

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

14487893 Canada Inc. et al.

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

January 19, 2024



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**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

SIXTEENTH 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 “**Original 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: (a) a stay of proceedings (the “**Stay of Proceedings**”) was granted; (b) 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 Original Applicants, the “**Just Energy Entities**”); (c) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (d) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million.
3. The Initial Order was amended and restated on March 19, 2021 and May 26, 2021 (the “**Second ARIO**”).

4. On March 9, 2021, Just Energy, in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”), commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). On April 2, 2021, the U.S. Court granted an Order recognizing the CCAA Proceedings as foreign main proceedings (the “**Final Recognition Order**”).

5. On November 3, 2022, the Court granted an Order (the “**Reverse Vesting Order**”) that, among other things:
 - (a) approved that certain stalking horse transaction sale agreement and the transaction contemplated thereby (the “**Transaction**”);
 - (b) ordered the following upon closing of the Transaction:¹
 - (1) that 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 “**Canadian ResidualCo**”);
 - (2) that all Excluded Contracts and Excluded Liabilities of the Acquired Entities be transferred to and vested in the ResidualCos, and the Acquired Entities be forever discharged and released from such Excluded Contracts and Excluded Liabilities and related claims and encumbrances;
 - (3) that the Acquired Entities be removed as Applicants in these CCAA Proceedings, and released from the Second ARIO and all other

¹ All capitalized terms used in this sub-paragraph are as defined in the stalking horse transaction agreement unless otherwise noted.

Orders granted in the CCAA Proceedings (excluding the Reverse Vesting Order);

- (4) that the ResidualCos be added as Applicants to these CCAA Proceedings (together with the Excluded Entities², the “**Remaining Entities**”);
- (c) granted certain releases and exculpations with respect to, among others, the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities and the ResidualCos, the Monitor and its legal counsel, the Purchaser and its current and former directors, officers, employees, legal counsel and advisors;
- (d) notwithstanding the above and subject to the provisions of the Reverse Vesting Order, ordered that neither Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P (together, the “**Specified JE Entities**”) nor their current and former directors would be released from any claim or potential claim existing up to the effective time of the Transaction in any way connected with the action commenced in the Ontario Superior Court of Justice on May 4, 2015 titled *Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.*, Court File No. CV-15-52749300 CP (the “**Omarali Class Action**”) solely to the extent it is necessary to maintain any insured claims and potential related recoveries as against the insurance policies of the Specified JE Entities (the “**Specified Purpose**”); and
- (e) established a \$1.9 million administrative reserve (the “**Administrative Expense Amount**”) to be held by the Monitor for the purpose of paying the reasonable and documented 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 after the Transaction closing date and relating directly or indirectly to the

² The “Excluded Entities” consist of: 12175592 Canada Inc., Just Holdings L.P., Just Ventures GP Corp., Just Ventures L.P., JEAS Holdings LP, Just Ventures LLC, Drag Marketing LLC, Just Solar Holdings Corp., American Home Energy Services Corp., Just Energy Connecticut Corp., Hudson Energy Holdings UK Limited, Just Energy (U.K.) Limited, Just Energy (Ireland) Limited, Just Energy Germany GmbH, Just Energy Deutschland GmbH, Db SWPro GmbH, Just Energy (Finance) Hungary Zrt and Just Energy Services Limited.

CCAA Proceedings and the Chapter 15 Proceedings, and necessary costs required to wind-down or administer the Remaining Entities. Any unused portion of the Administrative Expense Amount shall be returned to Just Energy.

6. On November 3, 2022, the Court granted the Monitor's Enhanced Powers & Other Relief Order (the "**Monitor's Enhanced Powers Order**") that, among other things, expanded the powers of the Monitor on the closing of the Transaction. Specifically, the Monitor's Enhanced Powers Order authorized and empowered, but does not require, the Monitor to, among other things:
 - (a) cause the ResidualCos to take any and all actions and steps, and execute agreements and documents on behalf of the ResidualCos;
 - (b) exercise any power which may be properly exercised by any board of directors of the ResidualCos;
 - (c) engage, retain or terminate, either directly or on behalf of the ResidualCos, services of any officer, employee, consultant, agent, or other persons or entities as the Monitor deems necessary;
 - (d) exercise any shareholder, partnership, joint venture or other rights of any of the ResidualCos;
 - (e) assign any of the ResidualCos into bankruptcy, and the Monitor is entitled (but not obligated) to act as a trustee in such bankruptcies;
 - (f) cause the dissolution or wind-down of any of the ResidualCos; and
 - (g) act as an authorized representative of the ResidualCos in respect of dealings with any taxing authority.
7. 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.
8. The Transaction closed on December 16, 2022 (the "**Closing Date**"), and the Reverse Vesting Order took effect at such time. As a result, most of the Original Applicants have now exited the CCAA Proceedings.

9. On June 22, 2023, the U.S. Court entered a final decree to close the Chapter 15 Proceedings for the Just Energy Entities with the exception of the following entities: (a) Just Energy Group Inc.; (b) Fulcrum Retail Energy LLC; (c) Hudson Energy Services LLC; and, (d) Just Energy Texas LP (collectively, the “**U.S. Remaining Cases**”). The U.S. Remaining Cases will remain open until conclusion of all litigation arising from the Texas winter storm that prompted these CCAA Proceedings, and pending entry of an additional final decree upon the resolution of such litigation.
10. The Stay of Proceedings has been extended from time to time in these CCAA Proceedings including most recently, by Court Order dated June 28, 2023, to and including January 31, 2024.
11. All references to monetary amounts in this Sixteenth Report of the Monitor (the “**Sixteenth Report**”) are in Canadian dollars unless otherwise noted.
12. 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**”).
13. Further information regarding 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

14. The purpose of this Sixteenth Report is to provide information to the Court with respect to the following:
 - (a) the Monitor’s activities since the Monitor’s Fifteenth Report to the Court dated November 10, 2023 (the “**Fifteenth Report**”);
 - (b) the relief sought by the Monitor in its proposed Order: (i) extending the Stay of Proceedings to and including September 30, 2024; and (ii) amending the title to these CCAA Proceedings by removing 11368, LLC, 12175592 Canada Inc., Drag Marketing LLC, Just Solar Holdings Corp., Just Energy Connecticut Corp., and

Just Energy (Finance) Hungary ZRT as Applicants (collectively, the “**Wound-Down Entities**”);

- (c) the status of the Omarali Class Action;
- (d) the status of the wind-down and dissolution proceedings in respect of the Remaining Entities; and
- (e) the remaining activities that will need to be resolved prior to the anticipated termination of these CCAA Proceedings.

TERMS OF REFERENCE AND DISCLAIMER

- 15. In preparing this Sixteenth Report, the Monitor has relied upon discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
- 16. The Monitor has prepared this Sixteenth Report to provide information to the Court in connection with the stated purpose above. This Sixteenth Report should not be relied on for any other purpose.

MONITOR’S ACTIVITIES SINCE THE FIFTEENTH REPORT

- 17. In accordance with its duties as outlined in the Second ARIO, the Monitor’s Enhanced Powers Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Fifteenth Report have included the following:
 - (a) coordinating the wind-down of the Remaining Entities, including engaging and working with local counsel and trustees in respect of foreign-registered Remaining Entities;
 - (b) engaging with regulatory bodies, including the Office of the Superintendent of Bankruptcy and foreign regulatory bodies, in respect of the wind-down of the Remaining Entities;

- (c) preparing creditor lists, notices to creditors and other information and documentation relating to the wind-down and bankruptcies of certain of the Remaining Entities;
- (d) monitoring the cash receipts to and disbursements from the Administrative Reserve (as defined below);
- (e) engaging with counsel to the representative plaintiff in the Omarali Class Action in respect of their proposed relief;
- (f) filing applicable tax and other returns as necessary;
- (g) responding to stakeholder inquiries regarding the CCAA Proceedings generally; and
- (h) preparing this Sixteenth Report.

ADMINISTRATIVE EXPENSE AMOUNT

18. The Administrative Expense Amount of \$1.9 million was paid to the Monitor in trust on the Closing Date for the purpose of paying the reasonable and documented 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 after the Transaction closing date which related directly or indirectly to the CCAA Proceedings and the Chapter 15 Proceedings, and necessary costs required to wind-down or administer the Remaining Entities. The Monitor established an administrative reserve trust account for the purposes of receiving and administering the Administrative Expense Amount (the “**Administrative Reserve**”).
19. A summary of the receipts and disbursements of the Administrative Reserve from November 1, 2023 to January 5, 2024, is presented in the table below:

(\$CAD in thousands)

Administrative Reserve Receipts & Disbursements Summary		
Administrative Reserve, Opening Balance as of November 1, 2023	\$	1,118
<i>Receipts</i>		
Bank interest, net of bank fees		8
Sales and other tax refunds collected		77
Total Receipts		86
<i>Disbursements</i>		
Professional fees		(190)
Sales and other taxes		(17)
Wind-down and other miscellaneous disbursements		(9)
Total Disbursements		(216)
Net Cash Flows	\$	(131)
Administrative Reserve, Ending Balance as of January 5, 2024	\$	987

20. The receipts and disbursements set out in the table above include:
- (a) bank interest, net of bank fees, of approximately \$8 thousand;
 - (b) the collection of applicable sales tax refunds of approximately \$77 thousand;
 - (c) professional fee disbursements of approximately \$190 thousand representing costs incurred by the Monitor, its counsel and other professional advisors for services performed with respect to the wind-down and administration of the Remaining Entities;
 - (d) disbursements related to sales and other taxes of approximately \$17 thousand pertaining to sales taxes paid on taxable disbursements and other state tax filings and fees; and
 - (e) wind-down and other miscellaneous disbursements of approximately \$9 thousand pertaining to various costs required to wind-down the Remaining Entities.
21. The Administrative Reserve is finite in nature, and was estimated and established to fund the activities required to complete the wind-down of the Excluded Entities within a reasonable time period. Any unused portion of the Administrative Reserve shall be returned to Just Energy pursuant to the Transaction.

OMARALI CLASS ACTION RELIEF

22. The background and an overview of the relief sought by counsel to the representative plaintiff can be found in paragraphs 22 to 31 of the Fifteenth Report.

The November 2023 Case Conference

23. In August 2023, the Monitor understands that counsel to the representative plaintiff provided a copy of their motion record and the Omarali Order to the below insurers in accordance with the notice provision in the Insurance Policies:
- (a) XL Specialty Insurance Company;
 - (b) Tokio Marine HCC;
 - (c) Paragon International Insurance Brokers Ltd.; and
 - (d) CNA Canada.
24. Only counsel for one of the excess insurance providers responded to the representative plaintiff's attempted outreach.
25. On November 16, 2023, counsel to the representative plaintiff, the Monitor, the Applicants and the responding excess insurance provider attended a case conference regarding the Omarali Class Action and the scheduling of the proposed adjudication.
26. Justice Cavanagh advised at the case conference that he was not comfortable proceeding with any scheduling of the motion filed by the representative plaintiff until the insurance providers are personally served. Justice Cavanagh asked that counsel to the representative plaintiff prepare, in consultation with counsel to the Monitor, an endorsement directing Mr. Omarali to personally serve his August 25, 2023 motion record on the insurers enumerated above and a letter to accompany the motion record explaining the reason for the insurers to respond to such motion.

Status of Omarali Class Action Relief

27. On November 24, 2023, counsel to the representative plaintiff provided the Monitor with a draft endorsement; however, the representative plaintiff had not yet provided the

draft letter. The terms of the draft endorsement and a covering letter were settled as between counsel to the Monitor and the representative plaintiff in January, and the endorsement was issued by the Court on January 17, 2024.

28. The Monitor is advised by counsel to the representative plaintiff that they personally served their motion record and covering letter on the insurers enumerated above by personal service on January 15, 2024, in accordance with the terms of the endorsement.
29. The Monitor observes that, since the Closing Date of the Transaction approximately 13 months ago, there has been little to no progress to date regarding the Omarali Class Action relief. At this time, the Omarali Class Action remains the only material outstanding item in the CCAA Proceedings.
30. The Administrative Reserve was not established for the purposes of facilitating lengthy and potentially contentious litigation processes that may take years to resolve. The Monitor is concerned that the Administrative Reserve could be exhausted before the Omarali Class Action's adjudication is finally resolved, to the potential detriment of Just Energy as the recipient of any unused Administrative Reserve funds.

UPDATE ON WIND-DOWN ACTIVITIES BY JURISDICTION

31. The Remaining Entities that have either not completed dissolution, wind-down, or bankruptcy processes, or generally require the on-going assistance of the Monitor, span the following jurisdictions: Canada, the United States, the United Kingdom and Ireland, and Barbados. An overview by jurisdiction of the status of the entities in each jurisdiction follows.

Canada

32. Six of the Remaining Entities resided in Canada (collectively, the “**Canadian Remaining Entities**”, and each a “**Canadian Remaining Entity**”).³ The Monitor facilitated bankruptcy proceedings for five of the six remaining Canadian Remaining

³ The Canadian Remaining Entities consist of: 14487893 Canada Inc., 12175592 Canada Inc., Just Holdings L.P., Just Ventures GP Corp., Just Ventures L.P., and JEAS Holdings LP.

Entities on either October 18, 2023, or October 19, 2023: (a) 12175592 Canada Inc.; (b) JEAS Holdings L.P.; (c) Just Holdings L.P.; (d) Just Ventures GP Corp.; and (e) Just Ventures L.P (collectively, the “**Canadian Bankrupt Estates**”).

33. The first meeting of creditors for each of the Canadian Bankrupt Estates was held on October 30, 2023. FTI Consulting Canada Inc., in its capacity as trustee of each of the Canadian Bankrupt Estates, is in the process of administering each estate and is preparing to seek its discharge.
34. The sole Canadian Remaining Entity is the Canadian ResidualCo. The Omarali Class Action relief and related Omarali Order represent the only remaining matter to be resolved with respect to the Canadian ResidualCo. Upon resolution of the Omarali Class Action matter, the Monitor intends to seek the termination of the CCAA Proceedings and concurrently facilitate a bankruptcy proceeding for the Canadian ResidualCo.

United States

35. Six of the Remaining Entities resided in the United States (the “**U.S. Remaining Entities**”).⁴
36. On October 20, 2023, each of the U.S. Remaining Entities filed voluntary petitions under chapter 7 of the Bankruptcy Code, thereby commencing the following chapter 7 cases: *In re 11368, LLC* (Case No. 23-34049); *In re American Home Energy Servs. Corp.* (Case No. 23-34050); *In re Drag Marketing LLC* (Case No. 23-34051); *In re Just Energy Connecticut Corp.* (Case No. 23-34052); *In re Just Solar Holdings Corp.* (Case No. 23-34053); and *In re Just Ventures LLC* (Case No. 23-34055) (the “**Chapter 7 Cases**”).
37. On December 12, 2023, a representative of the Monitor appeared and testified at the meeting of creditors under section 341 of chapter 7 of the United States Bankruptcy Code. At the conclusion of the meeting, the chapter 7 trustee for each of the Chapter 7

⁴ The U.S. Remaining Entities consist of: 11368, LLC, Just Ventures LLC, Drag Marketing LLC, Just Solar Holdings Corp., American Home Energy Services Corp., and Just Energy Connecticut Corp.

Cases concluded the cases and filed Notices of Proposed Abandonment on December 13, 2023. The objection deadline passed on December 27, 2023, and the Chapter 7 Cases were abandoned without the necessity of further court order.

38. As the Chapter 7 Cases are now fully administered, the Monitor confirms that there are no known remaining matters to attend to in the U.S. or in respect of the U.S. Remaining Entities.

United Kingdom and Ireland

39. Two of the Remaining Entities, Hudson Energy Holdings UK Limited (“**HUK**”) and Just Energy (U.K.) Limited (“**JEUK**”), reside in the United Kingdom, and one of the Remaining Entities, Just Energy (Ireland) Limited (“**JE Ireland**”), resides in Ireland (collectively, the “**UK and Irish Remaining Entities**”).
40. On September 29, 2023, HUK and JEUK entered into voluntary liquidation procedures upon the appointment of representatives of Menzies LLP as liquidator.
41. Also on September 29, 2023, JE Ireland entered voluntary liquidation procedures upon the appointment of representatives of McStay Luby Chartered Accountants as liquidator (collectively with Menzies LLP, the “**Liquidators**”).
42. The Monitor continues to support the Liquidators on an *ad hoc* basis as required to complete the liquidation procedures; however, the Monitor considers its obligations to be effectively complete with respect to these jurisdictions given the Canadian ResidualCo no longer has any interest or responsibilities in respect of HUK, JEUK, and JE Ireland.

Barbados

43. One of the Remaining Entities, Just Energy Services Limited (which is not an Applicant) resides in Barbados (the “**Barbadian Remaining Entity**”). The Monitor continues to attempt to locate and reach an arrangement with a local insolvency trustee whereby the local trustee will be responsible for completing the dissolution of the Barbadian Remaining Entity. The timeline to dissolve the Barbadian Remaining Entity cannot be accurately estimated at present.

REMAINING ACTIVITIES

44. Subject to the implementation of either a bankruptcy or other dissolution approach for the Barbadian Remaining Entity (and ultimately the Canadian ResidualCo upon termination of the CCAA Proceedings), the Monitor regards the following as the remaining activities required to complete the CCAA Proceedings:
- (a) the resolution of the Omarali Class Action claim against the Insurance Policies, which, as noted, is currently impeding the termination of the CCAA Proceedings and bankruptcy of the Canadian ResidualCo;
 - (b) bringing a motion to terminate these CCAA Proceedings and to discharge the Monitor, which is anticipated to be triggered upon filing of a Monitor's Certificate; and
 - (c) the completion of the necessary statutory and administrative steps for the termination of the CCAA Proceedings and the discharge of the Monitor, and the filing of a Monitor's Certificate confirming such steps have been taken.

STAY OF PROCEEDINGS EXTENSION

45. As mentioned above, the existing Stay of Proceedings expires on January 31, 2024. The Monitor is now seeking an 8-month extension to the Stay of Proceedings up to and including September 30, 2024.
46. The reasons for extending the Stay of Proceedings are as follows:
- (a) additional time is required to adjudicate the Omarali Class Action, and the Monitor anticipates continuing its oversight and facilitative role as an officer of the Court in that regard;
 - (b) additional time is required to attend to the wind-down of the Barbadian Entity, or to find a reasonable resolution in respect of the Barbadian Entity;
 - (c) the Monitor is of the view that it has sufficient funds in the Administrative Reserve to continue its oversight role for the proposed extension to the Stay of Proceedings;

- (d) no creditor of the Remaining Entities will be materially prejudiced by an extension of the Stay of Proceedings; and
- (e) the Applicants through the Monitor have acted in good faith and with due diligence.

REMOVAL OF WOUND-DOWN ENTITIES AS APPLICANTS IN CCAA PROCEEDINGS

47. As the Wound-Down Entities have either entered into and/or completed bankruptcy, dissolution, or other wind-down procedures in their respective jurisdictions, the Monitor requests that those specific Wound-Down Entities that were Applicants in these CCAA Proceedings be removed as Applicants, including by amending the title to these CCAA Proceedings.

CONCLUSION

48. The Monitor is of the view that the requested relief is reasonable and justified in the circumstances. Accordingly, the Monitor respectfully requests that the proposed Stay Extension Order be granted.

The Monitor respectfully submits this Sixteenth Report to the Court dated this 19th day of January, 2024.

FTI Consulting Canada Inc.,
in its capacity as Court-appointed
Monitor of 14487893 Canada Inc. *et al*,
and not in its personal or corporate
capacity

Per: _____



Paul Bishop
Senior Managing Director

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 14487893 CANADA 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

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

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