

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

**Just Energy Group Inc. et al.**

**EIGHTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

**April 7, 2022**

## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>PURPOSE.....</b>	<b>3</b>
<b>TERMS OF REFERENCE AND DISCLAIMER .....</b>	<b>4</b>
<b>MONITOR’S ACTIVITIES SINCE THE SEVENTH REPORT .....</b>	<b>5</b>
<b>UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES .....</b>	<b>6</b>
<b>DONIN/JORDET ACTIONS CLAIMS ADJUDICATION.....</b>	<b>7</b>
<b>ERCOT PROCEEDING .....</b>	<b>7</b>
<b>CONCLUSION .....</b>	<b>8</b>

## APPENDICES

Appendix “A” April 5, 2022 Ruling of Justice Dennis O’Connor

**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**”)

**EIGHTH 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 most recently on May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as 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 certain relief, with reasons to follow, 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 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 on February 24, 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 with respect to the adjudication of the Donin/Jordet Actions.
8. On March 24, 2022, the Court granted an Order extending the Stay Period until April 22, 2022.
9. All references to monetary amounts in this Eighth Report of the Monitor (the “**Eighth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Second A&R Initial Order.
10. 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**”).
11. 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>.

## PURPOSE

12. In the Monitor’s Seventh Report to the Court dated March 22, 2022 (the “**Seventh Report**”), the Monitor advised the Court that it would provide an update to the Court on April 7, 2022 in respect of the status of the Applicants’ recapitalization plan (“**Plan**”) discussions.

13. The purpose of this Eighth Report is to provide information to the Court with respect to the following:
- (a) the status of the Plan negotiations and future relief to be sought by the Applicants;
  - (b) the Monitor's activities since the Seventh Report;
  - (c) the status of the claims adjudication process for the Donin/Jordet Actions;
  - (d) the status of the ERCOT Litigation (as defined below); and
  - (e) the Monitor's views in respect of the foregoing, as applicable.

#### **TERMS OF REFERENCE AND DISCLAIMER**

14. In preparing this Eighth 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**").
15. Except as otherwise described in this Eighth 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 Eighth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
16. The Monitor has prepared this Eighth Report to provide information to the Court in connection with the relief requested by the Applicants. This Eighth Report should not be relied on for any other purpose.

## MONITOR'S ACTIVITIES SINCE THE SEVENTH REPORT

17. 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 Seventh 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, communications with stakeholders and business operations;
  - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;
  - (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
  - (e) 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 and presentations; and
    - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
  - (f) attending meetings of the Board of Directors of Just Energy, and various committees thereof;

- (g) responding to creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (h) attending a hearing before the Honourable Justice O'Connor regarding certain procedural matters in connection with the adjudication of the Donin/Jordet Actions, as further described below;
- (i) 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;
- (j) attending a hearing before the U.S. Court with respect to the ERCOT Litigation, as defined and described below;
- (k) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (l) preparing this Eighth Report.

#### **UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES**

18. The Plan is intended to facilitate the Just Entity Entities' emergence from the CCAA Proceedings while preserving the going concern value of the business, maintaining customer relationships, and preserving employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities' stakeholders.
19. Although regular discussions and negotiations are ongoing amongst the Just Energy Entities and principal stakeholders, the Plan has not yet been finalized.
20. In its Fifth Report to the Court dated February 4, 2022, the Monitor noted that the Just Energy Entities intended to bring a motion before the Court on March 3, 2022 to seek the authority to file the Plan. Approximately one month has transpired since the time the Plan was intended to be filed, and it is clear that more time will be required to conclude Plan discussions and negotiations.



21. The Monitor is concerned about the delay in finalizing the Plan and has strongly encouraged the Just Energy Entities and principal stakeholders to work together to resolve quickly all remaining issues in order to ensure the Just Energy Entities' timely emergence from these CCAA proceedings.
22. Notwithstanding the foregoing concerns, the Monitor is of the view that the Just Energy Entities and principal stakeholders continue to work in good faith to develop a Plan.
23. The Monitor understands that the Just Energy Entities will seek an extension to the Stay Period before the Court on April 21, 2022, prior to the expiration of the current Stay Period. The Monitor will comment on the requested stay extension in a further Report to the Court.

#### **DONIN/JORDET ACTIONS CLAIMS' ADJUDICATION**

24. As mentioned above, pursuant to an Order of the Court dated March 3, 2022, the Honourable Justice O'Connor was appointed as Claims Officer for the purpose of adjudicating the Donin/Jordet Actions in accordance with the Claims Procedure Order.
25. There have been two attendances before Justice O'Connor since the date of his appointment to decide certain preliminary and procedural matters. Topics of discussion at the first hearing primarily pertained to logistics and scheduling matters, identification and overview of key issues, and the roles of the parties involved in the arbitration. At the second hearing, the procedural matter argued pertained to the claimants' request for Justice O'Connor to appoint two additional claims officers from the U.S. Judicial Arbitration and Mediation Services. Justice O'Connor dismissed the claimants' requested relief pursuant to written reasons dated April 5, 2022 (the "**April 5 Ruling**"). The April 5 Ruling is attached herewith as **Appendix "A"**.

#### **ERCOT PROCEEDING**

26. On November 12, 2021, the Just Energy Entities commenced litigation against the Electric Reliability Council of Texas ("**ERCOT**") and the Public Utility Commission of Texas (the "**PUCT**") in the U.S. Court (the "**ERCOT Litigation**"). The claims against the PUCT were dismissed by the U.S. Court. The Just Energy Entities are

seeking to recover payments made by various Just Energy Entities to ERCOT for certain invoices in February 2021 relating to the unprecedented Texas winter storm.

27. The Monitor intends to be actively involved in supporting the ERCOT Litigation. The Monitor is of the view that the potential recoveries that might be available to the Just Energy Entities justifies the ERCOT Litigation and the Monitor's involvement therewith.
28. Certain procedural issues relating to the cross-border nature of these CCAA Proceedings and the ERCOT Litigation will require the Just Energy Entities to request certain clarification and relief from this Court, which the Monitor intends to comment on in a further Report to this Court.

## CONCLUSION

29. Notwithstanding the Monitor's concerns noted above, the Monitor supports the continuation of Plan discussions and negotiations during the remainder of the Stay Period currently approved by this Honourable Court.

The Monitor respectfully submits to the Court this Eighth Report dated this 7<sup>th</sup> day of April, 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

**Appendix "A"**

**APRIL 5, 2022 RULING**

[attached]

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

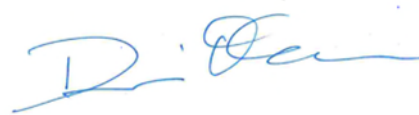
**RULING**

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 5<sup>th</sup> day of April 2022.



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Dennis O'Connor

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

**EIGHTH REPORT OF  
FTI CONSULTING CANADA INC., IN ITS  
CAPACITY AS COURT-APPOINTED MONITOR**

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