

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

APPLICANTS

**FACTUM OF THE APPLICANTS  
(Stay Extension Hearing)**

May 21, 2021

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Lawyers for the Applicants

**TO: SERVICE LIST**

## PART I - NATURE OF THIS MOTION

1. The Applicants obtained relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) by an initial order dated March 9, 2021 (the “**Initial Order**”).<sup>1</sup> The Initial Order, among other things, appointed the Monitor and granted a stay of proceedings (the “**Stay**”) in favour of the Applicants up to and including March 19, 2021. On March 19, 2021, this Court issued an Amended & Restated Initial Order (the “**ARIO**”) extending the Stay until June 4, 2021 and granting other related relief.

2. The Applicants now seek an order (the “**Stay Extension Order**”): (a) extending the Stay to and including September 30, 2021 (the “**Extended Stay Period**”), (b) relieving Just Energy of any obligation to call its annual meeting of shareholders (“**AGM**”) until further Order of this Court, and (c) authorizing certain payments of pre-filing intercompany indebtedness, including interest (the “**Intercompany Payments**”) to ensure sufficient working capital is held by each Canadian Just Energy Entity<sup>2</sup> to fund its ongoing operations within the CCAA proceedings. The Applicants also seek a Second Amended & Restated Initial Order (the “**SARIO**”) amending, among other things, certain provisions in the ARIO involving Commodity Suppliers.

3. Since the issuance of the ARIO, the Applicants have acted in good faith and with due diligence to pursue this restructuring expeditiously and in a manner that balances the interests of all stakeholders. In particular, the Just Energy Group has worked in close consultation with the Monitor to stabilize its business. It has developed a detailed business plan to account for changes to the business caused by the Texas weather event and to assist its key stakeholders in

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<sup>1</sup> The relief requested by the Applicants was supported by the Affidavit of Michael Carter, sworn March 9, 2021 [Initial Order Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Initial Order Affidavit.

<sup>2</sup> As defined in the Affidavit of Michael Carter, sworn May 19, 2021 [Third Carter Affidavit].

understanding, among other things, the anticipated operations of the Just Energy Group during, and upon exit from, the current CCAA and Chapter 15 proceedings. It is also in the process of developing a restructuring process to optimize value.

4. The Applicants submit that this Court has the authority to grant the requested relief. It is appropriate for it to do so to allow the Applicants to continue their ongoing efforts to achieve a going-concern solution to their financial challenges for the benefit of their stakeholders.

## **PART II -FACTS**

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

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

6. The principal issues on this Motion are whether:

- (a) this Court should grant the requested extension of the Stay;
- (b) this Court should order that Just Energy be relieved of the obligation to call its AGM pending further order of the Court;
- (c) this Court should authorize the Intercompany Payments; and
- (d) the SARIO should be issued in the terms described further below.

### **A. THE STAY EXTENSION SHOULD BE GRANTED**

7. The Initial Order granted a Stay for the period up to and including March 19, 2021. The Stay was subsequently extended under the ARIIO to June 4, 2021. The Applicants now seek the Extended Stay Period up to and including September 30, 2021.

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<sup>3</sup> Second Report of FTI Consulting Canada Inc., in its capacity as Court-Appointed Monitor, to be filed [Second Report of the Monitor].

8. On an application other than an initial application, the Court may make a stay order for any period that the Court considers necessary if the applicant satisfies the Court that: a) circumstances exist that make the order appropriate, and b) the applicant has acted, and is acting, in good faith and with due diligence.<sup>4</sup> The Applicants satisfy both branches of this test.

9. The Applicants submit that the Extended Stay Period is necessary and appropriate in the circumstances. The proposed Extended Stay Period will provide the Applicants with the necessary breathing room to continue to focus on stabilizing their business and going concern operations. It will also allow the Applicants a reasonable time to develop their proposed restructuring process (including a recapitalization term sheet), and engage with key stakeholders with respect to viable restructuring options.<sup>5</sup>

10. Further, the Extended Stay Period is necessary to allow an intercreditor issue arising under an Intercreditor Agreement among certain of the Applicants' major creditors to be advanced in tandem with the Applicants' restructuring activities.<sup>6</sup> Although the Applicants intend to take no position on the merits of this inter-creditor dispute, its resolution in an efficient and expeditious manner is an important step in this proceeding.<sup>7</sup>

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<sup>4</sup> CCAA, ss. 11.02(2), (3).

<sup>5</sup> Third Carter Affidavit, para. 54.

<sup>6</sup> Third Carter Affidavit, para. 54.

<sup>7</sup> Third Carter Affidavit, paras. 24-26.

11. Turning to the second branch of the test for a CCAA stay extension, the Applicants have acted and continue to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order.<sup>8</sup>

12. Specifically, in addition to working diligently to prepare the business plan and, in consultation with the Financial Advisor, to advance restructuring initiatives, the Applicants continue to advocate for a legislative resolution to the Texas weather event. The Applicants have continued the process of disputing the settlements and resettlements in accordance with ERCOT Protocols, and to discuss ongoing issues related to the financial fallout from the Texas weather event with ERCOT, PUCT and other interested parties.<sup>9</sup>

13. In addition, the Applicants are continuing to engage regularly with a broad range of stakeholders, including Canadian and U.S. regulators, Commodity Suppliers and ISO Services Providers, the DIP Lenders, the Credit Facility Lenders, employees, and others.<sup>10</sup> Within the protection of the Regulatory Stay (as defined in the Initial Order Affidavit), which has been in place since the Filing Date, the Applicants have continued to satisfy all obligations in the ordinary course to regulators which license one or more Just Energy Entities, and all licenses and registrations held by the Applicants as of the Filing Date remain valid and in full force and effect.<sup>11</sup>

14. The Extended Stay Period is supported by the Monitor. The Second Report of the Monitor includes, among other things, a cash flow forecast demonstrating that, subject to the underlying

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<sup>8</sup> A detailed review of the restructuring activities of the Just Energy Group since the ARIO was granted is found in the Third Carter Affidavit at paras. 43-50.

<sup>9</sup> Details regarding ongoing disputes with ERCOT and other steps to address the impact of the Texas weather event are set out in the Third Carter Affidavit, paras. 37-42, 55.

<sup>10</sup> Third Carter Affidavit, para. 55.

<sup>11</sup> Third Carter Affidavit, para. 27.

assumptions contained therein, the Applicants have sufficient funds to continue their operations and fund these CCAA proceedings until September 30, 2021.<sup>12</sup>

**B. THE ANNUAL SHAREHOLDER MEETING SHOULD BE POSTPONED**

15. Just Energy is a public company governed by the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended (“CBCA”). As such, Just Energy is required pursuant to section 133(1)(b) of the CBCA to call the AGM by no later than September 30, 2021, being six months after the end of Just Energy’s preceding financial year.<sup>13</sup>

16. This Court has the jurisdiction to grant an order relieving Just Energy from the obligation to call the AGM during the CCAA proceeding, subject to further Order of the Court. Section 133(1) of the CBCA makes it mandatory to call (as distinct from hold) the AGM within the prescribed time period. However, subsection 133(3) of the CBCA authorizes the corporation to apply to the Court for an order extending the time for calling the annual meeting.<sup>14</sup> Additionally, this Court has the jurisdiction under the CCAA to make any order that it considers appropriate in the circumstances.<sup>15</sup>

17. This Court has made similar orders relieving a debtor from the obligation to call an AGM in a number of other CCAA proceedings.<sup>16</sup> For example, this Court permitted the company to

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<sup>12</sup> Third Carter Affidavit, para. 56.

<sup>13</sup> Third Carter Affidavit, para. 57.

<sup>14</sup> CBCA, ss. 133(1), (3).

<sup>15</sup> CCAA, s. 11.

<sup>16</sup> *Re Cline Mining Corp.*, [2014 ONSC 6998](#) at paras. 53-55 [*Cline*]; *Re SkyLink Aviation Inc.*, [2013 ONSC 1500](#) [Commercial List] at para. 29; *Re Canwest Global Communications Corp.* (2009), [59 C.B.R. \(5th\) 72](#) (Ont. Sup. Ct. [Commercial List]) at paras. 53-54 [*Canwest*]; *Re Nortel Networks Corp.*, [\[2009\] O.J. No. 614](#) (Sup. Ct. [Commercial List]) at para. 8; *Re Laidlaw Inc.* (2002), [34 C.B.R. \(4th\) 72](#), (Ont. Sup. Ct. [Commercial List]) at para. 7 [*Laidlaw*]; *Re Sears Canada Inc.*, [Initial Order](#), Court File No. CV-17-11846-00CL (Ont. Sup. Ct. [Commercial List]) at para. 54.

postpone calling its AGM in *Canwest*, on the basis that preparations for calling and holding the meeting would distract the company's key personnel at a time when they needed to focus on the restructuring.<sup>17</sup> The fact that shareholders likely have no economic interest in an insolvent company, at least while it is being restructured, also supports an order permitting the postponement of the AGM.<sup>18</sup>

18. The Applicants submit that it would not be in the best interests of the restructuring to call the AGM within the statutory time period, which coincides with the end of the proposed Extended Stay Period. It is both permissible and appropriate to grant the requested order relieving Just Energy from the obligation to call the AGM until further order of the Court, for the following reasons:

- (a) The executive management of Just Energy are presently devoting significant efforts to the restructuring with a view to implementing a going-concern and value-maximizing solution for the benefit of all stakeholders. Calling the AGM during the CCAA and Chapter 15 proceedings would divert the attention of Just Energy's executive management team away from the restructuring at this critical juncture.<sup>19</sup>
- (b) One of the key purposes of an AGM is to elect directors.<sup>20</sup> However, if directors are not elected at an AGM, the CBCA contemplates that the incumbent directors will continue to hold office until their successors are elected.<sup>21</sup> The incumbent directors

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<sup>17</sup> *Canwest* at paras. 53-54.

<sup>18</sup> *Cline* at paras. 54-55; *Laidlaw* at para. 7.

<sup>19</sup> Third Carter Affidavit, para. 58.

<sup>20</sup> CBCA, s. 106(3).

<sup>21</sup> CBCA, s. 106(6).



are knowledgeable about the business and it is appropriate that they continue in office in order to minimize disruption while the restructuring is underway.

- (c) A further purpose of an AGM is to place financial information before the shareholders.<sup>22</sup> However, financial and other information is and will continue to be available to the public through the Applicants' court filings, public filings on SEDAR and EDGAR, and Monitor reports which will be easily accessible on the Monitor's website.<sup>23</sup>

19. The Applicants submit that it is impractical for Just Energy to call the AGM during this CCAA proceeding. Moreover, there currently are no pending shareholder applications to compel Just Energy to call the AGM and no prejudice to shareholders will result from the requested order.<sup>24</sup> It is therefore appropriate to grant the requested order relieving Just Energy from its obligation to call the AGM until further order of this Court.

### **C. INTERCOMPANY PAYMENTS SHOULD BE AUTHORIZED**

20. This Court has the authority pursuant to its broad powers to make any order that it considers appropriate to allow the Intercompany Payments in order to further the Applicants' restructuring.<sup>25</sup> The order sought provides the flexibility required for efficient management of the Just Energy Entities' operations in a tax efficient manner, thereby preserving value for the benefit of all

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<sup>22</sup> CBCA, s. 155(1).

<sup>23</sup> Third Carter Affidavit, para. 58.

<sup>24</sup> Third Carter Affidavit, para. 60.

<sup>25</sup> CCAA, s. 11.

stakeholders.<sup>26</sup> The requested order is therefore consistent with the objectives of the CCAA and appropriate in the circumstances.

21. The Just Energy Group maintains a centralized cash management system to consolidate and track funds generated by the operations of Just Energy and its subsidiaries. As part of that cash management system, certain intercompany loans have been advanced among various of the Just Energy Entities.<sup>27</sup> Specifically, as at May 18, 2021, Just Energy U.S. was indebted to Just Energy Hungary in the amount of U.S. \$235 million. Similarly, as at May 18, 2021, Just Energy Hungary was indebted to JE Finance in the amount of U.S. \$213 million.<sup>28</sup>

22. The Applicants are seeking authorization for Just Energy U.S. to repatriate funds on an “as needed” basis to Canada for use by the Canadian Just Energy Entities as working capital to fund their ongoing operations within the CCAA proceedings. While all Canadian Just Energy Entities currently have sufficient liquidity to fund their operations, Just Energy is concerned that any increase in the volume of transactions executed by the Canadian Just Energy Entities which require the posting of cash collateral or other security such as a letter of credit will deplete available liquidity in Canada and necessitate an inflow of capital. No immediate need for additional liquidity in Canada currently exists but, if such a need arises, the Just Energy Group anticipates that it will be immediate.<sup>29</sup>

23. The repatriation of funds (if required) is proposed to be effected through a repayment of the intercompany indebtedness between Just Energy U.S. and Just Energy Hungary and, in turn,

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<sup>26</sup> Third Carter Affidavit, para. 67.

<sup>27</sup> Details of these loans may be found in the Third Carter Affidavit, para. 61.

<sup>28</sup> Third Carter Affidavit, para. 63.

<sup>29</sup> Third Carter Affidavit, para. 64.

between Just Energy Hungary and JE Finance on a “back to back” basis. This structure is tax efficient. While the Just Energy Group reviewed alternative mechanisms for effecting the repatriation (such as an inter-company transfer secured by a Court-ordered charge), such mechanisms had negative tax implications. The Applicants accordingly submit that the proposed repayment structure is the preferable mechanism to effect a repatriation of funds to Canada, should this be required.<sup>30</sup>

24. The repayment of intercompany indebtedness in the manner discussed above is not expected to cause prejudice to stakeholders of the Just Energy Group. While all funds under the DIP Facility were advanced to Just Energy U.S., all of the Just Energy Entities are jointly and severally liable for such amounts, and the DIP Lenders’ Charge is secured against all present and future assets, property and undertakings of the Just Energy Entities, including all the Canadian Just Energy Entities. Accordingly, a transfer of funds between Just Energy U.S. and the Canadian Just Energy Entities will have a net neutral effect – all such entities are already jointly and severally liable for the indebtedness regardless of which entity has possession and use of the capital.<sup>31</sup>

**D. THE ARIO SHOULD BE VARIED AS PROPOSED IN THE SARIO**

25. This Court’s broad powers under section 11 of the CCAA to make any order it sees fit to achieve the overall objective of the CCAA provide this Court with the jurisdiction to amend or vary a prior order, including the ARIO, if such amendment or variation facilitates the debtor’s restructuring of its business as a going concern and achieves the appropriate “balance of prejudices”. The proposed variations to the ARIO satisfy these requirements.

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<sup>30</sup> Third Carter Affidavit, para. 65.

<sup>31</sup> Third Carter Affidavit, para. 66.

26. The three principal amendments to the ARIIO sought by the Applicants relate to: (a) the definition of “Qualified Commodity/ISO Supplier”; (b) the definition of “Commodity Agreement”; and (c) the current requirement that Qualified Commodity/ISO Suppliers obtain court authorization to exercise any termination rights. All other minor amendments sought are simply for clarification purposes.<sup>32</sup>

**(a) *Expanded Definition of Qualified Commodity/ISO Suppliers***

27. The continuity of the Just Energy Entities’ supply sources and the stabilization of the Just Energy Group’s business has been facilitated by means of the Qualified Support Agreements entered into with BP, Shell and Macquarie.<sup>33</sup> The Applicants submit that the Just Energy Group’s business and restructuring would be enhanced by expanding business-critical supply requirements beyond these three counterparties.<sup>34</sup> The Applicants view a diversified suite of Commodity Agreements as advantageous to alleviate the risk of single source or limited source supply arrangements, which is beneficial to the long-term viability and security of the Just Energy Group’s business.<sup>35</sup>

28. However, all but one of the Just Energy Entities’ other main Commodity Suppliers declined to execute a Qualified Support Agreement and ultimately terminated their transactions with the Just Energy Group after the CCAA filing.<sup>36</sup> The remaining Commodity Supplier has not transacted

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<sup>32</sup> Third Carter Affidavit, para. 21.

<sup>33</sup> Third Carter Affidavit, para 12.

<sup>34</sup> Third Carter Affidavit, para 13.

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

<sup>36</sup> Third Carter Affidavit, para 11.

with the Just Energy Group in almost 2 years. The Just Energy Entities must therefore seek new supply arrangements in order to fulfill their diversification objectives.

29. Currently, the ARIO provides that only counterparties to a Commodity Agreement or ISO Agreement with a Just Energy Entity as of the Filing Date can obtain the benefit of the Priority Commodity/ISO Charge (subject to executing a Qualified Support Agreement).<sup>37</sup> Unless this restriction is amended as proposed in the SARIO, the practical effect of this restriction is that the Just Energy Entities will likely be required to post cash collateral or a letter of credit as financial support for any new supply arrangements entered into after the Filing Date.<sup>38</sup>

30. In order to facilitate new supply sources, therefore, the Applicants are seeking to expand the definition of “Qualified Commodity/ISO Supplier” in the ARIO to include additional parties that may execute a Commodity Agreement with a Just Energy Entity after the Filing Date, subject to execution of a Qualified Support Agreement.<sup>39</sup>

31. The flexibility for new counterparties to execute a Qualified Supply Agreement, and thereby gain the benefit of the Priority Commodity/ISO Charge, will not only incentivize such parties to conduct business with the Just Energy Group, but also mitigate the need for the Just Energy Group to post (and tie up) financial collateral in respect of such counterparties.<sup>40</sup>

32. The expanded definition of Commodity Supplier will not prejudice any of the Applicants’ creditors. The Applicants are currently transacting in relation to the vast majority of all their

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<sup>37</sup> ARIO, para. 27 and Schedule “B”.

<sup>38</sup> Third Carter Affidavit, para. 15.

<sup>39</sup> Third Carter Affidavit, para. 14.

<sup>40</sup> Third Carter Affidavit, para. 15.

physical supply, financial hedging and risk management needs with Shell and Mercuria Energy America, LLC. The scope of such transactions will not change (i.e., supply requirements will continue to be dictated exclusively by customer demand). Rather, it is anticipated that only the number of Commodity Agreements under which such transactions are completed will expand, resulting in the diversification of supply sources, to the benefit of the long-term viability and security of the Just Energy Group's business.<sup>41</sup>

33. Furthermore, the number of Qualified Support Agreements will be limited to eight, being the same number of Secured Suppliers which were eligible to execute a Qualified Support Agreement as at the Filing Date under the terms of the ARIO.<sup>42</sup>

**(b) *Amended Definition of Commodity Agreement***

34. The Applicants are also seeking to amend the definition of "Commodity Agreement" to include contracts entered into to protect against fluctuations in currency exchange rates in relation to certain customer obligations.

35. As explained in the Initial Order Affidavit, many of the Just Energy Group's gas supply agreements, electricity supply agreements, and other agreements for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental credits are in United States dollars, notwithstanding that the services are provided to Canadian customers. Costs under the contract accrue in United States dollars, while revenues accrue in Canadian dollars.<sup>43</sup>

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<sup>41</sup> Third Carter Affidavit, para. 16.

<sup>42</sup> Third Carter Affidavit, para. 17.

<sup>43</sup> Third Carter Affidavit, para. 18.

36. In order to manage the risk of fluctuations between these currency exchange rates and lock in the gross margin for such customers, the Just Energy Group regularly executes hedging and other forward contracts. Such foreign currency agreements are consistent with the Just Energy Group's ordinary course risk management policy.<sup>44</sup> Expanding the current definition of "Commodity Agreement" in the ARIO to include such contracts will allow the Just Energy Group to continue entering into new customer contracts, while simultaneously managing their current risk exposure created by the post-filing termination of certain foreign exchange forward contracts.

(c) *Termination Rights in Limited Circumstances*

37. Lastly, the Applicants are seeking to amend paragraph 30 of the ARIO to permit a Qualified Commodity/ISO Supplier, unless otherwise ordered by the Court, to terminate its Commodity Agreement and Qualified Support Agreement entered into after May 26, 2021 without Court authorization in two limited circumstances: (a) if an Order is granted authorizing the exercise of rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge; or (b) these CCAA proceedings or the Applicants' recognition proceedings under Chapter 15 of the United States Bankruptcy Code (the "**Bankruptcy Code**") are dismissed or converted to a liquidation proceeding, including a receivership, bankruptcy, proceeding under Chapter 7 of the Bankruptcy Code or otherwise.<sup>45</sup>

38. This amendment will incentivize new commodity suppliers to supply to the Just Energy Entities during the CCAA proceeding without requiring that financial collateral be provided. The proposed amendment is not opposed by the DIP Lenders and is supported by the Monitor.<sup>46</sup>

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<sup>44</sup> Third Carter Affidavit, para. 18.

<sup>45</sup> Third Carter Affidavit, para. 19.

<sup>46</sup> Third Carter Affidavit, para. 20.

39. The Applicants submit that all of the requested amendments to the ARIO are limited in scope, commercially reasonable and consistent with the protections otherwise afforded to the Just Energy Group by the ARIO. These amendments are designed to further the restructuring process and are entirely consistent with the objectives of the CCAA. There will be no material prejudice to any stakeholder as a result of these amendments.

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

40. For all of the reasons above, the Applicant submits that this Court should grant the relief requested and issue the Stay Extension Order and SARIO substantially in the form attached as **Tabs “3” and “4”** to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of May, 2021.



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per Marc Wasserman / Michael De Lellis / Jeremy Dacks



**SCHEDULE “A”  
LIST OF AUTHORITIES**

**Case Law**

1. *Canwest Global Communications Corp., Re* (2009), [59 C.B.R. \(5th\) 72](#) (Ont. Sup. Ct. [Commercial List])
2. *Cline Mining Corp., Re*, [2014 ONSC 6998](#)
3. *Laidlaw Inc., Re* (2002), [34 C.B.R. \(4th\) 72](#) (Ont. Sup. Ct. [Commercial List])
4. *Nortel Networks Corp., Re*, [\[2009\] O.J. No. 614](#) (Sup. Ct. [Commercial List])
5. *Sears Canada Inc., Re*, [Initial Order](#), Court File No. CV-17-11846-00CL (Ont. Sup. Ct. [Commercial List]).
6. *SkyLink Aviation Inc., Re*, [2013 ONSC 1500](#) [Commercial List]

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

*Canada Business Corporations Act, RSC, 1985, c. C-44*

**Election of directors**

106(3) Subject to paragraph 107(b), shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election.

[...]

**Incumbent directors**

106(6) Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders the incumbent directors continue in office until their successors are elected.

[...]

**Calling annual meetings**

133(1) The directors of a corporation shall call an annual meeting of shareholders

(a) not later than eighteen months after the corporation comes into existence; and

(b) subsequently, not later than fifteen months after holding the last preceding annual meeting but no later than six months after the end of the corporation’s preceding financial year.

[...]

**Order to delay calling of annual meeting**

133(3) Despite subsection (1), the corporation may apply to the court for an order extending the time for calling an annual meeting.

[...]

**Annual financial statements**

155(1) The directors of a corporation shall place before the shareholders at every annual meeting

(a) prescribed comparative financial statements that conform to any prescribed requirements and relate separately to

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the

last completed financial year and ended not more than six months before the annual meeting, and

(ii) the immediately preceding financial year;

(b) the report of the auditor, if any; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

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

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

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

[...]

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

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

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

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

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

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

11.02(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;**

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**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT Toronto

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**FACTUM OF THE APPLICANTS**

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