

**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)
<b>SECURED DEBT</b>	
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
<b>TOTAL SECURED DEBT</b>	<b>\$1.0 billion</b>

Items	Approximate Amount (CAD)
<b>UNSECURED DEBT</b>	
Term Loan The non-revolving term loan established pursuant to the Term Loan Agreement as part of the Recapitalization (the “ <b>Term Loan</b> ”) 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
<b>TOTAL UNSECURED DEBT</b>	<b>\$341.6 million</b>

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 concern 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 unsecured

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 by 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 9<sup>th</sup> 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.

