad statutory and policy objectives under the *CCAA*. In *Ted Leroy Trucking Ltd., Re*, 2010 SCC 60 (S.C.C.), the Court stated:

> [70] The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.
>
> [Emphasis added.]

54 Quest has also referred to s. 11.2 of the *CCAA* that provides the court with specific authority to grant a charge in favour of a person who is lending money to the debtor company. That provision does not apply since Primacorp is not lending Quest any monies; however, I have found the s. 11.2(4) factors to be useful in my analysis.

55 In "Rights of First Refusal and Options to Purchase in Insolvency Proceedings" (2019) 8 J.I.I.C. 103, the authors Virginie Gauthier, David Sieradzki and Hugo Margoc discussed the rationale for break fees at 125 — 126:

> It is well established convention in both Canadian and U.S. insolvency proceedings that a party willing to incur the time and expense to perform the level of diligence required to submit an unconditional "stalking horse" offer prior to the commencement of a sale process should be entitled to bid protections. Those bid protections typically include a "break fee" and "expense reimbursement" mechanism. The overriding rationale for these types of bid protections is to compensate the stalking horse bidder for its substantial time and expense to the extent it is ultimately not the successful bidder at the conclusion of the sale process.

56 As noted by the authors of the above article, numerous Canadian courts have considered break fees or break up fees with or without an accompanying charge. These can arise in *CCAA* proceedings, proposal proceedings, receiverships and foreclosures.

57 In the *CCAA* context, cases include *Mosaic Group Inc., Re*, [2004] O.J. No. 2323 (Ont. S.C.J.) at para. 16; *Tiger Brand Knitting Co., Re*, [2005] O.J. No. 1259 (Ont. S.C.J.) at paras. 13 and 37 (described as a "stay fee"); *Stelco Inc., Re*, [2005] O.J. No. 4733 (Ont. C.A.) at para. 20; *Boutique Euphoria inc., Re*, 2007 QCCS 7129 (C.S. Que.) at paras. 63-72; *Nortel Networks Corp., Re*, [2009] O.J. No. 3169 (Ont. S.C.J. [Commercial List]) at para. 56 and [2009] O.J. No. 4487 (Ont. S.C.J. [Commercial List]) at para. 10; *Brainhunter Inc., Re* (2009), 62 C.B.R. (5th) 41 (Ont. S.C.J. [Commercial List]) at para. 10; *Bul River Mineral Corp, Re*, 2014 BCSC 645 (B.C. S.C.) at paras. 110 — 111; and, *IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GREEN GROWTH BRANDS INC.*, 2020 ONSC 3565 (Ont. S.C.J.) at para. 52.

58 There is no doubt that some break fees and related charges may be seen as unfairly and unreasonably extracting value from the estate with little or no benefit to the stakeholders. As in many exercises of its discretion under the *CCAA*, the court must be mindful of such concerns. Each situation must be considered in the context of its own unique circumstances, including the present state of affairs faced by the debtor company and its stakeholders.

59 If a break fee is fair and reasonable in all of the circumstances in the sense that it provides a corresponding or greater benefit to the estate, court approval of such a fee and a related charge may be warranted. Relevant factors that may be considered by the court when asked to approve a break fee and grant a charge include:

a) Was the agreement reached as a result of arm's length negotiations?;

b) Has the agreement been approved by the debtor company's board or specifically constituted committees who are conducting the sales process?;

c) Is the relief supported by the major creditors?;

d) What may be the effect of such a fee/charge? Will it have a chilling effect on the market, or will it facilitate the sales process?;

e) Is the amount of the fee reasonable? In relation to expenses anticipated to be covered, is the amount reasonable given the bidder's time, resources and risk in the process?;

f) Will the fee and charge enhance the realization of the debtor's assets?;

g) Will the fee and charge enhance the prospects of a viable compromise or arrangement being made in respect of the company?; and

h) Does the monitor support the relief?

60 The Primacorp transaction is not a true stalking horse bid in the sense that Quest seeks approval of the transaction with the Break Up Fee and with the expectation that Quest will then use that bid to entice other proposals. Quest is seeking approval of the Primacorp transaction now; however, it remains the case that other persons remain interested in Quest's assets and they may later seek approval of another bid.

61 Quest is pursuing the Primacorp transaction at this time on a tight timeline given Quest's need to achieve a speedy resolution in order to provide assurances to its students and other stakeholders for the 2021 academic school calendar. In addition, Quest has been facing increasing pressure from its secured creditors to move to a resolution of the matter after almost ten months in this proceeding.

62 All of the relevant circumstances were considered by the Monitor who has indicated its support of the Break Up Fee and Break Up Fee Charge (the s. 11.2(4)(g) factor). It its Fourth Report, the Monitor states:

5.17 . . . Quest's agreement to the Break Up Fee was instrumental in encouraging Primacorp to expend time and expense engaging in extensive discussions with Quest to reach a definitive agreement at a time when no other proposals were forthcoming. Quest benefited from this commitment as it resulted in the Primacorp Agreement as well as the advancement of other potential proposals thereby giving Quest the confidence that Primacorp was the superior partner. The quantum of the Break Fee is calculated on an expense recovery basis and the Monitor considered it to be reasonable in light of the value of the transaction.

63 I agree with Quest and the Monitor that the Break Up Fee and Charge is appropriate in these circumstances, particularly given the following factors:

a) The Break Up Fee has been approved by Quest's board of directors and Quest's Restructuring Committee, both having integral knowledge of Quest's options at this stage of the proceedings;

b) The Break Up Fee is not akin to a "fee" that one sees in many stalking horse bids, including those approved by Canadian courts, that is driven by the purchase price. Rather, the Break Up Fee is limited to Primacorp's actual out-of-pocket fees incurred in connection with the transaction. It is evident from the materials before the Court that the negotiations leading to the transaction were extensive and that Primacorp has already expended significant resources engaging in that process and doing its necessary due diligence;

c) The Break Up Fee and Break Up Fee Charge is only expected to be material for a short period of time. It will become irrelevant if the Primacorp transaction is approved under the TAVO;

d) The Break Up Fee is only payable if the Transaction does not close due to Quest's breach of its obligations in respect of the transaction or Quest takes steps to pursue a transaction that makes it impossible to close the Primacorp transaction;

e) Quest's management has remained intact throughout the proceedings and the Monitor continues to be of the view that Quest is acting with good faith and due diligence;

f) The major secured creditors Vanchorverve Foundation, and the Interim Lender have been kept apprised of Quest's consideration of its options and, in particular, the Primacorp transaction, which includes the requirement for the Break Up Fee and Charge. They remain supportive of this relief;

g) The Break Up Fee and Charge will enhance Quest's ability to put forward the Plan and obtain creditor approval of the Plan, which will provide for the funds to satisfy Quest's creditors' claims and allow Quest to continue as a viable post-secondary institution;

h) The value of Quest's assets and property is substantial and there is every indication that there is sufficient value to repay all the secured creditor's claims and the Break Up Fee; and

i) No creditor will be materially prejudiced by the Break Up Fee and Charge. The only creditor who registered an objection to this relief was CapU, a secured creditor. CapU submitted that the Court should adjourn this relief and address it at the later application for the TAVO. However, CapU stands to recover its secured loan under this transaction or any alternate transaction. CapU also holds a right of first refusal but has failed to identify any prejudice in that respect arising from this relief referring only vaguely to the possibility of its rights being affected.

64 The only other person objecting to the approval of the Break Up Fee and Charge was Development Partner #1, who asserted that it was premature to grant that relief. I decline to address these submissions as they come from a potential competing bidder whose future involvement is unclear and who presently has no standing in this proceeding.

CONCLUSION

65 I grant the relief sought by Quest at this preliminary stage, including granting the Claims Process Order and the Meeting Order. I also approve the Break Up Fee and grant the Break Up Fee Charge.

Petition granted.

Tab 41

2000 CarswellAlta 623
Alberta Court of Queen's Bench

Canadian Airlines Corp., Re

2000 CarswellAlta 623, [2000] A.W.L.D. 642, [2000] A.J. No. 1693, 19 C.B.R. (4th) 12

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

In the Matter of the Business Corporations Act (Alberta) S.A. 1981, c. B-15, As Amended, Section 185

In the Matter of Canadian Airlines Corporation and Canadian Airlines International Ltd.

Paperny J.

Judgment: May 12, 2000 *
Docket: Calgary 0001-05071

Proceedings: refused leave to appeal *Canadian Airlines Corp., Re*, 2000 ABCA 149, 80 Alta. L.R. (3d) 213 (Alta. C.A. [In Chambers])

Counsel: *A.L. Friend, Q.C.*, *H.M. Kay, Q.C.*, and *R.B. Low, Q.C.*, for Canadian Airlines.
V.P. Lalonde and *Ms M. Lalonde*, for AMR Corporation.
S. Dunphy, for Air Canada.
P.T. McCarthy, Q.C., for PricewaterhouseCoopers.
D. Nishimura, for Resurgence Asset Management LLC.
E. Halt, for Claims Officer.
A.J. McConnell, for Bank of Nova Scotia Trust Company of New York and Montreal Trust Co. of Canada.

Paperny J. **(orally):**

1 Resurgence Asset Management LLC "Resurgence" appeared on behalf of holders of approximately 60 percent of the unsecured notes issued by Canadian Airlines Corporation in the total amount of $100 million U.S. These unsecured note holders are proposed to be classified as unsecured creditors in the plan that is the subject of these proceedings.

2 Resurgence applied for the following relief:

1. An order lifting the stay of proceedings against Canadian Airlines Corporation and Canadian Airlines International Ltd. (respectively "CAC" and "CAIL" and collectively called "Canadian") to permit Resurgence to commence and proceed with an oppression action against Canadian, Air Canada and others.

2. Further, and in the alternative, Resurgence sought the same relief described in item one above in the context of the C.C.A.A. proceedings.

3. An order that any and all unsecured claims held or controlled, directly or indirectly by Air Canada shall be placed in a separate class and either not allowed to be voted at all, or, alternatively, allowed to be voted in separate class from all other affected unsecured claims.

4. An order that there be a separation in class between creditors of CAC and CAIL

5. An order striking Section 6.2(2)(ii) of the plan on the basis that it is contrary to the C.C.A.A.

3 Resurgence abandoned the application described in item 1 above, and the application in item 2 was addressed in my ruling given May 8, 2000, in these proceedings.

Standing

4 Prior to dealing with the remaining issues of classification, voting and Section 6.2(2)(ii) of the plan, the issue of standing needs to be addressed. This was a matter of some debate, largely in the context of the first two applications. Canadian argued that Resurgence was only a fund manager and did not hold the unsecured notes, beneficially or otherwise, and, accordingly, did not have standing to make any of the applications. The evidence establishes that Resurgence is not the legal owner and the evidence of beneficial ownership is equivocal.

5 Canadian has not raised this issue on any of the previous occasions on which Resurgence has been before the court in these proceedings. There has been a consent order involving Resurgence and Canadian.

6 In my view, it is not appropriate now for Canadian to suggest that Resurgence does not represent the interests of the holders of 60 percent of the unsecured notes and essentially seek a declaration that Resurgence is a stranger to these proceedings.

7 I am not prepared to dismiss the applications of Resurgence on classification, voting and amending the plan out of hand on the basis of standing.

8 Resurgence was also supported in these applications by the senior secured note holders. For the purposes of these applications, I accept that Resurgence is representing the interests of 60 percent of the unsecured note holders.

Classification of Air Canada's Unsecured Claim

9 By my April 14, 2000 order in these proceedings, I approved transactions involving CAIL, a large number of aircraft lessors and Air Canada, which achieved approximately $200 million worth of concessions for CAIL. In exchange for granting the concession, each creditor received a guarantee from Air Canada and the assurance that the creditor would immediately cease to be affected by the C.C.A.A. proceedings.

10 These concessions or deficiency claims were quantified and reflected in promissory notes which were assigned to Air Canada in exchange for its guarantee of the aircraft leases. The monitor approved the method of quantifying these claims and recognized the value of the concessions to Canadian. In that order I reserved the issue of classification and voting to be determined at some later date. The plan provides for two classes of creditors, secured and unsecured.

11 The unsecured class is composed of a number of types of unsecured claims, including aircraft financings, executory contracts, unsecured notes, litigation claims, real estate leases and the deficiencies, if any, of the senior secured note holders.

12 In one portion of the application, Resurgence seeks to have Air Canada vote the promissory notes in separate class and relied on several factors to distinguish the claims of other Affected, Unsecured Creditors from Air Canada's unsecured claim, including the following:

> 1. The Air Canada appointed board caused Canadian to enter into these C.C.A.A. proceedings under which Air Canada stands to gain substantial benefits in its own operations and in the merged operations and ownership contemplated after the compromise of debts under the plan.
>
> 2. Air Canada is providing the fund of money to be distributed to the Affected Unsecured Creditors and will, therefore, end up paying itself a portion of that money if it is included in the Affected Unsecured Creditors' class and permitted to vote.
>
> 3. Air Canada gave no real consideration in acquiring the deficiency claims and manufactured them only to secure a 'yes' vote.

13 Air Canada and Canadian argue that the legal right associated with Air Canada's unsecured promissory notes and with the other Affected, Unsecured Claims, are the same and that the matters raised by Resurgence, as relating to classification, are really matters of fairness, more appropriately dealt with at the fairness hearing. Air Canada and Canadian emphasized that classification must be determined according to the rights of the creditors, not their personalities.

14 The starting point in determining classification is the statute under which the parties are operating and from which the court obtains its jurisdiction. The primary purpose of the C.C.A.A. is to facilitate the re-organization of insolvent companies, and this goal must be given proper consideration at every stage of the C.C.A.A. process, including classification of claims; see, for example, *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20 (Alta. Q.B.)

15 Beyond identifying secured and unsecured classes, the C.C.A.A. does not offer any guidance to the classification of claims. The process, instead, has developed in the case law.

16 A frequently cited description of the method of classification of creditors for the purposes of voting on a plan, under the C.C.A.A., is *Sovereign Life Assurance Co. v Dodd* (1891), [1892] 2 Q.B. 573 (Eng. C.A.).

17 At page 583 (Q.B.), Bowen, L.J. stated:

> The word 'class' is vague and to find out what is meant by it, we must look at the scope of the section which is a section enabling the court to order a meeting of a class of creditors to be called. It seems plain that we must give such a meaning to the term 'class' as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with the view to their common interest.

This test has been described as the "commonality of interest" test. All counsel agree that this is the test to apply in classification of claims under the C.C.A.A. However, there is a dispute on the types of interests that are to be considered in determining commonality.

18 Generally, the cases hold that classification is a fact-driven determination unique to the circumstances of every case, upon which the court should be loathe to impose rules for universal application, particularly in light of the flexible and remedial jurisdiction involved; see, for example, *Re Fairview Industries Ltd.* (1991), 11 C.B.R. (3d) 71 (N.S. T.D.)

19 The majority of the cases presented to me, held that commonality of the interest is to be determined by the rights the creditor has vis-a-vis the debtor. Courts have also found it helpful to consider the context of the proposed plan and treatment of creditors under a liquidation scenario. In the absence of bad faith, motivation for supporting or rejecting a plan is not a classification issue in the authorities.

20 In considering what interests are included in the commonality of interest test, Forsyth J., in *Norcen Energy Resources Ltd.* (Supra) had to determine whether all the secured creditors of the company ought to be included in one class. The creditors all had first-charge security and the same method of valuation was applied to each secured claim in order to determine security value under the plan. The distinguishing features were submitted to be based on the difference in the security held, including ease of marketability and realization potential. In holding that a separate class was not necessary, Forsyth J., said at page 29:

> Different security positioning and changing security values are a fact of life in the world of secured financing. To accept this argument would again result in a different class of creditor for each secured lender.

In doing so, Forsyth J. rejected the "identity of the interest" approach in which creditors in a class must have identical interests.

21 It was also submitted in *Norcen Energy Resources Ltd.* that since the purchaser under the plan had made financing arrangements with the Royal Bank, the bank had an interest not shared by the other secured creditors. Forsyth J., held that in the absence of any allegation that the Royal Bank was not acting bona fide in considering the benefit of the plan, the secured creditors could not be heard to criticize the presence of the Royal Bank in their class.

22 Forsyth J., also emphasized in *Norcen Energy Resources Ltd.* that the commonality test cannot be considered without also considering the underlying purpose of the C.C.A.A., which is to facilitate reorganizations of insolvent companies. To that end, the court should not approve a classification scheme which would make a reorganization difficult, if not impossible, to achieve. At the same time, while the C.C.A.A. grants the court the authority to alter the legal rights of parties other than the debtor company without their consent, the court will not permit a confiscation of rights or an injustice to occur.

23 The *Norcen Energy Resources Ltd.* approach was specifically adopted in British Columbia in *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada* (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.), where it was held that various mortgagees with different mortgages against different properties were included in the same class.

24 In *Savage v. Amoco Acquisition Co.* (1988), 68 C.B.R. (N.S.) 154 (Alta. C.A.) the Alberta Court of Appeal rejected the argument that shareholders who have private arrangements with the applicant or who are brokers or officers or otherwise in a special position vis-a-vis the debtor company, should be put in a special category.

25 At page 158 the court stated in regard to the test applied to classification:

> We do not think that this rule justifies the division of shareholders into separate classes on the basis of their presumed prior commitment to a point of view. The state of facts, common to all, is that they are all offered this proposal, face as an alternative the break-up of this apparently insolvent company and hold shares that appear to be worthless on break-up. In any event, any attempt to divide them on the basis suggested, would be futile. One would have as many groups as there are shareholders.

The commonality of interest test was addressed by the British Columbia Supreme Court in *Re Woodward's Ltd.* (1993), 84 B.C.L.R. (2d) 206 (B.C. S.C.). Tysoe J. rejected the identity of interest approach and held that it was permissible to include creditors with different legal rights in the same class, so long as their legal rights were not so dissimilar that it was still possible for them to vote with a common interest.

26 Tysoe J. went on to find that legal interests should be considered in the context of the proposed plan and that it was also necessary to examine the legal rights of creditors in the context of the possible failure of the plan.

27 In other words, "interest" for the purpose of classification does not include the personality or identity of the creditor, and the interests it may have in the broader commercial sphere that might influence its decision or predispose it to vote in a particular way; rather, "interest" involves the entitlement of the debt holder viewed within the context of the provisions of the proposed plan. In that regard, see *Woodward's Ltd.* at page 212.

28 In *Fairview Industries Ltd.* , the court held that in classification there need not be a commonality of interest of debts involved, so long as the legal interests were the same. Justice Glube (as she then was) stated that it did not automatically follow that those with different commercial interests, for example, those with security on "quick" assets, are necessarily in conflict with those with security on "fixed" assets. She stated that just saying there is a conflict is insufficient to warrant separation.

29 In *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), 86 D.L.R. (4th) 621 (Ont. Gen. Div.) at 626 like *Norcen Energy Resources Ltd.*, the "identity of interests" approach was rejected. The court preserved a class of creditors which included debenture holders, terminated employees, realty lessors and equipment lessors.

30 Borins J. held that not every difference in the nature of the debt warrants a separate class and that in placing a broad and purposive interpretation on the C.C.A.A., the court should "take care to resist approaches which would potentially jeopardize a potentially viable plan." He observed that "excessive fragmentation is counterproductive to the legislative intent to facilitate corporate reorganization" and that it would be "improper to create a special class simply for the benefit of an opposing creditor which would give that creditor the potential to exercise an unwarranted degree of power." (p. 627).

31 In summary, the cases establish the following principles applicable to assessing commonality of interest:

1. Commonality of interest should be viewed on the basis of the non-fragmentation test, not on an identity of interest test;

2. The interests to be considered are the legal interests the creditor holds qua creditor in relationship to the debtor company, prior to and under the plan as well as on liquidation;

3. The commonality of these interests are to be viewed purposively, bearing in mind the object of the C.C.A.A., namely to facilitate reorganizations if at all possible;

4. In placing a broad and purposive interpretation on the C.C.A.A., the court should be careful to resist classification approaches which would potentially jeopardize potentially viable plans.

5. Absent bad faith, the motivations of the creditors to approve or disapprove are irrelevant.

6. The requirement of creditors being able to consult together means being able to assess their legal entitlement *as creditors* before or after the plan in a similar manner.

32 With this background, I will make several observations relating to the reasons asserted by Resurgence that distinguish Air Canada from the rest of the Affected Unsecured Creditors.

33 The first two reasons given relate to interests of Air Canada extraneous to its legal rights as a unsecured creditor. The third reason relates largely to the further assertion that Air Canada should not be allowed to vote at all. The matter of voting is addressed more specifically later in these reasons.

34 The factors described by Resurgence distinguish between Air Canada and other unsecured creditors relate largely to the fact that Air Canada is the assignee of the unsecured debt. In my view, that approach is to be discouraged at the classification stage. To require the court to consider who holds the claim, as distinct from what they hold, at that point would be untenable. I note that Mr. Edwards recognizes in 1947 in his article, "*Reorganizations under the Companies Creditors Arrangement Act*", (1947), 25 Cdn. Bar Rev. 587, and observe this concern is heightened in the current commercial reality of debt trading.

35 Resurgence also asserted that a court should avoid placing creditors with a potential conflict of interest in the same class and relies on *Re NsC Diesel Power Inc.* (1990), 79 C.B.R. (N.S.) 1 (N.S. T.D.), a case in which the court considered a potential conflict of interest between subcontractors and direct contractors. To the extent this case can be seen as decided on the basis of the distinct legal rights of the creditors, I agree with the result. To the extent that the case determined that a class could be separated based on a conflict of interest not based on legal right, I disagree. In my view, this would be the sort of issue the court should consider at the fairness hearing.

36 Resurgence also relied on the decisions of the British Columbia Supreme Court in *Re Northland Properties Ltd.* (1988), 73 C.B.R. (N.S.) 166 (B.C. S.C.), a case decided prior to *Norcen Energy Resources Ltd.*. In that case the court held that a subsidiary wholly owned by Northland Bank was incorporated to purchase certain bonds from Northland in exchange for preferred shares and was not entitled to vote. The court found that would be tantamount to Northland Bank voting in its own reorganization and relied on *Re Wellington Building Corp.*, [1934] O.R. 653, 16 C.B.R. 48 (Ont. S.C.) In this regard. I would note that the passage relied upon at page 5 in that case, in *Wellington Building Corp* (Supra) dealt with whether the scheme, as proposed, was unfair.

37 All creditors proposed to be included in the class of Affected, Unsecured Creditors, are all unsecured and are treated the same under the plan. All would be treat similarly under the BIA. The plan provides that they will receive 12 cents on the dollar. The Monitor opined that in liquidation unsecured creditors would realize a maximum of 3 cents on the dollar. Their legal interests are essentially the same. Issue is taken with the presence of Air Canada, supporter and funder of the plan, also having taken an assignment of a substantial, unsecured claim. However, absent bad faith, who creditors are is not relevant. Air Canada's mere presence in the class does not in and of itself constitute bad faith.

38 Further, all of these methods of distinguishing Air Canada's unsecured claim at their core are fundamentally issues of fairness which will be addressed by the Court at the fairness hearing on June 5, 2000. I am prepared to give serious consideration

to these matters at that time and direct that there be a separate tabulation of the votes cast by Air Canada arising from any assignments of promissory notes they have taken, so that there is an evidentiary record to assist me in assessing the fairness of the vote when and if I am called upon to sanction the plan. This approach was taken by Justice Forsyth in *Norcen Energy Resources Ltd.*, and in my view is consistent with the underlying purpose of the C.C.A.A. I wish to emphasize that the concerns raised by Resurgence will form part of the assessment of the overall fairness of the plan.

39 Permitting the classification to remain intact for voting purposes will not result in a confiscation of rights of or injustice to the unsecured note holders. Their treatment does not at this point depart from any other Affected Unsecured Creditors and recognizes the similarity of legal rights. Although based on different legal instruments, the legal rights of the unsecured note holders and Air Canada are essentially the same. Neither has security, nor specific entitlement to assets. Further, the ability of all of the Affected Unsecured Creditors to realize their claims against the debtor companies, depend in significant part, on the company's ability to continue as a going concern.

40 The separate tabulation of votes will allow the "voice" of unsecured creditors to be heard, while at the same time, permit rather than rule out the possibility that a plan might proceed.

41 It is important to preserve this possibility in the interests of facilitating the aim of the C.C.A.A. and protecting interests of all constituents. To fracture the class prior to the vote, may have the effect of denying the court jurisdiction to consider sanctioning a plan which may pass the fairness test but which has been rejected by one creditor. This would be contrary to the purpose of the C.C.A.A.

Separating the Claims Against CAC and CAIL

42 Resurgence briefly argued that since Air Canada's debt is owed by CAIL only, it could only look to CAIL's assets in a bankruptcy and would not be able to look to any CAC assets. In contrast, Resurgence suggested that the unsecured note holders are creditors of both CAIL under a guarantee, and CAC under the notes. Resurgence submitted that the resulting difference in legal rights destroys the commonality of interests.

43 There is insufficient evidence to suggest that the unsecured note holders are also creditors of CAIL. Counsel referred only to a statement made by Mr. Carty on cross-examination that there was an "unsecured guarantee". However, no documents have been brought to my attention that would support this statement and, in of itself, the statement is not determinative. In any case, I do not have sufficient evidence before me to conclude that there would be a meaningful difference in recoveries for unsecured creditors of CAC and CAIL in the event of bankruptcy. I, therefore, cannot conclude on this basis that rights are being confiscated, unlike Tysoe J.'s ability to do so in *Re Woodward's Ltd.* Simply looking to different assets or pools of assets will not alone fracture a class; some unique additional legal right of value in liquidation going unrecognized in a plan and not balanced by others losing rights as well is needed on the analysis of Tysoe J.

44 I recognize the struggle between the unsecured note holders, represented by Resurgence on one side, and Air Canada and Canadian on the other. Resurgence fears the inclusion of Air Canada and the Affected Unsecured Creditors' class will swamp the vote. Air Canada and Canadian fear that exclusion of Air Canada will result in the voting down of a plan which, in their view, otherwise stands a realistic chance of approval. As unsecured creditors, they do share similar legal rights. As supporters or opponents of the plan, they may well have distinctly different financial or strategic interests. I believe that in the circumstances of this case, these other interests and their impact on the plan, are best addressed as matters of fairness at the June 5, 2000 hearing, and in this way, the concerns will be heard by the court without necessarily putting an end to the entire process.

Voting

45 Although my decision on classification makes it clear that I will permit Air Canada to vote on the plan, I wish to comment further on this issue. Air Canada submitted that it should be entitled to vote the face value of the promissory notes which represent deficiency claims assigned to it from aircraft lessors in the same fashion as any other creditor who has acquired the claims by assignment. All parties accept that deficiency claims such as these would normally be included and voted upon in

an unsecured claims class. The request by Resurgence to deny them a vote would have the effect of varying rights associated with those notes.

46 The concessions achieved in the re-negotiation of the aircraft leases, represent value to CAIL. The methodology of calculation of the claims and their valuation was reviewed by the Monitor and this is not being challenged. Rather, it is because it is Air Canada that now holds them, that it is objectionable to Resurgence. Resurgence asserts that Air Canada manufactured the assignment so it could preserve a 'yes' vote. This, in my view, is a matter going to fairness. Is it fair for Air Canada to vote to share in the pool of cash funded by it for the benefit of unsecured creditors? That matter is best resolved at the fairness hearing.

47 Resurgence relied on *Northland Properties Ltd.* in which a wholly owned subsidiary of the debtor company was not allowed to vote because to do so would amount to the debtor company voting in its own reorganization. The corporate relationship between Air Canada and CAIL can be distinguished from the parent and wholly owned subsidiary in *Northland Properties Ltd.*. Air Canada is not CAIL's parent and owns 10 percent of a numbered company which owns 82 percent of CAIL. Further, as noted above, the court in *Northland Properties Ltd.* apparently relied on the passage from *Wellington Building Corp* which indicated in that case the court was being asked to approve a plan as fair. Again, the basis on which Resurgence seeks to deprive Air Canada of its vote is really an issue of fairness.

Section 6(2)(2) of the Plan

48 Resurgence wishes me to strike out Section 6(2)(2) of the plan, which essentially purports to provide a release by affected creditors of all claims based in whole or in part on any act, omission transaction, event or occurrence that took place prior to the effective date in any way relating to the debtor companies and subsidiaries, the C.C.A.A. proceeding or the plan against:

1. The debtor companies and its subsidiaries;

2. The directors, officers and employees;

3. The former directors, officers and employees of the debtor companies and its subsidiaries; or

4. The respective current and former professionals of the entities, including the Monitor, its counsel and its current officers and directors, et cetera. Resurgence submits that this provision constitutes a wholesale release of directors and others which is beyond that permitted by Section 5.1 of the C.C.A.A. CAIL and CAC submit that the proposed release was not intended to preclude rights expressly preserved by the statute and are prepared to amend the plan to state this.

49 Section 5.1(3) of the C.C.A.A. provides that the court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

50 In this application of Resurgence, the court must deal with two issues: One, what releases are permitted under the statute; and, two, what releases ought to be permitted, if any, under the plan.

51 In my view, I will be in a better position to assess the fairness of the proposed compromise of claims which is drafted in extremely broad terms, when I consider the other issues of fairness raised by Resurgence. Accordingly, I leave that matter to the fairness hearing as well.

52 In summary, the application contained in paragraph (d) of the Resurgence Notice of Motion is dismissed. The application in paragraph (e) is adjourned to June 5, 2000.

Application dismissed.

Footnotes

* Leave to appeal refused 2000 ABCA 149, 80 Alta L.R. (3d) 213, 19 C.B.R. (4th) 33 (Alta C.A. [In Chambers]).

Tab 42

2014 ONSC 494
Ontario Superior Court of Justice [Commercial List]

Jaguar Mining Inc., Re

2013 CarswellOnt 18630, 2014 ONSC 494, 12 C.B.R. (6th) 290, 236 A.C.W.S. (3d) 820

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

In the Matter of a Plan of Compromise or Arrangement of Jaguar Mining Inc., Applicant

Morawetz R.S.J.

Heard: December 23, 2013
Judgment: December 23, 2013
Written reasons: January 16, 2014
Docket: CV-13-10383-00CL

Counsel: Tony Reyes, Evan Cobb for Applicant, Jaguar Mining Inc.
Robert J. Chadwick, Caroline Descours for Ad Hoc Committee of Noteholders
Joseph Bellissimo for Secured Lender, Global Resource Fund
Jeremy Dacks for Proposed Monitor, FTI Consulting Canada Inc.
Robin B. Schwill for Special Committee of the Board of Directors

Morawetz J. **(orally):**

1 On December 23, 2013, I heard the CCAA application of Jaguar Mining Inc. ("Jaguar") and made the following three endorsements:

> 1. CCAA protection granted. Initial Order signed. Reasons will follow. It is expected that parties will utilize the e-Service Protocol which can be confirmed on comeback motion. Sealing Order of confidential exhibits granted.
>
> 2. Meeting Order granted in form submitted.
>
> 3. Claims Procedure Order granted in form submitted.

2 These are my reasons.

3 Jaguar sought protection from its creditors under the *Companies' Creditors Arrangement Act* ("CCAA") and requested authorization to commence a process for the approval and implementation of a plan of compromise and arrangement affecting its unsecured creditors.

4 Jaguar also requested certain protections in favour of its wholly-owned subsidiaries that are not applicants (the "Subsidiaries" and, together with the Applicant, the "Jaguar Group").

5 Counsel to Jaguar submits that the principal objective of these proceedings is to effect a recapitalization and financing transaction (the "Recapitalization") on an expedited basis through a plan of compromise and arrangement (the "Plan") to provide a financial foundation for the Jaguar Group going forward and additional liquidity to allow the Jaguar Group to continue to work towards its operational and financial goals. The Recapitalization, if implemented, is expected to result in a reduction of over $268 million of debt and new liquidity upon exit of approximately $50 million.

6 Jaguar's senior unsecured convertible notes (the "Notes") are the primary liabilities affected by the Recapitalization. Any other affected liabilities of Jaguar, which is a holding company with no active business operations, are limited and identifiable.

7 The Recapitalization is supported by an Ad Hoc Committee of Noteholders of the Notes (the "Ad Hoc Committee of Noteholders") and other Consenting Noteholders, who collectively represent approximately 93% of the Notes.

8 The background facts are set out in the affidavit of David M. Petrov sworn December 23, 2013 (the "Petrov Affidavit"), the important points of which are summarized below.

9 Jaguar is a corporation existing under the *Business Corporations Act*, R.S.O. 1990 c. B.16, with a registered office in Toronto, Ontario. Jaguar has assets in Canada.

10 Jaguar is the public parent corporation of other corporations in the Jaguar Group that carry on active gold mining and exploration in Brazil, employing in excess of 1,000 people. Jaguar itself does not carry on active gold mining operations.

11 Jaguar has three wholly-owned Brazilian operating subsidiaries: MCT Mineração Ltda. ("MCT"), Mineração Serras do Oeste Ltda. ("MSOL") and Mineração Turmalina Ltda. ("MTL") (and, together with MCT and MSOL, the "Subsidiaries"), all incorporated in Brazil.

12 The Subsidiaries' assets include properties in the development stage and in the production stage.

13 Jaguar has been the main corporate vehicle through which financing has been raised for the operations of the Jaguar Group. The Subsidiaries have guaranteed repayment of certain funds borrowed by Jaguar.

14 Jaguar has raised debt financing by (a) issuing notes, and (b) borrowing from Renvest Mercantile Bank Corp. Inc., through its global resource fund ("Renvest").

15 In aggregate, Jaguar has issued a principal amount of $268.5 million of Notes through two transactions, known as the "2014 Notes" and the "2016 Notes".

16 Interest is paid semi-annually on the 2014 Notes and the 2016 Notes. Jaguar has not paid the last interest payment due on November 1, 2013. Under the 2014 Notes, the grace period has lapsed and an event of default has occurred.

17 Jaguar is also the borrower under a fully drawn $30 million secured facility (the "Renvest Facility") with Renvest. The obligations under the Renvest Facility are secured by a general security agreement from Jaguar as well as guarantees and collateral security granted by each of the Subsidiaries.

18 Jaguar has identified another potential liability. Mr. Daniel Titcomb, former chief executive officer of Jaguar, and certain other associated parties, have instituted a legal proceeding against Jaguar and certain of its current and former directors that is currently proceeding in the United States Federal Court. Counsel to Jaguar submits that this lawsuit alleges certain employment-related claims and other claims in respect of equity interests in Jaguar that are held by Mr. Titcomb and others. Counsel to Jaguar advises that Jaguar and its board of directors believe this lawsuit to be without merit.

19 Counsel also advises that, aside from the lawsuit and professional service fees incurred by Jaguar, the unsecured liabilities of Jaguar are not material.

20 The Jaguar Group's mines are not low-cost gold producers and the recent decline in the price of gold has negatively impacted the Jaguar Group.

21 Based on current world prices and Jaguar Group's current level of expenditures, the Jaguar Group is expected to cease to have sufficient cash resources to continue operations early in the first quarter of 2014.

22 Counsel also submits that, as a result of Jaguar's event of default under the 2014 Notes, certain remedies have become available, including the possible acceleration of the principal amount and accrued and unpaid interest on the 2014 Notes. As of November 13, 2013, that principal and accrued interest totalled approximately $169.3 million.

23 Jaguar's unaudited consolidated financial statements for the nine months ending September 30, 2013 show that Jaguar had an accumulated deficit of over $317 million and a net loss of over $82 million for the nine months ending September 30, 2013. Jaguar's current liabilities (at book value) exceed Jaguar's current assets (at book value) by approximately $40 million.

24 I accept that Jaguar faces a liquidity crisis and is insolvent.

25 Jaguar has been involved in a strategic review over the past two years. Counsel submits that the efforts of Jaguar and its advisors have shown that a comprehensive restructuring plan involving a debt-to-equity exchange and an investment of new money is the best available alternative to address Jaguar's financial issues.

26 Counsel to Jaguar advises that the board of directors of Jaguar has determined that the Recapitalization is the best available option to Jaguar and, further, that the plan cannot be implemented outside of a CCAA proceeding. Counsel emphasizes that without the protection of the CCAA, Jaguar is exposed to the immediate risk that enforcement steps may be taken under a variety of debt instruments. Further, Jaguar is not in a position to satisfy obligations that may result from such enforcement steps.

27 Jaguar requests a stay of proceedings in favour of non-applicant Subsidiaries contending that, because of Jaguar's dependence upon its Subsidiaries for their value generating capacity, the commencement of any proceedings or the exercise of rights or remedies against these Subsidiaries would be detrimental to Jaguar's restructuring efforts and would undermine a process that would otherwise benefit Jaguar Group's stakeholders as a whole.

28 Jaguar also seeks a charge on its current and future assets (the "Property") in the maximum amount of $5 million (a $500,000 first-ranking charge (the "Primary Administration Charge") and a $4.5 million fourth-ranking charge (the "Subordinated Administration Charge") (together, the "Administration Charge")). The purpose of the charge is to secure the fees and disbursements incurred in connection with services rendered both before and after the commencement of the CCAA proceedings by various professionals, as well as Canaccord Genuity and Houlihan Lokey, as financial advisors to the Ad Hoc Committee (collectively, the "Financial Advisors").

29 Counsel advises that the Financial Advisors' monthly work fees (but not their success fees) will be secured by the Primary Administration Charge, while the Financial Advisors' success fees will be secured solely by the Subordinated Administration Charge.

30 Counsel further advises that the Proposed Initial Order contemplates the establishment of a charge on Jaguar's Property in the amount of $150,000 (the "Director's Charge") to protect the directors and officers. Counsel further advises that the benefit of the Director's Charge will only be available to the extent that a liability is not covered by existing directors and officers insurance. The directors and officers have indicated that, due to the potential for personal liability, they may not continue their service in this restructuring unless the Initial Order grants the Director's Charge.

31 Counsel to Jaguar further advises that the proposed monitor is of the view that the Director's Charge and the Administration Charge are reasonable in these circumstances.

32 Jaguar is unaware of any secured creditors, other than those who have received notice of the application, who are likely to be affected by the court-ordered charges.

33 In addition to the Initial Order, Jaguar also seeks a Claims Procedure Order and a Meeting Order, submitting that it must complete the Recapitalization on an expedited timeline.

34 Each of the Claims Procedure Order and Meeting Order include a comeback provision.

35 Having reviewed the record and upon hearing submissions, I am satisfied the Applicant is a company to which the CCAA applies. It is insolvent and faces a looming liquidity crisis. The Applicant is subject to claims in excess of $5 million and has assets in Canada. I am also satisfied that the application is properly before me as the Applicant's registered office and certain of its assets are situated in Toronto, Ontario.

36 I am also satisfied that the Applicant has complied with the obligations of s. 10(2) of the CCAA.

37 I am also satisfied that an extension of the stay of proceedings to the Subsidiaries of Jaguar is appropriate in the circumstances. Further, I am also satisfied that it is reasonable and appropriate to grant the Administration Charge and the Director's Charge over the Property of the Applicant. In these circumstances, I am also prepared to approve the Engagement Letters and to seal the terms of the Engagement Letters. In deciding on the sealing provision, I have taken into account that the Engagement Letters contain sensitive commercial information, the disclosure of which could be harmful to the parties at issue. However, as I indicated at the hearing, this issue should be revisited at the comeback hearing.

38 I am also satisfied that Jaguar should be authorized to comply with the pre-filing obligations to the extent provided in the Initial Order.

39 In arriving at the foregoing conclusions, I reviewed the argument submitted by counsel to Jaguar that the stay of proceedings against non-applicants is appropriate. The Jaguar Group operates in a fully integrated manner and depends upon its Subsidiaries for their value generating capacity. Absent a stay of proceedings not only in favour of Jaguar but also in favour of the Subsidiaries, various creditors would be in a position to take enforcement steps which could conceivably lead to a failed restructuring, which would not be in the best interests of Jaguar's stakeholders.

40 The court has jurisdiction to extend the stay in favour of Jaguar's Subsidiaries. See *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]); *Calpine Canada Energy Ltd., Re*, 2006 ABQB 153, 19 C.B.R. (5th) 187 (Alta. Q.B.); *SkyLink Aviation Inc., Re*, 2013 ONSC 1500, 3 C.B.R. (6th) 150 (Ont. S.C.J. [Commercial List]).

41 The authority to grant the court-ordered Administration Charge and Director's Charge is contained in ss. 11.51 and 11.52 of the CCAA.

42 In granting the Administration Charge, I am satisfied that:

(i) notice has been given to the secured creditors likely to be affected by the charge;

(ii) the amount is appropriate; and

(iii) the charges should extend to all of the proposed beneficiaries.

43 In considering both the amount of the Administration Charge and who should be entitled to its benefit, the following factors can also be considered:

(a) the size and complexity of the business being restructured; and

(b) whether there is an unwarranted duplication of roles.

See *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222, 63 C.B.R. (5th) 115 (Ont. S.C.J. [Commercial List]).

44 In this case, the proposed restructuring involves the proposed beneficiaries of the charge. I accept that many have played a significant role in the negotiation of the Recapitalization to date and will continue to play a role in the implementation of the Recapitalization. I am satisfied that there is no unwarranted duplication of roles among those who benefit from the proposed Administration Charge.

45 With respect to the Director's Charge, the court must be satisfied that:

(i) notice has been given to the secured creditors likely to be affected by the charge;

(ii) the amount is appropriate;

(iii) the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and

(iv) the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.

46 A review of the evidence satisfies me that it is appropriate to grant the Director's Charge as requested.

47 Jaguar requested that the Initial Order authorize it to perform certain pre-filing obligations in respect of professional service providers and third parties who provide services in respect of Jaguar's public listing agreement. In the circumstances, I find it to be reasonable that Jaguar be authorized to perform these pre-filing obligations.

48 In view of Jaguar's desire to move quickly to implement the Recapitalization, I have also been persuaded that it is both necessary and appropriate to grant the Claims Procedure Order and the Meeting Order at this time. These are procedural steps in the CCAA process and do not require any assessment by the court as to the fairness and reasonableness of the Plan at this stage.

49 Counsel to Jaguar submits that Jaguar's approach to classification of the affected unsecured creditors is appropriate in these circumstances, citing a commonality of interest. Counsel also references s. 22(2) of the CCAA. For the purposes of today's motion, I am prepared to accept this argument. However, this is an issue that can, if raised, be reviewed at the comeback hearing.

50 In the result, an Initial Order is granted together with a Meeting Order and Claims Procedure Order. All orders have been signed in the form presented.

Application granted.

Tab 43

2009 NSSC 163
Nova Scotia Supreme Court

ScoZinc Ltd., Re

2009 CarswellNS 283, 2009 NSSC 163, 177 A.C.W.S. (3d) 294, 55 C.B.R. (5th) 205

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 ScoZinc Limited

D.R. Beveridge J.

Heard: May 1, 2009
Judgment: May 1, 2009
Written reasons: May 20, 2009
Docket: Hfx 305549

Counsel: John D. Stringer, Q.C., Ben Durnford for Applicant
Robbie MacKeigan, Q.C. for Daniel Rozon
John McFarlane, Q.C. for Kamatsu

***D.R. Beveridge J.*:**

1 ScoZinc brings a motion seeking an order to accomplish three things. The first is for a meeting of the creditors pursuant to ss. 4 and 5 of the *Companies' Creditors Arrangement Act*. The second is a further extension of the stay of proceedings initially ordered by this Court on December 22, 2008 and extended from time to time. The third is approval of notice of this motion being given only to certain defined creditors.

2 The company has filed an affidavit of William Felderhof referred to as his seventh affidavit, sworn April 28, 2009 and the Monitor has filed its sixth report dated April 30, 2009.

3 As part of its submissions the company notes that there is nothing in the *CCAA* which requires the Court to give prior preliminary approval of ScoZinc's proposed plan before it is presented to the creditors. It notes that the jurisprudence establishes that this approval is generally desirable prior to calling a meeting of the creditors. Some, but not all of this jurisprudence was reviewed by MacAdam J. in *Federal Gypsum Co., Re*, 2007 NSSC 384 (N.S. S.C.).

4 Justice MacAdam in *Federal Gypsum Co., Re* did refer to the two different standards that have been proposed or referred to in cases from Ontario and British Columbia. Some of these cases have expressed the view that the debtor company should establish that the plan has "a reasonable chance" that it would be accepted by the creditors. Other cases have referred to the appropriate test as simply a determination as to whether or not the proposed plan is one that would be "doomed to failure".

5 In a different context, Glube C.J.T.D. (as she then was) in *Fairview Industries Ltd., Re* (1991), 11 C.B.R. (3d) 43 (N.S. T.D.) cautioned that it would be impractical and extremely costly to continue to prepare a plan when "there is no hope that it would be approved".

6 I think it fair to say that MacAdam J., although not expressly but by necessary implication, preferred the lower standard facing a debtor company in submitting its plan to the Court for a preliminary approval. At para. 12 he wrote:

> [12] In view of the relatively low threshold on the Company in seeking Court approval to have a plan of arrangement submitted to the creditors for a vote, I am satisfied the plan should proceed and the creditors should determine whether they do, or do not accept the plan as finally filed.

7 In my opinion it should not be up to the Court to second guess the probability of success of a proposed plan of arrangement. Businessmen are free to make their own views known before and ultimately at the creditors' meeting. It seems to me that the Court should only decline to give preliminary approval and refuse to order a meeting if it was of the view that there was no hope that the plan would be approved by the creditors or, if it was approved by the creditors, it would not, for some other reason, be approved by the Court.

8 The Monitor in its sixth report says that the proposed plan is reasonable under the circumstances. This opinion appears to flow from its conclusion that if the plan is rejected and the company forced into receivership or bankruptcy, unsecured creditors will not recover the amount offered in the plan and it is highly unlikely that the secured creditors will recover the amount offered to them. I see no reason to disagree with the opinion offered by the Monitor.

9 Given that opinion and in light of the terms that are set out in the proposed plan I am certainly satisfied that the plan is far from one that is doomed to failure. It is one that should be put to the creditors for their consideration. It is therefore appropriate that I exercise the discretion that is set out in ss. 4 and 5 of the *CCAA* and order a meeting of the creditors on the terms set out in the proposed meeting order.

10 With respect to the extension of the stay of proceedings, as I noted at the outset there had been an initial order of this Court under s.11 of the *CCAA*. This order was granted on December 22, 2008. It was, as required by the statute, limited to a period of 30 days. It has been extended on two previous occasions. It is now due to expire May 22nd, 2009. The meeting of the creditors is scheduled for May 21, 2009. There is a tentative return date scheduled for May 28, 2009 for the Court to consider sanctioning the plan, should it be approved by the creditors.

11 The test with respect to extending the stay of proceedings has been set out in a number of cases that have considered ss. 11(4) and (6) of the *CCAA*. These were reviewed by me in *ScoZinc Ltd., Re*, 2009 NSSC 108 (N.S. S.C.). In these circumstances there is no need to review the test and the evidence in support of that test.

12 In light of my conclusion that the company had met the threshold for ordering a meeting of the creditors under ss. 4 and 5 of the *CCAA* the appropriateness of a further extension permitting the company to return to the Court within a very short period of time following that meeting of the creditors is patently obvious. The extension is therefore granted.

13 The last issue is the approval of notice of this motion being given only to certain defined creditors. Given the number of creditors that appeared early on in the proceedings it was somewhat impractical to give notice to each of them with the volumes of materials that would be required to be produced and served. With respect to the prior motions it was required that notice be given to all creditors asserting claims against the debtor company in excess of $100,000.00 and all creditors asserting builders liens. In addition all creditors were apprised of these proceedings by way of the mail out to each and every creditor as required by the *CCAA* leading to filing of proofs of claim. The status of the proceedings, including this motion, have been posted on the Monitor's website. I see no reason to depart from the previous practice and this aspect of the motion is also granted.

Motion granted.

Tab 44

2009 ABQB 490
Alberta Court of Queen's Bench

SemCanada Crude Co., Re

2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 180 A.C.W.S. (3d) 374, 479 A.R. 318, 57 C.B.R. (5th) 205

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 SemCanada Crude Company, SemCAMS ULC, SemCanada Energy Company, A.E. Sharp Ltd., CEG Energy Options, Inc., 319278 Nova Scotia Company and 1380331 Alberta ULC

B.E. Romaine J.

Heard: August 5, 2009
Judgment: August 24, 2009
Docket: Calgary 0801-08510

Counsel: A. Robert Anderson, Q.C., Rupert Chartrand, Michael De Lellis, Cynthia L. Spry, Douglas Schweitzer for Applicants
David R. Byers, for Bank of America
Patrick T. McCarthy, Josef A. Krüger for Monitor
Douglas S. Nishimura for ARC Resources Ltd., City of Medicine Hat, Black Rider Resources Inc. Wolf Coulee Resources Inc., Orleans Energy Ltd., Crew Energy Inc., Trilogy Energy LP
Brendan O'Neill, Jason Wadden for Fortis Capital Corp.
Sean Fitzgerald for Tri-Ocean Engineering Ltd.
Dean Hutchison for Crescent Point Energy Trust, Enbridge Pipelines Inc.
Caireen Hanert for Bellamount Exploration Ltd., Enersul Limited Partnership
Bryce McLean for DPH Focus Corporation
Aubrey Kauffman for BNP Paribas

***B.E. Romaine J.*:**

Introduction

1 The SemCanada Group applied for various relief related to the holding of meetings of creditors to consider three plans to restructure and distribute assets of the CCAA applicants, including applications for orders authorizing the establishment of a single class of creditors for each plan for the purpose of considering and voting on the plans. I granted the applications, and these are my reasons.

Relevant Facts

2 On July 22, 2008, SemCanada Crude Company ("SemCanada Crude") and SemCAMS ULC ("SemCAMS") were granted initial Orders pursuant to s. 11(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "CCAA").

3 On July 30, 2008, the CCAA proceedings of SemCAMS and SemCanada Crude and the bankruptcy proceedings of SemCanada Energy Company ("SemCanada Energy") A.E. Sharp Ltd. ("AES") and CEG Energy Options, Inc. ("CEG") which had been commenced on July 24, 2008 were procedurally consolidated for the purpose of administrative convenience.

4 In addition, CCAA protection was granted to two affiliated companies, 3191278 Nova Scotia Company (A319") and 1380331 Alberta ULC ("138"). SemCanada Energy, AES, CEG, 319 and 138 are collectively referred to as the "SemCanada Energy Companies". The CCAA applicants are collectively referred to as the "SemCanada Group".

5 On July 22, 2008, SemGroup L.P. and its direct and indirect subsidiaries in the United States (the "U.S. Debtors") filed voluntary petitions to restructure under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

6 According to the second report of the Monitor, the financial problems of the SemGroup arose from a failed trading strategy and the volatility of petroleum products prices, leading to material margin calls related to large futures and options positions on the NYMEX and OTC markets, resulting in a severe liquidity crisis. SemGroup's credit facilities were insufficient to accommodate its capital needs, and the corporate group sought protection under Chapter 11 and the CCAA.

7 The SemCanada Group are indirect, wholly-owned subsidiaries of SemGroup LP. The SemCanada Group is comprised of three separate businesses:

(a) SemCanada Crude, a crude oil marketing and blending operation;

(b) the SemCanada Energy Companies, whose business was gas marketing, including the purchase and sale of gas to certain of its four subsidiaries as well as to SemCAMS; and

(c) SemCAMS, whose business consists of ownership interests in large gas processing facilities located in Alberta, as well as agreements to operate these facilities.

8 SemCrude, L.P. as U.S. borrower and a predecessor company of SemCAMS as Canadian borrower, certain U.S. SemGroup corporations and Bank of America as administrative agent for a syndicate of lenders (the "Secured Lenders") entered into a credit agreement in 2005 (the "Credit Agreement"). The Credit Agreement provides four different credit facilities. There are no advances outstanding with respect to the Canadian term loan facility, but in excess of U.S. $2.9 billion is owing under the U.S. term loan facility, the working capital loan facility and the revolver loan.

9 Five of the SemCanada Group, including SemCanada Crude, SemCanada Energy and SemCAMS, have provided a guarantee of all obligations under the Credit Agreement to the Secured Lenders, who rank as senior secured lenders, and under a US $600 million bond indenture issued by SemGroup. The guarantee is secured by a security and pledge agreement (the "Security Agreement") signed by the five members of the SemCanada Group.

10 The SemCanada Energy Companies were liquidated or have ceased operations and no longer have significant ongoing operations. As a result of liquidation proceedings and the collection of outstanding accounts receivable, the SemCanada Energy Companies hold approximately $113 million in cash. An application to distribute that cash to the Secured Lenders was adjourned *sine die* on January 19, 2009: *SemCanada Crude Co., Re*, 2009 ABQB 90 (Alta. Q.B.).

11 Originally, SemCAMS and SemCanada Crude proposed to restructure their businesses as stand-alone operations without further affiliation with the U.S. Debtors and accordingly sought bids in a solicitation process undertaken in early 2009. Unfortunately, no acceptable bids were received. It also became apparent that, as SemCanada Crude's business was closely integrated with certain North Dakota transportation rights and assets owned by the U.S. Debtors, restructuring SemCanada Crude's operations on a stand alone basis would be problematic. The SemCanada Group turned to the alternative of joining in the restructuring of the entire SemGroup through concurrent and integrated plans of arrangement in both Canada and the United States.

Summary of the U.S. and Canadian Plans

12 The U.S. and Canadian plans are complex and need not be described in their entirety in these reasons. For the purpose of these reasons, the relevant aspects of the plans are as follows:

1. The disclosure statement relating to a joint plan of affiliated U.S. Debtors was approved for distribution to creditors by the U.S. Bankruptcy Court on July 21, 2009. Under the Chapter 11 process, meetings of creditors are not necessary. Voting takes place through a notice and balloting mechanism that has been approved by the U.S. Court and September 3, 2009 has been set as the voting deadline for acceptance or rejection of the U.S. plan.

2. The total distributable value of the SemGroup for the purpose of the plans is expected to be US $2.3 billion, consisting of US $965 million in cash, US $300 million in second lien term loan interests and US $1.035 billion in new common stock and warrants of the U.S. Debtors.

3. The SemCanada Group will contribute approximately US $161 million in available cash to the U.S. plan and US $54 million is expected to be received from SemCanada Crude relating to crude oil settlements that will occur after the effective date of the plans, being cash received from prepayments that are outstanding on the implementation date which will be replaced with letters of credit or other post-plan financing.

4. Approximately US $50 million will be retained by the corporate group for working capital and general corporate purposes, including for the post plan cash needs of SemCAMS and SemCanada Crude.

5. Certain U.S. causes of action will be contributed to a "litigation trust" and will be distributed through the U.S. Plan, including to the Secured Lenders on their deficiency claims. No value has been placed on the litigation trust by the U.S. Debtors. The Monitor reports that it is unable to make an informed assessment of the value of the litigation trust assets as the trust is a complicated legal mechanism that will likely require the expenditure of significant time and professional fees before there will be any recovery.

6. The U.S. plan contains a condition precedent that, on the effective date of the plan, the restructured corporate group will enter into a US $500 million exit financing facility, which will apply to all post-restructuring affiliates, including SemCAMS and SemCanada Crude, and which will allow the corporate group to re-enter the crude marketing business in the United States and to continue operations in Canada.

7. It is expected that the Secured Lenders will receive cash, second lien term loan interests and equity in priority to unsecured creditors on their secured guarantee claims of US $2.9 billion, which will leave them with a deficiency of approximately US $1.07 billion on the secured loans. The Secured Lenders are entitled under the U.S. Plan to a share in the litigation trust on their deficiency claim. If certain other classes of creditors do not vote to approve the U.S. plan, the Secured Lenders may also receive equity of a value up to 4.53% of their deficiency, subject to other contingencies. The Monitor reports that the Secured Lenders are thus estimated to recover approximately 57.1% of their estimated claims of US $2.1 billion on secured working capital claims and 73.3% of their estimated claims of US $811 million on secured revolver/term claims. The Monitor estimates that the Secured Lenders will recover no value on their deficiency claims, assuming no reallocation of equity from other categories of debtors and no value for the litigation trust.

8. The holders of the US $600 million bonds (the "Noteholders") are entitled to receive common shares and warrants in the restructured corporate group, plus an interest in the litigation trust and certain trustee fees, for an estimated recovery of 8.34% on their claims of US $610 million under the U.S. plan, assuming all classes of Noteholders approve the plan and no value is given to the litigation trust. Depending on certain contingencies, the range of recovery is 0.44$ to 11.02% of their claim. Noteholders are treated more advantageously under the plans than general unsecured creditors in recognition that the Senior Notes are jointly and severally guaranteed by 23 U.S. debtors and the Canadian debtors, while in most instances only one SemGroup debtor is liable with respect to each ordinary unsecured creditor. In addition, the Noteholders have waived their right to receive distributions under the Canadian plans.

9. Under the U.S. Plan, general unsecured creditors will receive common shares, warrants and an interest in the litigation trust. Depending on the level of approval, recovery levels will range from 0.08% to 8.03% on claims of

US $811 million. The Monitor reports that it expects recovery to general unsecured creditors under the U.S. Plan to be 2.09% of their claim.

10. Pursuant to section 503(b)(9) of the U.S. Bankruptcy Code, entities that provided goods to the U.S. Debtors in the ordinary course of business that were received within 20 days of the filing of Chapter 11 proceedings are entitled to a priority claim that ranks above the claims of the Secured Lenders.

11. There are 3 Canadian plans. As the Secured Lenders will be entitled to some recovery in respect of their deficiency claim and the Noteholders will be entitled to some recovery on their unsecured claim under the U.S. Plan, the Secured Lenders and the Noteholders are deemed to have waived their rights to any additional recovery under the Canadian plans for the most part. However, the votes of the Secured Lenders and the Noteholders entitled to vote on the U.S. Plan are deemed to be votes for the purpose of the Canadian plans, both with respect to numbers of parties and value of claims, and are to be included in the single class of "Affected Creditors" entitled to vote on the Canadian plans. Originally, the Canadian plans provided that the value attributable to the Secured Lenders' votes would be based on the full amount of their guarantee claim, approximately US $2.9 billion, and not only on their deficiency claim of approximately US $1.07 billion. Thus, the aggregate value of the Secured Lenders' voting claims would be:

a) US $2.939 billion for the SemCAMS plan;

b) US $2.939 billion less C $145 million for the SemCanada Crude plan, recognizing that the Secured Lenders would be entitled to receive C $145 million in respect of a negotiated Lenders' Secured Claim under the SemCanada Crude plan; and

c) US $2.939 billion less C $108 million for the SemCanada Energy plan, recognizing that the Secured Lenders will receive that amount in respect of a negotiated Lenders' Secured Claim under the SemCanada Energy plan.

At the conclusion of the classification hearing, the CCAA applicants proposed a revision to the proposed orders which stipulates that, if the approval of a plan by the creditors would be determined by the portion of the votes cast by the Secured Lenders that represents an amount of indebtedness that is greater than their estimated aggregate deficiency after taking into consideration the payments they are to receive under the U.S. plan and the Canadian plans, the Court shall determine whether the voting claim of the Secured Lenders should be limited to their estimated deficiency claim.

12. Only "Ordinary Creditors" receive any distribution under the Canadian Plans. Ordinary Creditors are defined as creditors holding "Affected Claims" other than the Secured Lenders, Noteholders, CCAA applicants and U.S. Debtors. Each plan provides that the Affected Creditors of the CCAA applicant will vote at the Creditors' Meeting as a single class.

13. The SemCAMS plan will be funded by a cash advance from SemCanada Crude and establishes two pools of cash. One pool will fund the full amount of secured claims which have not been paid prior to the implementation date of the plan up to the realizable value of the property secured, and the other pool will fund distributions to ordinary unsecured creditors. Ordinary unsecured creditors will receive cash subject to a maximum total payment of 4% of their proven claims. The Monitor estimates that the distribution will equal 4% of claims unless claims in excess of the current highest estimate are established.

14. The SemCanada Crude plan also establishes two pools of cash, one for secured claims and one for ordinary unsecured creditors. Again, the distribution to ordinary unsecured creditors is estimated to be 4% of claims unless claims in excess of the current highest estimate against SemCanada Crude are established.

15. Any cash remaining in SemCanada Crude after deducting amounts necessary to fund the above-noted payments to secured and unsecured ordinary creditors of SemCAMS and SemCanada Crude, unaffected claims and administrative costs, less a reserve for disputed claims, will be paid to the Secured Lenders through the U.S. plan as part of the payment on secured debt.

16. The SemCanada Energy distribution plan is funded from the cash received from the liquidation of the assets of the companies. It also establishes two pools of cash, one of which will be used to pay secured ordinary creditors and a one of which will be used to pay cash distributions to ordinary unsecured creditors. The Monitor estimates that the distribution to ordinary unsecured creditors will be in the range of 2.16% to 2.27% of their claims, unless claims in excess of the current maximum estimate are established. Any amounts outstanding after payment of these claims, unaffected claims and administration costs will be paid to the Secured Lenders. The proposed lower amount of recovery is stated to be in recognition of the fact that the SemCanada Energy Companies have been liquidated and have no going concern value.

17. As this summary indicates, the U.S. Plan and the Canadian plans are closely integrated and economically interdependent. Each of the plans requires that the other plans be approved by the requisite number of creditors and implemented on the same date in order to become effective. The receipt of at least $160 million from the SemCanada Group is a condition precedent to the implementation of the U.S. Plan.

18. The Monitor reports that the SemCanada Group has indicated that there is no viable option to the proposed plans and that a formal liquidation under bankruptcy legislation would provide a lower recovery to creditors. The Monitor notes that the rationale for the treatment of the Secured Lenders and the ordinary unsecured creditors under the plans is that the Secured Lenders have valid and enforceable secured claims, and that, in the event of the liquidation of the Canadian companies, the Secured Lenders would be entitled to all proceeds, resulting in no recovery to ordinary creditors. Therefore, reports the Monitor, the CCAA plans are considered to be better than the alternative of a liquidation. The Secured Lenders derive some benefit from the plans through the preservation of the going concern value of SemCAMS and SemCanada Crude and by having a prompt distribution of funds held by the SemCanada Energy Companies.

19. The Monitor notes that the distribution to the SemGroup unsecured creditors under the U.S. plan is viewed as better than a liquidation, and that, therefore, given the effect of the U.S. Bankruptcy Code's "cram-down" provisions, it is likely that the U.S. plan will be confirmed. The Monitor comments that the proposed distribution to ordinary unsecured creditors under the CCAA plans is considered to be fair as it is comparable to and potentially slightly more favourable than the distributions being made to the U.S. ordinary unsecured creditors.

Positions of Various Parties

13 The SemCanada Group applied for orders

a) accepting the filing of, in the case of SemCAMS and SemCanada Crude, proposed plans of arrangement and compromise, and in the case of SemCanada Energy, a proposed plan of distribution;

b) authorizing the calling and holding of meetings of the Canadian creditors of these three CCAA applicants;

c) authorizing the establishment of a single class of creditors for each plan for the purpose of considering and voting on the plans;

d) approving procedures with respect to the calling and conduct of such meetings; and

e) other non-contentious enabling relief.

14 Certain unsecured creditors of the applicants objected to the proposed classification of creditors, submitting that the Secured Lenders should not be allowed a vote in the same class as the unsecured creditors either with respect to the secured portion of their overall claim or any deficiency in their claims that would remain unpaid, and that the Noteholders should not be allowed a vote in the same class as the rest of the unsecured creditors.

15 As noted previously, the CCAA applicants proposed a revision to the proposed orders at the conclusion of the classification hearing which would allow the Court to consider whether the voting claim of the Secured Lenders should be limited to their estimated deficiency claim. The objecting creditors continued to object to the proposed classification, even if eligible votes were limited to the deficiency claim of the Secured Lenders.

Analysis

16 Section 6 of the CCAA provides that, where a majority in number representing two-thirds in value of "the creditors or class of creditors, as the case may be" vote in favour of a plan of arrangement or compromise at a meeting or meetings, the plan of arrangement may be sanctioned by the Court. There is little by way of specific statutory guidance on the issue of classification of claims, leaving the development of this issue in the CCAA process to case law. Prior decisions have recognized that the starting point in determining classification is the statute itself and the primary purpose of the statute is to facilitate the reorganization of insolvent companies: Paperny, J. in *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 46 (Alta. C.A. [In Chambers]), leave to appeal refused (2000), 20 C.B.R. (4th) 46 (Alta. C.A. [In Chambers]), affirmed [2001] 4 W.W.R. 1 (Alta. C.A.), leave to appeal to SCC refused [2001] S.C.C.A. No. 60 (S.C.C.) at para. 14. As first noted by Forsyth, J. in *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20, 64 Alta. L.R. (2d) 139, [1989] 2 W.W.R. 566 (Alta. Q.B.) at page 28, and often repeated in classification decisions since, "this factor must be given due consideration at every stage of the process, including the classification of creditors..."

17 Classification is a key issue in CCAA proceedings, as a proposed plan must achieve the requisite level of creditor support in order to proceed to the stage of a sanction hearing. The CCAA debtor seeks to frame a class or classes in order to ensure that the plan receives the maximum level of support. Creditors have an interest in classifications that would allow them enhanced bargaining power in the negotiation of the plan, and creditors aggrieved by the process may seek to ensure that classification will give them an effective veto (see *Rescue: The Companies' Creditors Arrangement Act*, Janis P. Sarra, 2007 ed. Thomson Carswell at page 234). Case law has developed from the comments of the British Columbia Court in *Woodward's Ltd., Re* (1993), 84 B.C.L.R. (2d) 206 (B.C. S.C.) warning against the danger of fragmenting the voting process unnecessarily, through the identification of principles applicable to the concept of "commonality of interest" articulated in *Canadian Airlines Corp., Re* and elaborated further in Alberta in *San Francisco Gifts Ltd., Re*, 2004 CarswellAlta 1241, [2004] A.J. No. 1062 (Alta. Q.B.), leave to appeal refused (2004), 5 C.B.R. (5th) 300 (Alta. C.A.).

18 The parties in this case agree that "commonality of interest" is the key consideration in determining whether the proposed classification is appropriate, but disagree on whether the plans as proposed with their single class of voters meet that requirement. It is clear that classification is a fact-driven inquiry, and that the principles set out in the case law, while useful in considering whether commonality of interest has been achieved by the proposed classification, should not be applied rigidly: *Canadian Airlines Corp., Re* at para. 18; *San Francisco Gifts Ltd., Re* at para. 12; *Stelco Inc., Re* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.) at para. 22.

19 Although there are no fixed rules, the principles set out by Paperny, J. in para. 31 of *Canadian Airlines Corp., Re* provide a useful structure for discussion of whether to the proposed classification is appropriate:

1. Commonality of interest should be viewed based on the non-fragmentation test, not on the identity of interest test.

20 Under the now-rejected "identity of interest" test, all members of the class had to have identical interests. Under the non-fragmentation test, interests need not be identical. The interests of the creditors in the class need only be sufficiently similar to allow them to vote with a common interest: *Woodward's Ltd., Re* at para. 8.

21 The objecting creditors submit that the creation of two classes rather than one cannot be considered to be fragmentation. The issue, however, is not the number of classes, but the effect that fragmentation of classes may have on the ability to achieve a viable reorganization. As noted by Farley, J. in para. 13 of his reasons relating to the classification of creditors in *Stelco Inc., Re*, as endorsed by the Ontario Court of Appeal:

> ...absent valid reason to have separate classes it would be reasonable, logical, rational and practical to have all this unsecured debt in the same class. Certainly that would avoid fragmentation - and in this respect multiplicity of classes does not mean that fragmentation starts only when there are many classes. Unless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.

2. The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation.

22 The classification of creditors is viewed with respect to the legal rights they hold in relation to the debtor company in the context of the proposed plan, as opposed to their rights as creditors in relation to each other: *Woodward's Ltd., Re* at para. 27, 29; *Stelco Inc., Re* at para. 30. In the proposed single classification, the rights of the creditors in the class against the debtor companies are unsecured (other than the proposed votes attributable to the secured portion of the debt of the Secured Lenders, which will be discussed separately).

23 With respect to the Secured Lenders' deficiency claim, there is a clear precedent for permitting a secured creditor to vote a substantial deficiency claim as part of the unsecured class: *Campeau Corp., Re* (1991), 10 C.B.R. (3d) 100 (Ont. Gen. Div.); *Canadian Airlines Corp., Re*, supra.

24 The classification issues in the *Campeau Corp., Re* restructuring were similar to the present issues. In *Campeau Corp., Re*, a secured creditor, Olympia & York, was included in the class of unsecured creditors for the deficiency in its secured claim, which represented approximately 88% of the value of the unsecured class. The Court rejected the submission that the legal interests of Olympia & York were different from other unsecured creditors in the class. Montgomery, J. noted at para. 16 that Olympic & York's involvement in the negotiation of the plan was necessary and appropriate given that the size of its claims would allow it a veto no matter how the classes were constituted and that its co-operation was necessary for the success of both the U.S. and Canadian plans.

25 In the same way, the size and scope of the Secured Lenders claim makes their participation in the negotiation and endorsement of the proposed plans essential. That participation does not disqualify them from a vote in the process, nor necessitate their isolation in a special class. While under the integrated plans, the Secured Lenders will receive a different kind of distribution on their unsecured deficiency claim (a share of the litigation trust), that is an issue of fairness for the sanction hearing and does not warrant the establishment of a separate class.

26 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 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. That difference, while it may be subject to submissions at the sanction hearing, is an issue of fairness, and not a difference material enough to warrant a separate class for the Noteholders in this case. A separate class for the Noteholders would only be necessary if, after considering all the relevant factors, it appeared that this difference would preclude reasonable consultation among the creditors of the class: *San Francisco Gifts Ltd., Re* at para. 24.

27 The question arises whether the fact that the Secured Lenders and the Noteholders have waived their rights to recover under the Canadian plans should result in either the requirement of separate classes or the forfeiture of their right to vote on the Canadian plans at all.

28 This is a unique case: a cross-border restructuring with separate but integrated and interdependent plans that are designed to comply with the restructuring legislation of two jurisdictions. As the applicants point out, the co-ordinated structure of the plans is designed to ensure that the Secured Lenders and the Noteholders receive sufficient recoveries under the U.S. plan to justify the sacrifices in recovery that result from their waiver of distributions under the Canadian plans. In considering the context of the proposed classification, it would be unrealistic and artificial to consider the Canadian plans in isolation, without regard to the commercial outcome to the creditors resulting from the implementation of the plans in both jurisdictions. Thus, the fact that the distributions to Secured Lenders and Noteholders will take place through the operation of the U.S. plan, and

that the effective working of the plans require them to waive their rights to receive distributions under the Canadian plans does not deprive them of the right to an effective voice in the consideration of the Canadian plans through a meaningful vote.

29 It is not sufficient to say that the Secured Lenders and the Noteholders have a vote in the U.S. plans. The "cram down" power which exists under Chapter 11 of the U.S. Bankruptcy Code includes a "best interests test" that requires that if a class of holders of impaired claims rejects the plan, they can be "crammed down" and their claims will be satisfied if they receive property of a value that is not less than the value that the class would receive or retain if the debtor were liquidated under Chapter 7 of the U.S. Bankruptcy Code. Thus, the votes available to the Secured Lenders and the Noteholders with respect to their claims under the U.S. Plan do not give them the right available to creditors under Canadian restructuring law to vote on whether a proposed plan should proceed to the next step of a sanction hearing There is no reason to deprive the Secured Lenders and the Noteholders of that right as creditors of the Canadian debtors, even if the distributions they would be entitled to flow through the U.S. plan. The question becomes, then, whether that right should be exercised in a class with other unsecured creditors as proposed or in a separate class.

30 It is noteworthy that the proposed single classification does not have the effect of confiscating the legal rights of any of the unsecured creditors, or adversely affecting any existing security position. It is in fact arguable that seeking to exclude the Secured Lenders and the Noteholders from the class prejudices these similarly-placed creditors by denying them a meaningful voice in the approval or rejection of the plans in Canada.

31 A number of cases suggest that the Court should also consider the rights of the parties in liquidation in determining whether a proposed classification is appropriate: *Woodward's Ltd., Re* at para. 14; *San Francisco Gifts Ltd., Re* at para. 12.

32 Under a liquidation scenario, the Secured Lenders would be entitled to nearly all of the proceeds of the liquidated corporate group, other than the relatively few secured claims that have priority. This suggests that the Secured Lenders are entitled to a meaningful vote with respect to both the U.S. plan and the Canadian plans.

3. The commonality of interests is to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate organizations if possible.

4. In placing a broad and purposive interpretation on the CCAA, the Court should be careful to resist classification approaches that would potentially jeopardize viable plans.

33 The Ontario Court of Appeal in *Stelco Inc., Re* cautioned that, in addition to considering commonality of interest issues, the court in a classification application should be alert to concerns about the confiscation of legal rights and should avoid "a tyranny of the minority", citing the comments of Borins, J. in *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), 86 D.L.R. (4th) 621 (Ont. Gen. Div.), where he warned against creating "a special class simply for the benefit of the opposing creditor, which would give that creditor the potential to exercise an unwarranted degree of power": *Stelco Inc., Re* at para 28.

34 Excluding of the Secured Lenders and the Noteholders from the proposed single class would allow the objecting creditors to influence the voting process to a degree not warranted by their status. It is true that if the Secured Lenders and the Noteholders are not excluded from the class, even if only the votes related to the Secured Lenders' deficiency claim are tabulated, the positive vote will likely be enough to allow the proposed plans to proceed to a sanction hearing. It is also true that the Secured Lenders and the Noteholders may have been part of the negotiations that led to the proposed plans. Neither of those factors standing alone is sufficient to warrant a separate class unless rights are being confiscated or the classification creates an injustice.

35 The structure of the classification as proposed creates in effect what was imposed by the Court in *Canadian Airlines Corp., Re*, a method of allowing the "voice" of ordinary unsecured creditors to be heard without the necessity of a separate classification, thus permitting rather than ruling out the possibility that the plans might proceed to a sanction hearing. Given that the votes of the Secured Lenders and the Noteholders on the U.S. plan will be deemed to be votes of those creditors on the Canadian plans, there will be perforce a separate tabulation of those votes from the votes of the remaining unsecured creditors. In accordance with the revision to the plans made at the end of the classification hearing, there will be a separate tabulation of the votes of the Secured Lenders relating to the secured portion of their claims and the votes relating to the unsecured deficiency.

36 The situation in this classification dispute is essentially the same as that which faced Paperny, J. in *Canadian Airlines Corp., Re*. Fragmenting the classification prior to the vote raises the possibility that the plans may not reach the stage of a sanction hearing where fairness issues can be fully canvassed. This would be contrary to the purpose of the CCAA. This is particularly an issue recognizing that the U.S. plan and the Canadian plans must all be approved in order for any one of them to be implemented. Conrad, J.A. in denying leave to appeal in *San Francisco Gifts Ltd., Re*, 2004 ABCA 386 (Alta. C.A.) at para. 9 noted that the right to vote in a separate class and thereby defeat a proposed plan of arrangement is the statutory protection provided to the different classes of creditors, and thus must be determined reasonably at the classification stage. However, she also noted that "it is important to carefully examine classes with a view of protecting against injustice": para. 10. In this case, the goals of preventing confiscation of rights and protecting against injustice favour the proposed single classification.

37 This is the "pragmatic" factor referred to in *Campeau Corp., Re* at para. 21.The CCAA judge must keep in mind the interests of all stakeholders in reviewing the proposed classification, as in any step in the process. If a classification prevents the danger of a veto of a plan that promises some better return to creditors than the alternative of a liquidating insolvency, it should not be interfered with absent good reason. The classification hearing is not the only avenue of relief for aggrieved creditors. If a plan received the minimum required level of approval by vote of creditors, it must still be approved at a hearing where issues of fairness must be addressed.

5. Absent bad faith, the motivations of the creditors to approve or disapprove [of the Plan] are irrelevant.

38 As noted in *Canadian Airlines Corp., Re* at para. 35, fragmenting a class because of an alleged conflict of interest not based on legal rights is an error. The issue of the motivation of a party to vote for or against a plan is an issue for the fairness hearing. There is no doubt that the various affected creditors in the proposed single class may have differing financial or strategic interests. To recognize such differences at the classification stage, unless the proposed classification confiscates rights, results in an injustice or creates a situation where meaningful consultation is impossible, would lead to the type of fragmentation that may jeopardize the CCAA process and be counter-productive to the legislative intent to facilitate viable reorganizations.

6. The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan in a similar manner.

39 The issue of meaningful consultation was addressed by both the supervising justice and the Court of Appeal in *San Francisco Gifts Ltd., Re*. In that case, Topolniski, J. noted that two corporate insiders that the proposed plan had included in the classification of affected creditors held claims that were uncompromised by the plan, that they gave up nothing, and that it "stretches the imagination to think other creditors in the class could have meaningful consultation [with them] about the Plan": para. 49. Her decision to place these parties in a separate class was confirmed by the Court of Appeal, which commented that Topolniski, J. was "absolutely correct" to find no ability to consult "between shareholders whose debts would not be cancelled and other unsecured creditors whose debts would be": para. 14.

40 That is not the situation here. The deficiency claims of the Secured Lenders and the unsecured claims of the Noteholders are being compromised in the U.S. plan, and there is nothing to block consultations among affected creditors on the basis of dissimilarity of legal interests. While there are differences in the proposed distributions on the unsecured claims, they are not so major that they would preclude consultation.

41 The objecting creditors point to statements made by counsel for the Secured Lenders during the classification application about the alternatives to approval of the plans, which they submit indicates the impossibility of consultation. These comments were made in the context of advocacy on behalf of the proposed classification, and I do not take them as a clear statement by the Secured Lenders that they would refuse to consult with the other creditors.

Secured Portion of Secured Lenders' Claim

42 The CCAA applicants and the Secured Lenders submit that it would be unfair and inappropriate to limit the votes of the Secured Lenders in the Canadian plans to the amount of the deficiency in their secured claim, rather than the entire amount owing

under the guarantee. They argue that, by endorsing the plans, the Secured Lenders have in effect elected to treat their entire claim under the guarantee as unsecured with respect to the Canadian plans, except for relatively small negotiated secured claims under the SemCanada Crude plan and the SemCanada Energy plan. They also submit that the fact that under bankruptcy law, a creditor of a bankrupt debtor is entitled to prove for the full amount of its debt in the estates of both the debtor and a bankrupt guarantor of the debt justifies granting the Secured Lenders the right to vote the full amount of the guarantee claim, even if part of the claim is to be recovered through the U.S. plan, as long as they do not actually recover more than 100 cents on the dollar.

43 It became apparent during the course of the classification hearing that it may not matter whether the plans are approved by the requisite number of creditors and value of their claims if the Secured Lenders are only entitled to vote the deficiency portion of their claims or the full amount of their claims. It was this that led to the revision in the language of the voting provisions of the plans. I defer a decision on the question of whether or not the Secured Lenders are entitled to vote the entire amount of their guarantee claims until after the vote has been conducted and the votes separately tabulated as directed. As noted by the Court of Appeal in *Canadian Airlines Corp., Re* (2000), 19 C.B.R. (4th) 33 (Alta. C.A. [In Chambers]) at para. 39, such a deferral of a voting issue is not an error of law and is in fact consistent with the purpose of the CCAA.

Recent Amendments

44 The following amendment to the CCAA that has been proclaimed in effect from September 18, 2009 sets out certain factors that may be considered in approving a classification for voting purposes:

> 22.2 (2)**Factors** - For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account:
>
> (a) the nature of the debts, liabilities or obligations giving rise to their claims;
>
> (b) the nature and rank of any security in respect of their claims;
>
> (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
>
> (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed. (R.S.C. 2005, c. 47, s. 131, amended R.S.C. 2007, Bill C -12, c.36, s.71)

45 These factors do not change in any material way the factors that have been identified in the case law and discussed in these reasons nor would they have a material effect on the consideration of the proposed classification in this case.

Creditors with Claims in Process

46 Two creditors advised that, because their claims of secured status had not yet been resolved with the applicants and the Monitor, they were not in a position to evaluate whether or not to object to the proposed classification. The plans were revised to ensure that the votes of creditors whose status as secured creditors remains unresolved until after the meetings of creditors be recorded with votes of creditors with disputed claims and reported to the Court by the Monitor if these votes affect the approval or non-approval of the plan in question.

Conclusion

47 In summary, I have concluded that there is no good reason to exclude the Secured Lenders and the Noteholders from the single classification of voters in the proposed plans, nor to create a separate class for their votes. There are no material distinctions between the claims of these two creditors and the claims of the remaining unsecured creditors that are not more properly the subject of the sanction hearing, apart from the deferred issue of whether the Secured Lenders are entitled to vote their entire guarantee claim. No rights of the remaining unsecured creditors are being confiscated by the proposed classification, and no injustice arises, particularly given the separate tabulation of votes which enables the voice of the remaining unsecured creditors to be heard and measured at the sanction hearing. There are no conflicts of interest so over-riding as to make consultation

impossible. While there are differences of interests and treatment among the affected creditors in the class, these are issues that will be addressed at the sanction hearing. Approval of the proposed classification in the context of the integrated plans is in accordance with the spirit and purpose of the CCAA.

Applications granted.

Tab 45

2005 CarswellOnt 6483
Ontario Superior Court of Justice [Commercial List]

Stelco Inc., Re

2005 CarswellOnt 6483, [2005] O.J. No. 4814, 143 A.C.W.S. (3d) 623, 15 C.B.R. (5th) 297

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO STELCO INC. AND THE OTHER APPLICANTS LISTED IN SCHEDULE "A"

APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Farley J.

Heard: November 9, 2005

Judgment: November 10, 2005 *
Docket: 04-CL-5306

Proceedings: affirmed *Stelco Inc., Re* (2005), 2005 CarswellOnt 6510 (Ont. C.A.)

Counsel: Michael E. Barrack, James D. Gage, Geoff R. Hall for Applicants
Kyla Mahar for Monitor
Robert Staley for Senior Debenture Holders
Ashley John Taylor (Agent) to Secured Creditors for CIT
Paul MacDonald, Andy Kent, Hilary Clarke for Converts Committee
Aubrey Kauffman for Tricap
Ken Rosenberg, Jeff Larry for USW
H. Whitely for CIBC
Steven Bosnick for USW Locals 8782, 8328
Murray Gold, Andrew Hatney for Salaried Retirees
Gale Rubenstein for Superintendent

***Farley J.*:**

1 Fortunately time cleared so that the motion of the Informal Independent Converts' Committee ("ConCom") which surfaced late last week — and the responding cross motion of the Informal Committee of Senior Debenture Holders ("BondCom") — could be accommodated today, less than week before the scheduled vote on Stelco Inc.'s Plan of Arrangement under the CCAA set for November 15, 2005.

2 The motion of ConCom was for an order:

> (i) directing the Applicants to amend page 39 of the Notice of Proceedings and Meetings and Information Circular (the "Information Circular") with respect to the Applicants' Proposed Plan of Arrangement or Compromise (the "Proposed Plan") in the manner set out in the Draft Order to confirm that the right (if any) of the Bondholders (as hereinafter defined) to assert claims or other remedies against other creditors of Stelco Inc. ("Stelco") will be subject to the effect of the Proposed Plan (the "Bondholders Claims Statement") and that the right (if any) of the Bondholders to assert

claims (the "Anti-Convert Claims") pursuant to Article 6 (the "Inter-Trustee Provisions") of the First Supplemental Trust Indenture dated January 21, 2002 between Stelco and CIBC Mellon Trust Company (the "Supplemental Trust Indenture") will be extinguished effective upon the implementation of the Proposed Plan;

(ii) declaring that, if the Proposed Plan is approved by the requisite majority of the creditors of Stelco and sanctioned by this Court, the Inter-Trustee Provisions shall, from and after the effective date of the Proposed Plan, be of no force or effect;

(iii) in the alternative, directing the Applicants to amend the Proposed Plan to provide that the Noteholders (as hereinafter defined) shall constitute a separate class of Stelco creditors for the purposes of voting on the Proposed Plan or any amended version thereof; and

(iv) such further and other relief as counsel may request and this Honourable Court may permit.

3 The cross motion of BondCom was for an Order:

2. for a declaration that, if any or all of the relief sought by the Convertible Noteholders as set out in its notice of motion dated November 4, 2005 is granted, that the Senior Debenture Holders shall constitute a separate class of Stelco Inc. ("Stelco") creditors for the purposes of voting on the Proposed Plan of Arrangement or Compromise (the "Proposed Plan") or any amended version thereof; and

3. such further and other relief as to this Honourable Court seems just.

4 No one present at this hearing disputed the proposition that it was appropriate to have the creditors vote on the Plan with the necessary benefit of clear statements of what was involved in such a vote and to eliminate therefore any ambiguities to the extent possible so that an objective creditor could make a reasoned decision. In that respect it would appear to me that the language of the Information Circular at p.39 thereof should be clarified to track that of the Meeting Order of October 4, 2005 at para. 34 thereof as to the operative element. Further it was acknowledged by everyone that the Plan itself provided that it may be amended before the vote. In that respect there would be no impediment for Stelco to adjust the language of the Plan in the sense of clarifying what its intent has been and continues to be in respect of matters affecting the debt in question and as held by those represented by the ConCom and by the BondCom. (Note: Subsequent to release of these reasons in handwritten form, I was advised on November 10, 2005 that Stelco has undertaken to make the aforesaid clarifications.)

5 I wish to emphasize that nothing in my reasons should be taken as being determinative of or affecting the relationship of the ConCom holders of debt vis-à-vis the BondCom holders of debt (that would as well encompass the holders of all Senior Debt as that term is defined in the Supplemental Trust Indenture). If those two sides are not able to work out an agreement between themselves, then they are at liberty to come to court to have that adjudicated.

6 ConCom points out that the Supplemental Trust Indenture was an agreement between Stelco and the holders of the ConCom debt, but it was not an agreement signed by the holders of the BondCom debt. While true, that would not preclude a claim of the BondCom holders based on the concept of third party beneficiary.

7 The CCAA is styled as "An act to facilitate compromises and arrangements between companies and their creditors" and its short title is: *Companies' Creditors Arrangement Act*. Ss. 4, 5 and 6 talk of compromises or arrangements between a company and its creditors. There is no mention of this extending by statute to encompass a change of relationship among the creditors vis-à-vis the creditors themselves and not directly involving the company. See *Pacific Coastal Airlines Ltd. v. Air Canada*, [2001] B.C.J. No. 2580 (B.C. S.C.) at paras. 24-25; *Royal Bank v. Gentra Canada Investments Inc.*, [2000] O.J. No. 315 (Ont. S.C.J. [Commercial List]) at para. 41, appeal dismissed (Ont. C.A.); *843504 Alberta Ltd., Re*, [2003] A.J. No. 1549 (Alta. Q.B.) at para. 13; *Royal Oak Mines Inc., Re*, [1999] O.J. No. 709 (Ont. Gen. Div. [Commercial List]) at para. 24; *Royal Oak Mines Inc., Re*, [1999] O.J. No. 864 (Ont. Gen. Div. [Commercial List]) at para. 1.

8 ConCom points out the language of article 4.01 of the Plan:

4.01 Cancellation of Certificates

At the Effective Time, all debentures, certificates, agreements, invoices and other instruments evidencing Affected Claims against Stelco or Existing Common Shares will not entitle any holder thereof to any compensation or participation other than as expressly provided for in this Plan or in the Articles or Reorganization, respectively, and will be cancelled and null and void, and all debentures, certificates, agreements, invoices and other instruments evidencing Affected Claims against any Subsidiary Applicant will not entitle any holder thereof (other than Stelco or its successors and assignees) to any compensation or participation other than as expressly provided for in this Plan and, if in the possession or control of any Person must, at the request of Stelco, be delivered to Stelco. (emphasis added)

However this must be carefully analyzed in context. This deals with "Affected Claims against Stelco." See also in this respect articles 6.01, 6.02 and 6.05.

6.01 Effect of Plan Generally

At the Effective Time, the treatment of Affected Claims will be final and binding on the Applicants, the Affected Creditors and the trustees under the trust indentures for the Bonds (and their respective heirs, executors, administrators and other legal representatives, successors and assigns), and this Plan will constitute: (a) full, final and absolute settlement of all rights of the Affected Creditors; (b) an absolute release and discharge of all indebtedness, liabilities and obligations of or in respect of the Affected Claims against Stelco, including any interest and costs accruing thereon; (c) an absolute assignment to Stelco of all indebtedness, liabilities and obligations of or in respect of the Affected Claims against Subsidiary Applicants, including any interest and costs accruing thereon, and an absolute release and discharge of any rights of Affected Creditors in respect thereof (excluding, for greater certainty, any rights assigned to Stelco); and (d) a reorganization of the capital and change in the minimum and maximum number of directors of Stelco in accordance with the provisions of Article 3 and the Articles of Reorganization. (emphasis added)

6.02 Prosecution of Judgments

At the Effective Time, no step or proceeding may be taken in respect of any suit, judgement, execution, cause of action or similar proceeding in connection with any Affected Claim (other than by Stelco in respect of Affected Claims assigned to it pursuant to this Plan) and any such proceedings will be deemed to have no further effect against any Applicant or any of its assets and will be released, discharged, dismissed or vacated without cost to the Applicants. Any Applicant may apply to Court to obtain a discharge or dismissal, if necessary, of any such proceedings without notice to the Affected Creditor. (emphasis added)

6.05 Consents, Waivers and Agreements

At the Effective Time, each Affected Creditor will be deemed to have consented and agreed to all of the provisions of the Plan, as an entirety. Without limitation to the foregoing, each Affected Creditor (but for greater certainty, excluding Stelco in respect of Affected Claims assigned to it pursuant to this Plan) will be deemed:

(a) to have executed and delivered to the Applicants all consents, assignments, releases and waivers, statutory or otherwise, required to implement and carry out this Plan as an entirety;

(b) to have waived any default by or rescinded any demand for payment against any Applicant that has occurred on or prior to the Plan Implementation Date pursuant to, based on or as a result of any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor and such Applicant with respect to an Affected Claim; and

(c) to have agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor and any Applicant with respect to an

Affected Claim as at the Plan Implementation Date and the provisions of this Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly.

(emphasis added)

This is not language which purports to, nor in my opinion does, affect relationships between creditors vis-à-vis themselves. With respect, I do not see s. 8 of the CCAA as coming into play here, nor is it necessary to have it come into play in this inter-creditor dispute which does not directly involve Stelco. No doubt it would be helpful to have Stelco clarify that aspect which ConCom has sincerely felt was ambiguous in article 4.01 of the Plan to reflect that these instruments are cancelled and null and void only as to the future (ie. that is after the Effective Time) vis-à-vis Stelco, but not as to the inter-creditor dispute or relationship. (See note above re: undertaking of Stelco.)

9 I would only note in passing that the holders of the ConCom debt freely bought into a situation governed by s. 6.2 of the Supplemental Trust Indenture which contemplated their relationship with the BondCom debt (Senior Debt) in the event of insolvency proceedings or a reorganization. Give the caveats in s. 6.3 it would not appear to me that this clause advances the argument pressed by the ConCom.

10 Therefore as to the relief request by ConCom in (i) and (ii) above, I would dismiss that part of the motion. That dismissal in no way affects the clarification of language mentioned above which would be of assistance to all concerned.

11 Secondly, I would note that while apparently Stelco had not specifically advised as to its position, at the time of the hearing, its counsel was quite straight forward in his opening comments when he stated that Stelco had intended and always intended that its Plan (as distributed) was only to affect rights between Stelco and its Affected Creditors, and specifically Stelco had no intent to alter the relationship between its creditors in the sense of one group of creditors vis-à-vis another group (i.e. the ConCom debt vis-à-vis BondCom debt (Senior Debt)). In this latter regard he indicated that Stelco was not intending to affect whatever subordination rights there may be between these two groups. This would be in the sense that what was the situation between these two groups as a result of the Supplemental Trust Indenture, especially at s. 6, would continue to be the relationship after the Effective Time.

12 The next question is whether or not there should be separate classes for the ConCom debt and/or the BondCom debt/ Senior Debt. I am of the view that the law in regard to classification is correctly set out in *Canadian Airlines Corp., Re* (2000), 19 C.B.R. (4th) 12 (Alta. Q.B.), leave to appeal denied (2000), 19 C.B.R. (4th) 33 (Alta. C.A. [In Chambers]), cited in the Alberta Court of Appeal subsequent decision *Canadian Airlines Corp., Re* (2000), 261 A.R. 120 (Alta. C.A. [In Chambers]), at para. 27. See also *San Francisco Gifts Ltd., Re* (2004), 5 C.B.R. (5th) 92 (Alta. Q.B.) at para. 11, leave to appeal denied 2004 ABCA 386 (Alta. C.A.). As noted by Toplinski J. at para. 11 of San Francisco:

> (11) The commonality of interest test has evolved over time and now involves application of the following guidelines that were neatly summarized by Paperny J. (as she then was) in *Resurgence Asset Management LLS v. Canadian Airlines Corp.* ("Canadian Airlines")
>
> 1. Community of interest should be viewed based on the non-fragmentation test, not on an identity of interest test.
>
> 2. The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor prior to and under the Plan as well as on liquidation.
>
> 3. The commonality of interests should be viewed purposively, bearing in mind that the object of the CCAA, namely to facilitate reorganizations if possible.
>
> 4. In placing a broad and purposive interpretation on the CCAA, the Court should be careful to resist classification approaches that would potentially jeopardize viable Plans.
>
> 5. Absent bad faith, the motivations of creditors to approve or disapprove [of the Plan] are irrelevant.

> 6. The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the Plan in a similar manner. (emphasis added)

13 I would note as well that the primary and most significant attribute of the ConCom debt and that of the BondCom debt/ Senior Debt plus the trade debt vis-à-vis Stelco is that it is all unsecured debt. Thus absent valid reason to have separate classes it would be reasonable, logical, rational and practical to have all this unsecured debt in the same class. Certainly that would avoid any unnecessary fragmentation — and in this respect multiplicity of classes does not mean that that fragmentation starts only when there are many classes. Unless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.

14 Is it necessary to have more than one class? Firstly, it would not appear to me that as between Stelco and the unsecured creditors overall there is any material distinction. Secondly, there would not appear to me to be any confiscation of any rights (or the other side of the coin any new imposition of obligations) upon the holders of ComCom debt. The subrogation issue was something which these holders assumed on the issue of that debt. Thirdly, I do not see that there is a realistic conflict of interest. Each group of unsecured creditors including the ConCom debt holders and the BondCom debt holders has the same general interest vis-à-vis Stelco, namely to extract from Stelco through the Plan the maximum value in the sense of consideration possible (subject to the practical caution that whatever is achieved must be compatible with Stelco being able to continue in a competitive industry so that the burden of this consideration cannot be so great as to swamp the newly renovated boat which had previously been sinking). That situation is not impacted for our purposes here in this motion by the possibility that in a subsequent dispute between the ConCom holders and the BondCom holders there may be a difference of opinion as to the valuation of the consideration obtained.

15 Counsel for BondCom and Stelco raised generally the question of there possibly being a tyranny of the minority if the ConCom debt was a separate class; counsel for ConCom raised the issue of tyranny of the majority if there was not a separate class for the ConCom debt. To my mind that questions of tyranny of the majority is something which may be addressed in the sanction hearing, if one takes place, as to the fairness, reasonableness and equitableness of the Plan. See item 4 of the Paperny list in *Canadian Airlines Corp.*; see also *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), 8 C.B.R. (3d) 312 (Ont. Gen. Div.) at p. 318 and *Campeau Corp., Re* (1991), 10 C.B.R. (3d) 100 (Ont. Gen. Div.) at p. 103.

16 Therefore I do not see that ConCom has made out a case for a separate class. That aspect of its motion is also dismissed.

17 Given the dismissal of the ConCom motion, the BondCom motion for a separate class for its debt becomes moot.

Motions dismissed.

Footnotes

* Affirmed *Stelco Inc., Re* (2005), 2005 CarswellOnt 6510, 15 C.B.R. (5th) 305 (Ont. C.A.)

Tab 46

2016 ONSC 3651
Ontario Superior Court of Justice

Target Canada Co., Re

2016 CarswellOnt 21083, 2016 ONSC 3651, 274 A.C.W.S. (3d) 259, 42 C.B.R. (6th) 330

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

In the Matter of a plan of compromise or arrangement of Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC

Morawetz J.

Heard: June 2, 2016
Judgment: June 2, 2016
Docket: CV-15-10832-00CL

Counsel: Jeremy Dacks, John MacDonald, Shawn Irving, for Applicants, Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC
Jay Swartz, for Target Corporation
William Sasso, Sharon Strosberg, Jacqueline Horvat, for Pharmacy Franchisee Association of Canada
Susan Philpott, for Employees of Applicants
Alan Mark, Melaney Wagner, Graham Smith, Francy Kussner, for Monitor, Alvarez & Marsal Inc.
Jane Dietrich, for Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and G.A. Retail Canada ULC
Andrew Hodhod, for Bell Canada
Harvey Chaiton, for Directors and Officers

***Morawetz J.* (orally):**

1 Target Canada Co. ("TCC"), the other applicants listed above and certain related partnerships, (collectively, the "Target Canada Entities"), obtained relief under the *Companies' Creditors Arrangement Act*, (the "CCAA") by an Initial Order dated January 15, 2015, (the "Initial Order"). Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor in this proceeding (the "Monitor"). The reasons which gave rise to the Initial Order are reported as *Target Canada Co., Re*, 2015 ONSC 303 (Ont. S.C.J.) . Those reasons set out the factual background giving rise to the CCAA filing. The Initial Order granted a stay of proceedings until February 13, 2015, which was later extended eight times, most recently to June 6, 2016.

2 Today the Applicants bring this motion for Court sanction of their Second Amended and Restated Joint Plan of Compromise and Arrangement dated May 19, 2016 (the "Amended Plan") and to obtain an order extending the Stay Period until September 23, 2016 to allow for the implementation of the Amended Plan and the continuation of the Claims Process for the benefit of all stakeholders.

3 The facts with respect to this motion are set out in the Sanction Affidavit of Mark J. Wong. Additional facts, including the background to, and mechanics of, the Amended Plan are described in the Meeting Order Affidavit of Mark J. Wong. In addition, factual information is also contained in the 28th Report of the Monitor.

4 Counsel for the Applicants submits that the Amended Plan is the product of extensive negotiations and consultations with key stakeholders, including Landlord Guarantee Creditors, Landlord Non-Guarantee Creditors, Target Corporation and the Consultative Committee, all with the assistance of the Monitor.

5 Noteworthy, each of the Monitor, the Landlords and the Consultative Committee of creditors support the Amended Plan.

6 The Amended Plan has been designed to isolate and address Claims against Propco and Property LP, on one hand, and TCC and the remaining Target Canada Entities on a consolidated basis, on the other. The Amended Plan provides for the consolidation for Plan purposes of the Target Canada Entities other than Propco and Property LP. The Monitor has commented on the impact of the substantive consolidation of the estates of the Target Canada Entities for the purposes of this proceeding. Such commentary contained in Monitor's 27th report.

7 I note that there is no opposition to the proposed consolidation, which has been brought to the attention of the affected creditors and I am satisfied that the effect of such consolidation is not prejudicial to the position of any creditor or creditor group.

8 The primary features of the Amended Plan are summarized in Meeting Order Affidavit, the Sanction Affidavit and the Monitor's Report. Some of the more significant features include:

a. Affected Creditors voted on the Amended Plan as a single class.

b. Affected Creditors with Proven Claims that are less than or equal to $25,000 (the "Convenience Class Creditors") will be paid in full. Affected Creditors with Proven Claims in excess of $25,000 had the option to elect to be treated for all purposes as Convenience Class Creditors.

c. Landlord Guarantee Creditors will be paid the full amount of their Proven Claims on the Initial Distribution Date.

d. Landlord Non-Guarantee Creditors will be paid, in addition to their Pro Rata Share of their Proven Claims, a Landlord Non-Guaranteed Creditor Equalization Amount.

e. Other Affected Creditors with Proven Claims will receive their Pro Rata Share of the remaining TCC Cash Pool.

f. All CCAA Charges will be discharged, except the Directors' Charge and the Administrative Charge.

g. The Target Canada Entities will transfer their remaining IP assets to Target Coporation's designees and the Pharmacy Shares to the Pharmacy Purchaser.

h. The Employee Trust will be terminated in accordance with the Amended Plan and any surplus funds returned to Target Corporation.

9 On November, 27, 2015 the Target Canada Entities brought a motion to file their original Plan of Compromise and Arrangement, ("the Original Plan"), and an Order authorizing the Target Canada Entities to call and hold a creditors' meeting to vote on it. I dismissed the motion on January 13, 2016, for reasons released on January 15, 2016 (the "January 15 Endorsement"). The reasons are reported as *Target Canada Co., Re* (2015), 2016 ONSC 316 (Ont. S.C.J.). Among other things, the Applicants' motion was dismissed as the Original Plan violated paragraph 19A of the Initial Order by seeking to compromise the Landlord Guarantee Claims without the consent of such affected Landlords.

10 After the January 15 Endorsement was issued, the Target Canada Entities continued their negotiations with the Landlords to develop framework for a consensual resolution that would preserve Target Corporation's agreement to maintain the subordination contained in the Original Plan, while the same time addressing certain Landlords' concerns and complying with the January 15th Endorsement.

11 On March 4, 2016 the Target Canada Entities announced that agreements had been entered into with all of the Landlord Guarantee Creditors and all of the Landlord Non-Guarantee Creditors.

12 The terms of these Agreements were disclosed and explained to Affected Creditors and to this Court prior to Creditors' Meeting.

13 The Landlord Guarantee Creditor Settlement Agreement and the Landlord Non-Guarantee Creditor Consent and Support Agreements are conditional upon (a) the Amended Plan's approval by the Affected Creditors; (b) sanction by this Court; and (c) Plan Implementation.

14 On April 13, 2016 an order was issued permitting the Applicants to put the Amended Plan before the Affected Creditors for approval at the Creditors' Meeting.

15 On April 14, 2016 the Monitor published the Meeting Materials on its website. The Meeting Materials were sent to Affected Creditors on April 19, 2016. In addition, notices were published in major national and US newspapers at the end of April.

16 The Creditors' Meeting was held on May 25, 2016. The required quorum was present and the meeting was properly constituted.

17 According to the Monitor's tabulation, 100% in number representing 100% in value of the Affected Creditors holding Proven Claims that were present in person or by proxy and voting at the Meeting, voted (or were deemed to vote) to approve the Resolution in favour of the Amended Plan. According to the Monitor's tabulation, 1246 Affected Creditors representing approximately $554 million in value voted (or were deemed to vote pursuant to the Meeting Order) at the Creditors' Meeting.

18 Based on the most up-to-date information from the Monitor, the Target Canada Entities expect that, subject to certain exceptions, Affected Creditors will be paid in a range from 71% to 80% of their Proven Claims.

19 The issue on this motion is:

a. Should this Court approve the Amended Plan as fair and reasonable?

20 Pursuant to section 6(1) of the CCAA, the court has the discretion to sanction a plan of compromise or arrangement where the requisite double-majority of creditors has approved the plan.

21 The general requirements for court approval of the CCAA Plan are well-established:

a. there must be strict compliance with all statutory requirements;

b. all materials filed and procedures carried out must be examined to determine if there has been anything done or purported to have been done, which is not authorized by the CCAA; and

c. the plan must be fair and reasonable.

22 See *SkyLink Aviation Inc., Re*, 2013 ONSC 2519 (Ont. S.C.J. [Commercial List]).

23 Having reviewed the record and hearing the submissions, I am satisfied that the foregoing test for approval has been met. In arriving at this conclusion, I have taken into account the following:

(a) In granting the Initial Order, it was determined that the Applicants qualified as debtor companies under section 2 of the CCAA and that the Applicants were insolvent;

(b) Affected Creditors were classified for the purposes of voting and receiving distributions under the Amended Plan and they voted on the Amended Plan as a single class; and

(c) The Monitor published the required notices and provided copies of the Meeting Materials to Affected Creditors;

(d) Affected Creditors were provided with Target Canada's letter to creditors containing an overview of the terms of the Amended Plan, as well as a letter from the Consultative Committee of creditors communicating the Consultative Committee's support of the Amended Plan and recommendation that Affected Creditors vote in favour of the Amended Plan;

(e) the Creditors' Meeting was properly-constituted;

(f) 100% in number representing 100% in value voted in favour of the Plan. Such unanimous approval of the Amended Plan far exceeds the required statutory majority under section 6(1).

24 Sections 6(2), 6(5) and 6(6) of the CCAA provide that the Court may not sanction the plan unless the plan contains specified provisions concerning crown claims, employee claims and pension claims. I am satisfied that all of these requirements have been met.

25 The claims of Affected Creditors are not being paid in full. In compliance with section 6(8) of the CCAA, the Amended Plan does not provide for any recovery for equity holders. In addition, Target Corporation, the indirect shareholder of TCC and the largest single creditor of TCC, has agreed to subordinate the majority of its Intercompany Claims.

26 I also note that the Monitor is of the view that the Amended Plan complies with the requirements of the CCAA, including the requirements under section 6 of the CCAA.

27 Having reviewed the record, I am satisfied that the statutory prerequisites to sanction the Amended Plan have been satisfied. I am also satisfied that no unauthorized steps have been taken in placing the Amended Plan before the Court to be sanctioned.

28 In assessing whether a proposed plan is fair and reasonable, the Court will consider the following:

a. whether the claims have been properly classified and whether the requisite majority of creditors approved the plan;

b. what creditors would receive on bankruptcy or liquidation as compared to the plan;

c. alternatives available to the plan;

d. oppression of the rights of creditors;

e. unfairness to shareholders; and

f. the public interest.

29 (See to *Sino-Forest Corp., Re*, 2012 ONSC 7050 (Ont. S.C.J. [Commercial List]) ("Sino-Forest").

30 I am satisfied that each of these factors supports approval of the Amended Plan.

31 In arriving at this conclusion, I have taken into account the following:

a. Classification and Creditor Approval: The Amended Plan was unanimously approved.

b. Recovery on Bankruptcy: The Monitor has expressed the view that recoveries under the Amended Plan are well in excess of those that would have been received on a bankruptcy of the Target Canada Entities. Recoveries against TCC in a bankruptcy would be 30%, as compared to the expected range of 71 to 80% under the Amended Plan.

c. Alternatives to the Amended Plan: The Amended Plan is the only alternative to bankruptcy.

d. No Oppression of Creditors: I am satisfied that the pre-insolvency rights and priorities of Affected Creditors are respected under the Amended Plan.

e. No Unfairness to Shareholders: Given that Affected Creditors are not being paid in full, there is no unfairness to shareholders in receiving no recovery.

f. Public interest: The Amended Plan resolves the Proven Claims against Target Canada Entities in a manner that is efficient and timely, and which avoids costly litigation.

32 Article 7.1 of the Amended Plan provides for full and final releases in favour of:

a. The Target Canada Released Parties;

b. The Third-Party Released Parties (which includes the Monitor and its affiliates, their directors, officers, employees, legal counsel, agents and advisors, as well as the Pharmacists' Representative Counsel and members of the Consultative Committee and their advisors;

c. It also provides a released in favour of the Plan Sponsor Released Parties, (Target Corporation and its subsidiaries other than the Target Canada Entities and the NE1, the HBC Entities and their respective directors, officers, employees, legal counsel agents and advisors), except in respect of the Landlord Guarantee Claims.

33 Finally, there is also release of the Employee Trust Released Parties.

34 It is accepted that Canadian courts have jurisdiction to sanction plans that containing releases in favour of third parties. In *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 92 O.R. (3d) 513 (Ont. C.A.) the Court of Appeal held that the CCAA Court has the jurisdiction to approve a plan of compromise or arrangement that includes third-party releases, stating that a release negotiated in favour of a third-party as part of the "compromise" or "arrangement" that reasonably relates to the proposed restructuring falls within the objectives and flexible framework of the CCAA.

35 There must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan.

36 In considering whether to approve releases in favour of third parties, the factors to be considered by the court include:

a. Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

b. Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

c. Whether the plan could succeed without the releases;

d. Whether the parties being released were contributing to the plan;

e. Whether the release benefitted the debtors as well as the creditors generally;

f. Whether the creditors voting on the plan had knowledge of the nature and the effect of the releases or;

g. Whether the releases were fair and reasonable and not overly broad.

37 (See *Metcalfe, Cline Mining Corp.*, 2015 ONSC 662; and *Kitchener Frame Ltd., Re*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]).)

38 In determining whether to approve a third-party release, the Court will take into account the particular circumstances of the case and the objectives of the CCAA. No single factor set out above will be determinative.

39 (See *Skylink and Cline Mining*.)

40 Courts have approved releases that benefit affiliates of the debtor corporation where the *Metcalfe* criteria is satisfied. In Sino-Forest, the subsidiaries of the debtor company were entitled to the benefit from the release under the plan as they were contributing their assets to satisfy the obligations of the debtor company for the benefit of affected creditors. It is not uncommon for CCAA courts to approve third-party releases in favour of person, such as directors or officers or other third parties, who could assert contribution and indemnity claims against the debtor company.

41 (See *Skylink and Cline Mining.)*

42 In my view, each of the Released Parties has contributed in tangible and material ways to the orderly wind down the Target Canada Entities' businesses. I accept that without the Releases, it is unlikely that all of the Released Parties would have been prepared to support the Amended Plan. The Releases are a significant part of the various compromises that were required to achieve the Amended Plan. They are a necessary element of the global, consensual resolution of this CCAA proceeding.

43 In particular, the economic contributions by Target Corporation, as Plan Sponsor, have demonstrably increased the available recoveries for Affected Creditors, as attested by the Monitor. Target Corporation's material direct and indirect contributions as Plan Sponsor include:

a. subordinating a number of Intercompany Claims against TCC;

b. partially subordinating various other Intercompany Claims;

c. a cash contribution of approximately $25.45 million towards the aggregate Landlord Guaranteed Enhancement;

d. a net cash contribution of approximately $4.1 million to fund the Landlord Non-Guaranteed Creditor Equalization;

e. a cash contribution of $700,000 towards costs of certain Landlord Guaranteed Creditors;

f. funding the Employee Trust in the amount of $95 million.

44 I am satisfied that the Releases are appropriately narrow and rationally connected to the overall purposes of the Amended Plan. The Plan Sponsor Released Parties are not released from the Landlord Guarantee Claims, which are separately resolved in the Landlord Guarantee Creditors Settlement Agreement. Nor will Target Corporation be released under the Amended Plan from any indemnity or guarantee in favour of any Director, Officer or employee.

45 I am also satisfied that the Releases apply to the extent permitted by law and expressly do not apply to liability for criminal, fraudulent or other willful misconduct, or to other claims that are not permitted to be compromised or released under the CCAA.

46 Full disclosure of the Releases was made to the Affected Creditors in the Meeting Order Affidavit, in the Amended Plan and in the Letter to Creditors. The terms of the Release were also disclosed to creditors in the Original Plan. No party has objected to the scope of the Releases as contained in the Amended Plan.

47 Having considered the Record and the applicable law, I am satisfied that the Amended Plan represents an equitable balancing of the interests of all Stakeholders in accordance with the provisions and obligations of the CCAA and I find that the Amended Plan is both fair and reasonable to all Stakeholders. The Amended Plan is sanctioned and approved.

48 The Applicants have also requested an extension of the stay period to September 23, 2016. It is clear that the CCAA proceedings have to be extended so as to permit Plan Implementation to occur and to provide sufficient time to complete post implementation details. I am satisfied the parties are working in good faith and with due diligence in this matter and that there are sufficient resources available to fund the Applicants during the proposed extension period. The extension of the stay period is approved. In order to accommodate my schedule, the stay period is extended to September 26, 2016, being three days longer than the requested period. The Applicants also request an extension of the Notice of Objection Bar Date to the Plan

Implementation Date. This request is reasonable in the circumstances and it is ordered that the Notice of Objection Bar Date expire on the Plan Implementation Date.

49 The motion is therefore granted and the Sanction Order has been signed by me.

50 In closing, I would like to thank all parties and their representatives for the manner in which this proceeding has been conducted. All parties and their counsel, by working in a constructive and cooperative manner, have made a contribution to the Amended Plan. It is very rare to have a CCAA plan of this magnitude supported by 100 percent of the affected creditors who voted at the creditors' meetings. This Sanctioned Amended Plan represents the best outcome from this unfortunate commercial venture.

Motion granted.

Tab 47

2016 ONSC 7899
Ontario Superior Court of Justice

U.S. Steel Canada Inc., Re

2016 CarswellOnt 20449, 2016 ONSC 7899, 275 A.C.W.S. (3d) 247, 31 C.C.P.B. (2nd) 131, 44 C.B.R. (6th) 133

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO U.S. STEEL CANADA INC.

H. Wilton-Siegel J.

Heard: December 15, 2016
Judgment: December 22, 2016
Docket: CV-14-10695-00CL

Counsel: Paul Steep, Steve Fulton, Jamey Gage, for Applicant, U.S. Steel Canada Inc.
Robert Staley, Kevin J. Zych, for Monitor, Ernst & Young Inc.
Alan Mark, Gale Rubenstein, Logan Willis, for Province of Ontario
Ken Rosenberg, for United Steelworkers International Union and United Steelworkers International Union, Local 8782
Andrew Hatnay, for Non-unionized active Employees and Retirees
Robert Thornton, Michael Barrack, Mitch Grossell, for United States Steel Corporation
Sharon White, for United Steelworkers International Union, Local 1005
Michael Kovacevic, Justyna Hidalgo, for City of Hamilton
Lou Brzezinski, for Robert and Sharon Milbourne
Waleed Malik, for Brookfield Capital Partners Ltd.
Mario Forte, for Bedrock Industries Canada LLC and Bedrock Industries L.P.
Bryan Finlay, Marie-Andrée Vermette, for Board of Directors of U.S. Steel Canada Inc.

***H. Wilton-Siegel J.*:**

1 The applicant, U.S. Steel Canada Inc. (the "applicant" or "USSC"), seeks an order declaring that Bedrock Industries Canada LLC (the "Purchaser" or "Bedrock") is the Successful Bidder as that term is defined in paragraph 27 of the sales and investment solicitation process order of the Court dated January 21, 2016 (the "SISP Order"). In addition, it seeks authorization to enter into an agreement with Bedrock and Bedrock Industries L.P. dated as of December 9, 2016 referred to as the "CCAA Acquisition and Plan Sponsor Agreement" (the "PSA"). The applicant also seeks related ancillary relief as described below. At the conclusion of the hearing, the Court advised the parties that it was prepared to grant the requested relief for written reasons to follow. This Endorsement sets out the written reasons of the Court for its determination.

Background

2 On September 16, 2014, the applicant obtained an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") (as amended and restated from time to time, the "Initial Order").

3 Over the course of more than 18 months, the applicant conducted extensive sales and marketing efforts within these CCAA proceedings. The initial marketing exercise was conducted pursuant to an order of the Court dated April 2, 2015, which authorized the applicant to commence a sale and restructuring/recapitalizing process (the "SARP"). The applicant did not receive

any viable offers for a transaction or series of transactions under the SARP. By order of the Court dated October 9, 2015, the applicant was authorized to discontinue the SARP.

4 Pursuant to the SISP Order, the applicant was authorized to commence a new sales and investment solicitation process (the "SISP"). The course of the SISP is set out in the various reports of the Monitor, Ernst & Young Inc. (the "Monitor"), including its most recent report, the thirty-third report dated December 13, 2016 (the "Monitor's Report"), and the affidavit sworn by the chief restructuring officer of the applicant, William Aziz (the "CRO") on December 13, 2016.

5 In summary, as with the SARP, more than 100 strategic and financial parties were contacted to solicit potential interest. The first phase of the SISP ended on February 29, 2016. After that date, the applicant, the financial advisor to the applicant, and the CRO assessed the bids received and selected a number of bidders as "Phase 2 Qualified Bidders" after obtaining input from key stakeholders and with the concurrence of the Monitor. The deadline for Phase 2 Qualified Bidders to submit a binding offer was May 13, 2016. After that date, the applicant, together with its financial advisor, the CRO and the Monitor, evaluated the offers received, discussed the offers with the key stakeholders, and facilitated numerous meetings and negotiations between the bidders and various key stakeholders.

6 At the end of July 2016, as a result of this review and the various meetings and negotiations, the applicant, with the assistance of the financial advisor and the support of the Monitor, concluded that the proposal of Bedrock was the most promising bid and designated the proposal as a "Qualified Bid" for the purposes of the SISP Order.

7 Since that time, Bedrock has held discussions and negotiations with the principal stakeholders of the applicant, being the United Steelworkers International Union ("USW"), the USW Locals 8782 and 1005, the Province of Ontario (the "Province"), United States Steel Corporation ("USS") and Representative Counsel on behalf of the non-unionized salaried employees and retirees ("Representative Counsel").

8 On September 21, 2016, the Province announced that it had entered into a memorandum of understanding with Bedrock (the "Province/Bedrock MOU"). On November 1, 2016, USS announced that it had agreed to proposed terms regarding the sale and transition of ownership of USSC to Bedrock, which are reflected in a term sheet (the "USS/Bedrock Term Sheet"). On November 22, 2016, USW Locals 8782 and 8782(b) (collectively, "Local 8782") delivered a letter to Bedrock confirming that the executive of these locals had approved a form of collective bargaining agreement to be entered into upon completion of Bedrock's purchase of USSC (the "Local 8782 Letter of Support"). The letter indicated that the executive was prepared to recommend the agreement to their respective memberships, conditional on satisfaction of certain arrangements relating to the funding of other post-employment benefits ("OPEBs") and the legacy and future pension plans of USSC.

9 In addition, as a result of direct discussions between Bedrock and USSC during this period, the parties reached agreement on the principal terms of a proposed transaction by which Bedrock would acquire the business and operations of USSC (the "Proposed Transaction"). These terms of the Proposed Transaction are set out in the PSA. The PSA is largely consistent with the terms of the Province/Bedrock MOU, the USS/Bedrock Term Sheet and the understanding between Bedrock and USW Local 8782. The PSA provides that it is not binding on USSC until USSC obtains an order of this Court authorizing it to enter into the PSA and to pursue the Proposed Transaction in accordance with the PSA (the "Authorization Order").

10 In connection with the PSA, USSC and Bedrock also requested the Province to enter into an agreement with USSC in respect of the Proposed Transaction. To this end, the Province and USSC have entered into an agreement dated December 9, 2016 (the "Province Support Agreement"). The Province Support Agreement also provides that it does not become effective unless and until the Authorization Order is granted.

The Proposed Transaction

11 The basic structure of the Proposed Transaction is summarized in the Monitor's Report as follows:

(a) the Purchaser will acquire substantially all of USSC's operating assets and business on a going concern basis and the outstanding shares of USSC through a CCAA plan of arrangement. Substantially all of the existing operations at both the Hamilton Works and the Lake Erie Works will continue;

(b) the Purchaser will not acquire USSC's real property in Hamilton (the "HW Lands") and at Lake Erie (the "Lake Erie Lands") but will cause USSC to lease the part of the real property needed to continue steel operations. USSC's real property will be contributed to a Land Vehicle (as defined below) to be sold, leased or developed for the benefit of USSC's five main registered pension plans (the "Stelco Plans") and OPEBs. There is an expectation that these lands will have value when redeveloped. The Land Vehicle will initially be funded by a $10 million secured revolving loan from the Province, and an amount to be agreed upon from USSC. Any proceeds generated from these lands would be available to:

(i) fund the operations of the Land Vehicle in an agreed amount;

(ii) provide reimbursement to the Ontario Ministry of the Environment and Climate Change ("MOECC") for costs, if actually incurred, to test, monitor and investigate environmental conditions on the land; and

(iii) provide additional funding to be distributed equally towards the benefit of the Stelco Plans and OPEBs;

(c) the Purchaser will provide an equity contribution to implement the Transaction and will arrange new debt financing in an amount with borrowing availability not less than $125,000,000 after satisfying all exit costs and the payment of other amounts associated with USSC's emergence from protection under the CCAA;

(d) a new administrator will be appointed for the Stelco Plans and USSC's ongoing obligations with respect to the legacy liabilities under the Stelco Plans will be fixed as described below. The Stelco Plans will continue to be covered by the Pension Benefits Guarantee Fund. In addition to any funding received by the Stelco Plans from the Land Vehicle, USSC will make various lump sum and ongoing contributions into these pension plans including:

(i) a $30 million upfront payment upon the closing of the Proposed Transaction;

(ii) a $20 million payment prior to any dividend distribution by USSC to Bedrock; and

(iii) 10% of USSC's Free Cash Flow (as defined in the PSA), subject to a minimum of $10 million per year for the first five years, and a minimum of $15 million for the next 15 years. Bedrock will guarantee $160 million of these total annual contributions required from USSC;

(e) one or more entities (the "OPEB Entity") satisfactory to USSC, the USW and the Province will be established for the purpose of receiving, holding and distributing funds on account of OPEBs. In addition to any funding received by the OPEB Entity from the Land Vehicle as referred to above, USSC will make various lump sum and ongoing contributions to the OPEB Entity, including:

(i) $15 million annual fixed payments (the "OPEB Fixed Contribution");

(ii) 6.5% of USSC's Free Cash Flow, subject to a maximum of $11 million per year; and

(iii) $30 million (the "Advance OPEB Payment") on the earlier of the date on which USSC first pays a dividend, redeems any capital stock, or makes any distribution to Bedrock or its affiliates, investors or funds, or the date that is three years after the closing of the Proposed Transaction. The Advance OPEB Payment is to be amortized in the fourth through ninth years following the closing date and applied against the OPEB Fixed Contribution described above for those years in accordance with a formula as set out in the OPEB Term Sheet (as defined below);

(f) USS will receive full payment for its secured claims and will assign its unsecured claims to the Purchaser;

(g) the Province will receive US$61 million and the MOECC will provide releases of certain legacy environmental liabilities associated with USSC's real property. The US$61 million would be used:

(i) to reimburse the professional fees of the Province related to USSC's restructuring;

(ii) as financial assurance, held by the MOECC, to cover any costs that may be incurred by the MOECC in connection with environmental conditions on USSC's real property; and

(iii) for any portion of the amount held as financial assurance that is not required by the MOECC, to be equally distributed towards the benefit of USSC's OPEBs and the Stelco Plans;

(h) USSC will be required to continue to comply with all environmental laws and regulations going forward and to enter into an environmental management plan with the MOECC going forward. USSC will fund the costs of any environmental baseline testing and monitoring;

(i) all other secured claims, as determined in accordance with the claims process order of the Court made November 13, 2014 (the "Claims Process Order"), will be paid in full or as otherwise agreed by the Purchaser and USSC; and

(j) the remaining unsecured claims will receive a distribution pursuant to the CCAA plan from a distribution pool in an amount to be determined.

12 The Monitor believes that, if the Proposed Transaction is completed, USSC will emerge as a stand-alone steel manufacturer with a restructured balance sheet and sufficient liquidity such that it will have stability and be able to compete in challenging steel market conditions. A successful completion of the Proposed Transaction is expected to result in the preservation of jobs, ongoing business for suppliers, and ancillary economic benefits for the communities in which USSC operates its business.

The Plan Sponsor Agreement

13 The following summarizes the significant terms of the PSA and is based on the description thereof in the Monitor's Report.

14 The principal commitments of USSC and Bedrock are set out in sections 2.01(1) and (2) of the PSA which read as follows:

2.01 Transaction

(1) The Corporation and the Purchaser will each use commercially reasonable efforts to give effect to a restructuring of the Corporation by way of a plan of arrangement under the CCAA (the "CCAA Plan") and the Stakeholder Agreements prior to the Outside Date, on the terms set out in and consistent in all material respects with the Term Sheets and this Agreement (the "Transaction").

(2) The Corporation and the Purchaser agree to cooperate with each other in good faith and use commercially reasonable efforts to complete the following steps in accordance with the following timeline in support of the Transaction:

(a) obtain the Authorization Order by December 31, 2016;

(b) obtain the Meeting Order [being an order of the court for the convening of a meeting or meetings of the creditors to consider and vote on the CCAA Plan] by January 31, 2017;

(c) obtain the Sanction Order [being an order of the court for the approval of the CCAA Plan] by March 10, 2017; and

(d) implement the CCAA Plan and close the Proposed Transaction by the Outside Date [being March 31, 2017 or such later date as USSC and the Purchaser may designate by mutual agreement].

15 The PSA attaches term sheets setting out the principal terms of the Proposed Transaction agreed to between USSC and Bedrock regarding the following matters (collectively, the "Term Sheets"):

1. the CCAA Plan contemplated to implement the Proposed Transaction;

2. the arrangements pertaining to the environmental conditions at the Hamilton Works and the Lake Erie Works;

3. the arrangements pertaining to the ownership of the HW Lands and the Lake Erie Lands after completion of the Proposed Transaction by a newly established entity (the "Land Vehicle");

4. the lease arrangements pertaining to the lands to be owned by the Land Vehicle that USSC will require for its operations at the Hamilton Works and the Lake Erie Works;

5. proposed terms for OPEBs, including the funding thereof (the "OPEB Term Sheet");

6. proposed terms regarding the Stelco Plans including the funding thereof (the "Pension Term Sheet"); and

7. arrangements concerning the tax aspects of the Proposed Transaction.

16 The Proposed Transaction is subject to a number of important conditions, which are for the benefit of the Purchaser and USSC and must be complied with at or prior to the closing of the Proposed Transaction. Such conditions include, among others:

(a) *Competition Act* compliance and *Investment Canada Act* approval will have been obtained;

(b) the Sanction Order of the court will have been obtained;

(c) amendments to the collective agreements with USW Local 1005, USW Local 8782 and USW Local 8782(b) shall have been executed and ratified;

(d) the closing conditions to implement the arrangements described in the Term Sheets will have been satisfied on terms and conditions acceptable to the Purchaser and USSC;

(e) implementation of arrangements satisfactory to the Purchaser and USSC regarding the following:

(i) the payment in full to USS of its secured claim;

(ii) the assignment to the Purchaser of the USS unsecured claims and the issued and outstanding shares in the capital of USSC;

(iii) the execution of a transitional services agreement between USS and USSC;

(iv) the execution of an agreement with respect to intellectual property and trade secrets between USS and USSC; and

(v) the execution of an ore supply agreement between USS and USSC;

(f) the execution and delivery of a new loan agreement, security and related documentation with not less than $125,000,000 of credit available, after satisfying all exit costs and other amounts associated with USSC's emergence from protection under the CCAA, to the Purchaser and USSC by the lenders and to be available at or prior to closing of the Proposed Transaction;

(g) the execution and delivery of all other agreements contemplated by the Term Sheets, or required to satisfy the closing conditions described above, that are required to be executed prior to the time of closing between Bedrock or USSC or both, as applicable, with one or more stakeholders as applicable;

(h) the execution and delivery of all releases among each of the key stakeholders and USSC; and

(i) the satisfaction or waiver of the conditions to the implementation of the CCAA Plan giving effect to the Proposed Transaction as described in the PSA.

Preliminary Matter

17 The relief sought in this proceeding is opposed by three parties: USW Local 1005 ("Local 1005"), the City of Hamilton ("Hamilton"), and Robert J. Milbourne and Sharon P. Milbourne (collectively, the "Milbournes"). These parties (collectively, the "Objecting Parties") each raise a common issue, the short service of the motion materials, which I will address first.

18 The notice of motion and motion record in this matter were served on the service list on Friday, December 9, 2010 after the close of business. The Objecting Parties say that this effectively gave them three business days' notice of the motion. In paragraph 55, the Initial Order contemplates eight business days' notice of a motion, subject to further order of the Court in respect of urgent motions. To the extent necessary, the applicant seeks leave of the Court to bring this motion on short service on the grounds that it is an urgent motion.

19 The Objecting Parties seek dismissal of the motion or, in the alternative, an adjournment of this motion for five business days. Counsel for Local 1005 and for Hamilton say that a delay would permit their clients to better understand the terms of the Proposed Transaction. In addition, Hamilton and the Milbournes suggest that such an adjournment might permit resolution of their respective issues.

20 It would have been preferable for the applicant to have provided the full notice contemplated by the Initial Order for motions in the ordinary course. However, I am prepared to grant leave to shorten the service to that actually provided in this case for the following reasons.

21 First, there is real urgency to this motion in several respects. After almost two years of marketing USSC, the Proposed Transaction is not only the only viable proposal but also the best offer for USSC's stakeholders generally. However, Bedrock is not currently legally obligated to proceed with any transaction. Moreover, the economic circumstances generally, and the economics of the steel industry in particular, are subject to great uncertainty. In addition, there are no currently operating timelines for the resolution of the outstanding issues necessary to finalize the Proposed Transaction. Time does not normally improve the prospects for a successful restructuring. It is therefore imperative that Bedrock be committed to using commercially reasonable efforts to complete the Proposed Transaction at the present time.

22 Second, there is no evidence whatsoever of any prejudice to the Objecting Parties that would result from granting the requested relief. As discussed below, none of their rights are affected by the Authorization Order. Further, there is no indication that any of them has been unable to understand the PSA in the time available or to represent their clients properly in this hearing. Indeed, they have very ably presented the principal issues of their clients. I would observe as well that Local 1005 has had knowledge of the principal terms of the Proposed Transaction in respect of pensions and OPEBs since early September through its participation in discussions regarding the Proposed Transaction.

23 Lastly, there is no reasonable likelihood that a delay of five business days will result in the resolution of any of the claims of the Objecting Parties that require negotiation. As all of the parties acknowledge, this is a highly complex restructuring with a number of inter-related issues. I would also note that, to the extent that the position of the Milbournes under the Proposed Transaction is a matter of clarification rather than negotiation, there is no need for any delay in hearing this motion.

Declaration of Bedrock as the Successful Bidder

24 As mentioned, the applicant seeks a declaration that Bedrock is the Successful Bidder as defined in paragraph 27 of the SISP Order with the result, among other things, that all other bids and proposals made by any other person are deemed to be rejected.

25 Paragraph 27 of the SISP Order reads as follows:

> USSC and the Financial Advisor, in consultation with and with the approval of the Monitor, (a) will review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated among USSC, in consultation with the Financial Advisor and the Monitor, and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations, and (b) identify the highest or otherwise best bid (the "Successful Bid", and the Phase 2 Qualified Bidder making such Successful Bid, the "Successful Bidder") for any particular Property or the Business in whole or part. The determination of any Successful Bid by USSC, with the assistance of the Financial Advisor, and the Monitor shall be subject to approval by the Court.

26 The applicant, with the assistance of its financial advisor and the Monitor, has determined that Bedrock is the Successful Bidder and that the Proposed Transaction is the Successful Bid. Such determination is therefore now subject to the approval of the Court.

27 The applicant says that such determination is, in effect, governed by the business judgment rule. On this basis, the determination of the applicant's board of directors should be respected absent evidence of negligence, fraud or patent unreasonableness. There is no such evidence filed in opposition to the motion, notwithstanding the objections discussed below.

28 I am inclined to agree with the standard proposed by the applicant. In any event, however, there are the following additional considerations which weigh in favour of the granting of the Court's approval if, instead, the Court is required to address the reasonableness of the applicant's determination.

29 First, the Proposed Transaction is the outcome of an extended search for a buyer or investor pursuant to which USSC has been very extensively marketed. There is no other viable bid or proposal before the Court which would provide as much value to the stakeholders generally. The Monitor is of the view that the Proposed Transaction is the best option for USSC and its stakeholders in the present circumstances.

30 Second, on the evidence before the Court in the earlier reports of the Monitor, and in the opinion of the Monitor as expressed in the Monitor's Report, the SISP process which resulted in the Proposed Transaction was transparent, robust, fair and reasonable and considered all available alternatives.

31 Third, despite the fact that the Proposed Transaction does not meet the objectives of all parties, it creates a number of benefits for stakeholders. These include the maintenance of USSC as a going concern with the attendant preservation of employment and related social benefits. In addition, the Proposed Transaction would provide significant funding for USSC's pensions and OPEBs, including through the Land Vehicle created to hold the lands not required for the operations of the Hamilton Works. It also provides for a distribution to the applicant's unsecured creditors as well as repayment of its secured creditors.

32 Fourth, as a related matter, there is considerable support for the PSA from principal stakeholders of USSC. While Local 1005 argues that support for the Proposed Transaction has not reached "the tipping point", because of the opposition to the PSA of the Objecting Parties addressed below, the reality is the opposite. The Authorization Order is supported by the applicant's board of directors, the Province and USW Local 8782. While USS, the USW and Representative Counsel take no position on the motion, they are not raising any objections. In particular, USS is not opposed to the terms of the Proposed Transaction as set out in the PSA but is withholding its consent until the remaining issues are resolved to its satisfaction. In addition, Representative Counsel stated on behalf of his clients that his clients take reassurance from the fact that the Authorization Order does not purport to affect the legal rights of the parties and that negotiations will continue regarding the matters of significance to his clients. Further, the board of directors of USSC is supportive of the PSA, notwithstanding the fact that an important issue to

them personally remains an unresolved issue, being the operation of existing indemnities in their favour from USS. Lastly, the CRO of the applicant also recommends that Bedrock be approved as the Successful Bidder.

33 Fifth, the Objecting Parties submit that particular provisions are intrinsically unfair and, on this basis, urge the Court to reject the Proposed Transaction, or to withhold its approval of Bedrock as the Successful Bidder. In so doing, they are implicitly urging the Court to apply its own view of fairness. I do not think that the Court's view of the fairness of the Proposed Transaction is the appropriate standard at this stage of the proceedings for the following reasons.

34 First, the Proposed Transaction is not yet finalized. It would therefore be premature to reach any conclusion regarding the terms of the Proposed Transaction. In addition, while the Objecting Parties raise legitimate concerns regarding particular issues of importance to them or their members and retirees, such issues cannot be examined in a vacuum. They must be measured for present purposes against the alternative. In this case, as mentioned, there is no alternative transaction against which to assess these provisions of the Proposed Transaction. The only alternative would appear to be a liquidation scenario.

35 Further, to the extent that the Court must address the fairness of a transaction, it must do so having regard to the entirety of the transaction, including the pre-existing rights of the stakeholders and the manner in which the interests of the parties are resolved given the need for concessions on the part of the stakeholders to achieve a successful restructuring. In this context, a significant consideration in assessing the fairness of any transaction is whether or not it has received the approval of the affected stakeholders. In other words, the fairness of the issues raised by Local 1005, which are important issues, are more properly addressed by the members and retirees of Local 1005 themselves in the creditors' meeting or otherwise after the Proposed Transaction and CCAA Plan are finalized.

36 Sixth, as discussed below, the Monitor has provided a strong recommendation in favour of the Court granting approval of the Authorization Order. The Monitor is of the view that the Proposed Transaction represents the best available option for USSC and its stakeholders in the present circumstances.

37 Accordingly, I am satisfied that the Court should approve the Proposed Transaction as the Successful Bid for the purposes of the SISP Order.

Authorization to Enter into the PSA and the Province Support Agreement

38 The applicant also seeks the authorization of the Court to enter into the PSA and the Province Support Agreement. I will address this matter by dealing first with the authority of the Court to grant such authorization, then with the reasons for the Court's determination to authorize the applicant to sign these agreements, next with two particular terms of the PSA for which the applicant has sought specific authorization, and finally with the objections of the Objecting Parties.

Authority of the Court to Authorize the Execution of the PSA and the Province Support Agreement by the Applicant

39 Section 11 of the CCAA provides the Court with broad powers to "make any order that it considers appropriate in the circumstances" and section 11.02(2) provides specific authority to vary a stay of proceedings. The Court therefore has the authority to authorize a debtor company in CCAA proceedings to enter into an agreement to facilitate a prospective restructuring.

40 The issue of the authority of a court was addressed in *Stelco Inc., Re* (2005), 78 O.R. (3d) 254 (Ont. C.A.). In that case, the Court of Appeal upheld an order of the motion judge authorizing the debtor company to enter into three agreements with the provincial government, the USW and a proposed financing party. The three agreements were said to be "intrinsic to the success" of the proposed plan of arrangement. The debtor company had negotiated those agreements "in an attempt to successfully emerge from CCAA protection." They established the framework for the proposed transaction which would in turn form the basis of the proposed plan of arrangement. It appears that these agreements served a similar purpose in that case as the Province/Bedrock MOU, the USS/Bedrock Term Sheet and the Local 8782 Letter of Support in the present proceeding.

41 In reaching its decision, the Court of Appeal expressed the following test at paras. 18 and 19, which I think is equally applicable in the present context:

> In my view, the motions judge had jurisdiction to make the orders he did authorizing Stelco to enter into the agreements. Section 11 of the CCAA provides a broad jurisdiction to impose terms and conditions on the granting of the stay. In my view, s.11(4) [the predecessor of section 11.02] includes the power to vary the stay and allow the company to enter into agreements to facilitate the restructuring, provided that the creditors have the final decision under s. 6 whether or not to approve the Plan. The court's jurisdiction is not limited to preserving the status quo. The point of the CCAA process is not simply to preserve the status quo but to facilitate restructuring so that the company can successfully emerge from the process. This point was made by Gibbs J.A. in *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990] B.C.J. No. 2384, 4 C.B.R. (3d) 311 (C.A.), at para. 10:
>
> [Excerpt omitted.]
>
> In my view, provided the orders do not usurp the right of the creditors to decide whether to approve the Plan the motions judge had the necessary jurisdiction to make them. The orders made in this case do not usurp the s. 6 rights of the creditors and do not unduly interfere with the business judgment of the creditors. The orders move the process along to the point where the creditors are free to exercise their rights at the creditors' meeting.

Authorization of the PSA and the Province Support Agreement

42 I will address the authorization of the applicant's execution of the PSA first and will then briefly address authorization of the Province Support Agreement.

Authorization of the Plan Sponsor Agreement

43 The following sets out the four principal reasons of the Court for its determination to authorize the applicant to enter into the PSA.

44 First, the Authorization Order does not alter or otherwise affect any legal rights of any of the creditors. As it is not a plan sanction order, it does not alter the right of creditors to approve or reject a plan of arrangement, based on a finalized Proposed Transaction, when it is presented to the creditors. Nor does it constitute approval of a plan of arrangement. For that, the applicant requires a finalized Proposed Transaction upon which to base such a plan. It does not even constitute approval of a final Proposed Transaction. It constitutes no more than authorization to USSC to enter into the PSA and thereby commit to use commercially reasonable efforts to pursue finalization of a transaction based on the framework of the Proposed Transaction described therein, as well as an authorization to enter into the Province Support Agreement.

45 In order to finalize a binding agreement for the Proposed Transaction that is capable of being completed, the applicant will have to negotiate the final terms of the agreement and take the necessary actions to be in a position to satisfy the conditions of closing contemplated in the PSA. The former requires resolution of a number of outstanding issues among the stakeholders who have already been involved as well as consultation and negotiation with other stakeholders who have not been involved to date, including Hamilton and the Milbournes, among others, regarding the treatment of their claims and interests. The latter requires negotiation of a number of agreements giving effect to the arrangements contemplated by the Term Sheets as well as new collective agreements with each of Local 1005 and Local 8782. There is nothing in the Authorization Order that prohibits USSC from continuing negotiations with its creditors on these matters. Rather, the PSA expressly contemplates that such discussions and negotiations are necessary to finalize all of the terms of the Proposed Transaction and of the proposed plan of arrangement.

46 Second, while the Objecting Parties' concern that granting the Authorization Order will limit or constrain their bargaining power in such negotiations is understandable, the fact is that the Order itself does not affect the bargaining power or "leverage" of any of the creditors. Nor is it correct to say that future negotiations will take place in a "take it or leave it" atmosphere.

47 On the one hand, there is scope for negotiations between the stakeholders and USSC and Bedrock. As mentioned, the PSA itself expressly contemplates serious negotiations on a large number of issues that are important to various stakeholders and that ultimately require their approval or consent. It does not predetermine or foreclose the outcome of these negotiations,

which are integral to the proposed restructuring of USSC. Further, as mentioned above, the extent to which particular creditors are able to achieve their priorities or objectives in such negotiations will continue to depend, among other factors, on the overall economics of the Proposed Transaction and the willingness of other parties to make concessions or tradeoffs to complete a transaction, rather than on the existence of the Authorization Order.

48 On the other hand, and more significantly, while the terms of the Authorization Order grant exclusivity to Bedrock while the necessary consultations and negotiations are proceeding, this merely reflects the reality of the current situation even without the Order. To the extent that any of the creditors believe themselves to be constrained in some manner in future negotiations, that is a reflection of the circumstances in which the parties find themselves quite apart from the Order. The Court's authorization of the applicant's request to enter into the PSA does not alter the environment in which future negotiations will take place if there is to be a successful restructuring of USSC. While that could be the case if the effect of the Authorization Order were to prevent stakeholders from negotiating simultaneously with two or more potential purchasers, this is no longer a realistic possibility. The SISP has run its course and the stakeholders must now address its outcome. The Proposed Transaction is not only the option that provides the most value to the stakeholders of USSC, it is the only viable option. There is no competing offer for the business and operations of USSC on a going concern basis. The only alternative to proceeding to finalize the Proposed Transaction is a liquidation of USSC on a controlled or an uncontrolled basis.

49 Third, there are real benefits that will flow from execution of the PSA. In general terms, the commitments of the applicant and Bedrock in the PSA will increase the likelihood of a successful restructuring to the benefit of all of the stakeholders. In this regard, the present circumstances are very similar to those in *Stelco Inc., Re*. The PSA is a necessary step in the progression toward finalization of a plan of arrangement for submission to the creditors. The PSA establishes the framework for the Proposed Transaction which would, in turn, form the basis of a proposed plan of arrangement. As in *Stelco Inc., Re*, the PSA is therefore intrinsic to the success of the prospective plan of arrangement and it is doubtful that the proposed plan could proceed if the Authorization Order were not granted.

50 More particularly, the execution of the PSA provides a binding commitment of Bedrock to use commercially reasonable efforts to finalize a restructuring of USSC based on the terms of the Proposed Transaction. As Bedrock is not otherwise obligated in respect of the Proposed Transaction, this commitment, even with the qualifications in the PSA, is important to maintain the confidence of the applicant's employees, suppliers and customers in the continued progress of the restructuring. As mentioned, it provides a framework for future negotiations among stakeholders as well as transparency regarding the interests of the other stakeholders, which will facilitate such negotiations. In addition, it provides some momentum to the process of finalizing the Proposed Transaction by bringing the creditors who have not been involved to date into the consultations and negotiations on an informed basis. Lastly, the PSA sets timelines for completion of a finalized Proposed Transaction and a plan of arrangement based on such Proposed Transaction, which are critical if there is to be successful restructuring.

51 Fourth, an important consideration for the Court is the strong recommendation of the Monitor that the Court grant the Authorization Order. The Monitor's recommendation is based on the following:

- the integrity of the SISP process used to arrive at the Proposed Transaction;
- the Monitor's judgment that the Proposed Transaction set out in the PSA is the best available option for USSC and its stakeholders in the circumstances and has only been possible to achieve after two marketing processes that took more than 18 months;
- the Monitor's view that the Proposed Transaction provides a foundation upon which a successful restructuring of USSC can be built; and
- the Monitor's belief that approval of the PSA should assist in focusing the efforts of the key stakeholders towards completing the negotiations of the definitive agreements and arrangements contemplated by the PSA.

Authorization of the Province Support Agreement

52 At the hearing of this motion, the focus of the arguments of all parties was on approval of the PSA, with little attention paid to the related issue of the request for the Court's authorization for the applicant to enter into the Province Support Agreement. I have proceeded on the basis that the opposition of the Objecting Parties also extended to opposition to authorization of the Province Support Agreement, given that it was also necessary in order to progress the Proposed Transaction.

53 In any event, to the extent that there is any opposition to this relief, the Court is satisfied that the applicant should be authorized to enter into the Province Support Agreement for the same reasons as it authorized the applicant to enter into the PSA.

Non-Solicitation and Expense Reimbursement Provisions of the PSA

54 The applicant also seeks approval of the Court of the non-solicitation provision in section 5.06 of the PSA and the expense reimbursement provision in section 7.02(2) of the PSA.

55 The non-solicitation provision runs in favour of Bedrock until such time as the PSA is terminated. Given the Court's approval of the applicant's determination of Bedrock as the Successful Bidder and the Court's authorization of the PSA, this is a commercially reasonable provision. It would be unreasonable to expect that Bedrock would commit the time and resources necessary to finalize and implement the Proposed Transaction, and a plan of arrangement giving effect to the Proposed Transaction, without the assurance that it could not be displaced by a subsequent offer. In addition, the significant level of stakeholder support in favour of the Authorization Order described above also weighs in favour of authorization of this covenant.

56 The expense reimbursement provision contemplates reimbursement of Bedrock's transaction-related expenses up to a maximum of $4 million in the event Bedrock terminates the PSA under section 7.01(a) thereof. However, this provision relates only to termination in the event of a material breach of any representation, warranty, covenant, obligation or other provisions of the PSA by the other party — i.e. by the applicant. Accordingly, Bedrock is only entitled to reimbursement of its expenses in the event of a material breach of the PSA by the applicant.

57 In my view, given the complexity and attendant cost of the Proposed Transaction, including the remaining actions required to complete a successful transaction, this is an eminently reasonable provision from a commercial perspective.

58 Based on the foregoing, the Court is satisfied that both provisions should be approved as commercially reasonable, given the context in which the PSA has been negotiated and executed. In addition, each of these provisions enhances the prospects for a successful restructuring of USSC and, as such, are consistent with the purposes of the CCAA.

The Objections

59 In reaching the Court's determination to authorize the applicant to enter into the PSA, the Court considered the following substantive objections to the Authorization Order and rejected them for the reasons expressed below.

The City of Hamilton

60 Hamilton objects to the declaration of Bedrock as the Successful Bidder and to the authorization of USSC to enter into the PSA. Hamilton says it has been excluded from meaningful consultation and negotiation regarding the Proposed Transaction. It says such consultation was due given its status as a creditor of the applicant and its role as the approval authority for land use and development on the HW Lands.

61 In its Notice of Objection dated December 13, 2016, Hamilton says it has three main areas of concern: (1) pension and benefits for retirees of USSC; (2) payment of past (accrued and unpaid) and future property taxes; and (3) the future of the HW Lands.

62 Of these matters, its principal objection pertains to the uncertainty regarding the treatment of the accrued and unpaid past property taxes on the HW Lands as well as the payment of future property taxes. It asks the Court to order, as a condition

of the authorization of the PSA, that the PSA confirm that USSC will pay its accrued past taxes and all future property taxes on the HW Lands.

63 It is not entirely clear that the City has been excluded from negotiations with Bedrock, as counsel for the City suggests. However, the more important point is that on each of the two issues that are of direct concern to the City — payment of its accrued and future taxes and the regime pertaining to the HW Lands — the effect of the relief granted is to permit consultations and negotiations to take place among Bedrock, Hamilton and the other parties involved in these issues. It is inappropriate for the Court to order that Hamilton's rights be enshrined in the provisions of the PSA pending the outcome of such discussions and negotiations. Moreover, the Authorization Order does not impair or otherwise affect its rights in any manner whatsoever. Among other things, Hamilton retains the right to oppose the prospective CCAA Plan, both at the creditors' meeting and in the sanction hearing, if it believes that the Proposed Transaction is not fair to it given its legal rights.

The Milbournes

64 The Milbournes have filed an objection dated December 14, 2016. The Milbournes say that they object to the Authorization Order because the PSA "fails to provide for treatment of the pension benefits and OPEBs for individuals in uniquely situated positions", including, in particular, themselves. They say the resulting uncertainty is prejudicial to their interests, given that these benefits stand to be compromised under the proposed plan of arrangement.

65 In addition to registered pension benefits, the Milbournes receive non-registered pension benefits under a retirement compensation agreement. They submit that, if the Authorization Order is granted, the Court should require that the PSA confirm their continued entitlement to these benefits.

66 The circumstances of the Milbournes, and any other parties who currently receive similar benefits, are not before the Court, although the Court understands that there may be a trust established to fund some or all of these benefits. In any event, it would be premature to address the treatment of these benefits at the present time.

67 As with the issues raised by Hamilton, the intended treatment of these benefits under the Proposed Transaction will be the subject of discussion and negotiation, depending, among other things, upon the extent to which such benefits are currently entitled to the benefit of a trust. Further, the Milbournes' rights are not affected in any way by the Authorization Order. They retain the right to oppose the fairness of any plan of arrangement in the sanction hearing to the extent they consider that their rights have been unfairly affected by such plan.

Local 1005

68 I have addressed above the principal objections of Local 1005 to approval of Bedrock as the Successful Bidder for purposes of the SISP Order. Local 1005 also opposes authorizing the applicant to enter into the PSA. It says that, if the PSA is authorized, significant issues outstanding among the parties will essentially be presented to stakeholders on a "take it or leave it basis". I do not agree with this characterization of the situation for the reasons set out above.

69 The Proposed Transaction is a multiparty transaction. The principal stakeholders have reached agreement on governing principles regarding a number of critical issues. However, Local 1005 is not bound by those arrangements as a legal matter. They are free to negotiate based on their own priorities. As mentioned, the extent to which they are able to achieve those priorities or objectives will depend, among other factors, on the overall economics of the Proposed Transaction and the willingness of other parties to make concessions or tradeoffs in order to complete a transaction. However, in the present circumstances, it will not be affected by the execution of the PSA and the exclusivity that the SISP Order and the PSA grant Bedrock.

70 Local 1005 also refers to the fact that the PSA and the CCAA Term Sheet stipulate that changes to Local 1005's collective agreement must be agreed to, as well as changes to the pension and OPEB arrangements. It says that, if the PSA is authorized, these conditions will have a significant impact on collective bargaining and contractual rights. The CCAA Term Sheet does contemplate amendments to existing arrangements affecting employees and retirees of USSC. I do not agree, however, that the authorization of the PSA has a significant impact by itself on the negotiation process.

71 After a lengthy search process, this is the transaction that is on the table. It reflects what Bedrock is prepared to offer and, in a larger sense, what the market assesses as the value of USSC. There remains considerable scope for negotiations between the parties. However, the scope of such negotiation is defined by the financial limitations imposed by the broad terms of the Bedrock offer and, in a larger sense, by the market. Any sense of constraint in this negotiating process is a reflection of these economic realities, not the authorization of the PSA. Moreover, the consequences of not approving the PSA would establish constraints of a more immediate and draconian nature.

72 Lastly, Local 1005 objects that certain provisions are, in its opinion, unfair to its members and retirees. This includes their treatment in respect of OPEBs relative to the treatment of members and retirees of Local 8782. Local 1005 also says the arrangements regarding the pension plans and OPEBs are unfair in that they do not provide retirees and beneficiaries, as well as future retirees and future beneficiaries, with any security regarding their pensions and benefits.

73 It is premature to address these issues at this time. They remain the subject of further negotiations among the stakeholders. They will also be addressed in the context of negotiations regarding satisfaction of the conditions to implementation of the Proposed Transaction. Concerns of this nature are also more properly addressed, as mentioned, by the creditors in the creditors' meeting or in the sanction hearing before the Court if a plan of arrangement is approved.

Sealing Order

74 The applicant also requests a sealing order regarding the un-redacted versions of the PSA and the Province Support Agreement. These versions differ from the redacted versions in only one respect: disclosure of the minimum equity contribution of Bedrock.

75 It is my understanding that none of the parties oppose this relief. In any event, I am satisfied that the requirements for sealing the un-redacted versions of the PSA and the Province Support Agreement contemplated by the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, 211 D.L.R. (4th) 193 (S.C.C.), at para. 53, have been met at this stage of the CCAA proceedings. The minimum equity figure is commercially sensitive information, disclosure of which could be prejudicial to Bedrock and/or USSC and, ultimately, to the prospects for a successful restructuring. The benefits of protecting this information in furthering the restructuring far outweigh any negative impact from its redaction. More generally, there is no obvious reason why the other stakeholders should know the position taken by their counterparty, Bedrock, in its negotiations with the applicant. Accordingly, the ability of stakeholders to negotiate the remaining outstanding issues is not reasonably affected in any manner by the non-disclosure of this information.

Motion granted.

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

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