

**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 14487893 CANADA INC., 11368, LLC, 12175592 CANADA INC., DRAG  
MARKETING LLC, JUST SOLAR HOLDINGS CORP., JUST ENERGY  
CONNECTICUT CORP., AND JUST ENERGY (FINANCE) HUNGARY ZRT.  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

APPLICANTS

**FACTUM OF THE MONITOR  
(Motion for Stay Extension and Other Relief)**

January 17, 2023

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**TO: THE SERVICE LIST**

## PART I - NATURE OF THIS MOTION

1. Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Just Energy Entities**”) obtained relief under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) by an initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021. The Court subsequently granted an Amended and Restated Initial Order (“**ARIO**”) and a Second ARIO. The foregoing orders were all recognized by the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”).<sup>1</sup>

2. On November 3, 2022, the Court granted the Monitor’s Enhanced Powers & Other Relief Order (the “**Monitor’s Enhanced Powers Order**”), which, among other things: (i) expanded the powers of FTI Consulting Canada Inc. as Monitor of the Applicants (in such capacity, the “**Monitor**”) upon the closing of the Transaction (as defined herein), and (ii) extended the stay of proceedings to January 31, 2023 (the “**Stay Period**”).<sup>2</sup>

3. The Transaction closed on December 16, 2022; however, the Monitor continues to attend to certain matters, including the wind-up and/or bankruptcy of the ResidualCos (as defined herein) and ancillary issues related to these CCAA proceedings that require the stay of proceedings to continue.<sup>3</sup>

4. The Monitor seeks, pursuant to the Monitor’s Enhanced Powers Order, an Order that: (i) extends the Stay Period until the termination of the CCAA Proceedings pursuant to a further Order of the Court (the “**CCAA Termination Date**”) to provide time to resolve such remaining matters,

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<sup>1</sup> Thirteenth Report of the Monitor dated January 12, 2023 (“**Thirteenth Report**”) at para 1. Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Thirteenth Report.

<sup>2</sup> Thirteenth Report at para. 16.

<sup>3</sup> Thirteenth Report at para. 30.

(ii) approves the fees and disbursements of the Monitor and its Canadian and U.S. Counsel incurred to the closing of the Transaction, and also those fees that will be incurred by the Monitor and its counsel until the CCAA Termination Date, to the maximum amount of the Administrative Reserve (as defined herein), and (iii) releases Computershare Trust Company of Canada (“**Computershare**”) from its obligations under the Subordinated Notes and the Term Loan (as such terms are defined herein).

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

### **A. BACKGROUND**

5. On August 18, 2022, the Court granted an Order (the “**SISP Approval Order**”) that, among other things, (i) approved a sales and investment solicitation process (the “**SISP**”) in accordance with a Support Agreement dated August 4, 2022, and (ii) authorized Just Energy to enter into the stalking horse transaction agreement (the “**Stalking Horse Transaction Agreement**”) dated August 4, 2022 between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XV LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT Energy I LLC (collectively, the “**Purchaser**”) and the transactions contemplated therein (the “**Transaction**”) with such further minor amendments as Just Energy and the Purchaser may deem necessary, and as may be approved by the Monitor. On September 19, 2022, the U.S. Court granted an Order recognizing and enforcing the SISP Approval Order.<sup>4</sup>

6. There were no bids received in the SISP, and the Court ultimately granted an Order on November 3, 2022 (the “**Reverse Vesting Order**”), which approved the Stalking Horse

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<sup>4</sup> Thirteenth Report at paras. 13-14.

Transaction Agreement (as amended, the “**Transaction Agreement**”) and the Transaction. The Reverse Vesting Order also ordered that, upon closing of the Transaction:<sup>5</sup>

- (a) the Excluded Assets be transferred to and vested in two residual companies (together, the “**ResidualCos**”), one for Excluded Assets with respect to Acquired Entities formed or incorporated in the United States (being 11368, LLC) and one for Excluded Assets with respect to Acquired Entities formed or incorporated outside of the United States (being 14487893 Canada Inc., the “**Non-U.S. ResidualCo**”) – in each case, all claims and encumbrances continue to attach to such Excluded Assets;
- (b) all right, title and interest in and to the Purchased Interests vest absolutely in the Purchaser and all Assumed Liabilities continue as provided under the Transaction Agreement;
- (c) the Acquired Entities will cease to be Applicants in the CCAA Proceedings, and will be released from the Second ARIO and all other Orders granted in the CCAA Proceedings (excluding the Reverse Vesting Order); and
- (d) the title of the CCAA Proceedings will be changed to delete the names of the Just Energy Entities that are Acquired Entities and add the names of the two ResidualCos.

7. On November 3, 2022, the Court granted the Monitor’s Enhanced Powers Order. The Monitor’s Enhanced Powers Order authorizes and empowers, but does not require, the Monitor to,

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<sup>5</sup> Thirteenth Report at para. 15.

among other things, (i) cause the ResidualCos to take any and all actions and steps, and execute agreements and documents on behalf of the ResidualCos, (ii) exercise any power which may be properly exercised by any board of directors of the ResidualCos, (iii) engage, retain or terminate, either directly or on behalf of the ResidualCos, services of any officers, employee, consultant, agent, or other person or entities as the Monitor deems necessary, (iv) exercise any shareholder, partnership, joint venture or other rights of any of the ResidualCos, (v) assign any of the ResidualCos into bankruptcy, and the Monitor is entitled (but not obligated) to act as trustee in such bankruptcies, (vi) cause the dissolution or winding-up of any of the ResidualCos, and (vii) act as an authorized representative of the ResidualCos in respect of dealings with any Taxing Authority.<sup>6</sup>

8. On December 1, 2022, the U.S. Court granted an Order recognizing and enforcing the Reverse Vesting Order and the Monitor's Enhanced Powers Order in the United States.<sup>7</sup>

9. Pursuant to the Transaction Agreement, a \$1.9 million administrative reserve was paid to the Monitor in trust (the "**Administrative Reserve**") for payment of the reasonable fees and costs of the Monitor and its professional advisors and the professional advisors of the Just Energy Entities for services performed prior to and, other than in respect of the Just Energy Entities, after the Closing Date, including the costs to wind-down and/or bankrupt each ResidualCo<sup>8</sup>.

10. Any unused portion of the Administrative Reserve will be returned to Just Energy.<sup>9</sup>

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<sup>6</sup> Thirteenth Report at para. 16.

<sup>7</sup> Thirteenth Report at para. 17.

<sup>8</sup> Thirteenth Report at para. 33.

<sup>9</sup> *Ibid.*

11. The Transaction closed on December 16, 2022, and the closing date steps set out in the Transaction Agreement and Reverse Vesting Order took effect.<sup>10</sup>

**B. REMAINING MATTERS IN THESE CCAA PROCEEDINGS**

12. Before these CCAA proceedings can be terminated, the Monitor must attend to the matter of the wind-up and/or bankruptcy of the ResidualCos. Certain other ancillary matters are also likely to arise that the Monitor will address in accordance with the Monitor’s Enhanced Powers Order, including dealing with taxing authorities and the wind-down of certain foreign non-Applicant subsidiaries of the Just Energy Entities that were Excluded Equity Interests in the Transaction.

13. In the circumstances of these CCAA proceeding which include no recoveries available to any unsecured creditors and a finite Administrative Reserve, the Monitor believes it is in the best interest of all stakeholders to reduce the time and administrative burden on the Court by dispelling with the need for further regular attendances to extend the Stay Period and approve the Monitor and its counsel’s fees and disbursements. Therefore, the Monitor requests that the Court grant an Order extending the Stay Period to the CCAA Termination Date, and authorizing and approving the Monitor and its counsel’s fees and disbursements until such date, up to the amount of the Administrative Reserve.

**C. ONGOING OBLIGATIONS WITH RESPECT TO CERTAIN SUBORDINATED NOTES AND TERM LOANS**

14. Prior to the commencement of these CCAA proceedings, Just Energy issued \$15 million principal of subordinated unsecured notes (the “**Subordinated Notes**”) to certain holders, and a

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<sup>10</sup> Thirteenth Report at para. 30.

US\$205.9 million principal unsecured note (the “**Term Loan**”) maturing on March 31, 2024 to Sagard Credit Partners, LP and the other persons party thereto as lenders.<sup>11</sup>

15. Computershare Trust Company of Canada (“**Computershare**”) acts as notes trustee under the Subordinated Notes and a related Trust Indenture dated September 28, 2020 (the “**Trust Indenture**”), and as administrative agent of the Term Loan.<sup>12</sup>

16. Pursuant to the Reverse Vesting Order, Just Energy’s obligations under the Subordinated Notes and Term Loan were transferred to and vested in the Non-U.S. ResidualCo and there will be no recoveries thereunder.<sup>13</sup>

17. Given there is no recovery for any unsecured or subordinated unsecured creditors, Computershare has requested that the Monitor seek an Order discharging and releasing it from any duties and liabilities in acting in its capacities as notes trustee under the Subordinated Notes and Term Loan.

18. The requested relief would save each of Computershare and the ResidualCos time and costs attending to reporting and other continuing administrative obligations under the Subordinated Notes and the Trust Indenture.<sup>14</sup>

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

19. The principal issues on this Motion are whether this Court should:

- (a) Extend the Stay Period until the CCAA Termination Date;

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<sup>11</sup> Thirteenth Report at para. 47-48.

<sup>12</sup> *Ibid.*

<sup>13</sup> Thirteenth Report at para. 49.

<sup>14</sup> Thirteenth Report at para. 50.

- (b) Approve the fees and disbursements of the Monitor and its counsel to be incurred until the Termination Date, up to the amount of the Administrative Reserve; and
- (c) Discharge and release Computershare from its obligations under the Subordinated Notes and the Term Loan.

**A. THE STAY PERIOD SHOULD BE EXTENDED TO THE CCAA TERMINATION DATE**

20. The Stay Period expires January 31, 2023. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.<sup>15</sup>

21. In the circumstances and pursuant to the Monitor's Enhanced Powers Order, the Monitor exercises control over the ResidualCos. The Applicants have no ongoing business operations. The Monitor requires additional time to complete the wind-up of the ResidualCos. As certain other closing-related matters are outside the Monitor's control, including dealing with taxing authorities and the wind-down of certain foreign non-Applicant subsidiaries of the Just Energy Entities that were Excluded Equity Interests in the Transaction, a fixed timeline to terminate these CCAA Proceedings cannot be determined at this time.

22. No stakeholders are expected to suffer prejudice as a result of the contemplated extension of the Stay Period. The ResidualCos are acting in good faith, and there is sufficient cash within the Administrative Reserve to fund projected costs during the contemplated extension period.

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<sup>15</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 11.02(2) and (3).



23. This Court has granted stay extensions without a specified time limit where only winding-up and ancillary matters remained to be resolved, including where the termination of the CCAA proceedings were contemplated by the filing of a Monitor's certificate,<sup>16</sup> a lower threshold than the present circumstances where a further Court Order will be sought.

24. For all of the foregoing reasons and to avoid drawing on the limited resources of the Applicants and the Court, this Court should grant the requested stay extension.

**B. THE MONITOR AND ITS COUNSEL'S FEES AND DISBURSEMENTS TO THE CCAA TERMINATION DATE SHOULD BE APPROVED**

25. The Monitor and its counsel's actions, conduct, and activities in these CCAA Proceedings since their inception have been carried out in good faith, as recognized and approved by this Court pursuant to various Orders.

26. This Court has approved the Administrative Reserve for payment of the reasonable fees and costs of the Monitor and its advisors and, with respect to fees incurred until the Closing Date, the Just Energy Entities' advisors. The Administrative Reserve has sufficient funds to cover the foregoing fees until the CCAA Termination Date. Any unused portion of the Administrative Reserve will be returned to Just Energy.

27. This Court has approved the fees and disbursements of the Monitor and its counsel in similar situations where only wind-up and related matters remained to be completed, subject to a

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<sup>16</sup> *Re TGF Acquisition Parent Ltd. et al.* (27 August 2021) Toronto CV-21-00657098-00CL (Ont Sup Ct [Commercial List]) ([Monitor's Website](#)).

reasonable limit for such fees and disbursements, which in this case was estimated as part of the Transaction to be equal to the Administrative Reserve.<sup>17</sup>

28. The Monitor requests that the fees and disbursement of the Monitor and its counsel to the CCAA Termination Date be approved up to the amount of the Administrative Reserve to avoid the cost and time burden to the Court, the Monitor, and other parties, of seeking the approval of same at a future date. There is no prejudice to any party from such relief. Any potential prejudice would, because of the construct of the Administrative Reserve, affect only Just Energy. Just Energy is aware of and supports the requested relief.

### **C. COMPUTERSHARE SHOULD BE RELEASED FROM ITS OBLIGATIONS**

29. Computershare's request to be discharged and released from its duties and obligations under the Subordinated Notes and the Trust Indenture makes practical and commercial sense given the backdrop of nil recoveries under such loan documents. Such relief would save costs for both Computershare and the Non-U.S. ResidualCo. There is no apparent prejudice related to the granting of such relief.

30. This Court has the jurisdiction under section 11 of the CCAA to make any order it considers appropriate in the circumstances. The Supreme Court of Canada has ruled that this authority may be exercised in furtherance of the remedial objectives of the CCAA, and where the applicants demonstrate that: (a) the order sought is appropriate in the circumstances, and (b) the applicant has been acting in good faith and with due diligence.<sup>18</sup>

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<sup>17</sup> *Ibid.*

<sup>18</sup> 9354-9186 *Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 49.

31. The relief requested is appropriate in the circumstances as it provides a demonstrated benefit to several stakeholders without prejudicing any other parties. The ResidualCos have and are continuing to act in good faith and with due diligence under the Monitor's supervision, including with respect to this specified relief.

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

32. The Monitor submits that this Court should grant the requested relief and issue Orders substantially in the form attached at Tab 3 to the Monitor's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of January, 2023.

A handwritten signature in black ink, appearing to be the initials 'JW' followed by a checkmark-like flourish.

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per Thornton Grout Finnigan LLP

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

**Case Law**

1. *Re TGF Acquisition Parent Ltd. et al.* (27 August 2021) Toronto CV-21-00657098-00CL (Ont Sup Ct [Commercial List]) ([Monitor’s Website](#)).
2. 9354-9186 *Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#).

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

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

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

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

#### **Relief reasonably necessary**

**11.001** An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

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

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

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

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

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

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

**(3)** The court shall not make the order unless

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

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

[...]

**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 14487893  
CANADA INC. ET AL.**

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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**FACTUM OF THE MONITOR**

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