Court of Appeal File No. M53250
Court File No. CV-21-00658423-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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.

(each, an "**Applicant",** and collectively, the "**Applicants")**

MOTION RECORD OF THE MOVING PARTIES

April 5, 2022

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Tab 1

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NOTICE OF MOTION FOR LEAVE TO APPEAL

THE MOVING PARTIES, Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**U.S. Class Counsel**"), in their capacity as counsel to the plaintiff classes (the "**Class Claimants**") in *Donin v. Just Energy Group Inc. et al.* (the "**Donin Action**") and *Trevor Jordet v. Just Energy*

Solutions, Inc. (the "**Jordet Action**", together with the Donin Action, the "**U.S. Litigation**"), will make a motion to a panel of the Court of Appeal for Ontario, in writing on an expedited basis or, in the alternative, within 36 days after service of the moving parties' motion record and factum, or on the filing of the moving parties' reply factum, if any, which ever is earlier.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing.

THE MOTION IS FOR:

1. An order granting U.S. Class Counsel leave to appeal to the Court of Appeal for Ontario from the order of Justice McEwen dated February 9, 2022 (the "**Order**"), dismissing the motion of U.S. Class Counsel seeking, *inter alia*, an order that the Class Claimants be treated as unaffected creditors in the *CCAA* Proceeding (as defined below) or, in the alternative, an order for an expedited adjudication framework and information sharing protocol to allow the Class Claimants the opportunity to vote on a plan and/or have a role in the restructuring process;

2. An order that this leave motion be heard on an expedited basis;

3. An order validating the manner of service of this notice of motion and motion materials herein, if necessary;

4. The costs of this motion; and

5. Such further and other relief as this Honourable Court deems fit.

THE GROUNDS FOR THE MOTION ARE:

6. U.S. Class Counsel's proposed appeal raises serious and arguable grounds with respect to how contingent claims ought to be addressed in *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 ("*CCAA*") proceedings in the face of a pending plan of arrangement or compromise.

7. More specifically, do the *CCAA* and principles of procedural fairness require the debtor and the Court to implement a process that will make full use of the time available prior to the meeting of the creditors and result in the determination or estimation of the claim for the purpose of voting at a meeting of creditors having regard so far as possible to its merits?

8. There are two core requirements for approval of a restructuring plan pursuant to the CCAA: (i) a vote by creditors; and (ii) a court sanction.

9. Justice McEwen's order undermines the voting requirement, one of the foundational pillars of a *CCAA* restructuring. Justice McEwen erred in not using the time available and by failing to put a process in place that leads to a determination of the Class Claimants' claims prior to a meeting of creditors so that the Class Claimants position is fairly represented at the meeting and they can vote.

10. In respect of the failure to order access to information, Justice McEwen made a further error in principle in denying the Class Claimants access to meaningful information so that they can vote on an informed basis.

11. The *CCAA* process must not be engineered in a way that disenfranchises (or increases the likelihood of disenfranchisement of) creditors.

12. These issues are of real and significant interest and importance to the parties, the public, *CCAA* proceedings, insolvency practice in general, and the law.

A. Background

1. The U.S. Class Actions

1. On October 3, 2017, Fira Donin and Inna Golovan filed a proposed class action lawsuit on behalf of themselves and all other U.S. customers alleging, among other things, that the Applicants named as defendants (the "**Just Energy Defendants**") breached their contractual obligations and implied covenant of duty of good faith and fair dealing (the Donin Action).

2. On April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers in which he made similar allegations to the plaintiffs in the Donin Action (the Jordet Action).

3. The Donin Action and the Jordet Action encompass 11 states in which the Just Energy Defendants do business.

4. The Just Energy Defendants sought to have the U.S. Class Actions dismissed. They were unsuccessful. In each case, the court ruled that key claims in the U.S. Litigation were plausible. Both of the U.S. class actions remain stayed in the United States.

2. The CCAA Proceeding

5. On March 9, 2021, the Court issued an Initial Order granting *CCAA* protection to the Applicants (the "**CCAA Proceeding**").

6. On September 15, 2021, the Applicants proposed and the Court issued a "**Claims Procedure Order**" which, among other things, established a "**Claims Bar Date**" of 5:00 p.m. on November 1, 2021 in respect of Pre-Filing Claims (as defined in the Claims Procedure Order).

7. On November 1, 2021, prior to the expiry of the Claims Bar Date, U.S. Class Counsel filed Proof of Claim forms in respect of the Donin Action and the Jordet Action in the aggregate, unsecured amount of approximately $3.66 billion (reflecting a joint, composite damages claim encompassing both lawsuits).

8. In each case, U.S. Class Counsel provided Claim Documentation setting out the relevant background and merits of the respective U.S. class action.

3. The Notice of Disallowance

9. On January 11, 2022, the Applicants served a Notice of Revision or Disallowance with respect to both the Donin and Jordet Proofs of Claim (the "**Notice of Disallowance**"). The Notice of Disallowance disallowed the Donin and Jordet Claims in their entirety.

10. The Notice of Disallowance largely repeats the failed legal arguments that the Applicants made in their unsuccessful attempts to have the Donin Action and the Jordet Action dismissed.

11. The Notice of Disallowance takes issue with the alleged size of the Class and quantum of the alleged claim, yet the Applicants continue to refuse to provide U.S. Class Counsel with the necessary data and information to more precisely determine these issues or to verify the Applicants' unsupported assertions related to class size and damages.

12. The Notice of Disallowance also rejects the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report prepared by Serhan Ogur for the U.S. Litigation.

13. The Class Claimants filed a comprehensive Notice of Dispute of Revision or Disallowance on February 10, 2022.

4. U.S. Class Counsel's Efforts to Obtain Information in Connection with this CCAA

14. U.S. Class Counsel repeatedly requested that the Applicants and the Monitor provide them with access to information in connection with the CCAA Proceeding.

15. U.S. Class Counsel's requests were consistent with the type and character of information that is commonly requested and provided as between creditors and debtors in restructuring proceedings.

16. The information that U.S. Class Counsel requested is necessary to properly evaluate and consider the Applicants' restructuring plan formation and resulting plan proposal in this ongoing CCAA Proceeding. Without this information, the Class Claimants cannot exercise their right to vote on any plan on an informed basis.

17. At this time, with the exception of the DIP Term Sheet and its 15th amendment, U.S. Class Counsel has still not received from the Applicants any substantive information which is useful to evaluate any plan proposal.

18. Notwithstanding repeated requests, the Applicants have largely resisted U.S. Class Counsel's requests. As a result, the flow of information has been deficient and contrary to a consensual *CCAA* restructuring.

5. U.S. Class Counsel, Paliare Roland, Tannor Capital Advisors and the Applicants enter into an NDA

19. On November 30, 2021, Just Energy Group Inc., U.S. Class Counsel, Tannor Capital Advisors and Paliare Roland Rosenberg Rothstein LLP entered into a Confidentiality, Non-Disclosure and Non-Use Agreement (the "**NDA**").

20. Despite the execution of the NDA, the Applicants have continued to delay and resist U.S. Class Counsel's requests for information.

21. Despite requests from U.S. Class Counsel to the Monitor and the Applicants, U.S. Class Counsel has not received substantive information regarding:

(a) the Plan Term Sheet, and the details of the creditor pool and further information on the quantum of claims in this CCAA Proceeding;

(b) whether there are any professionals representing unsecured creditors and the Class Claims in the ongoing realization discussions, given that it now appears the Applicants have equity on the balance sheet (as discussed below);

(c) the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' and/or financiers' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval; and

(d) how and when the Class Claimants' claims will be adjudicated and/or be treated within a vote.

22. U.S. Class Counsel and its advisors need access to this type of information in order to meaningfully participate in any restructuring file, including this CCAA Proceeding.

23. Without this information, U.S. Class Counsel is hampered in its ability to consider and discuss the Applicant's intended course of conduct, and to develop and propose alternatives that may be attractive to and preserve value for the general body of unsecured creditors.

6. The Class Claimants are Unaffected Creditors

24. U.S. Class Counsel sought an Order that the Class Claimants are unaffected in the CCAA Proceeding so that their claims could continue in the U.S. courts.

25. Alternatively, if the claims were not unaffected, then U.S. Class Counsel sought the prompt and efficient adjudication of the Donin and Jordet Claims within the CCAA Proceeding and meaningful information so that the Class Claimants were not effectively disenfranchised.

7. The Expedited Adjudication Framework

26. In response to a request from Counsel to the Applicants, and in anticipation of the disallowance of the Proofs of Claim, on December 13, 2021, U.S. Class Counsel proposed an adjudication plan for the Donin and Jordet Claims.

27. The proposed adjudication plan was an attempt to put in place a mutually-agreeable process for the adjudication of the Donin and Jordet Claims within the CCAA Proceeding.

28. On February 1, 2022, the Applicants finally responded and sent a with prejudice alternative adjudication process that would see the Donin and Jordet Claims determined on a schedule of more than one year.

29. On February 4, 2022, U.S. Class Counsel proposed a further Expedited Adjudication Framework.

30. To accommodate concerns that had been raised with U.S. Class Counsel, the Expedited Adjudication Framework contemplated a more extensive and lengthier adjudication process than U.S. Class Counsel's initial proposal. Specifically, the Expedited Adjudication Framework proposed:

(a) adjudication by a tripartite panel of two US arbitrators and one Canadian arbitrator (collectively, the "**Claims Officers**");

(b) the Honourable Mr. Dennis O'Connor would sit as the Canadian arbitrator and each side would have the right to appoint one Claims Officer from the extensive list of US JAMS arbitrators with class action experience;

(c) the Claims Officers would have complete jurisdiction and discretion to determine the appropriate process for the proceeding within the JAMS US expedited rules and with consideration to an endorsement from the *CCAA* court that the deadline for the release of a decision on the merits was to be three days prior to the meeting of creditors (implying an outside date of March 27, 2022, as it appeared as though the DIP lenders were requesting a timeline that would have a vote on March 30, 2022).; and

(d) any appeal would be to the *CCAA* court.

31. The Expedited Adjudication Framework established a time-sensitive process that addressed and protected the rights and interests of the parties and ensured that all questions about scope, jurisdiction, discovery or any other matter will be dealt with efficiently by the very panel that would hear the case.

32. Given the potential significance of the Donin and Jordet Claims to the approval of any Plan, there is a need to establish a process for the valuation of these claims in advance of any meeting of creditors and sanction hearing (or any other exit from this CCAA Proceeding).

B. The February 9, 2022 Order

33. Throughout various case conferences and discussions the Applicants and the Monitor told U.S. Class Counsel that their requests for information and for an expedited adjudication process were premature.

34. Then, at approximately 3:20 pm, on February 4, 2022, the day that U.S. Class Counsel's factum was due, and three business days before the motion, the Monitor served the Fifth Report of the Monitor in which it advised that the DIP lenders were requesting a timeline that would see a vote on a plan by March 30, 2022. A motion date was also set for March 3, 2022, at which time the Applicants will seek an order to file the plan and obtain a meeting order.

35. After months of saying that U.S. Class Counsel's requests were premature and that there would be time, a vote was being proposed within 8 weeks.

36. U.S. Class Counsel's motion was heard on February 9, 2022.

37. Justice McEwen dismissed U.S. Class Counsel's motion from the bench, but stated that his Honour "may have some comments on the information sharing". His Honour advised that he hoped to have handwritten reasons delivered to the parties by February 16, 2022.

38. Justice McEwen did not provide handwritten reasons on February 16, 2022.

39. On February 22, 2022, Jeffrey Larry ("**Mr. Larry**"), counsel to U.S. Class Counsel wrote a letter to the Applicants' counsel advising that given that Justice McEwen had not released reasons, and that the import of the decision was not known yet, it was U.S. Class Counsel's position that the time for seeking leave to appeal had not begun running.

40. Mr. Larry requested that the Applicants agree to consent to any motion that U.S. Class Counsel may be required to bring for an extension of time.

41. On February 23, 2022, Justice McEwen delivered handwritten reasons.

42. Later on February 23, 2022, the Applicants' counsel advised that it would not consent to any extension of time regarding this appeal.

C. Proposed Appeal

43. If leave is granted, this court would be asked to answer the following questions:

(a) How are contingent claims to be addressed in *CCAA* proceedings in the face of a pending plan?

(b) Do the *CCAA* and the principles of procedural fairness require a debtor and the Court to implement a process that will result in the determination or estimation of the claim for the purpose of voting at a meeting of creditors?

D. Leave to appeal should be granted

44. The points raised on the proposed appeal are significant to these proceedings and to the practice, and are *prima facie* meritorious.

45. There is good reason to doubt the correctness of the Order appealed.

46. Justice McEwen erred in principle in allowing the Applicants to pursue a process that will ultimately result in the Class Claimants' disenfranchisement.

47. Justice McEwen also erred in failing to consider the impact of his decision on one of the two core requirements for approval of a restructuring plan – the vote by creditors.

48. The vote by creditors must be meaningful in order to advance the policy objectives underlying the *CCAA*.

49. The *CCAA* places the restructuring process under the Court's supervision. The Court is required to impose obligations on the debtor to ensure creditors may meaningfully exercise the right to vote.

50. In making the impugned order, the motion judge denied the Class Claimants' procedural fairness.

51. Given the number of claimants and the size of the Donin and Jordet Claims, the fair treatment and assessment of these claims is critical to the outcome of the CCAA Proceeding.

52. Indeed, the Class Claimants are creditors and potentially key stakeholders in the Applicants' restructuring. The Class Claimants are the Applicants' former and current customers. They have a significant interest in the CCAA Proceeding and a successful restructuring of the Applicants.

53. The proposed appeal involves matters of such importance that leave to appeal should be granted.

54. The proposed appeal is of profound significance to *CCAA* proceedings in general. Justice McEwen's order dilutes the principle of *CCAA* proceedings that creditors must be treated fairly and narrows the scope of the fundamental protections to creditors that the *CCAA* is designed to provide.

55. Justice McEwen's decision is a concerning precedent that threatens to disrupt the relationship between creditors and debtors. His Honour's decision creates a restructuring dynamic that is fundamentally at odds with the principles of the *CCAA*. It also undermines the obligations on debtors to satisfy the Court that they have proceeded in a manner where the transparency, integrity, credibility and fairness of the process is beyond reproach.

56. Moreover, the learned motion judge's approach will have significant impact on contingent creditors in *CCAA* proceedings. It will encourage debtors to avoid determining contingent claims.

57. The *CCAA* has a remedial objective. It is focused on *all* stakeholders. It requires that creditors, including contingent creditors, be treated fairly and meaningfully.

58. The appeal is *prima facie* meritorious and is not frivolous.

59. US Class Counsels' proposed appeal will not unduly hinder the progress of the CCAA Proceeding.

E. An Expedited Hearing of this Motion is Necessary

60. U.S. Class Counsel asks that this motion for leave to appeal be heard as soon as possible by this Court.

61. While this motion remains outstanding, the CCAA Proceeding is continuing and the clock continues to run towards a plan and a vote.

F. Statutory Grounds

62. Rules 1.04, 1.05, 61.03.1 and 63.02 of the *Rules of Civil Procedure.*

63. Sections 11, 11.02 and 18.6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

64. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Orders and endorsements of the court made in the CCAA Proceeding;

2. The evidence before the court on the motion; and

3. Such further and other evidence as counsel may advise and as this Honourable Court may permit.

February 24, 2022

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Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*

Court of Appeal File No. M53250
Court File No. CV-21-00658423-00CL

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC. ET AL.
Applicant

COURT OF APPEAL FOR *ONTARIO*
~~**SUPERIOR COURT OF JUSTICE**~~

PROCEEDING COMMENCED AT TORONTO

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Tab 2

Electronically issued
Délivré par voie électronique : 04-Apr-2022
Toronto

Court File No. CV-21-00658423 L

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 9th
	)	
JUSTICE MCEWEN	)	DAY OF FEBRUARY, 2022

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 C NADA 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, UDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

(each, an "**Applicant**", and collectively, the "**Applicants**")

ORDER
(Class Counsel's Motion for Advice and Direction)

THIS MOTION, brought by Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**Class Counsel**"), in their capacity as counsel to the proposed plaintiff classes (the "**Class Claimants**") in *Donin v. Just Energy Group*

Inc. et al.[1] (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions Inc.* [2] (the "**Jordet Action**", together with the Donin Action the "**U.S. Litigation**"), seeking advice and directions of the Court in respect of the Class Claimants' role in these proceedings and the availability of due process, including:

(a) an order, if necessary, validating the method of service, dispensing with further service, and abridging the time for filing of this motion, such that the motion is properly returnable on the date indicated above;

(b) an order declaring that the Class Claimants are to be unaffected by this CCAA Proceeding;

(c) in the alternative to the relief sought in paragraph (b), in the event the Class Claimants are to be affected by this CCAA Proceeding:

(i) an order directing the implementation of a timely schedule and process leading to the final adjudication of the Class Claims, prior to any consideration by this Court of the Applicants' Plan or other event to exit this CCAA proceeding (the "**Claims Adjudication Process**") in substantially the following form:

(A) three arbitrators from JAMS (US) with consumer class action experience shall be appointed to sit as Claims Officers in this CCAA Proceeding;

(B) the Claims Adjudication Process shall employ the "Expedited Procedures" in the JAMS Comprehensive Arbitration Rules;

(C) the Claims Adjudication process shall employ a process for exchanging documents and conducting any necessary depositions, subject to the oversight of the Claims Officers; and

[1] No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.).

[2] No. 18 Civ. 953 (WMS) (W.D.N.Y.).

(D) the Class Claims shall be finally adjudicated at a hearing lasting five to seven days in February 2022;

(ii) an order, substantially in the form attached to Class Counsel's notice of motion as Schedule "A", directing the Applicants to provide the Class Claimants with access to any data room established by them in respect of these proceedings, and appointing a mediator/arbitrator to resolve all matters pertaining to the production of documents and access to information for restructuring purposes (as distinct from production for the purpose of the Claims Adjudication Process) together with such other procedural or substantive matters as the parties may agree or the Court may direct;

(iii) in the alternative to the relief sought in paragraph (c)(ii), above, an order:

(A) directing the specific production of the following documents and information within seven (7) days of the date of the order:

(1) a listing of creditors, the amount claimed by each creditor, whether security or other priority is claimed, and the status of the claim (i.e., allowed/contested/subject to ongoing review/etc.) and the aggregate number of creditors and claims;

(2) the DIP Term Sheet, each of its revisions, the latest current form, a conformed copy of the DIP term sheet with all revisions, any future updates, signature pages, DIP loan amount exhibits by DIP Loan participant, and definitive documents, and any other related non-privileged documents;

(3) copies of all of the Applicants' insurance policies that might respond to the Class Claims, the coverage status, the total amount drawn against the policy to date, and a list of competing claims made against the policies;

(4) a list and the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval;

(5) the restructuring, realization and/or sale or investment process related to any and all exit plans under consideration by the Applicants;

(6) any debt capacity analyses by the company and/or its investment bank;

(7) an updated business plan showing updates of actual results to projected results, an update showing the range of recoveries as per Texas House Bill 4492, the proceeds from

the sale of ecobee Shares, and all other updates included in the business plan since it was published in May 2021; and

(8) a statement of the enterprise value of the company with supporting documents showing methodology, multiples, discount rates used, and comparables relied upon;

(B) directing the Applicants and their necessary advisors to meet with Class Counsel and their advisors within seven (7) days of the completion of production of the foregoing information, to review the information and answer questions; and

(C) scheduling a further case conference within 21 days of the date of the order to report on the status of its implementation and to schedule such further case conferences or hearings as may be necessary for the effective management and supervision of these proceedings;

(d) the costs of this motion; and

(e) such further and other relief as to this Honourable Court may seem just, including, without limitation, if and as necessary for the purpose of giving effect to the new information exchange regime contemplated at paragraphs (c)(ii) and (c)(iii) above, the variation of any prior orders made in these proceedings.

was heard on February 9, 2022 by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic, with reasons released on February 23, 2022.

ON READING the Motion Record of Class Counsel dated January 19, 2022, the Factum and Book of Authorities of Class Counsel dated February 4, 2022, the Compendium of Class Counsel dated February 8, 2022, the Motion Record of the Applicants dated February 2, 2022, the Responding Factum of the Applicants dated February 7, 2022, the Factum and Book of Authorities of the DIP Lenders dated February 7, 2022, the Compendium of the Applicants and the DIP Lenders dated February 7, 2022, and the Fifth Report of FTI Consulting Canada Inc., in its capacity as Court Appointed Monitor, dated February 4, 2022, and on hearing the submissions of respective

counsel for the Applicants, Class Counsel, the DIP Lenders, the Monitor, and such other counsel as were present, no one else appearing although duly served, filed:

1. **THIS COURT ORDERS** that this motion is dismissed.

McE— J.

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

9 Feb 22

Order to go as per the draft filed and signed. Counsel have agreed to the form and content.

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(Class Counsel's Motion for Advice and Direction)

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Counsel for the Applicants

Tab 3

Court File Number: CV-21-00658423-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the Matter of Just Energy Group Inc.
Plaintiff(s)

AND

Defendant(s)

Case Management ☑ Yes ☐ No by Judge: McEwen J

Counsel	Telephone No:	Facsimile No:
see counsel slip		

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: ______
☐ Time Table approved (as follows):

US Class Counsel brought a motion on February 9/22 primarily seeking the following relief:
(1) an order declaring the class claimants in the Donin v. Just Energy Group Inc et and the Jordet v. Just Energy Solutions Inc (the "Class Claimants") are to be unaffected by this CCAA Proceeding;
(2) in the alternative, an order directing

23 Feb 22
Date

McEwen J
Judge's Signature

☑ Additional Pages 16

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Superior Court of Justice
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Judges Endorsment Continued

amongst other things, "a timely schedule and process" leading to the final adjudication of the Dorin and Tordet Actions (the "Class Claims") prior to this Court's determination of the Applicant's Plan, or other event to exit this CCAA Proceeding; and,

(3) access to any data room / appointing a mediator / arbitrator to resolve disputes / production of specific documents listed in the Notice of Motion / & a compulsory meeting between the Applicants and U.S. Class Counsel.

Upon the conclusion of the motion I dismissed the motion with reasons to follow. I am now providing those reasons by hand given the time sensitive nature of this matter.

I do not propose to outline the background of this matter,

Judges Initials TM

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Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

in great detail, as the facts are well-known to the stakeholders.

Briefly, the Applicants obtained CCAA protection in March/21. The Applicants have been working with its significant stakeholder in their capital structure to develop a going-concern restructuring plan (the "Plan").

The Applicants provide energy to approximately 950,000 customers in Canada and the U.S. and employ over 1,000 people.

Currently, the Applicants are hopeful that agreement on the Plan can be reached in the near future. A motion date has been set for March 3/22 at which time the Applicants will seek an order to file the Plan and obtain a meeting order. There is some

Judges Initials TM

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Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

possibility that the March 3/22 hearing date will be delayed somewhat if the Plan has not been prepared.

In this regard the Applicants are working with their DIP Lenders (who are also the Term Loan Lenders, and the assignee of a large secured supplier claim from BP), the Credit Facility Lenders and Shell who is also a significant, secured supplier.

The Monitor is assisting and is supportive of the attempt to file a Plan.

Against this backdrop, the U.S. Class Counsel bring their motion. Generally, they assert that either the Class Claimants should be unaffected by the CCAA proceeding or, alternatively, that the aforementioned expedited process be

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Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

undertaken before three arbitrators from JAMS (US) to ensure that the Class Claimants can meaningfully participate in the restructuring process and vote at a meeting of creditors considering the Plan.

This would of necessity require a motion on certification, possible summary judgment, outstanding discovery (to date there has been no discovery in the Tordet Action) preparation of experts reports, procedural motions, PTC and trial.[1]

US Class Counsel link their schedule to the Creditors' Meeting where a vote would take place.

Although uncertified, the Class Claims have survived an attempt in the US Courts to have them dismissed outright, although the

 Judges Initials FM

1. A potential appeal could obviously not be dealt with in the proposed timeframe.

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Class Claims have been narrowed in scope.

Also, US Class Counsel have filed two Proofs of Claim, which the Monitor has denied. Each is in the amount of approximately $3.6 billion USD and is an unsecured claim.

Insofar as the motion is concerned, the Applicants oppose the relief sought and are supported by the Monitor.

The DIP Lenders, the Agent/Credit Facility Lenders and Shell also oppose the motion.

I will now turn to the relief sought by U.S. Class Counsel.

First, as noted, US Class Counsel seek an order that the Class Claimants should be unaffected by

 Judges Initials TM

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

this CCAA Proceeding.
Generally, they submit that the Applicants cannot have it both ways: Namely, they cannot describe the Class Claims as being meritless / frivolous and at the same time resist a motion to allow them to proceed outside of the CCAA Proceeding.
I disagree. If the order was granted it would allow the unsecured Class Claimants to partially dictate the form of the Plan which has not yet been placed before this Court. This runs contrary to the caselaw that allows debtors to determine how they should deal with creditors in a proposed plan — subject to a creditor vote.
In this regard, U.S. Class Counsel have not produced any

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

caselaw to support its position. To allow the relief sought would, in essence, elevate the Class Claims above other unliquidated, unsecured, contingent claims who would undoubtedly like to receive similar treatment.

Further, as a practical matter, the DIP Lenders who have been longstanding stakeholders, have clearly stated that they will not support a Plan that leaves the Class Claims unaffected. This is a reasonable position given the nature of the proposed Plan.

Second is the motion directing the speedy determination of the Class Claims utilizing JAMS (U.S) within the general time frame set out above.

Here U.S Class Counsel submit that the Applicants ignored them

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

for approximately three weeks late in 2021 and US Class Counsel were later told in early Feb/22 that there was no time to conduct the proposed process given the proposed meeting date.

US Class Counsel also submit that there is equity in the Applicants based on their own filings (which is hotly contested by the Applicants).

Overall, they argue that the process must be fair and reasonable/constructive for all stakeholders; that their timeline is achievable and has been accomplished in other similar cases[2]; and that given the size of the Class Claims that they should be determined before the creditors' vote, particularly since they have been disallowed by the Monitor.

  Judges Initials TM

2. Essar Steel Algoma (Re) 2016 ONSC 1802, leave ref'd 2016 ONCA 274; Covia Canada Partnership Corp v PWA Corp 1993 CanLII 9429 (ONSC) aff'd 1993 CanLII 815 (ON CA).

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

I do not agree for a number of reasons:

i) I do not accept that the Applicants have "sandbagged" the US Class Counsel based on the record before me. Given the complexity of the restructuring and the timing of the U.S. Class Counsel's proposed adjudication plan it is not surprising that it took a matter of weeks to respond;

ii) within the CCAA Proceeding U.S Class Counsel have not yet contested the disallowance of the Class Claims, thus not triggering the adjudication process provided for in claims procedure order;

iii) I have significant concerns, and very much doubt, that the process proposed by US Class Counsel is viable given the significant number of hearings – including

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Superior Court of Justice
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Judges Endorsment Continued

certification and damage - that would have to occur in a compressed timeline (it bears noting that in the 3-4 years that the Class Claims have been outstanding they have not completed these stages).

iv) even if such a process was allowed it would be a tremendous distraction from the restructuring which is at a critical juncture;

v) the Applicants' Plan has not yet been offered to the Court, nor has the issue of a meeting order been addressed - the CCAA process should be allowed to progress further before the adjudication proposed by U.S. Class Counsel is considered;

vi) last and overall, I am not of the view that the hotly contested Class Claims (both on

Judges Initials DM

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Judges Endorsment Continued

liability and quantum) ought to adjudicated before other claims and prior to the next contemplated step in the CCAA Proceeding – in this regard the cases relied upon (Essar and Coviva) are distinguishable as per the submission of the DIP Lender at paras 34-35 of their factum.[2a]

The third issue concerns the data room / production of documents and related relief.

US Class Counsel generally submit that given the size and nature of their Class Claims that it is appropriate that they have access to the data room and the specific documents referenced in para 3(c) of their Notice of Motion.

In this regard US Class Counsel rely on a number of other

Judges Initials DM

2a - See also the Applicant's Factum at para 69.

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Judges Endorsment Continued

CCAA cases in which significant stakeholders were given access to data rooms / documentation[3].

US Class Counsel have entered into an NDA with the Applicants. With the assistance of the Monitor, certain documentation, including the Applicants' May 21 Business Plan and DIP Term Sheet amongst other documents, have been provided to US Class Counsel. Many requests have not been agreed to by the Applicants.

It bears noting that the secured lenders will not provide their consent to share information / documentation sought which concerns their confidential negotiations.

Further, in this regard the Monitor submits that it, and the Applicants, have been responsive to US Class

 Judges Initials TM

3. As per para 84 of U.S. Class Counsel's Factum.

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Superior Court of Justice
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Judges Endorsment Continued

Class Counsel's request for documentation and that the only documentation withheld relates to information concerning the negotiations. The Monitor, again, supports the Applicants' position.

At the motion, time did not allow for a granular review of the documents produced and sought.

I agree with the Applicants, however, that US Class Counsel should not be allowed to documentation concerning the ongoing negotiations. Further, based on the record I am generally satisfied that adequate production has been made.

If specific documents not related to the negotiations, are still sought I can be spoken to.

With respect to the issue of production I also note that the cases relied

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

upon by US Class Counsel are not analogous to the within CCAA Proceeding. For example, this CCAA Proceeding is far different than that in Sino-Forest or Nortel.[4]

For all of the reasons above the motion is dismissed. Generally, I am of the view that the CCAA Proceeding ought to proceed as per the provisions of the Act without the relief sought by US Class Counsel (save and except some limited production if deemed sensible by this Court).

In due course the Plan will be presented to the Court and the question of a meeting order will be dealt with. US Class Counsel will have the opportunity to make submissions. This is

 Judges Initials DM

4. See para 84 of the Applicants' Factum.

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Superior Court of Justice
Commercial List

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Judges Endorsment Continued

preferrable and fairer to all creditors than to have the Class Claims receive enhanced treatment insofar as an expedited hearing and production are concerned.

It also negates the possibility of derailing the ongoing, sensitive negotiations that are currently ongoing and creating a truncated adjudication of the Class Claims that may well be unachievable in the available time period.

[signature]

Judges Initials TM

Tab 4

Unofficial Transcription of the Written Reasons of Justice McEwen, February 23, 2022

In the Matter of Just Energy Group Inc.
McEwen J.

U.S. Class Counsel brought a motion on February 9/22 primarily seeking the following relief:

1. an order declaring the class claimants in the Donin v. Just Energy Group Inc et and Jordet v. Just Energy Solutions Inc. (the "Class Claimants") are to be unaffected by this CCAA Proceeding;

2. in the alternative, an order directing amongst other things, a timely schedule and process leading to the final adjudication of the Donin and Jardet Actions (the "Class Claims") prior to this Courts determination of the Applicants Plan, or other event to exit this CCAA Proceeding; and

3. access to any data room/appointing a mediator/arbitrator to resolve disputes/production of specific documents listed in the Notice of Motion / + a compulsory meeting between the Applicants and U.S. Class Counsel.

Upon the conclusion of the motion I dismissed the motion with reasons to follow. I am now providing those reasons by hand given the time sensitive nature of this matter.

I do not propose to outline the background of this matter, in great detail, as the facts are well-known to the stakeholders.

Briefly, the Applicants obtained CCAA protection in March/21. The Applicants have been working with its significant stakeholder in their capital structure to develop a going-concern restructuring plan (the "Plan").

The Applicants provide energy to approximately 950,000 customers in Canada and the U.S. and employ over 1,000 people.

Currently, the Applicants are hopeful that agreement on the Plan can be reached in the near future. A motion date has been set for March 3/22 at which time the Applicants will seek an order to file the Plan and obtain a meeting order. There is some possibility that the March 3/22 hearing date will be delayed somewhat if the Plan has not been prepared.

In this regard the Applicants are working with the DIP Lenders (who are also the Term Loan Lenders, and the assignee of a large secured supplier claim from BP), the Credit Facility lenders and Shell who is also a significant, secured supplier.

The Monitor is assisting and is supportive of the attempt to file a Plan.

Against this backdrop, the U.S. Class Counsel bring their motion. Generally, they assert that either the Class Claimants should be unaffected by the CCAA proceeding or, alternatively, that the aforementioned expedited process be undertaken before three arbitrators from JAMS (US) to ensure that the Class Claimants can meaningfully participate in the restructuring process and vote at a meeting of creditors considering the Plan.

This would, of necessity, require a motion on certification, possible summary judgment, outstanding discovery (to date there has been no discovery in the Jardet Action), preparation of expert reports, procedural motions, PTC and trial.[1]

U.S. Class Counsel link their schedule to the Creditors Meeting where a vote would take place.

Although uncertified, the Class Claims have survived an attempt in the US Courts to have them dismissed outright, although the Class Claims have been narrowed in scope.

Also, U.S. Class Counsel have filed two Proofs of Claims, which the Monitor has denied. Each is in the amount of approximately $3.6 billion USD and is an unsecured claim.

Insofar as the motion is concerned, the Applicants oppose the relief sought and are supported by the Monitor.

The DIP Lenders, the Agent/Credit Facility Lenders and Shell also oppose the motion.

I will now turn to the relief sought by U.S. Class Counsel. First, as noted, U.S. Class Counsel seek an order that the Class Claimants should be unaffected by this CCAA Proceeding.

Generally, they submit that the Applicants cannot have it both ways. Namely, they cannot describe the Class Claims as being meritless/frivolous and at the same time resist a motion to allow them to proceed outside of the CCAA Proceeding.

I disagree. If the order was granted it would allow the unsecured Class Claimants to partially dictate the form of the Plan which has not yet been placed before this Court. This runs contrary to the caselaw that allows debtors to determine how they should deal with creditors in a proposed plan – subject to a creditor vote.

In this regard, U.S. Class Counsel have not produced any caselaw to support its position. To allow the relief sought would, in essence, elevate the Class Claims above other unliquidated, unsecured, contingent claims who would undoubtedly like to receive similar treatment.

Further, as a practical matter, the DIP Lenders who have been longstanding stakeholders, have clearly stated that they will not support a Plan that leaves the Class

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[1] A potential appeal could obviously not be dealt with in the proposed timeframe.

Claims unaffected. This is a reasonable position given the nature of the proposed Plan. Second, is the motion directing the speedy determination of the Class Claims utilizing JAMS (US) within the general time frame set out above.

Here U.S. Class Counsel submit that the Applicants ignored them for approximately three weeks late in 2021 and U.S. Class Counsel were later told in early Feb/22 that there was no time to conduct the proposed process given the proposed meeting date.

U.S. Class Counsel also submit that there is equity in the Applicants based on their own filing (which is hotly contested by the Applicants).

Overall, they argue that the process must be fair and reasonable/constructive for all stakeholders; that their timeline is achievable and has been accomplished in other similar cases[2]; and that given the size of the Class Claims that they should be determined before the creditors vote, particularly since they have been disallowed by the Monitor.

I do not agree for a number of reasons:

i) I do not accept that the Applicants have "sandbagged" the U.S. Class Counsel based on the record before me. Given the complexity of the restructuring and the timing of the Class Counsel's proposed adjudication plan it is not surprising that it took a matter of weeks to respond;

ii) Within the CCAA Proceeding U.S. Class Counsel have not yet contested the disallowance of the Class Claims, there not triggering the adjudication process provided for in claims procedure order;

iii) I have significant concerns, and very much doubt, that the process proposed by U.S. Class Counsel is viable given the significant number of hearings – including certification and damage – that would have to occur in a compressed timeline (it bears noting that in the 3-4 years that the Class Claims have been outstanding they have not completed these stages);

iv) even if such a process was allowed it would be a tremendous distraction from the restructuring which is at a critical juncture;

v) the Applicants' Plan has not yet been offered to the Court, nor has the issue of a meeting order been addressed – the CCAA process should be allowed to progress further before the adjudication proposed by U.S. Class Counsel is considered;

vi) last and overall, I am not of the view that the hotly contested Class Claims (both on liability and quantum) ought to adjudicated before other claims and prior to the next contemplated steps in the CCAA Proceeding – in this regard

[2] Essar Steel Algoma (re) 2016 ONSC 1802, leave ref'd 2016 ONCA 274; Covia Canada Partnership Corp. v. PWA Corp. 1993 CanLII 9429 (ONSC) aff'd 1993 CanLII 815 (ONCA)

> the cases relied upon (Essar and Covia) are distinguishable as per the submissions of the DIP Lenders at paras 34-35 of their factum [3]

The third issue concerns the data room/production of documents and related relief.

U.S. Class Counsel generally submit that given the size and nature of their Class Claims that it is appropriate that they have access to the data room and the specific documents referenced in para 3(c) of their Notice of Motion.

In this regard U.S. Class Counsel rely on a number of other CCAA cases in which significant stakeholders were given access to data rooms/documentation.[4]

U.S. Class Counsel have entered into an NDA with the Applicants with the assistance of the Monitor, certain documentation, including the Applicants' May 21 Business Plan and the DIP Term Sheet amongst other documents, have been provided to U.S. Class Counsel. Many requests have not been agreed to by the Applicants.

It bears noting that the secured lenders will not provide their consent to share information/documentation sought which concerns their confidential negotiations.

Further, in this regard the Monitor submits that it, and the Applicants, have been responsive to U.S. Class Counsel's request for documentation and that the only documentation withheld relates to information concerning the negotiations. The Monitor, again, supports the Applicants' position.

At the motion, time did not allow for a granular review of the documents produced and sought.

I agree with the Applicants, however, that U.S. Class Counsel should not be allowed the documentation concerning the ongoing negotiations. Further, based on the record I am generally satisfied that adequate production had been made.

If specific documents, not related to the negotiations are still sought I can be spoken to.

With respect to the issue of production. I also note that the cases relied upon by U.S. Class Counsel are not analogous to the within CCAA Proceeding. For example, this CCAA Proceeding is far different than that in Sino-Forest or Nortel[5].

For all of the reasons above the motion is dismissed. Generally, I am of the view that the CCAA Proceeding ought to proceed as per the provision of the Act without the relief sought by U.S. Class Counsel (save and except some limited production if deemed sensible by this Court).

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[3] See also the Applicants factum at para 69

[4] As per para 84 of the U.S. Class Counsel's factum

[5] See para 84 of the Applicants' factum

In due course the Plan will be presented to the Court and the question of a monitoring order will be dealt with. U.S. Class Counsel will have the opportunity to make submissions. This is preferable and fairer to all creditors than to have the Class Clams receive enhanced treatment insofar as an expedited hearing and production are concerned.

It also negates the possibility of derailing the ongoing, sensitive negotiations that are currently ongoing and creating a truncated adjudication of the Class Claims that may well be unachievable in the available time period.

McEwan J.

Tab 5

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

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.
(each, an "**Applicant",** and collectively, the "**Applicants")**

NOTICE OF MOTION AND CROSS-MOTION
(Motion for Advice and Direction)

Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**Class Counsel**"), in their capacity as counsel to the plaintiff classes (the "**Class Claimants**") in *Donin v. Just Energy Group Inc. et al.*[1] (the

[1] No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.).

“**Donin Action**”) and *Trevor Jordet v. Just Energy Solutions, Inc.*[2] (the “**Jordet Action**”, together with the Donin Action, the "**U.S. Litigation**"), will make a motion and cross-motion before the Honourable Justice McEwen of the Commercial List on February 9, 2022 at 10:00 a.m., or as soon after that time as the Motion can be heard via Zoom at Toronto, Ontario. If you intend to participate in the motion, you should send an email expressing your intention to Toronto.commerciallist@jus.gov.on.ca and teleconference details will be circulated to you in the ordinary course.

PROPOSED METHOD OF HEARING: The Motion is to be heard by videoconference.

THE MOTION IS FOR THE ADVICE AND DIRECTION OF THE COURT IN RESPECT OF THE CLASS CLAIMANTS’ ROLE IN THESE PROCEEDINGS AND THE AVAILABILITY OF DUE PROCESS, INCLUDING:

1. an order, if necessary, validating the method of service, dispensing with further service, and abridging the time for filing of this motion, such that the motion is properly returnable on the date indicated above;

2. an order declaring that the Class Claimants are to be unaffected by this CCAA Proceeding;

3. in the alternative to the relief sought in paragraph 2, in the event the Class Claimants are to be affected by this CCAA Proceeding:

[2] No. 18 Civ. 953 (WMS) (W.D.N.Y.).

a. an order directing the implementation of a timely schedule and process leading to the final adjudication of the Class Claims, prior to any consideration by this Court of the Applicants' Plan or other event to exit this CCAA Proceeding (the "**Claims Adjudication Process**"), in substantially the following form:

(1) three arbitrators from JAMS (US) with consumer class action experience shall be appointed to sit as Claims Officers in this CCAA Proceeding;

(2) the Claims Adjudication Process shall employ the "Expedited Procedures" in the JAMS Comprehensive Arbitration Rules;

(3) the Claims Adjudication Process shall employ a process for exchanging documents and conducting any necessary depositions, subject to the oversight of the Claims Officers; and

(4) the Class Claims shall be finally adjudicated at a hearing lasting five to seven days in February 2022;

b. an order, substantially in the form attached hereto as **Schedule "A"**, directing the Applicants to provide the Class Claimants with access to any data room established by them in respect of these proceedings, and appointing a mediator/arbitrator (the "**Mediator/Arbitrator**") to resolve all matters pertaining to the

production of documents and access to information for restructuring purposes (as distinct from production for the purpose of the Claims Adjudication Process), together with such other procedural or substantive matters as the parties may agree of the Court may direct;

c. in the alternative to the relief sought in paragraph 3(b), above, an order:

(1) directing the specific production of the following documents and information within seven (7) days of the date of the order:

(A) a listing of creditors, the amount claimed by each creditor, whether security or other priority is claimed, and the status of the claim (i.e., allowed/contested/subject to ongoing review/etc.) and the aggregate number of creditors and claims;

(B) the DIP Term Sheet, each of its revisions, the latest current form, a conformed copy of the DIP term sheet with all revisions, any future updates, signature pages, DIP loan amount exhibits by DIP Loan participant, and definitive documents, and any other related non-privileged documents;

(C) copies of all of the Applicants' insurance policies that might respond to the Class Claims, the coverage

status, the total amount drawn against the policy to date, and a list of competing claims made against the policies;

(D) a list and the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval;

(E) the restructuring, realization and/or sale or investment process related to any and all exit plans under consideration by the Applicants;

(F) any debt capacity analyses by the company and/or its investment bank;

(G) an updated business plan showing updates of actual results to projected results, an update showing the range of recoveries as per Texas House Bill 4492 (described below), the proceeds from the sale of ecobee Shares (defined below), and all other updates included in the business plan since it was published in May, 2021; and

(H) a statement of the enterprise value of the company with supporting documents showing methodology,

multiples, discount rates used, and comparables relied upon;

(2) directing the Applicants and their necessary advisors to meet with Class Counsel and their advisors within seven (7) days of the completion of production of the foregoing information, to review the information and answer questions; and

(3) scheduling a further case conference within 21 days of the date of the order to report on the status of its implementation and to schedule such further case conferences or hearings as may be necessary for the effective management and supervision of these proceedings;

4. the costs of this motion; and

5. such further and other relief as to this Honourable Court may seem just, including, without limitation, if and as necessary for the purpose of giving effect to the new information exchange regime contemplated at paragraphs 3(b) and (c) above, the variation of any prior orders made in these proceedings.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

The U.S. Litigation

6. On October 3, 2017, Fira Donin and Inna Golovan filed a proposed class action lawsuit on behalf of themselves and all other U.S. customers alleging, among other things, that the Applicants named as defendants (the "**Just Energy Defendants**") breached their contractual obligations and implied covenant of duty of good faith and fair dealing (the Donin Action).

7. On April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers in which he made similar allegations to the plaintiffs in the Donin Action (the Jordet Action).

8. The Donin Action and the Jordet Action are nationwide and encompass all states in which the Just Energy Defendants do business.

9. The Just Energy Defendants sought to have the Donin Action and the Jordet Action dismissed. They were unsuccessful because both courts ruled that the Plaintiffs' claims were plausible, and both actions remain pending in the United States.

THE CCAA Proceeding

10. On March 9, 2021, the Court issued an Initial Order granting CCAA protection to the Applicants.

11. On September 15, 2021, the Court issued a “**Claims Procedure Order**” which, among other things, established a “**Claims Bar Date**” of 5:00 p.m. on November 1, 2021 in respect of Pre-Filing Claims (as defined in the Claims Procedure Order).

12. On November 1, 2021, prior to the expiry of the Claims Bar Date, Class Counsel filed Proofs of Claim forms in respect of the Donin Action and the Jordet Action in the aggregate, unsecured amount of approximately $3.66 billion (reflecting a joint, composite damages claim encompassing both lawsuits).

13. In each case, Class Counsel provided Claim Documentation setting out the relevant background and merits of the U.S. Litigation.

14. Publicly filed financial statements dated September 30, 2021 indicate that Just Energy Group Inc. had approximately $12.6 million CAD in equity on its balance sheet.

15. By virtue of the size of the claims in the Donin Action and Jordet Action, and having regard to the Applicants’ publicly filed financial statements, the Class Claimants have a significant stake in the CCAA Proceeding and ought to be treated as material stakeholders.

CLASS COUNSEL’S EFFORTS TO OBTAIN INFORMATION IN CONNECTION WITH THIS CCAA

Class Counsel’s Initial Requests

16. Class Counsel has repeatedly requested that the Applicants and the Monitor provide them with access to information in connection with the CCAA Proceeding.

17. Class Counsel’s requests are consistent with the type and character of information that is commonly requested and provided as between creditors and debtors in restructuring proceedings.

18. The information that Class Counsel has requested is necessary to properly evaluate and consider the ongoing CCAA Proceeding.

19. Notwithstanding repeated requests, the Applicants have largely resisted Class Counsel’s requests. As a result, the flow of information has been deficient and contrary to a consensual CCAA restructuring.

20. On November 10, 2021, Steven Wittels, representing the Class Claimants, appeared on a motion before Justice Koehnen and objected to the Applicants’ request for a second Key Employee Retention Plan (“**KERP**”), arguing that it was a waste of corporate assets. Mr. Wittels also alleged that the Applicants had not been forthcoming in providing Class Counsel with any information as to the Applicants’ financial status.

21. On November 11, 2021, Class Counsel requested a meeting with counsel for the Monitor to discuss access to certain financial information of the Applicants.

22. On November 12, 2021, counsel for the Monitor suggested that Class Counsel direct their request to the Applicants.

23. On November 24, 2021, Class Counsel had a phone meeting with the Monitor in which Class Counsel and Tannor Capital, Class Counsel's financial advisor, requested information regarding, among other things:

    a. the proposed capital structure of the Applicants;

    b. creditor priorities and amounts;

    c. a copy of the DIP Facility, along with milestones and covenants;

    d. a potential claims adjudication process in connection with the claims of the Class Claimants; and

    e. the Plan Term Sheet.

24. At this time, with the exception of the DIP Term Sheet and its 15th amendment, Class Counsel has still not received the requested information from the Applicants.

<u>Class Counsel, Paliare Roland, Tannor Capital and the Applicants enter into an NDA</u>

25. On November 30, 2021, Just Energy Group Inc., Class Counsel, Tannor Capital and Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") entered into a Confidentiality, Non-Disclosure and Non-Use Agreement (the "**NDA**").

26. The NDA was the product of negotiation between the parties and was intended to facilitate the Applicants' disclosure of non-public information to Class Counsel.

27. Despite the execution of the NDA, the Applicants have continued to delay and resist Class Counsel's requests for information.

28. On November 30, 2021, in response to Class Counsel's request for a further phone meeting, counsel for the Applicants requested that Class Counsel first provide a list of questions it sought to have answered.

29. On December 2, 2021, Class Counsel provided the requested list to the Applicants.

30. On December 8, 2021, following nearly a week of delay by the Applicants, the parties had a virtual meeting. Only one hour before the meeting, the Applicants provided Class Counsel with the Applicants' May 2021 Business Plan (which was outdated), DIP Term Sheet (together with one

amendment), and written answers to Class Counsels' December 2, 2021 question list.

31. Most of the substantive information requests contained in Class Counsel's December 2, 2021 question list remain outstanding.

32. The Business Plan provided to Class Counsel is dated May 2021. Since that time,

    a. the Applicants have publicly filed subsequent financial statements;

    b. the Applicants have sold assets, including an 8% equity interest in ecobee Inc. (the "**ecobee Shares**"), which sale was authorized by the Court in its order dated November 10, 2021; and

    c. the State of Texas governor signed House Bill 4492, which provides recovery of costs by energy market participants, and pursuant to which the Applicants have filed for their recovery amounts. On December 9, 2021, the company issued a news release stating: "Just Energy Group Inc. ("Just Energy" or the " Company") (TSXV:JE; OTC:JENGQ), announced today an update of the expected recovery by Just Energy from the Electric Reliability Council of Texas, Inc. ("ERCOT") of certain costs incurred during the extreme weather event in Texas in February 2021 (the "Weather Event") as previously disclosed, which is expected to be approximately USD $147.5 million.

33. On December 13, 2021, Class Counsel sent counsel to the Applicants an email enclosing a further list of questions regarding the Applicants' Business Plan.

34. On December 15, 2021, the Applicants advised they were not in a position to "devote additional resources" to answering Class Counsel's questions and inquiries.

The Monitor's Involvement

35. On December 17, 2021, Class Counsel advised counsel for the Monitor of the difficulties it was encountering in obtaining information from the Applicants, and requested a meeting to discuss the company's financial condition, restructuring plans, and a suitable claims resolution process for the claims of the Class Claimants.

36. On December 22, 2021, Class Counsel and counsel to the Monitor had a virtual meeting to discuss Class Counsel's information requests.

37. On December 28, 2021, Paliare Roland emailed counsel for the Monitor to request the Monitor's assistance in scheduling a Case Conference with the presiding Judge in the first week of January 2022, for the purpose of setting a timetable for the bringing of this motion.

38. On December 31, 2021, counsel to the Applicants advised Paliare Roland that they had asked the Monitor to inquire for a date in the latter half of the second week of January 2022.

39. On January 4, 2022, Paliare Roland advised that it was not consenting to a further 7 - 10 day delay in obtaining a Case Conference date to schedule a date for a motion, and reiterated that it had not received a response from the Company regarding its substantive, timeline, process, transparency and information requests.

40. On January 4, 2022, Class Counsel again met with counsel to the Monitor to discuss the process proposed by Class Counsel for the adjudication of the claims of the Class Claimants.

41. For well over a month, Class Counsel has been ready, and has repeatedly requested, to become deeply involved as a key stakeholder in this CCAA Proceeding. Unfortunately, the Applicants appear to be unwilling to engage with Class Counsel in any substantive way.

42. To date, despite requests from Class Counsel to the Monitor and the Applicants, Class Counsel has not received substantive information regarding:

    a. the Plan Term Sheet, the size of the creditor pool or the quantum of claims in this CCAA Proceeding;

b. whether there are any professionals representing unsecured creditors and the Class Claims in the ongoing realization discussions, given that it now appears the Applicants have equity on the balance sheet (as discussed below);

c. the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' and/or financiers' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval; and

d. how and when the Class Claimants' claims will be adjudicated and/or be treated within a vote.

43. The Applicants would ordinarily have established a data room through which stakeholders can access non-public information material to the restructuring effort.

44. If such a data room exists, then Class Counsel have not received access to it.

45. Class Counsel and its advisors need access to this type of information in order to meaningfully participate in any restructuring file, including this CCAA Proceeding.

46. Without this information, Class Counsel is hampered in its ability to consider and discuss the Applicant's intended course of conduct, and to develop and

propose alternatives that may be attractive to and preserve value for the general body of unsecured creditors.

CLASS COUNSEL'S PROPOSED CLAIMS ADJUDICATION PLAN

The Notice of Disallowance

47. On January 11, 2022, the Applicants served a Notice of Revision or Disallowance with respect to both the Donin/Golovan and Jordet Proofs of Claim (the "**Notice of Disallowance**").

48. The Notice of Disallowance largely repeats the failed legal arguments that the Applicants made in their unsuccessful attempts to have the Donin Action and the Jordet Action dismissed.

49. The Notice of Disallowance takes issue with the alleged size of the Class and quantum of the alleged claim, yet the Applicants continue to refuse to provide Class Counsel with the necessary data and information to more precisely determine these issues or to verify the Applicants' unsupported claims related to class size and damages.

50. The Notice of Disallowance rejects the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report prepared by Serhan Ogur.

The Class Claimants are Unaffected Creditors

51. Class Counsel seeks a determination that the Class Claimants are unaffected creditors in this CCAA Proceeding, so that they may continue to pursue the U.S. Litigation in the U.S. courts.

52. In the absence of such a determination, Class Counsel seek the prompt and efficient adjudication of the U.S. Litigation within this CCAA Proceeding.

53. In response to the suggestion of Counsel to the Applicants, and in anticipation of the disallowance of the Proofs of Claim, on December 13, 2021, Class Counsel emailed the Applicants' counsel a proposed adjudication plan for the Class Actions.

54. The proposed adjudication plan was an attempt to reach a resolution for a mutually-agreeable process for the adjudication of the U.S. Litigation in a prompt and efficient manner within the CCAA Proceeding.

55. The proposal contemplated:

  a. the appointment of 3 arbitrators from JAMS (US) (with consumer class action experience) to sit as Claims Officers in this CCAA Proceeding;

  b. the use of the "Expedited Procedures" in the JAMS Comprehensive Arbitration Rules;

c. a process for exchanging documents, subject to the oversight of the Claims Officers; and

d. a hearing lasting 5-7 days in February 2022.

56. On December 15, 2021, the Applicants, through counsel, advised that “the Just Energy Entities anticipate further discussions with your group concerning a fair and reasonable method of adjudicating your clients’ claims at the appropriate time”.

57. To date, despite these overtures, the Applicants have not responded to Class Counsel’s December 13, 2021, letter or proposed any alternative adjudication process for the Class Actions.

58. Given the size of the claims in the Class Actions, there is a need to establish an adjudication process leading to a resolution of these claims in advance of any motion to consider approving any Plan that the Applicants may put forward (or any other exit from this CCAA Proceeding).

THERE IS EQUITY IN THE JUST ENERGY ENTITIES

59. Just Energy’s public financial reports, as filed with SEDAR and the US Securities Exchange Commission, are prepared in accordance with International Financial Reporting Standards (“**IFRS**”), as issued by the International Accounting Standards Board (“**IASB**”).

60. The September 30, 2021 financial statements indicate that Just Energy Group Inc. had approximately $12.6 million CAD in equity on its balance sheet.

61. Just Energy's shares are listed for trading on the TSX Venture Exchange under the symbol (TSX: JE) and in the United States on the OTC Pink Exchange under the symbol (OTC: JENGQ).

62. As of January 10, 2021, Just Energy's equity market capitalization was approximately $55.8 million CAD.

63. Sections 11, 11.02 and 18.6 of the CCAA;

64. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and Rule 57.03 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended and section 106 of the *Courts of Justice Act*, R.S.O 1990, c. C. 43 as amended; and

65. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Affidavit of Robert Tannor sworn January 17, 2022; and

2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 19, 2022

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Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*

TO: THE SERVICE LIST

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. ET AL.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION AND CROSS-MOTION

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SCHEDULE "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE
	)	
JUSTICE MCEWEN	)	9th DAY OF FEBRUARY, 2022

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.

(each, an "**Applicant",** and collectively, the "**Applicants")**

ORDER

(Mediation/Arbitration Order)

THIS MOTION made by Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**Class Counsel**"), in its capacity as counsel to the plaintiff classes (the "**Class Claimants**") in *Donin v. Just Energy Group Inc. et al.*[1] (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions, Inc.*[2] (the "**Jordet Action**", together with the Donin Action, the "**U.S. Litigation**") was heard this day via Zoom conference at Toronto, Ontario.

ON READING the motion record of the moving party and on hearing the submissions of counsel for the moving party and counsel for the Applicants, no one else appearing,

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

   a. "**CCAA Proceeding**" means the within proceedings in respect of the Applicants;

   b. "**Data Room**" means any data room established by the Applicants by which non-public information has been made available to certain stakeholders in this CCAA Proceeding;

   c. "**Monitor**" means FTI Consulting Canada Inc., in its capacity as the court-appointed monitor of the Applicants; and

   d. "**Persons**" means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade

[1] Case No: 17 Civ. 5787 (WFK)(SJB), before the United States District Court Eastern District of New York.

[2] Case No: 2:18-cv-01496-MMB, before the United States District Court for the Eastern District of Pennsylvania.

union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity.

3. **THIS COURT ORDERS** that any capitalized term used but not defined herein shall have the meaning given to such term in the Motion Record of the moving party dated January 19, 2022.

DATA ROOM ACCESS

4. **THIS COURT ORDERS** that the Applicants shall provide the Class Claimants with access to their Data Room.

APPOINTMENT OF MEDIATOR/ARBITRATOR

5. **THIS COURT ORDERS** that [*mediator/arbitrator to be determined by the Court after the moving party, the Applicants and the Monitor consult*] is hereby appointed as an officer of the Court and shall act as a neutral third party (the "**Mediator/Arbitrator**").

6. **THIS COURT ORDERS** that the Mediator/Arbitrator's mandate is to resolve all matters arising from the Class Claimants' requests for information in respect of any restructuring, realization and/or sale or investment process, and any and all exit plans of the Applicants in respect of these proceedings, together with such other procedural or substantive matters as the parties may agree or this Court may direct (the "**Mandate**").

7. **THIS COURT ORDERS** that in carrying out the Mandate, the Mediator/Arbitrator may, among other things:

    a. adopt processes and utilize resources which, in his/her discretion, he/she considers appropriate;

    b. consult with all Persons as the Mediator/Arbitrator considers appropriate; and

c. apply to this Court for advice and directions as, in his/her discretion, the Mediator/Arbitrator deems necessary.

8. **THIS COURT ORDERS** that the reasonable fees and disbursements of the Mediator/Arbitrator in relation to carrying out the Mandate shall be paid by the Applicants on a monthly basis, forthwith upon the rendering of accounts to the Applicants.

9. **THIS COURT ORDERS** that the Applicants are hereby authorized to pay to the Mediator/Arbitrator a retainer to be held by the Mediator/Arbitrator as security for payment of the Mediator/Arbitrator's fees and disbursements outstanding from time to time.

10. **THIS COURT ORDERS** that the Mediator/Arbitrator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Mediator/Arbitrator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

COMMUNICATION AND CONFIDENTIALITY PROTOCOL

12. **THIS COURT ORDERS** that the following communication and confidentiality protocol between the Court, the Mediator/Arbitrator and participants in the Mediation/Arbitration Process be and is hereby approved:

    a. the Court and the Mediator/Arbitrator may communicate between one another directly to discuss, on an on-going basis, the conduct of the

Mediation/Arbitration Process and the manner in which it will be coordinated with the CCAA Proceedings;

b. the Court will not disclose to the Mediator/Arbitrator how the Court will decide any matter which may come before the Court for determination;

c. the Mediator/Arbitrator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation/Arbitration Process;

d. without-prejudice statements, discussions, and offers of any of the parties arising in the course of the Mediation/Arbitration Process shall not be subject to disclosure through discovery or any other process, shall remain confidential, and shall not be referred to in Court and shall not be admissible into evidence for any purpose, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation/Arbitration Process, provided, for the avoidance of doubt, that arbitral decisions and any related reasons of the Mediator/Arbitrator may be disclosed; and

e. any notes, records, statements made, discussions had and recollections of the Mediator/Arbitrator or any of his assistants in conducting the Mediation/Arbitration Process shall be confidential and without prejudice and protected from disclosure for all purposes, provided, for the avoidance of doubt, that arbitral decisions and any related reasons of the Mediator/Arbitrator may be disclosed;

GENERAL

13. **THIS COURT ORDERS** that the Monitor and the Applicants may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

____

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. ET AL.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

ORDER

(Mediation/Arbitration Order)

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Counsel to US counsel for Fira Donin and Inna Golovan, in their capacity as proposed class representatives in *Donin et al. v. Just Energy Group Inc. et al.*

Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*

Tab 6

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

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.
(each, an "**Applicant",** and collectively, the "**Applicants")**

AFFIDAVIT OF ROBERT TANNOR
(Sworn January 17, 2022)

I, Robert Tannor, of the city of Santa Barbara, in the state of California, MAKE OATH AND SAY:

1. I am the general partner of Tannor Capital Advisors LLC ("Tannor Capital"), a boutique financial advisory firm specializing in restructuring. As a restructuring professional, I have actively participated in restructuring cases involving over 8 billion dollars of debt and over 400 credits from 2008 to 2021. Prior to founding Tannor Capital, I was a senior industry practice leader and director at Ernst & Young Corporate Finance LLC in New York ("EY"). While at EY, I worked as lead restructuring advisor, or as part of the team, in over 30 bankruptcy cases, both in and out of court. A copy of my CV is attached at **Exhibit "A"** to my affidavit.

2. Together with Tannor Capital, I have been retained as a financial advisor to Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "Class Counsel") in connection with Class Counsel's representation of approximately eight million U.S. customers of the Applicants (the "Class Claimants") in *Donin v. Just Energy Group Inc. et al.*[1] (the "Donin Action") and *Trevor Jordet v. Just Energy Solutions, Inc.*[2] (the "Jordet Action", together with the Donin Action, the "U.S. Litigation" or the "Class Actions"), and in connection with Class Counsel's representation of the Class Claimants' interests as contingent unsecured creditors in this proceeding under the *Companies' Creditors Arrangement Act* (the "CCAA Proceeding"). As such, I have knowledge of the matters contained in this affidavit. Where I do not have direct knowledge of a matter, I have stated the source of my information and I believe it to be true.

[1] No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.).
[2] No. 18 Civ. 953 (WMS) (W.D.N.Y.).

A. BACKGROUND

(i) The U.S. Litigation

3. The following overview is based on my review of court documents in the U.S. Litigation and information I have received from Class Counsel, which I believe to be true. The merits of the U.S. Litigation are described in detail in the supporting materials (the "Claim Documentation") accompanying the Proofs of Claim forms filed by Class Counsel in this CCAA Proceeding.

4. On October 3, 2017, Fira Donin and Inna Golovan filed proposed class action lawsuits on behalf of themselves and all other U.S. customers alleging, among other things, that the Just Energy entities named as defendants breached:

(a) their contractual obligations to base their variable gas and electricity rates on "business and market conditions";

(b) their contractual obligation to charge a specified energy rate; and

(c) the implied covenant of duty of good faith and fair dealing.

The Complaint in the Donin Action is attached as **Exhibit "B"** to my affidavit.

5. The Just Energy Entities have sought to have the Donin Action dismissed. On September 24, 2021, Judge William F. Kuntz of the U.S. District Court for the Eastern District of New York denied the Just Energy Entities' motion to dismiss the Donin Action. A copy of Judge Kuntz's Decision and Order are attached as **Exhibit "C"** to my affidavit.

6. On April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers in which he made similar allegations to the Donin and Golovan plaintiffs. The Complaint in the Jordet Action is attached as **Exhibit "D"** to my affidavit.

7. On December 7, 2020, Judge William M. Skrenty of the U.S. District Court for the Western District of New York denied the Just Energy Entities' motion to dismiss the Jordet Action. Judge Skrenty ruled, among other things, that "'business and market conditions' has some standard that [the Just Energy Entities] had to apply in setting [their] variable pricing but apparently failed to adhere to in [their] pricing." Judge Skrenty's Decision and Order are attached as **Exhibit "E"** to my affidavit.

8. I am advised by Class Counsel that the Donin Action and Jordet Action are nationwide and encompass all states in which the Applicants do business. The U.S. Litigation remains pending in the U.S. courts.

(ii) This CCAA Proceeding

9. From my participation in this CCAA Proceeding, and from my review of the materials available on the Monitor's website, I understand that:

(a) On March 9, 2021, this Court issued an Initial Order granting CCAA protection to the Applicants; and

(b) On September 15, 2021, this Court issued a "Claims Procedure Order" which, among other things, established a "Claims Bar Date" of 5:00 p.m. on November 1, 2021 in respect of Pre-Filing Claims (as defined in the Claims Procedure Order).

10. On November 1, 2021, prior to the expiry of the Claims Bar Date, Class Counsel filed Proofs of Claim forms in respect of the Donin Action and in respect of the Jordet Action in the aggregate, unsecured amount of approximately $3.66 billion (reflecting a joint, composite damages claim encompassing both lawsuits). In each case, counsel provided Claim Documentation setting out the relevant background and merits of the U.S. Litigation. The Donin/Golovan Proof of Claim, the Jordet Proof of Claim and the Claim Documentation (excluding Exhibits 2-5) are attached to my affidavit as **Exhibits "F"**, **"G"** and **"H"**, respectively.

11. By virtue of the size of the claims in the Donin Action and Jordet Action, the Class Claimants have a significant stake in the CCAA Proceeding and ought to be treated as material stakeholders.

B. CLASS COUNSEL'S EFFORTS TO OBTAIN INFORMATION IN CONNECTION WITH THIS CCAA PROCEEDING

(i) Class Counsel's Initial Requests

12. Class Counsel has repeatedly requested that the Applicants and the Monitor provide access to information in connection with this CCAA Proceeding. In my experience, Class Counsel's requests (as described below) are consistent with the type and character of information that is commonly requested and provided as between creditors and debtors in restructuring proceedings. Moreover, the requested information is necessary to properly evaluate and consider the ongoing CCAA Proceeding and to advise my clients accordingly.

13. Notwithstanding repeated requests, the Applicants have largely resisted Class Counsel's requests. As a result, the flow of information in this CCAA Proceeding has been deficient and contrary to a consensual CCAA restructuring.

14. On November 10, 2021, Steven Wittels, representing the Class Claimants, appeared on a motion before Justice Koehnen and objected to the Applicants' request for a second Key Employee Retention Plan ("KERP"), arguing that it was a waste of corporate assets. Mr. Wittels also alleged that the Applicants had not been forthcoming in providing Class Counsel with any information as to the Applicants' financial status.

15. On November 11, 2021, Class Counsel requested a meeting with counsel for the Monitor to discuss access to certain financial information of the Applicants.

16. On November 12, 2021, counsel for the Monitor advised that "[t]he Monitor does not have any financial information available to share with you with respect to the restructuring", and suggested that Class Counsel direct their request to the Applicants. A copy of counsel's email correspondence dated November 11-12, 2021 is attached at **Exhibit "I"** of my affidavit.

17. On November 24, 2021, Class Counsel had a phone meeting with the Monitor in which Class Counsel and I requested information regarding, among other things:

(a) the proposed capital structure of the Applicants;

(b) creditor priorities and amounts;

(c) a copy of the DIP Facility, along with milestones and covenants;

(d) a potential claims adjudication process in connection with the claims of the Class Claimants; and

(e) the Plan Term Sheet.

18. At this time, with the exception of the DIP Term Sheet and its 15th amendment, Class Counsel has still not received the requested information from the Applicants.

(ii) Class Counsel, Paliare Roland, Tannor Capital and the Applicants enter into an NDA

19. On November 30, 2021, Just Energy Group Inc., Class Counsel, Tannor Capital and Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland") entered into a Confidentiality, Non-Disclosure and Non-Use Agreement (the "NDA"). The NDA was the product of negotiation between the parties and was intended to facilitate the Applicants' disclosure of non-public information to Class Counsel.

20. Despite the execution of the NDA, the Applicants have continued to delay and resist Class Counsel's requests for information.

21. On November 30, 2021, in response to Class Counsel's request for a further phone meeting, counsel for the Applicants requested that Class Counsel first provide a list of questions it sought to have answered. Accordingly, on December 2, 2021, Class Counsel provided such a list to the Applicants, a copy of which is attached at **Exhibit "J"** to my affidavit.

22. Following nearly a week of delay on the part of the Applicants, the parties had a further virtual meeting on December 8, 2021. Only one hour before the meeting, the Applicants provided Class Counsel with the Applicants' Business Plan, DIP Term Sheet (together with one amendment), and written answers to Class Counsels' December 2nd question list. A copy of the email correspondence regarding the scheduling of the December 8th meeting is attached as **Exhibit "K"** to my affidavit.

23. Many of the substantive information requests contained in Class Counsel's December 2nd question list remain outstanding. I have not attached a copy of the Applicants' written answers to Class Counsel's questions, out of concern that the Applicants may view them as privileged or confidential. Class Counsel would be pleased, however, for a copy of those written answers to be put before the Court.

24. Moreover, I note that the Business Plan provided to Class Counsel is dated May 2021. Since that time,

(a) the Applicants have publicly filed subsequent financial statements;

(b) the Applicants have sold assets, including an 8% equity interest in ecobee Inc. (the "ecobee Shares"), which sale was authorized by this Court in its order dated November 10, 2021; and

(c) the State of Texas governor signed House Bill 4492, which provides recovery of costs by energy market participants, and pursuant to which the Applicants have filed for their recovery amounts. On December 9, 2021, the company issued a news release stating: "Just Energy Group Inc. ("Just

Energy" or the " Company") (TSXV:JE; OTC:JENGQ), announced today an update of the expected recovery by Just Energy from the Electric Reliability Council of Texas, Inc. ("ERCOT") of certain costs incurred during the extreme weather event in Texas in February 2021 (the "Weather Event") as previously disclosed, which is expected to be approximately USD $147.5 million. A copy of the news release is attached as **Exhibit "L"** to my affidavit.

25. On December 13, 2021, Class Counsel sent counsel to the Applicants an email enclosing a further list of questions regarding the Applicants' Business Plan. A copy of Class Counsel's further list of questions is attached as **Exhibit "M"** to my affidavit.

26. On December 15, 2021, in response to Class Counsel's further inquiries, the Applicants advised, through counsel, that "the Just Energy Entities [...] are not in a position to devote additional resources at this time to answer an unreasonable number of questions and inquiries from your group". A copy of counsel's email correspondence dated December 13-15, 2021 is attached as **Exhibit "N"** to my affidavit.

(iii) The Involvement of the Monitor

27. On December 17, 2021, Class Counsel emailed counsel for the Monitor, explaining the difficulties it was encountering in obtaining information from the Applicants, and requesting a meeting to discuss the company's financial condition, restructuring plans, and a suitable claims resolution process for the claims of the Class Claimants. A copy of

counsel's email correspondence dated December 17, 2021 is attached as **Exhibit "O"** to my affidavit.

28. On December 22, 2021, Class Counsel and counsel to the Monitor had a virtual meeting to discuss Class Counsel's information requests.

29. On December 28, 2021, Paliare Roland emailed counsel for the Monitor to request the Monitor's assistance in scheduling a Case Conference with the presiding Judge in the first week of January 2022, for the purpose setting a timetable for the bringing of this motion.

30. On December 31, 2021, counsel to the Applicants advised Paliare Roland that they had asked the Monitor to inquire for a date in the latter half of the second week of January 2022.

31. On January 4, 2022, Paliare Roland advised that it was not consenting to a further 7 - 10 day delay in obtaining a Case Conference date to schedule a date for a motion, and reiterated that it had not received a response from the Company regarding its substantive, timeline, process, transparency and information requests. A copy of counsel's email correspondence dated December 28, 2021 – January 4, 2022 is attached as **Exhibit "P"** to my affidavit.

32. On January 4, 2022, Class Counsel again met with counsel to the Monitor to discuss the process proposed by Class Counsel for the adjudication of the claims of the Class Claimants.

33. In summary, for well over a month, Class Counsel has been ready, and has repeatedly requested, to become deeply involved as a key stakeholder in this CCAA Proceeding. Unfortunately, the Applicants appear to be unwilling to engage with Class Counsel in any substantive way.

34. To date, despite requests from Class Counsel to the Monitor and the Applicants, Class Counsel has not received substantive information regarding:

(a) the Plan Term Sheet, the size of the creditor pool or the quantum of claims in this CCAA Proceeding;

(b) whether there are any professionals representing unsecured creditors and the Class Claims in the ongoing realization discussions, given that it now appears the Applicants have equity on the balance sheet (as discussed below);

(c) the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' and/or financiers' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval; and

(d) how and when the Class Claimants' claims will be adjudicated and/or be treated within a vote.

35. I would ordinarily expect Applicants in a case such as this to establish a data room through which stakeholders can access non-public information material to the restructuring effort. In light of the NDA signed by Class Counsel, I cannot comment on

the existence of a data room. However, if such a data room does exist, then Class Counsel have not received any access to it.

36. As noted above, Class Counsel and its advisors need access to this type of information in order to meaningfully participate in any restructuring file, including this CCAA Proceeding. The following are some examples of the information requested and its relevance to Class Counsel's position in, response to and the outcome of these proceedings:

(a) To understand recoveries, financial advisors and my firm usually provide a waterfall analysis of enterprise value across the capital structure including any and all claims. We have requested access to the claims records and have not received anything.

(b) To understand timing of the proceedings and details of the DIP loan, we have requested the complete DIP loan and amendments. We have received a DIP term sheet and Amendment 15 to the DIP loan. In my experience, 15 amendments in less than a year since the March 9, 2021 origination of the DIP loan is unusual, and we wish to see all of the amendments and updates to the DIP loan as they occur so that we can better understand what is occurring.

(c) A current business plan updated by events since the bankruptcy filing is usually provided to stakeholders. The enterprise value of the business is derived from the business plan prepared by management. We believe the

business plan received, dated May 2021, does not reflect the actual financial results since publishing the business plan. We have not been given any opportunity to make direct assessment and inquiry of the company and its financial advisors about details in the business plan.

(d) In any insolvency proceeding, the debtor and its financial advisor prepare an enterprise value assessment, which is the basis for recoveries across the pre-bankruptcy capital structure and proposed exit capital structure. We have been unable to obtain any information related to the proposed enterprise value ("EV") including the methodology for the EV, multiples, adjustments to EV or exit capital structure, and the contemplated exit capital structure.

(e) In almost every restructuring, the Debtor and its advisors prepare an analysis of the debt capacity ranges for the company with input from debt capital providers through their investment bank. We have not received any debt capacity analysis provided by the company or its advisors which is a critical element in preparing a proposed capital structure for the company which is a critical element in understanding the range of potential recoveries to creditors and equity holders.

(f) We also requested access to the insurance policies of the Debtor that may be a source of recoveries to our constituency which was not provided. We request any and all claims made against such insurance policies.

(g) Lastly, in my experience, it is axiomatic that receiving a plan term sheet after it has been baked by the company and other stakeholders leads to distrust and dissatisfaction with the financial terms, recoveries, and process. Without access to company confidential information, any financial advisor is forced to rely on public information, such as Just Energy's public financials showing equity, and in my opinion, an out-of-date business plan.

37. Based on the Applicants' conduct described herein, I am concerned that the Applicants are not answering Class Counsel's questions as part of a strategy to "run out the clock" on the Class Claimants' ability to meaningfully participate in this CCAA Proceeding. Without this information, Class Counsel is hampered in its ability to consider and discuss the Applicant's intended course of conduct, and to develop and propose alternatives that may be attractive to and preserve value for the general body of unsecured creditors.

C. CLASS COUNSEL'S PROPOSED CLAIMS ADJUDICATION PLAN

38. On January 11, 2022, the Applicants served a Notice of Revision or Disallowance with respect to both the Donin/Golovan and Jordet Proofs of Claim (the "Notice of Disallowance"), copies of which are attached as **Exhibits "Q"** and **"R"** to my affidavit, respectively. I am advised by Class Counsel that the Notice of Disallowance largely repeats the legal arguments which were not persuasive to the U.S. courts on the motions to dismiss in the U.S. Litigation.

39. I also note that while the Notice of Disallowance takes issue with the alleged size of the Class and quantum of the alleged claim, the Applicants continue to refuse to provide Class Counsel with the necessary data and information to more precisely determine these issues. Instead, the Notice of Disallowance rejects the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report prepared by Serhan Ogur, enclosed as Exhibit 1 to the Claim Documentation, and attached at Exhibit "H" to my affidavit. Mr. Ogur's report indicates that he is an experienced economist specializing in the U.S. energy industry, who performed a detailed analysis calculating, among other things, how much Just Energy overcharged its variable-rate customers from 2011 to 2020.

40. From my discussions with Class Counsel, I understand that Class Counsel now intends to seek a determination that the Class Claimants are unaffected creditors in this CCAA Proceeding, so that they may continue to pursue the U.S. Litigation in the U.S. courts. In the absence such determination, Class Counsel seek the prompt and efficient adjudication of the U.S. Litigation within this CCAA Proceeding.

41. In anticipation of the disallowance of the Proofs of Claim, on December 13, 2021, Class Counsel emailed counsel to the Applicants enclosing a proposed adjudication plan for the Class Actions, a copy of which is attached as **Exhibit "S"** to my affidavit. The proposed adjudication plan was an attempt to reach a resolution for a mutually-agreeable process for the adjudication of the U.S. Litigation in a prompt and efficient manner within the CCAA Proceeding. The proposal contemplated:

(a) the appointment of 3 arbitrators from JAMS (US) (with consumer class action experience) to sit as Claims Officers in this CCAA Proceeding;

(b) the use of the "Expedited Procedures" in the JAMS Comprehensive Arbitration Rules;

(c) a process for exchanging documents, subject to the oversight of the Claims Officers; and

(d) a hearing lasting 5-7 days in February 2022.

42. On December 15, 2021, the Applicants, through counsel, advised that "the Just Energy Entities anticipate further discussions with your group concerning a fair and reasonable method of adjudicating your clients' claims at the appropriate time". See **Exhibit "N"** to my affidavit.

43. To date, despite these overtures, the Applicants have not responded to Class Counsel's December 13, 2021 letter or proposed any alternative adjudication process for the Class Actions.

44. Given the size of the claims in the Class Actions, there is a need to establish an adjudication process leading to a resolution of these claims in advance of any motion to consider approving any Plan that the Applicants may put forward (or any other exit from this CCAA Proceeding).

D. THERE IS EQUITY IN THE JUST ENERGY ENTITIES

45. Just Energy's public financial reports as filed with SEDAR and the US Securities Exchange Commission, are prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"). The September 30, 2021 financial statements indicate that Just Energy Group Inc. had approximately $12.6 million CAD in equity on its balance sheet. A copy of the September 30, 2021 financial statements is attached as **Exhibit "T"** to my affidavit.

46. Just Energy's shares are listed for trading on the TSX Venture Exchange under the symbol (TSX: JE) and in the United States on the OTC Pink Exchange under the symbol (OTC: JENGQ). As of January 10, 2021, Just Energy's equity market capitalization was approximately $55.8 million.

47. I swear this affidavit in connection with Class Counsel's motion for advice and direction of the court and for no other or improper purpose.

SWORN remotely by Robert Tannor of the City of Santa Barbara, in the State of California, before me at the City of Toronto, in the Province of Ontario, on this 17th day of January, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

Robert Tannor

This is Exhibit "A" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

Professional Summary
I have had a career in running companies and restructuring companies. I have deep experience as a CEO and Restructuring professional with deep finance, accounting, and restructuring experience. Over the course of my career, I have startup experience, growth experience while as an officer of operating companies, and deep experience as a restructuring advisor. While operating a hedge fund, I was Chief Investment Officer of a distressed hedge fund investing in over 400 distressed credits from bank loans to bankruptcy trade claims in the US and Canada. As a restructuring professional at a boutique restructuring firm and a credit hedge fund, I have actively participated in restructurings of over 8 billion dollars of debt in over 400 credits from 2008 to 2021.

Education and Professional Certifications
Rensselaer Polytechnic Institute, Bachelor of Science in Electric Power Engineering
London Business School, Finance and Entrepreneurship program 2006
Harvard Business School 2017, 2018, and 2019 YPO Program at HBS
Member of YPO and Former Board of Directors NY YPO

Experience
2008 to 2021 – General Partner of Tannor Capital Advisors LLC which managed the investing for Tannor Partners Credit Fund, LP ("TPCF"). TPCF has invested in over 400 companies since 2008 in the United States and Canada in credit and equity of companies undergoing external competitive pressures or internal operational challenges. Since 2021, the fund has returned capital as investments mature. The fund has made successful investments in retail, energy, airlines, pharmaceutical and medical devices, power companies, and manufacturing businesses over 13 years. In this time, Robert participated in adhoc committees as part of the restructuring process.

2004 to 2008 - Chairman and CEO of Westar Satellite Services, LP a satellite communications company based in Dallas, Texas. Robert Tannor led a group of investors to purchase the company out of bankruptcy in 2005, restructure its operations and sold the business in 2008 for a 2.5x invested capital.

2000 to 2004 - Senior industry practice leader and Director, Ernst & Young Corporate Finance LLC in New York focusing on Corporate Restructuring, distressed M&A, and Transaction Due Diligence. Robert worked as lead restructuring advisor or part of the team in over 30 bankruptcy cases, in court and out of court.

Notable assignments, M&A transactions, and Restructurings at E&Y
Pacific Crossing – a subsea cable owned by Asia Global Crossing spanning the Pacific Ocean from US West Coast to Japan (advised the bank group - $700 million credit)
Bear Swamp Pumped Storage Hydroelectric Facility – Part of US Generating NE (advised creditor certificate holders)
Velocita – a US and Canadian fiber optic network based in Virginia (advised creditor's committee - $500 million unsecured credit)
Adelphia Business Solutions – a CLEC based in Coudersport, Pennsylvania (advised creditor's committee-$1.2 billion unsecured credit)

Board Experience
Present – Board member of Overseas Military Sales Corporation, an authorized contractor by US Armed Forces to sell vehicles to US Military and US diplomats around the world. Company is based in New York and has offices in Europe.

Present Board of Directors of C&K Market, a regional grocer in Oregon and Northern California

Present Board of Directors New York City Metro Chapter of YPO from 2010 to 2014 – Young Presidents' Organization.

Former Board of Directors of EESISP - Electrical Employers Self Insured Safety Plan ("EESISP") from 1996 to 2000 EESISP is a worker's compensation insurance plan in New York State covering over 13,000 workers and the Joint Board of the Electrical Industry of New York with over $300 million dollars of assets responsible for oversight of workers compensation insurance coverage and claims for over 10,000 workers.

This is Exhibit “B” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

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Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FIRA DONIN and INNA GOLOVAN, **on behalf of themselves and all others similarly situated,** **Plaintiffs,** **v.** **JUST ENERGY GROUP INC. JUST ENERGY NEW YORK CORP., and JOHN DOES 1 TO 100,** **Defendants.**	***FIRST AMENDED CLASS ACTION COMPLAINT*** Case No: 17 Civ. 5787 (WFK) (SJB) ***JURY TRIAL DEMANDED***

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PRAYER FOR RELIEF 70

Plaintiffs Fira Donin and Inna Golovan ("Plaintiffs"), by their attorneys Wittels Law, P.C. and Hymowitz Law Group, PLLC, bring this consumer protection action in their individual capacity, and on behalf of a Class of consumers defined below, against Defendants Just Energy Group Inc., Just Energy New York Corp., and John Does 1 to 100 (hereafter collectively "Just Energy" or "Defendants" unless otherwise specified), and hereby allege the following with knowledge as to their own acts, and upon information and belief as to all other acts:

OVERVIEW OF DEFENDANTS' UNLAWFUL PRACTICES

1. This consumer class action arises from Just Energy's fraudulent, deceptive, unconscionable, bad faith, and unlawful conduct in "supplying" residential gas and electricity to consumers.

2. Traditionally, residential gas and electricity was supplied by regulated utilities like Con Edison. The rates utilities could charge were strictly controlled. In the 1990s, however, Enron's unprecedented lobbying campaign resulted in deregulation of state energy markets in New York and elsewhere such that consumers were permitted to choose from a variety of companies selling residential energy. Seizing on deregulation, independent energy service companies ("ESCOs") like Defendant Just Energy have grown rapidly.

3. Just Energy entices residential customers to sign up for its service by offering its energy at low initial "teaser rates." Yet Defendants do not alert their unsuspecting customers that when the teaser rate period expires consumers are charged exorbitant variable energy rates. Just Energy's customers are given no advance notice of these excessive variable rates. Just Energy also does not disclose to customers that its rates are consistently higher than the rates charged by consumers' existing utilities, or how variable rate customers can calculate (and avoid) Just Energy's steep variable gas and electricity charges.

4. Just Energy also breaches its customer contracts through a pricing shell game rigged in Just Energy's favor. Just Energy's customer contract explicitly incorporates the terms of Defendants' welcome emails into the contract. In April 2012 Just Energy sent Plaintiff Donin a welcome email stating that after her "intro rate" expired she would be charged an electric rate of 8¢ per kWh. Notwithstanding this contractual promise, Just Energy consistently charged Ms. Donin more than 8¢ per kWh. In fact, based on the billing data Ms. Donin has as well as the information gathered by her counsel, during a four-year period there was only one month when Just Energy charged Ms. Donin less than the 8¢ per kWh contractual rate. The same scenario occurred with Ms. Donin's Just Energy gas account. In April 2012 she received a welcome email (also explicitly incorporated into the Just Energy contract) which stated that after her "intro rate" expired she would be charged a gas rate of 63¢ per therm. The 17 months of billing data Ms. Donin has demonstrates that during all of those months Just Energy's rate was higher than 63¢ per therm.

5. Just Energy further breaches its customer contract in two additional ways. First, Just Energy's contract states that its variable rates "will not increase more than 35% over the rate from the previous billing cycle." Yet Just Energy violated this contract term when it increased Plaintiff Donin's August 2013 electricity price by more than 80% over the prior month's rate. Just Energy also increased Ms. Donin's May 2016 gas rate by more than 36% compared to the rate she paid in April 2016.

6. Second, Just Energy's customer contract states that the company's variable rates are "determined by business and market conditions," yet Defendants' variable rates are not determined by business and market conditions. Instead, when the underlying wholesale market price of gas and/or electricity that Just Energy purchases for re-sale goes ***up***, Defendants simply

pass on these costs to their customers by raising rates. However, when the market price goes ***down***, Just Energy's rate remains at an inflated level higher than the market rate. Through this scheme, Just Energy subjects consumers to consistent and unlawful "heads I win, tails you lose" pricing.

7. Just Energy's practice of charging inflated electric and gas prices is intentionally designed to maximize revenue.

8. Plaintiffs and the Class of Defendants' gas and electric customers have been injured by Defendants' unlawful practices. Accordingly, Plaintiffs and the Class defined below seek damages, restitution, declaratory, and injunctive relief for Just Energy's fraud, violation of state consumer protection statutes, unjust enrichment, and breach of contract. Residential energy costs are a significant portion of most families' budgets. To prey on consumers as Defendants have done here is unconscionable.

9. Defendants' deceptive marketing and sales practices are unlawful in multiple ways, including:

a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;

b. Failing to adequately disclose that quoted rates are introductory teaser rates;

c. Failing to adequately disclose when Defendants' introductory teaser rates expire;

d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;

e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges;

f. Failing to provide customers advance notice of the variable rate Defendants will charge; and

g. Failing to clearly and conspicuously identify in its contract and marketing materials the variable charges in Defendants' variable energy plans.

10. Defendants also breached their customer contract in at least the following three ways:

a. Charging rates higher than the rates promised in the welcome emails Defendants sent to consumers.

b. Violating the contract's requirement that Defendants' variable rates "will not increase more than 35% over the rate from the previous billing cycle."

c. Failing to comply with the contract's requirement that Defendants charge variable energy rates "determined by business and market conditions."

11. Only through a class action can Just Energy's customers remedy Defendants' ongoing wrongdoing. Because the monetary damages suffered by each customer are small compared to the much higher cost a single customer would incur in trying to challenge Just Energy's unlawful practices, it makes no financial sense for an individual customer to bring his or her own lawsuit. Further, many customers don't realize they are victims of Just Energy's deceptive conduct. With this class action, Plaintiffs and the Class seek to level the playing field and make sure that companies like Just Energy engage in fair and upright business practices.

I. Defendants' Fraudulent, Deceptive, and Unlawful Conduct.

12. Price is the most important consideration for energy consumers. Given that there is no difference at all in the electricity or natural gas that Just Energy supplies as opposed to the consumer's utility, the only reason a consumer switches to an ESCO like Just Energy is for the potential savings offered in a competitive market as opposed to prices offered by a regulated utility. That is, after all, the entire point of energy deregulation.

13. Understanding this basic fact about residential energy consumers' decision-making, Just Energy uses introductory teaser rates to misrepresent the cost of its energy. For example, Just Energy enticed consumers like Plaintiffs and the Class to switch their gas and electric accounts by showing them low introductory rates. Yet Defendants did not adequately

apprise consumers that the sample energy rates were teaser rates. Defendants also did not effectively disclose that Just Energy's introductory teaser rate would expire or the date on which Just Energy's actual and much higher variable rate would kick in.

14. Defendants further defrauded and deceived Plaintiffs and the Class by actively misrepresenting the rates Just Energy charges when its teaser rates expire, and by failing to adequately disclose that Just Energy's gas and electricity rates are consistently higher than the rates charged by the customers' regulated utility.

15. Defendants are aware of the variable energy rates they intend to charge. Yet to conceal Just Energy's price gouging, Defendants do not provide customers any advance notice.

16. Just Energy's material misrepresentations and omissions concerning its energy rates violate N.Y. GEN. BUS. LAW § 349-d(3), which prohibits deceptive acts and practices in the marketing of residential energy. Section 349-d(3) is part of a new law, called New York's ESCO Consumers Bill of Rights, which was specifically enacted in 2010 to combat widespread consumer fraud in New York's energy markets and to protect New York's energy consumers from underhanded business tactics like those employed by Defendants.

17. Just Energy's material misrepresentations and omissions concerning its energy rates also violate New York's and other states' consumer protection statutes and common laws of fraud and unjust enrichment.

18. Plaintiffs are not the only consumers harmed by Just Energy's conduct. On December 31, 2014, Just Energy agreed to settle strikingly similar claims brought by the Massachusetts Attorney General, making various concessions related to its deceptive residential

energy sales and billing practices in Massachusetts.[1]

19. The Massachusetts Attorney General alleged that Just Energy made misleading, false, and unlawful representations and omissions concerning its energy, including that:

> Just Energy represented to consumers that purchasing residential gas and/or electricity from Just Energy will save customers money;
>
> Just Energy failed to disclose complete and accurate pricing information; and
>
> Just Energy failed to disclose to consumers that its rates following any introductory period may be higher than the rates charged by consumers' traditional utilities.[2]

20. In response to the Massachusetts Attorney General's allegations, Just Energy agreed to refund a total of $4,000,000 to Massachusetts customers along with implementing several key changes to its marketing and sales practices, as follows:

> Just Energy must cease making representations, either directly or by implication, about savings that consumers may realize by switching to Just Energy, unless Just Energy contractually obligates itself to provide such savings to consumers.[3]
>
> Where Just Energy quotes introductory teaser rates in its marketing material or in any verbal representation, the rate quote must be accompanied by a statement informing consumers that the quoted rate is an introductory rate and state when the rate will expire.[4]
>
> Just Energy is banned for three years from enrolling consumers into variable rate energy products unless it complies with the following requirements:
>
> - Within 30 days of a customer enrolling in a variable energy rate product, Just Energy must provide the customer with written notice of the date on which the introductory rate will expire.

[1] Assurance of Discontinuance, *In the Matter of Just Energy Group, Inc., et al.*, Mass. Sup. Ct., Suffolk, (Dec. 31, 2014), attached as Exhibit A.

[2] *Id.* ¶¶ 19(a), 20(a)–(b).

[3] *Id.* ¶ 26(a).

[4] *Id.* ¶ 26(c).

- Any new contracts for variable rate products shall either (i) include the calculation that will be used to set monthly rates under the contract such that the customer can calculate the cost of Just Energy's residential energy, or (ii) make the rates available 60 days in advance via phone and the internet.[5]

For three years Just Energy is banned from charging consumers variable electricity rates in excess of 14.25¢ per kWh.[6] [7]

For current Just Energy variable rate customers, the company is required to clearly and conspicuously post its current variable rates and post subsequent variable rates with at least 45 days advance notice.[8] Just Energy is also required to mail notice to all existing Massachusetts variable rate customers alerting them to the fact that advance pricing information is now available via phone and on Just Energy's website, and that these customers can cancel their Just Energy contracts without paying termination fees.[9]

Just Energy must at its own expense hire an independent monitor for three years to audit *inter alia* Just Energy's Massachusetts marketing materials, billing data, consumer communications, and direct marketing efforts.[10]

Just Energy must distribute a copy of the Assurance of Discontinuance to current and future (for three years) principals, officers, directors, and supervisory personnel responsible for the Massachusetts market.[11] Just Energy must also secure and maintain these individuals' signed acknowledgement of receipt of the Assurance of Discontinuance.

21. Notably, while as discussed below Just Energy has been fined by regulators for deceptive marketing at least *six* times, no other actions have to date been brought by New York's

[5] *Id.* ¶ 28(a)–(b), (d).

[6] *Id.* ¶ 30(a).

[7] Just Energy charged Plaintiff Donin electricity rates higher than this very high rate for 17 months while she was a Just Energy customer. 14 of those 17 months were consecutive. For the 10 months of billing data Plaintiff Golovan possesses, Defendants charged her more than the 14.25¢ cap ***every single month***.

[8] *Id.* ¶ 30(b).

[9] *Id.* ¶ 30(c).

[10] *Id.* ¶ 44, Attachment 2.

[11] *Id.* ¶ 46.

or other states' enforcement authorities to recoup the millions Just Energy unlawfully extracted from consumers in New York and elsewhere. That is the purpose of this action.

II. Just Energy's Contract and Marketing Materials Also Violate New York's Mandatory ESCO Disclosure Statute.

22. Under N.Y. GEN. BUS. LAW § 349-d(7), Just Energy is required to clearly and conspicuously identify its variable charges in *all* consumer contracts and in *all* marketing materials. The purpose of this disclosure requirement is to ensure that consumers are adequately apprised of how their rates will be set.

23. Rather than complying with Section 349-d(7)'s disclosure requirements, Just Energy's marketing either does not mention its variable rates *at all* or fails to make the required disclosures in a clear and conspicuous manner.

24. Just Energy's contracts, which arrive when a customer can still cancel without penalty, likewise fail to meet the New York ESCO Consumers Bill of Rights' variable charge disclosure requirements.

25. Had Just Energy provided Plaintiffs with truthful, adequate, and appropriate disclosures about Just Energy's variable energy rates, they would not have switched to Just Energy.

III. Defendants' Breach of Contract.

26. Just Energy imposed on Plaintiffs and the Class a standard, non-negotiable, and uniform customer contract referred to by Defendants as the "Agreement." Defendants have advised Plaintiffs that they believe that the contract applicable to Plaintiffs is the document attached hereto as Exhibit B. Exhibit B has the following document identification code: NY_SVC_MOMENTIS_CODE_VAR_V3_Mar_27_12.

27. The Agreement Just Energy drafted is made up of various documents. Paragraph 1

of Just Energy's "General Terms and Conditions," the section entitled "Key Defined Terms," defines the Agreement to include "[c]ollectively, the Customer Agreement (the front page, the Momentis online enrollment page website, and the welcome email), these General Terms and Conditions, and any authorized attachments."

28. The welcome emails sent to Plaintiff Donin state "[w]here the words 'front page' appear in the Terms and Conditions of your Agreement, we are referring to this correspondence, the information contained herein, and the Momentis website." The welcome emails therefore constitute part of the "Customer Agreement" defined in the General Terms and Conditions, which in turn is part of the larger Agreement between Plaintiffs and Defendants.

29. "Electricity Price" is also defined in paragraph 1 of the General Terms and Conditions as "[e]ither your Intro Price or your Electricity Price, as specified on the Customer Agreement. The Intro Price will be your Electricity Price for the first 3 months of the Term of this Agreement and thereafter your Electricity Price will be the Variable Price as specified on the Customer Agreement."

30. Paragraph 1 of the General Terms and Conditions similarly define the "Natural Gas Price" as "[e]ither your Intro Price or your Natural Gas Price, as specified on the Customer Agreement. The Intro Price will be your Natural Gas Price for the first 3 months of the Term of this Agreement and thereafter your Natural Gas Price will be the Variable Price as specified in the Customer Agreement."

31. The welcome emails Defendants sent to Plaintiff Donin do not list an intro rate and instead state that the "Supply Rate after Intro period" for Plaintiff Donin's Just Energy electric account will be 8¢ per kWh. The Supply Rate after Intro period for Plaintiff Donin's gas account was set forth in Defendants' welcome email as 63¢ per therm.

32. Another part of the Agreement, the first page of Exhibit B attached hereto called the "Customer Disclosure Statement (Essential Agreement Information)," which is either "the front page" or an "authorized attachment" under the General Terms and Conditions, states that "[c]hanges to the Variable Price will be determined by business and market conditions and will not increase more than 35% over the rate from the previous billing cycle (see para. 7)."

33. Paragraph 7.1 of the General Terms and Conditions, entitled "Natural Gas Charge" states in relevant part that "[c]hanges to the Variable Price will be determined by Just Energy according to business and market conditions and will not increase more than 35% over the rate from the previous billing cycle."

34. Paragraph 7.3 of the General Terms and Conditions, entitled "Electricity Charge" states in relevant part that "[c]hanges to the Variable Price will be determined by Just Energy according to business and market conditions and will not increase more than 35% over the rate from the previous billing cycle."

35. As set forth more fully below Defendants breached the aforementioned contract provisions by (a) charging rates higher than the rates set forth in the welcome emails Defendants sent to consumers (b) violating the contract's requirement that Defendants "will not increase more than 35% over the rate from the previous billing cycle," and (c) violating the contract's requirement that Defendants charge variable energy rates "determined by business and market conditions."

PARTIES

Plaintiff Fira Donin

36. Plaintiff Donin is a citizen of New York residing in Brooklyn, New York.

37. In the Spring of 2012, Ms. Donin was contacted by a Just Energy sales representative. Upon information and belief, the sales representative was affiliated with Just

Energy Group Inc.'s Momentis network marketing program. Just Energy's representative used a written, standardized sales script and had been trained by Defendants in a way that emphasized uniformity in sales techniques. Upon information and belief, Just Energy's representatives were only permitted to use sales scripts that had been centrally approved and the content of such scripts did not meaningfully vary over time.

38. The Just Energy representative showed Ms. Donin Just Energy's rates for gas and electricity, which Plaintiff believed were representative of Just Energy's rates. The truth, however, is that the rates were teaser rates not reflective of Just Energy's actual rates. It was thus fraudulent for the Just Energy representative to show Ms. Donin a teaser rate that was supposedly representative of Just Energy's rates when in fact the teaser rate was much lower than Just Energy's ordinary rates. Based on these teaser rates, Ms. Donin agreed to switch both her electric and gas account to Just Energy. As described herein Just Energy's statements about its rates were false, fraudulent, and constitute material misrepresentations. Just Energy's statements both during the initial enrollment and at all relevant times thereafter also included several material omissions about Just Energy's variable rates, as described herein.

39. Shortly after agreeing to switch her gas and electric accounts to Just Energy, Defendants sent Plaintiff Donin emails which misrepresented the rates Just Energy would charge after the introductory period. The rates in Just Energy's emails were not substantially different from Defendants' teaser rates. Just Energy's deceptive emails repeated and reinforced Defendants' misrepresentations and omissions regarding Just Energy's rates. The emails were sent from the "justenergysales@mymomens.net" email account. The following pages contain the relevant portions of the email Defendants sent to Plaintiff Donin regarding her electric account:

From: Momentis <justenergysales@mymomentis.net>
To:
Subject: Just Energy NY Customer Agreement and Electricity Enrollment Confirmation 36100346
Date: Mon, 16 Apr 2012 10:56:14 -0500

P.O. Box 2210
Buffalo, New York 14240-22
T 1.866.587.8674
F 1.888.548.7690
cs@justenergy.com

Welcome to Just Energy!

4/16/2012

Dear STAN DONIN,

Congratulations on enrolling as a Just Energy Customer with your Momentis Independent Marketing Representative. You have joined over 1 million North American consumers who have chosen Just Energy.

Reaffirm to Complete Your Enrollment

As a part of the enrollment process, you must reaffirm your intent to enter into this Agreement. If you have not already reaffirmed your agreement, then please call our **toll-free number, 1-866-730-9271 between 9:3 a.m. to 10 p.m. EST, 7 days a week to reaffirm your decision**. Once you have completed this step and your enrollment has been completed successfully, Just Energy New York Corp. will become your electricity suppli and you will begin to see the name of Just Energy, as well as our charges and toll free customer service number, on your utility bills.

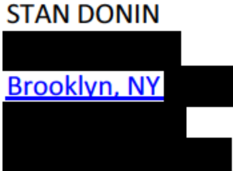
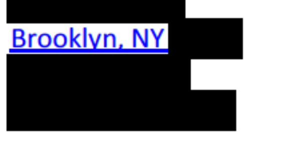
Your Just Energy reference number is

Following is the account information you entered.

Submission Date:

4/16/2012

Account Holder:

STAN DONIN


Brooklyn, NY

Account Information:

Utility Name:
CENYELE

Utility Account Number:

Billing Address:

Brooklyn, NY

Your Momentis Independent Representative:

Commodity License Information »

If any of this information is incorrect, please contact us at 1.866.587.8674. Please keep this email for your records.

Smart Switch 1 year ELEC 50%

Term	Intro Rate (¢/kWh)	Supply Rate after Intro period (¢/kWh)	JustGreen Option	JustGreen Rate
1 year(s)	N/A	8.00	50%	1.00

Should we need additional information to process your request, we will contact you directly.

Please find below a link to the Terms and Conditions of your Agreement with Just Energy. Where the words "front page" appear in the Terms and Conditions of your Agreement, we are referring to this correspondence, the information contained herein, and the Momentis website. In addition, there is a link below to the New York Notice of Cancellation.

Terms and Conditions of your Service Agreement
New York Notice of Cancellation

40. Once Ms. Donin's gas and electricity accounts were successfully transferred to Just Energy, Defendants began supplying Plaintiff's residential energy in June 2012. After Ms. Donin learned in August 2016 that she had been overcharged by Just Energy by more than $2,000 compared to what her local utilities would have charged, she notified Just Energy that she wanted to cancel her gas and electricity accounts.

Plaintiff Inna Golovan

41. Plaintiff Golovan is a citizen of New York residing in Brooklyn, New York.

42. In or around the Summer of 2012, Ms. Golovan was contacted by a Just Energy sales representative. Upon information and belief, the sales representative was affiliated with Just Energy Group Inc.'s Momentis network marketing program. Just Energy's representative used a written, standardized sales script and had been trained by Defendants in a way that emphasized uniformity in sales techniques. Upon information and belief, Just Energy's representatives were only permitted to use sales scripts that had been centrally approved and the content of such scripts did not meaningfully vary over time.

43. Defendants' representative showed Ms. Golovan Just Energy's electricity rate, which Plaintiff believed was representative of Just Energy's rates. The truth, however, is that the rate was a teaser rate not reflective of Just Energy's actual rates. It was thus fraudulent for the Just Energy representative to show Ms. Donin a teaser rate that was supposedly representative of Just Energy's rates when in fact the teaser rate was much lower than Just Energy's ordinary rates. Based on this rate, Plaintiff Ms. Golovan agreed to switch her electric account to Just Energy. As described herein Just Energy's statements about its rate were false, fraudulent, and constitute material misrepresentations. Just Energy's statements both during the initial enrollment and at all relevant times thereafter also included several material omissions about Just

Energy's variable rates, as described herein.

44. Once Ms. Golovan's electricity account was successfully transferred to Just Energy, Defendants began supplying Plaintiff's residential electricity in August 2012. After Ms. Golovan learned in April 2015 that Just Energy's electricity rates had been consistently high, she notified Just Energy that she wanted to cancel her electricity account.

Defendant Just Energy Group Inc.

45. Established in 1997, Defendant Just Energy Group Inc. (which refers to itself as "Just Energy"), is a publicly traded Canadian corporation incorporated under the laws of Ontario. In 2004, Just Energy made its initial expansion into the United States. Headed by Enron alums James Lewis and Deborah Merril, Just Energy is operated out of dual headquarters in Houston, Texas and Toronto, Ontario. Just Energy's operating affiliates include Defendant Just Energy New York Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Texas L.P., Just Energy Massachusetts Corp., Just Energy Michigan Corp., Amigo Energy, Commerce Energy Inc., Green Star Energy, Hudson Energy Services, LLC, Momentis U.S. Corp., National Energy Corp., Tara Energy, Universal Energy Corporation, and Universal Gas and Electric Corporation. Just Energy and its operating affiliates market and sell natural gas and/or electricity in New York, California, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and Texas.

46. Just Energy's shares are traded on the Toronto Stock Exchange and the New York Stock Exchange bearing the ticker symbol "JE." Just Energy is the 11th largest independent energy supplier in the United States, with over 1.8 million customers across North America. Variable rate plans are one of Just Energy's main products.

47. Just Energy has amassed a damning public dossier. The following chronology unearthed by Plaintiffs' counsel's pre-suit investigation documents Defendants' deceptive business practices.

48. In June 2003, the Toronto Star reported that Just Energy (then operating under the name Ontario Energy Savings Corp.) was fined for violating the Ontario Energy Board's code of conduct for fraudulently enrolling customers.[12]

49. In 2008, the Illinois Attorney General sued U.S. Energy Savings Corp. (whose name was changed to Just Energy in 2012), alleging violations of Illinois' consumer fraud laws. The May 2009 Press Release announcing a $1 million settlement noted that the Illinois Attorney General had "received a nearly unprecedented number of calls from consumers who were deceived by false assurances that they would receive significant savings by switching to this alternative gas supplier."[13] According to the Attorney General's complaint, among other deceptive conduct "consumers were led to believe that they would automatically save money by enrolling in the U.S. Energy Savings program."[14]

50. During this same period, the Citizens Utility Board (the "CUB") and AARP filed a formal complaint with the Illinois Commerce Commission (the "ICC") alleging, *inter alia*, that Just Energy told customers they would "save money" by signing up, that consumers would not see any gas price increases if they signed up, and that Just Energy presented false and misleading

[12] Spears, John, "*Energy marketers fined over forgeries*," Toronto Star (June 21, 2003).

[13] Press Release, "Madigan Secures $1 Million in Consumer Restitution from Alternative Gas Supplier for Deceptive claims," May 14, 2009.

[14] *Id.*

information about its prices.[15] In April 2010, the ICC found that Just Energy's sales and marketing practices were deceptive, fined the company $90,000, and ordered an independent audit of its practices.[16]

51. In July 2008, New York's Attorney General announced a $200,000 settlement with Just Energy (then named U.S. Energy Savings) and noted that the Attorney General's "office received hundreds of consumer complaints that sales contractors promised immediate savings on utility bills, but the price of gas was actually more than the price charged by the local utility because the price was locked in for a multi-year period."[17]

52. As previously noted, in December 2014 Just Energy agreed to settle deceptive marketing claims brought by the Massachusetts Attorney General.

53. In November 2016, Ohio's Public Utilities Commission (the "PUCO") fined Just Energy *for a second time* for misleading marketing practices. An article in the Columbus Dispatch notes that Just Energy is an "energy company with a track record of misleading marketing," that it was fined by the PUCO in 2010 for deceptive marketing, and that it "sells energy contracts that often cost more than customers would pay if they received the standard service price."[18] The article also mentions that some of the complaints that led to the PUCO's

[15] Verified Original Complaint ¶19, Illinois Commerce Commission Docket 08-0175 (March 3, 2008).

[16] Press Release, "Illinois Commerce Commission Fines Just Energy for Deceptive Sales and Marketing Practices, Orders Audit," April 15, 2010.

[17] Press Release, "Attorney General Cuomo Stops WNY Natural Gas Provider From Deceiving Consumers by Misrepresenting Service Contracts," (July 4, 2008).

[18] Gearino, Dan, "Electricity marketer Just Energy fined over complaints,'" The Columbus Dispatch, (Nov. 4, 2016).

action "stemmed from contracts sold on behalf of Just Energy by another company, saveonenergy.com."[19]

54. There are also numerous complaints about Just Energy on the internet.

55. Over the last three years alone Just Energy has had at least 284 complaints filed with the Better Business Bureau (the "BBB"). Of the customer reviews posted to the BBB's website, 93% are categorized by the BBB as "Negative Reviews."

56. Below are a few examples taken from the consumer complaint website Ripoff Report:[20]

> **Just Energy Switched my energy rate to variable with NO NOTICE, doubled fees for six months.**
>
> I have noticed over the past few months that the energy cost was getting higher and I thought it was due to the cold winter and higher energy usage. I called Duquesne Light last month and they said call your energy supplier which is JUST ENERGY. In December they had changed my fixed electrical usage rate to a nearly DOUBLE variable rate with NO NOTICE (total extra fees amounting to about $1,500.00). I called Just Energy and tried to get reimbursed, they reviewed my account and said they sent me a POST CARD in the mail when the rate change occurred (which I have never received). I have gotten no reimbursement and they offered to send me a $20.00 visa gift card which I declined. If anyone can offer any information about anything I can do to try and reclaim some money that would be great!!!!
>
> **Just Energy Our bill has doubled since signing up for this, "energy efficient" program. Nipsco checked what we have been paying and what we are now paying and confirmed that. Our thermostat is digitally programmed to have heat set at 65 and our bill is $354.20**
>
> We signed up for Just Energy because of them of course telling us we can save more money on our gas bill. We just received a bill of $354.20 and a disconnect notice. We called Nipsco to figure out what is going on and they were able to look at what we have been paying with them which had been .38 cents per therm and now we are being charged double that! I would like to note that our indoor

[19] *Id.*

[20] Misspellings corrected.

thermostat is electronically programmed to be at 65 degrees when heat is running . . . . I was also told by Nipsco that they cannot check or confirm because Just Energy is a different company, that we are now most likely stuck into a contract with these people and obligated to pay these outrageous bills. Having 4 children having our services disconnected is not an option, it's just sad . . . that instead of buying my kids Christmas presents I now have to pay this high gas bill or go without heat in the dead of winter.

Commerce Energy dba Just Energy Just Energy, US Energy Broken Promises

For the past 7 months, I was understanding that Just Energy was a utility company that was about helping the consumer save money on their electric bills from AEP. Come to find out that they were in fact charging my account more than what I could have been paying if I stayed with AEP. I was also told that when I signed up with them that my rate would be a fixed rate of 6.5 cents but in fact it wasn't. I am completely at a loss of words at how this company has done me wrong.

I am on a very fixed income and every dollar I can save is a blessing, so when they come to my house promising that they can save me money I was all for it. Just recently I was told that I was being charged an additional fee of supplier charges that I wasn't supposed to have on my bill. I am very upset with this and I want some explanation as to why this was happening . . . as well as I want my money back. So to anyone who is thinking about signing up with this company, please do your research and think again.

Just Energy of Massachusetts Just Energy of Ontario Just energy promised me 6.9 cents, not to ever go above Nstar rates, after a month or two the rate is almost twice Nstar rate, because I use electricity for heating my bill was very high after they doubled their rates that I noticed, most people would not, they ripped me off for $1,300, only God knows how much the rip off in their final month. Please do not sign with them.

Just Energy sales representative called me promised 6.9 cents rate, that will never go above Nstar rate, that happened for a month or two, now my rate is almost twice Nstar rate, I only noticed because I use electricity for heat, my utilization is high so is my rip off, so I have to notice most people with low utilization would not, they ripped me off $1,300 in 2 months and only God knows how much is the rip off this month, the problem is by the time you realize and change they already ripped you off 3 months. Please no matter what you do, do not sign up with Just Energy.

Just Energy 100% scam. Pushy sales people lie. Company won't cancel service. Rates went way up!!!

Pushy sales people who lie. Rates went way up, not down as promised.

Company not allowing me to cancel service . . . . Upon receiving the first bill after the switch to Just Energy our cost for gas doubled, and electric went up 50%. Calls to cancel service and switch back to our local company do not go though, month after month I continue to get ripped off.

Just Energy Scummy bunch of scheisters! Avoid them at any cost. I bought their spiel, and I suffered as a result. Prices are not competitive. After I moved, they screwed me cause I wouldn't continue with the Just Energy, Scam, Untrustworthy, Avoid

AVOID Just Energy. Quick talking salesmen, who will rip you off. Rates are not competitive, and they charged me $50 when I moved out of my apartment. Never deal with this company if you want a truth in advertising and a good deal.

USESC, Just Energy Scammed me I'm a 72 year old Hispanic. This man flashed a badge made me get my gas bill and promised I'd save money.

I am a 72 year old Hispanic lady, on social security and Section 8. A man showed up at my apartment. He flashed a badge and began to explain on what USESC was all about.

He talked about how high the gas rates are going and that by signing with this company I would be locked into a certain rate and that my gas bills would be lower. He made me get my current gas bill and he showed me the rate I was at and compared it to a rate he said I would be locked into.

I was made to believe that I would be saving money. When I began to look at my bills after signing I noticed that instead of saving money I have begun to pay more. On my bills I have seen a 200 dollar increase monthly and have not saved a dime on anything.

I was completely scammed into signing this contract and I believe it's because I'm a senior citizen. I now cannot afford to pay my gas bill and feed my children.

It would be best if no one else got scammed the way I did. I'm raising my grandchildren and we are barely surviving. I'm outraged that a company would purposely scam the weak and helpless

Heaven
Chicago, Illinois
U.S.A.

just energy I sign a contract with just energy and the bill went up instead of down

I sign a contract with just energy and the bill went up instead of down . . . .

57. Just Energy's twitter feed tells a similar story, as the word "scam" appears more than 40 times in posts from 2009 to the present.

58. Media reports about Just Energy equally condemn Defendants for deceptive conduct. When the confidential results of the audit ordered by the ICC referenced above were made public, Chicago's CBS affiliate reported that between 2010 and 2011 Just Energy received over 29,729 customer complaints.[21] "There were so many complaints over so many years with so little company oversight on how they were handled that the audit said, '[a]n adequate compliance culture at the top levels of the organization is not evident.'"[22]

59. A 2014 exposé by Canada's Global News highlights that the "CUB, the Better Business Bureau (BBB), the Ontario Energy Board, among others, have been inundated with complaints from consumers about the sales methods employed by Just Energy. The most common grievance is Just Energy promises people savings that don't materialize."[23]

60. The exposé further references Just Energy's founder Rebecca MacDonald who has "raked in an estimated $150 million from the company since she established it in the 1990s" and is facing accusations "over whether she's misled investors in her company."[24] Those accusations include that MacDonald faked her credentials and the conclusions by "two of Canada's top forensic accounting firms" that Defendants used "an unregulated form of

[21] Zekman, Pam, "Alternative Energy Supplier Has Long Record Of Fraud Complaints," *CBS2*, (Jan. 15, 2013).

[22] *Id.*

[23] Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014).

[24] *Id.*

accounting to paint a much rosier picture of the company's financial situation," which in turn allowed Just Energy to show an "artificial profit."[25]

61. The Global News exposé also contains a 22-minute video entitled the "Just Energy Hustle." Below is an excerpt of a Global News Journalist's videotaped interview with Just Energy's Co-CEO Deborah Merril. Despite having joined Just Energy in 2007, in the 2014 interview the Co-CEO denies even knowing about the many criticisms leveled at Just Energy's marketing and sales practices:

> Journalist: "Critics have accused your company of underhanded sales tactics, sleazy tactics to try to get people to sign their name to a contract."
>
> Co-CEO Merril: "I have not heard those accusations, so, nobody said that to me, no."
>
> Journalist: "Really, this is news to you?"
>
> Co-CEO Merril: "No, nobody's said that to me. I think it's . . . ."
>
> Journalist: "It's your company. I mean, you know . . . ."
>
> Co-CEO Merril: "I would disagree with that."
>
> Journalist: "You would disagree that there's a view that your company is doing things at the door that it shouldn't be doing?"
>
> Co-CEO Merril: "No, I'm saying that mistakes happen and we take 'em very seriously."

"The Just Energy Hustle," Minutes 18:35 to 19:18.[26]

62. More than a year prior to the Global News exposé, on July 31, 2013, New York-based investment management firm Spruce Point Capital Management released an investment

[25] *Id.*

[26] *Available at:* https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/

analysis that labeled Just Energy as "a company that U.S. consumers and investors are quickly realizing has become toxic to their wallets through deceptive energy marketing practices, and harmful to their brokerage accounts."[27] The report signaled that Just Energy's "growth appears to be the result of deceptive sales tactics, now at risk of unravelling" which is "evidenced by a large body of consumer fraud complaints."[28]

63. The report also highlights how Just Energy (referred to below as "JE") uses a teaser rate to deceive consumers:[29]

> As noted in the table below, JE "appears" to offer the lowest price fixed contract, but as discussed below there's a 'catch.'

	ConEd Solutions	Constellation	Spark Energy	Greenlight Energy	US Gas & Electric	Just Energy	Constellation	Spark Energy	Greenlight Energy	Just Energy
Commodity	Electric	Electric	Electric	Electric	Electric	Electric	Gas	Gas	Gas	Gas
Term (months)	12	12	12	None	5	60	12	12	None	60
Initiation Fee	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Cancellation Fee	-	-	-	-	$50.00	$50.00	-	-	-	$50.00
Monthly Fee	-	-	-	-	-	-	-	4.95	-	
Unit Cost (c/KWh | c/therm)	**10.45c**	**10.99c**	**10.49c**	**10.00c**	**10.50c**	**7.15c**	**67.90c**	**77.50c**	**66.00c**	**62.00c**

Source: ConEdison website and company websites. End of April 2013

JE's gas RateFlex prices are fixed *only for three* months – despite the 5-year term – and after three months, the contract reverts to a *fluctuating* price based on "*business and market conditions*." The Electric RateFlex is fixed for 2 months. JE then gives its customers the option of locking in this new, variable and unknown price. The company tries to reassure consumers that the rate won't fluctuate that much by guaranteeing that the variable rate won't increase by more than *35% per month* (see: section 7). Just Energy also allows consumers to cancel their contract free within 30 days – before the misleadingly low introductory price expires – but charges a $50 "Exit Fee" if cancelled thereafter. Of course, most consumers don't bother to read the fine print, particularly if salesmen are pushing quick cash back incentives with Visa Gift Cards for registering and referring friends.

[27] Spruce Point Capital Management, "Just Energy: Another Dividend Cut Poses An Above Average Risk to Investors" at 2 (July 31, 2013), *available at:* http://www.sprucepointcap.com/just-energy/.

[28] *Id.* at 3.

[29] *Id.* at 4–5.

Defendant Just Energy New York Corp.

64. Defendant Just Energy New York Corp. is a Delaware company with its principle executive office in Toronto, Ontario. Defendant Just Energy Group Inc.'s public financial filings reveal that it completely controls its operating affiliates, including Defendant Just Energy New York Corp. These filings and other public data show that Just Energy Group Inc. and its unified executive team control all operational and financial aspects of its operating affiliates, which are run on a consolidated basis as one company. Just Energy Group Inc. uses its operating affiliates to perpetrate the unlawful conduct challenged in this lawsuit. Just Energy Group Inc. reports its operating affiliates' earnings and losses in a consolidated format. Defendant Just Energy New York Corp. is the corporate entity that supplied Plaintiffs' energy.

65. Just Energy New York Corp. is Just Energy Group Inc.'s agent in New York and has apparent authority to act on Just Energy Group Inc.'s behalf. Just Energy New York Corp. and Just Energy Group Inc. use the same corporate logo and share the same principal place of business. On information and belief, Just Energy New York Corp. has no separate offices or letterhead. On information and belief, Just Energy New York Corp. does not have its own management or employees. When Defendants issue new releases about New York, they do so under Just Energy Group Inc.'s brand. On information and belief, Just Energy New York Corp. does not have its own payroll. On information and belief, to the extent Just Energy New York Corp. maintains any corporate policies those policies were developed and implemented by Just Energy Group Inc.'s management and employees. On information and belief, Just Energy New York Corp. does not own real property. On information and belief, Just Energy New York Corp. does not advertise or have a website. Rather customers sign up with "Just Energy" through co-Defendant Just Energy Group Inc.'s advertisements, sales staff, independent sales contractors,

and website. On information and belief, all Just Energy marketing directed at New York consumers was created by or on behalf of Just Energy Group Inc. On information and belief, Just Energy Group Inc is fully aware that Just Energy New York Corp. has apparent authority to act on Just Energy Group Inc.'s behalf.

66. On information and belief, Just Energy New York Corp. possesses actual authority to act on Just Energy Group Inc.'s behalf in New York. On information and belief, Just Energy Group Inc.'s management, employees, or other individuals or entities contracted by Just Energy Group Inc. drafted the customer contract at issue in this litigation. On information and belief, Just Energy Group Inc. caused Defendants to breach their contracts with Plaintiffs and the Class.

67. On information and belief, Just Energy New York Corp. is entirely dominated by Just Energy Group Inc. On information and belief, Just Energy New York Corp. observes no corporate formalities. On information and belief, Just Energy New York Corp. keeps no corporate records or minutes and has no officers or directors elected in accordance with its by-laws. On information and belief, Just Energy Group Inc. commingles assets with Just Energy New York Corp. On information and belief, Just Energy Group Inc. pays all of Just Energy New York Corp.'s bills. On information and belief, Just Energy New York Corp. has no assets and passes all revenues to Just Energy Group Inc. On information and belief, Just Energy New York Corp. does not own real property. On information and belief, any real property owned by Defendants is owned by Just Energy Group Inc. or other entities controlled by Just Energy Group Inc. On information and belief, Just Energy New York Corp.'s marketing and sales data are not recorded independently but are treated as part of Just Energy Group Inc.'s marketing and sales data. On information and belief, Just Energy New York Corp. does not have an independent

marketing and sales department and does not utilize marketing and sales software for its sole benefit. Instead, on information and belief, Just Energy Group Inc.'s marketing and sale channels and software are used for soliciting consumers.

68. In sum, Just Energy New York Corp. is a shell company through which Just Energy Group Inc. operates in New York. Just Energy New York Corp. is Just Energy Group Inc.'s agent in New York with authority to bind New York consumers to Just Energy's customer contract.

Defendants John Doe 1 to 100

69. Defendants John Does 1 to 100 are the shell companies and affiliates similar to Just Energy New York Corp. through which Defendant Just Energy Group Inc. does business in New York and elsewhere. John Does 1 to 100 are also the Just Energy management and employees who perpetrated the unlawful acts described herein.

JURISDICTION AND VENUE

Subject Matter Jurisdiction

70. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332 (the "Class Action Fairness Act").

71. This action meets the prerequisites of the Class Action Fairness Act, because the claims of the Class defined below exceed the sum or value of $5,000,000, the Class has more than 100 members, and diversity of citizenship exists between at least one member of the Class and Defendants.

Personal Jurisdiction

72. This Court has specific personal jurisdiction over Defendants because they maintain sufficient contacts in this jurisdiction, including the advertising, marketing, distribution

and sale of natural gas and electricity to New York consumers.

73. Defendant Just Energy New York Corp. contracts with consumers in this district and is Defendant Just Energy Group Inc.'s agent and alter ego in this district.

74. Defendant Just Energy Group Inc.'s press releases describe this Defendant's conduct in New York. For example, on April 3, 2017 Defendant Just Energy Group Inc. stated that "Just Energy . . . operates in California, Georgia, Ohio, Michigan, Illinois, New York, Delaware, New Jersey, Pennsylvania and Maryland." An October 18, 2017 Just Energy Group Inc. press release states that Just Energy Group Inc.'s markets include "New York City." An August 10, 2016 Just Energy Group Inc. press release states that Just Energy Group Inc. "actively" markets "energy management solutions" in "California, New York and New Jersey . . . ."

75. On September 4, 2017 Just Energy Group Inc. issued a press release stating that "it will participate in the Rodman & Renshaw 17th Annual Global Investment Conference on Thursday, September 10, at the St. Regis Hotel in New York, NY." The same press release also states that "Co-Chief Executive Officer, Deborah Merril and Chief Financial Officer, Patrick McCullough are scheduled to present an overview of the Company and its strategies on Thursday, September 10, at 10:00 a.m. EST."

76. On August 12, 2010 Just Energy Group Inc. announced that it was expanding into two new utility territories in New York and that it launched "Momentis network marketing in Ontario and New York . . . ." As set forth above, upon information and belief Plaintiffs were solicited by a sales representative affiliated with Just Energy Group Inc.'s Momentis network marketing program and the contract Defendants contend is applicable to Plaintiffs contains the word "MOMENTIS" in its document identification code and references the Momentis website.

The welcome email sent to Plaintiff Donin was sent from the "justenergysales@mymomens.net" email account. According to the New York Department of State's Division of Corporations database Momentis U.S. Corp. was registered as a Delaware corporation on February 5, 2010. The Department of State's database lists Momentis U.S. Corp.'s CEO as Just Energy Group Inc.'s co-CEO James Lewis. According to the Department of State's database Momentis U.S. Corp. was dissolved on June 29, 2016.

77. Defendant Just Energy Group Inc.'s securities filings also describe this Defendant's contacts with New York. For example, Just Energy Group Inc.'s 2018 Third Quarter Report states that Just Energy receives payment from New York utilities related gas delivered to these New York utilities.

78. Just Energy Group Inc.'s 2016 Annual Report states that it sells gas and electricity in New York. The emails sent by Just Energy to Plaintiff Donin also refer to Just Energy's "JustGreen" energy. Just Energy Group Inc.'s 2016 Annual Report states that "[t]he Company currently sells JustGreen gas in the eligible markets of Ontario, British Columbia, Alberta, Saskatchewan, Michigan, New York, Ohio, Illinois, New Jersey, Maryland, Pennsylvania and California. JustGreen electricity is sold in Ontario, Alberta, New York, Texas, Maryland, Massachusetts, Ohio, Illinois and Pennsylvania."

79. Just Energy Group Inc.'s 2015 Annual Report states that Just Energy Group Inc. is "exposed to customer credit risk on its continuing operations in Alberta, Texas, Illinois, British Columbia, New York, California, Michigan and Georgia and commercial direct-billed accounts in British Columbia, New York and Ontario."

80. Just Energy Group Inc.'s 2011 Annual Report states that its larger customers include the New York City Housing Authority.

Venue

81. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2). Substantial acts in furtherance of the alleged improper conduct occurred within this District and Plaintiffs reside within this District.

FACTUAL ALLEGATIONS

I. Energy Deregulation and Resulting Wide-Spread Consumer Fraud.

82. In 1996, New York deregulated the sale of retail gas and electricity. As a result of deregulation, New York consumers can purchase natural gas and electricity through third-party suppliers while continuing to receive delivery of the energy from their existing public utilities. These third-party energy suppliers are known as energy service companies, or "ESCOs." Since New York opened its retail gas and electric markets to competition, approximately two New York consumers have switched to an ESCO.

83. ESCOs are subject to minimal regulation by New York's utility regulator, the New York State Public Service Commission (the "PSC"). ESCOs like Just Energy do not have to file their rates with the PSC, or the method by which those rates are set. The PSC also does not limit in any way the prices ESCOs charge.

84. ESCOs play a middleman role: they purchase energy directly or indirectly from companies that produce energy and sell that energy to end-user consumers. However, ESCOs do not ***deliver*** energy to consumers. Rather, the companies that produce energy deliver it to consumers' utilities, which in turn deliver it to the consumer. ESCOs merely buy gas and electricity and then sell that energy to end-users with a mark-up. Thus, ESCOs are essentially brokers and traders: they neither make nor deliver gas or electricity, but merely buy energy from a producer and re-sell it to consumers.

85. If a customer switches to an ESCO, the customer's existing utility continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is which company sets the price for the customer's energy supply.

86. After a customer switches to an ESCO, the customer's energy supply charge (based either on a customer's kilowatt hour [electricity] or therm [gas] usage) is calculated using the supply rate charged by the ESCO and not the regulated rate charged by the customer's former utility. The supply rate charged is itemized on the customer's bill as the number of kilowatt hours ("kWh") or therms multiplied by the rate. For example, if a customer uses 145 kWh at a rate of 10.0¢ per kWh, the customer will be billed $14.50 (145 x $.10) for their energy supply.

87. Almost all states that deregulated their energy markets did so in the mid to late 1990s. This wave of deregulation was frantically pushed by then-corporate superstar Enron. For example, in December 1996 when energy deregulation was being considered in Connecticut, "the most aggressive proponent" of deregulation, Enron CEO Jeffrey Skilling said:

> Every day we delay [deregulation], we're costing consumers a lot of money . . . . It can be done quickly. The key is to get the legislation done fast.[30]

88. Operating under this concocted sense of urgency, the states that deregulated suffered serious consumer harm. For example, in 2001 forty-two states had started the deregulation process or were considering deregulation. Today, the number of full or partially deregulated states has dwindled to only seventeen and the District of Columbia. Even within those states several have recognized deregulation's potential harm to everyday consumers and thus only allow large-scale consumers to shop for their energy supplier.

89. Responding to shocking energy prices, many key players that supported

[30] Keating, Christopher, "Eight Years Later . . . 'Deregulation Failed,'" *Hartford Courant*, Jan. 21, 2007.

deregulation now regret the role they played. For example, reflecting on Maryland's failed deregulation experience, a Maryland Senator commented:

> Deregulation has failed. We are not going to give up on re-regulation till it is done.[31]

90. A Connecticut leader who participated in that state's foray into energy deregulation was similarly regretful:

> Probably six out of the 187 legislators understood it at the time, because it is so incredibly complex . . . . If somebody says, no, we didn't screw up, then I don't know what world we are living in. We did.[32]

91. One of deregulation's main unintended consequences has been the proliferation of ESCOs like Just Energy whose business model is primarily based on taking advantage of consumers. As a result of this widespread misconduct, states like New York began enacting post-deregulation remedial legislation meant to "establish[] important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers." [33] As the sponsoring memorandum notes, the ESCO Consumers Bill of Rights, codified as G.B.L. Section 349-d, in 2010 sought to end the exact type of deceptive conduct Plaintiffs challenge here:

> Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process.

[31] Hill, David, "State Legislators Say Utility Deregulation Has Failed in its Goals," *The Washington Times*, May 4, 2011.

[32] Keating, *supra*.

[33] ESCO Consumers Bill of Rights, New York Sponsors Memorandum, 2009 A.B. 1558, at 1 (2009) attached as Exhibit C.

* * *

> High-pressure and *misleading sales tactics*, onerous contracts with unfathomable *fine print*, *short-term "teaser" rates followed by skyrocketing variable prices*—many of the problems recently seen with subprime mortgages are being repeated in energy competition. Although the PSC has recently adopted a set of guidelines, its "Uniform Business Practices" are limited and omit important consumer protections in several areas. The fact is, competition in supplying energy cannot succeed without a meaningful set of standards to weed out companies whose business model is based on taking unfair advantage of consumers.

Id. at 3–4 (emphasis added).

92. New York regulators have also begun to call out the high levels of misconduct that pervade deregulated energy markets. For example, in 2014 the PSC concluded that New York's residential and small-commercial retail energy markets were plagued with "marketing behavior that creates and too often relies on customer confusion."[34] The PSC further noted "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."[35] The PSC concluded as follows:

> [A]s currently structured, the retail energy commodity markets for residential and small nonresidential customers cannot be considered to be workably competitive. Although there are a large number of suppliers and buyers, and suppliers can readily enter and exit the market, the general absence of information on market conditions, particularly the price charged by competitors, is an impediment to effective competition . . . .[36]

93. The PSC's complaint data confirms its conclusions. The PSC's annual complaint statistics reports indicate that in 2012 the PSC received 1,733 ESCO related complaints of which 322 alleged deceptive marketing. The number of ESCO related complaints increased to 2,384 in 2013 with 2,001 reporting deceptive marketing practices. In 2014 there were 4,640 initial ESCO

[34] CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 4 (Feb. 25, 2014).

[35] *Id*. at 11.

[36] *Id*. at 10.

related complaints, with 2,510 claiming deceptive marketing. In 2015 the data shows there were 5,044 initial ESCO related complaints with 2,348 alleging deceptive marketing practices. In 2016 there were 2,995 initial complaints against ESCOs, with 1,375 alleging deceptive marketing practices.

94. The number of deceptive marketing allegations against ESCOs far exceed the combined number of complaints received by all other regulated utilities in New York, including the lightly regulated telecommunications industry. Further, no single ESCO or single region of New York is responsible for most of the complaints. Rather, the complaint data demonstrates that consumer fraud is part of the industry's standard operating procedures.

95. A large percentage consumer complaints to the PSC concern variable rate pricing like Defendants' where consumers' bills are more or less as advertised during the teaser or fixed rate period, but after this initial period expires, instead of switching the consumer back to the utility the ESCO uses the consumers' inaction to substantially increase the price without further notice or explanation as to how the new rate is determined.

96. Statistics from the New York Attorney General's ("NYAG") office confirm the pattern of activity this consumer class action seeks to combat. From at least the year 2000 to the present, the NYAG has investigated numerous ESCOs' deceptive and illegal business practices. These investigations have resulted in at least eight settlements providing for extensive injunctive relief and millions in restitution and penalties.

97. In the last three years, the NYAG has also directly received more than 600 complaints against ESCOs. These complaints demonstrate that the ESCO practices that were the subject of the NYAG's previous settlements continue, and that industry participants like Just Energy view regulatory enforcement actions as simply the cost of continuing their fraudulent

business practices.

98. The deceptive conduct of ESCOs like Just Energy has been devastating to consumers nationwide. For example, "[a]ccording to the data provided by [New York's] utilities, the approximately two million New York State residential utility customers who took commodity service from an ESCO collectively paid almost $1.2 billion more than they would have paid if they purchased commodity from their distribution utility during the 36-months ending December 31, 2016."[37] "Additionally, small commercial customers paid $136 million more than they would have paid if they instead simply remained with their default utilities for commodity supply for the same 36-month period."[38] Combining these two groups, New York consumers have been "'overcharged' by over $1.3 billion dollars over this time period."[39]

99. New York's low-income consumers have also been hit hard. The utilities reported that low-income ESCO customers (a subset of the residential customers mentioned above) "collectively paid in excess of $146 million more than they would have paid if they took commodity supply from their utility."[40]

100. Based on the flood of consumer complaints, negative media reports, and data demonstrating massive overcharges the PSC announced in December 2016 an evidentiary hearing to consider primarily whether ESCOs should be "completely prohibited from serving their current products" to New York residential consumers.[41] In other words, to reassess whether

[37] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 2 (Mar. 30, 2018).

[38] *Id.* at 3.

[39] *Id.*

[40] *Id.*

[41] CASE 12-M-0476, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, at 3 (December 2, 2016).

New York's deregulation experiment has failed everyday consumers.

101. Then, on December 16, 2016, the PSC permanently prohibited ESCOs from serving low-income customers, because of "the persistent ESCO failure to address (or even apparently to acknowledge) the problem of overcharges to [low income] customers . . . ."[42]

102. Following the first part of the evidentiary hearing announced in December 2016, on March 30, 2018, PSC staff reached the following conclusions about ESCOs in New York:

> [M]ass market ESCO customers have become the victims of a failed market structure that results in customers being fooled by advertising and marketing tricks into paying substantially more for commodity service than they had remained full utility customers, yet thinking they are getting a better deal. Rather than fierce ESCO against ESCO price competition working to protect customers from excessive charges, ESCOs have deliberately obfuscated prices and resisted market reforms such that the Commission's decision to allow ESCOs access to the utility distribution systems to sell electric and gas commodity products to mass market customers has proven to be no longer just and reasonable. [43]
>
> * * *
>
> [T]he Commission must direct that mass market ESCO customer bills disclose a relative bill comparison showing the current bill charges and what the customer would have paid had they taken delivery and commodity from their utility.[44]
>
> * * *
>
> The primary problem with the retail markets for mass market customers is the overcharging of customers for commodity due to the lack of transparency to customers on ESCO prices and products; this lack of transparency allows ESCOs to charge customers practically whatever they want without customers' understanding that they are paying substantially more than if they received full utility service. Consequently, potential commodity customers attempting to choose between the ESCO offerings

[42] CASE 12-M-0476, Order Adopting A Prohibition On Service To Low-Income Customers By Energy Services Companies, at 3 (Dec. 16, 2016).

[43] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 1 (Mar. 30, 2018).

[44] *Id.* at 4.

> and the default utility service cannot readily determine which ESCO offers the best price for comparable products or if the ESCOs' prices can possibly "beat" or even be competitive with the utility's default commodity service for the duration of the contract term.
>
> Thus, as the current retail access mass markets are structured, customers simply cannot make fully informed and fact-based choices on price . . . since the terms and pricing of the ESCO product offerings are not transparent to customers. For variable rate products this is due, in large part, to the fact that ESCOs often offer "teaser rates" to start, and after expiration of the teaser rate, the rate is changed to what is called a "market rate" that is not transparent to the customer, and the contract signed by the customer does not provide information on how that "market rate" is calculated.[45]
>
> * * *
>
> ESCOs take advantage of the mass market customers' lack of knowledge and understanding of, among other issues, the electric and gas commodity markets, commodity pricing, and contract terms (which often extend to three full pages), and in particular, the ESCOs' use of teaser rates and "market based rate" mechanisms that customers are charged after the teaser rate expires. In fact, ESCOs appear to be unwilling to provide the necessary product pricing details as to how those "market based rates" are derived to mass market customers in a manner that is transparent so as to enable an open and competitive marketplace where customers can participate fairly and with the necessary knowledge to make rational and fully informed decisions on whether it is in their best interest to take commodity service from their default utility, or from a particular ESCO among competing but equally opaque choices.[46]

103. As for the ESCOs' claim that their marketing and overhead costs explain the overcharges, PSC staff found that these costs do "not justify the significant overcharges" ESCOs levied on New York consumers.[47] Likewise, when the ESCOs claimed that their provision to consumers of so-called value-added products such as light bulbs and thermostats contributed to their excessive rates, PSC staff found that "these sorts of value-added products is at best de

[45] *Id.* at 41–42 (citations omitted).

[46] *Id.* at 86 (citations omitted).

[47] *Id.* at 37.

minimis and does not explain away the significantly higher commodity costs charged by so many ESCOs."[48] Similarly, the PSC staff found that the "claim that at least a portion of the significant delta between ESCO and utility charges is explained by ESCOs offering renewable energy is disingenuous at best. ESCOs may be charging a premium for green energy, but they are not actually providing a significant amount of added renewable energy to customers in New York."[49]

104. Instead, PSC staff reached the following conclusion:

> The massive $1.3 billion in overcharges is the result of higher, and more often than not, significantly higher, commodity costs imposed by the ESCOs on unsuspecting residential and other mass market customers. These Overcharges are simply due to (1) the lack of transparency and greed in the market, which prevents customers from making rational economic choices based on facts rather than the promises of the ESCO representative, and (2) obvious efforts by the ESCOs to prevent, or at least limit, the transparency of the market. These obvious efforts include the lack of a definition for "market rate" in their contracts, resulting in the fattening of ESCOs' retained earnings.[50]

105. This class action, which seeks more than $100,000,000 in damages, restitution, penalties, and equitable relief is further proof that residential energy deregulation has been an abject failure.

II. Just Energy Misled Its Customers and Then Gouged Them Compared to What They Would Have Paid Had They Stayed with Their Local Utility.

106. To convince consumers to switch, Defendants represented that customers would save money on their energy costs by switching over from their current utilities.

107. As evidenced by the fact that Just Energy used to be called "U.S. Energy Savings," Defendants understand that the potential for saving money on their home energy costs

[48] *Id.* at 87.

[49] *Id.* at 69.

[50] *Id.*

is the primary, if not exclusive, reason consumers switch to Just Energy.

108. Defendants' primary way of enticing consumers with promised savings is through Just Energy's teaser rates. Defendants make the consuming public aware of Just Energy's teaser rates through various means, including via company-controlled in-person solicitations, telemarketing calls from Defendants' call centers, internet ESCO price aggregators such as www.chooseenergy.com and www.saveonenergy.com that Defendants pay to showcase Just Energy's prices, or through state utility ESCO pricing websites such as New York's www.newyorkpowertochoose.com.

109. Just Energy's teaser rates consistently misrepresent the cost of Defendants' energy because they suggest Just Energy's rates are lower than what Just Energy knows it will eventually charge consumers once the teaser period expires. Just Energy's teaser rates also misleadingly suggest to the consumer that Just Energy's rates are lower than their utility's rates. The truth is that Just Energy has a long history of charging substantially more than customers' local utilities.

110. To compound the deception, Defendants do not adequately disclose that the quoted rates are introductory teaser rates and that when Just Energy's teaser rates expire the consumer will pay a rate that is much higher than the utility's rate.

111. Defendants also do not adequately disclose when Just Energy's teaser rates expire. Instead, Just Energy enrolls consumers into variable rate plans knowing (but failing to disclose) that once the teaser rate expires Just Energy's rates will surpass the utility's rates.

112. Just Energy also actively misrepresents the rates it will charge when its teaser rates expire. For example, in April 2012 Just Energy sent Plaintiff Donin an email stating that she would be charged an electric rate of 8¢ per kWh once her "intro period" lapsed. Yet Just

Energy consistently charged Ms. Donin more than 8¢ per kWh. The Just Energy billing data Ms. Donin has in her possession shows that Just Energy's charges were far in excess of 8¢ per kWh.

113. Despite having ample advance notice of the variable rates it will impose on customers, Just Energy also fails to advise consumers of the rates they will be charged.

114. Defendants' entire sales model is structured to take advantage of well-studied patterns of human decision-making. Just Energy lures consumers to switch with misleading teaser rates and then exploits consumer inertia once those rates expire to bill consumers for its high-priced residential energy.

115. It is well-established that defaults are powerful drivers of consumer behavior. There are various factors underlying this human tendency that have been discussed in the judgment and decision-making literature, such as the work about defaults and the "status quo bias,"[51] and "Nudges."[52]

116. In this case, Defendants know that once they have the consumer enrolled they can charge high energy rates and many consumers (if not most) will simply pay Defendants' exorbitant charges.

117. Defendants' cynical exploitation of consumer inertia is further exacerbated by the fact that (i) it is extremely difficult for consumers to compare Just Energy's prices with what their local utility charges, and (ii) Just Energy tacks on early termination fees as a disincentive to consumer mobility and choice.

118. Upon being shown Just Energy's teaser rate, a reasonable consumer

[51] Daniel Kahneman, Jack L. Knetsch and Richard H. Thaler (1991), "Endowment Effect, Loss Aversion, and Status Quo Bias," *The Journal of Economic Perspectives*, Vol. 5, pp. 193–206.

[52] R. Thaler and S. Sunstein (2008), *Nudge*, Yale University Press.

understands—and expects—Just Energy's rates would typically be lower than the utility's rates.

119. But Just Energy's rates do no such thing. Instead, during the class period and during the time Plaintiffs were Just Energy customers, there were extended lengths of time in which Just Energy's rates were higher than the utility's rates.

120. Further, there are extended periods of time when the wholesale market price of gas or electricity declined or remained steady, yet Just Energy's prices rose. Moreover, even when market prices rise, Just Energy's rates often increase at a faster and higher rate than the market rates. But Just Energy does not disclose these material facts to its prospective or current customers.[53]

121. Just Energy misleads consumers into thinking that its rates are lower than consumers' utilities' rates. Yet when Plaintiff Donin was able to obtain comparison data in the summer of 2016 for what her electric utility would have charged from May 2015 to July 2016, Just Energy billed Ms. Donin more than the utility ***every single month***. These overcharges total more than $375. For Plaintiff Donin's gas utility, Plaintiff Donin obtained comparison data in the summer of 2016 that showed Just Energy charged more than the utility ***every single month*** for the 31 months from December 2013 to July 2016 for which data was available to Ms. Donin. For this period Ms. Donin paid Just Energy $1,929.06 more than she would have paid her gas utility.

122. No reasonable consumer exposed to Just Energy's marketing would expect that

[53] The wholesale cost of energy is the most significant and potentially volatile component of electricity and natural gas costs that ESCOs like Just Energy incur for supplying energy. Costs associated with transmission or transportation costs or other similarly static market and business price related factors do not account for the extent to which Just Energy's prices are disassociated from changes in wholesale prices. Similarly, costs associated with Just Energy's supply of so-called "green" energy do not account for the extent to which Just Energy's prices are disassociated from changes in wholesale prices.

Just Energy would charge them more than the utility by so much money for so long.

123. The rates Just Energy actually charges in comparison to the utility rate demonstrates the deceptive nature of Just Energy's marketing. Yet it is extremely difficult for Just Energy's customers to determine what their utility would have charged as the only energy supply rate listed on their bills is Just Energy's rate and the utility's current rate is very difficult for ordinary consumers to locate or calculate.

124. Thus, Just Energy's statements with respect to the rates it will charge are materially misleading. Instead, consumers are charged rates that are substantially higher. Just Energy fails to disclose this and other material fact to its customers.

125. No reasonable consumer who knows the truth about Just Energy's exorbitant rates would choose Just Energy as an electricity or natural gas supplier.

126. Just Energy intentionally makes these misleading statements regarding its rates to induce reasonable consumers to rely upon its statements and switch their energy supply.

III. Just Energy Violates New York's Variable Rate Disclosure Law

127. Because of the New York Legislature's concerns with skyrocketing variable rates, New York adopted N.Y. GEN. BUS. LAW § 349-d(7), which requires that "[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified."

128. Through their conduct, Defendants have violated both the spirit and letter of N.Y. GEN. BUS. LAW § 349-d, the law that is explicitly designed to allow energy consumers to make informed choices: "These provisions will go a long way toward restoring an orderly marketplace where consumers can make informed decisions on their choices for gas and electric service . . .

."[54]

129. At all relevant times Defendants' marketing materials and contracts never clearly and conspicuously apprised Plaintiffs of the actual factors that make up Just Energy's variable rate.

130. The marketing materials Defendants produced that were provided to Plaintiffs and the Class violate N.Y. GEN. BUS. LAW § 349-d(7) by not clearly and conspicuously setting forth all of the factors actually affecting Just Energy's variable rates. Indeed, most of the marketing materials provided to Plaintiffs and the Class do not even mention that Just Energy's rates are variable, nor do they comply with the statute's requirement that the factors that comprise Just Energy's rate be clearly and conspicuously disclosed.

131. Further, as described below, the various incarnations of Just Energy's consumer contract provided to Plaintiffs and the Class also violate N.Y. GEN. BUS. LAW § 349-d(7).

132. The Just Energy sales representative who signed up Plaintiffs used Just Energy marketing material and Just Energy's published teaser rates. Among other omissions, that sales representative failed to mention that once the teaser rate expires Just Energy's prices are invariably higher than the utility's rates almost all of the time. Based on the sales representative's statements, Plaintiffs decided to switch to Just Energy.

133. The Just Energy materials the representative provided to Plaintiffs did not contain language clearly and conspicuously describing the factors that affect Just Energy's variable rates or disclose that Just Energy's rates were variable.

134. Following their agreement to switch their accounts to Just Energy, the contracts Plaintiffs received fail to make the clear and conspicuous disclosure of Just Energy's variable

[54] Exhibit C, New York Sponsors Memo at 4.

rates as mandated by New York's ESCO Consumers Bill of Rights, as noted above.

135. Plaintiffs would have never signed up to purchase energy from Just Energy had Defendants complied with N.Y. GEN. BUS. LAW § 349-d(7).

IV. Just Energy Breaches its Consumer Contracts.

136. In or around the Spring of 2012, Plaintiff Donin (through her husband Stan Donin) enrolled their gas and electric accounts with Just Energy. Plaintiff Donin believed she was enrolling with the entity that controls the "Just Energy" brand, to wit Just Energy Group Inc.

137. In June 2012, Plaintiff Donin's electricity and gas accounts were switched to Just Energy. Thereafter, Plaintiff Donin paid the rate that she was charged by Just Energy.

138. In or around the Summer of 2012, Plaintiff Golovan enrolled her electric account with Just Energy. Plaintiff Golovan believed she was enrolling with the entity that controls the "Just Energy" brand, to wit Just Energy Group Inc.

139. In August 2012, Plaintiff Golovan's electricity account was switched to Just Energy. Thereafter, Plaintiff Golovan paid the rate that she was charged.

140. After Plaintiffs enrolled but before Just Energy began supplying their residential energy Just Energy provided Plaintiffs with Defendants' standard and uniform Agreement, including Defendants' welcome email. Just Energy also afforded Plaintiffs a rescissionary period during which they could rescind the Agreement prior to purchasing energy from Just Energy. During that rescissionary period, the Agreement served as a solicitation in which Just Energy identified the basis upon which the promised rate would be determined.

141. The Agreement represents that (a) Defendants energy rates will be the rates set forth in the welcome emails Defendants sent to consumers, (b) Defendants rates "will not increase more than 35% over the rate from the previous billing cycle," and (c) Defendants charge variable energy

rates "determined by business and market conditions."

142. The following table identifies for Ms. Donin's electric account the billing periods for the 49 months for which Plaintiff Donin and her counsel have her Just Energy billing data, the variable rate Just Energy charged Plaintiff Donin, the corresponding rate her electric utility Con Edison would have charged (which, as discussed below, is a reasonable representation of a rate based on business and market conditions), and the percent difference between Just Energy's and Con Edison's rates:

Billing Period From Date	Billing Period To Date	Just Energy Rate Per kWh	Con Ed Rate Per kWh	Difference	Percent Difference
6/26/2012	7/26/2012	$0.130761	$ 0.12106	$0.009704	8%
7/26/2012	8/24/2012	$0.135004	$ 0.09057	$0.044429	49%
8/24/2012	9/25/2012	$0.129536	$ 0.09696	$0.032575	34%
9/25/2012	10/24/2012	$0.125955	$ 0.10008	$0.025874	26%
10/24/2012	11/27/2012	$0.135003	$ 0.08577	$0.049234	57%
11/27/2012	12/26/2012	$0.109997	$ 0.07481	$0.035189	47%
12/26/2012	1/28/2013	$0.129386	$ 0.10983	$0.019552	18%
1/28/2013	2/27/2013	$0.132674	$ 0.12684	$0.005838	5%
2/27/2013	3/28/2013	$0.135002	$ 0.07601	$0.058993	78%
3/28/2013	4/26/2013	$0.136664	$ 0.07419	$0.062475	84%
4/26/2013	5/28/2013	$0.148058	$ 0.09615	$0.051907	54%
5/28/2013	6/26/2013	$0.148995	$ 0.10840	$0.040600	37%
6/26/2013	7/26/2013	$0.077106	$ 0.12956	($0.052455)	-40%
7/26/2013	8/26/2013	$0.139002	$ 0.09442	$0.044578	47%
8/26/2013	9/25/2013	$0.138995	$ 0.10736	$0.031635	29%
9/25/2013	10/24/2013	$0.139006	$ 0.11109	$0.027912	25%
10/24/2013	11/25/2013	$0.139005	$ 0.09415	$0.044857	48%
11/25/2013	12/26/2013	$0.148687	$ 0.11602	$0.032671	28%
12/26/2013	1/28/2014	$0.140205	$ 0.19650	($0.056300)	-29%
1/28/2014	2/27/2014	$0.139004	$ 0.16647	($0.027463)	-16%
2/27/2014	3/31/2014	$0.148050	$ 0.13686	$0.011193	8%
3/31/2014	4/29/2014	$0.149003	$ 0.08072	$0.068279	85%
4/29/2014	5/29/2014	$0.149007	$ 0.10170	$0.047306	47%
5/29/2014	6/27/2014	$0.149000	$ 0.11056	$0.038437	35%
6/27/2014	7/29/2014	$0.144400	$ 0.10610	$0.038300	36%
7/29/2014	8/27/2014	$0.144000	$ 0.10007	$0.043927	44%
8/27/2014	9/26/2014	$0.144000	$ 0.10245	$0.041547	41%
9/26/2014	10/27/2014	$0.144000	$ 0.10032	$0.043680	44%

10/27/2014	11/26/2014	$0.157508	$ 0.09824	$0.059271	60%
11/26/2014	12/29/2014	$0.159000	$ 0.08765	$0.071346	81%
12/29/2014	1/29/2015	$0.159000	$ 0.10842	$0.050576	47%
1/29/2015	3/2/2015	$0.159000	$ 0.16226	($0.003261)	-2%
3/2/2015	3/31/2015	$0.159000	$ 0.08974	$0.069260	77%
3/31/2015	4/29/2015	$0.163828	$ 0.07266	$0.091164	125%
4/29/2015	5/29/2015	$0.139843	$ 0.09671	$0.043130	45%
5/29/2015	6/29/2015	$0.122223	$ 0.09037	$0.031853	35%
6/29/2015	7/29/2015	$0.119000	$ 0.09677	$0.022234	23%
7/29/2015	8/27/2015	$0.119000	$ 0.10398	$0.015018	14%
8/27/2015	9/28/2015	$0.119000	$ 0.09672	$0.022277	23%
9/28/2015	10/27/2015	$0.137614	$ 0.08585	$0.051763	60%
10/27/2015	11/30/2015	$0.130182	$ 0.07453	$0.055656	75%
11/30/2015	12/29/2015	$0.129000	$ 0.06713	$0.061869	92%
12/29/2015	1/29/2016	$0.129000	$ 0.08014	$0.048856	61%
1/29/2016	3/1/2016	$0.129000	$ 0.07542	$0.053582	71%
3/1/2016	3/30/2016	$0.129000	$ 0.07338	$0.055621	76%
3/30/2016	4/28/2016	$0.102738	$ 0.08976	$0.012981	14%
4/28/2016	5/27/2016	$0.103767	$ 0.07959	$0.024180	30%
5/27/2016	6/28/2016	$0.095244	$ 0.07941	$0.015831	20%
6/28/2016	7/28/2016	$0.094000	$ 0.09397	$0.000029	0%

143. The following table identifies for Ms. Donin's gas account the billing periods for the 17 months for which Plaintiff Donin and her counsel have her Just Energy billing data, the variable rate Just Energy charged Plaintiff Donin, the corresponding rate her gas utility National Grid would have charged (which, as discussed below, is a reasonable representation of a rate based on business and market conditions), and the percent difference between Just Energy's and National Grid's rates:

Billing Period From Date	Billing Period To Date	Just Energy Rate Per Therm	National Grid Rate Per Therm	Difference	Percent Difference
1/5/2015	2/3/2015	$0.7859	$0.5901	$0.1958	33%
2/3/2015	3/4/2015	$0.8790	$0.5901	$0.2889	49%
3/4/2015	4/2/2015	$0.8800	$0.5901	$0.2899	49%
4/2/2015	5/4/2015	$0.6953	$0.5901	$0.1052	18%
5/4/2015	6/3/2015	$0.6500	$0.5901	$0.0599	10%
6/3/2015	7/2/2015	$0.6488	$0.5901	$0.0587	10%
7/2/2015	8/3/2015	$0.6492	$0.5901	$0.0591	10%
8/3/2015	9/2/2015	$0.6507	$0.5901	$0.0606	10%
9/2/2015	10/1/2015	$0.6990	$0.5901	$0.1089	18%

Missing					
10/30/2015	12/2/2015	$0.6999	$0.5901	$0.1098	19%
12/2/2015	1/4/2016	$0.7290	$0.5901	$0.1389	24%
1/4/2016	2/6/2016	$0.7290	$0.5901	$0.1389	24%
2/6/2016	3/2/2016	$0.7272	$0.5901	$0.1371	23%
3/2/2016	4/4/2016	$0.6836	$0.5901	$0.0935	16%
4/4/2016	5/3/2016	$0.6700	$0.5901	$0.0799	14%
5/3/2016	6/6/2016	$0.9144	$0.5901	$0.3243	55%
6/6/2016	7/5/2016	$0.9519	$0.5901	$0.3618	61%

144. The following table identifies for Ms. Golovan's electric account the billing periods for the 10 months for which Plaintiff Golovan and her counsel have her Just Energy billing data, the variable rate Just Energy charged Plaintiff Golovan, the corresponding rate her electric utility Con Edison would have charged (which, as discussed below, is a reasonable representation of a rate based on business and market conditions), and the percent difference between Just Energy's and Con Edison's rates:

Billing Period From Date	Billing Period To Date	Just Energy Rate Per kWh	Con Ed Rate Per kWh	Difference	Percent Difference
7/10/2014	8/8/2014	$0.1440	$0.0948	$0.0492	52%
8/8/2014	9/9/2014	$0.1440	$0.1043	$0.0397	38%
9/9/2014	10/8/2014	$0.1440	$0.0966	$0.0474	49%
10/8/2014	11/6/2014	$0.1440	$0.1025	$0.0415	40%
11/6/2014	12/10/2014	$0.1590	$0.1013	$0.0577	57%
8/8/2014	1/9/2015	$0.1502	$0.0979	$0.0523	53%
1/9/2015	2/10/2015	$0.1590	$0.1189	$0.0401	34%
2/10/2015	3/12/2015	$0.1590	$0.1639	($0.0049)	-3%
3/12/2015	4/10/2015	$0.1606	$0.0728	$0.0878	121%
4/10/2015	5/11/2015	$0.1551	$0.0828	$0.0723	87%

145. Defendants' multiple breaches of contract are demonstrated by the data in the above tables. For example, despite sending Plaintiff Donin welcome emails stating that the "Supply Rate after Intro period" for Plaintiff Donin's Just Energy account will be 8¢ per kWh (electric) and 63¢ per therm (gas), Just Energy charged Plaintiff Donin in excess of these

amounts for 48 of 49 months[55] (electric) and 17 of 17 months (gas).[56]

146. The tables also show that Defendants violated their contractual undertaking that Just Energy's variable rates "will not increase more than 35% over the rate from the previous billing cycle." Just Energy violated this requirement when it increased Plaintiff Donin's electricity price for the billing period ending on August 26, 2013 by 80.27% compared to the prior month's rate. Just Energy also increased Ms. Donin's gas rate for the billing period ending on June 6, 2016 by 36.48% compared to the rate prior month's rate.

147. Finally, that Just Energy's variable rate is not in fact based on the wholesale cost of electricity is demonstrated by the fact that Just Energy's variable rate was consistently significantly higher than Con Ed's rates and that the rate did not fluctuate with commodity prices.

148. Indeed, in 45 of the 49 months Plaintiff Donin was a Just Energy customer (or 91% of the time) Just Energy's rate was higher than Con Edison's rate. In fact, on average, Just Energy's rate was 40% higher than Con Edison's rate.

149. The pre-discovery billing data available for Plaintiff Donin's gas account shows that 100% of the time Just Energy's rate was higher than National Grid's rate and that on average Just Energy's rate was 26% higher than National Grid's rates.

150. The pre-discovery billing data available for Plaintiff Golovan's electric account shows that 90% of the time Just Energy's rate was higher than Con Edison's rate and that on average Just Energy's rate was 53% higher than Con Edison's rates.

[55] Where data is available to Plaintiff and her counsel.

[56] Where data is available to Plaintiff and her counsel.

151. The utility's rates serve as an appropriate indicator of business and market conditions because they are based on the wholesale energy costs and the associated market costs that are the same costs ESCOs such as Just Energy incur.

152. While the utilities and Just Energy may not purchase energy and incur associated costs in precisely the same manner, over time the wholesale costs they incur should be commensurate. In fact, Just Energy has a tactical advantage over the utility as it can purchase energy from highly competitive markets for future use, and therefore its cost for purchasing energy should at the very least reflect (if not undercut) market prices, albeit over a longer term. Therefore, while the utility's rates may not precisely match Just Energy's rates, they should correlate with the utility's rates. Instead, Just Energy's rates are wildly incongruent.

153. For example, using Plaintiff Donin's electric account data (the account with the most available pre-discovery data) when Con Edison's rate dropped 14% from $0.10008 to $0.08577 per kWh from October to November 2012, Just Energy increased its already much higher prices by 7% from $0.125955 to $0.135003 per kWh. Similarly, when Con Edison's rate slid 40% from $0.12684 to $0.07601 per kWh between February and March 2013, Just Energy's rate rose 2% from $0.132674 to $0.135002 per kWh.

154. The disparities are also evident over time. For instance, while Con Edison's rate generally declined between February 2014 and November 2014 from $0.13686 to $0.08765 per kWh (declining 36%), Just Energy's already much higher rates increased from $0.148050 to $0.15900 per kWh (increasing by 7%).

155. Just Energy's stark rate disparities with those of the local utility, wherein Just Energy's rates were higher more than 90% of the time where Plaintiffs have available billing data, considered together with the fact that Just Energy's rates do not reflect market fluctuations,

demonstrate that Just Energy does not charge a rate based on business and market conditions as required by its customer contract, but rather gouges its customers by charging outrageously high rates.

156. The disconnect between Just Energy's variable rate and changes in wholesale costs is also demonstrated by the fact that Just Energy's variable rate often increased while wholesale costs declined.

157. The wholesale cost of energy is the primary component of the non-overhead "market conditions" Just Energy incurs.

158. Just Energy's identification of "business" conditions as the other contractual factor used for setting rates also does not explain Just Energy's price gouging. A reasonable consumer might understand that an ESCO will attempt to make a reasonable margin on the commodity it sells to consumers. However, such a consumer would also expect that such profits would be consistent with profit margins obtained by other suppliers in the market, and also that Just Energy's profiteering at the expense of its customers would not be so extreme that its rate bears no relation to market prices but is instead outrageously higher. That other ESCOs' rates are lower, even though they purchase energy from the wholesale market, demonstrates that Just Energy sets its profit margins in bad faith. Similarly, the utility's rate reflects a rate that Just Energy could charge (because Just Energy could purchase energy in the same way and at the same cost as the utility) plus a reasonable margin. No reasonable consumer would consider a margin that is on 26% to 53% to be fair or commercially reasonable.

159. Any potentially conceivable additional business and market are insignificant in terms of the overall costs Just Energy incurs to provide its energy, and do not fluctuate over time.

Therefore, these other cost factors cannot explain the drastic increases in Just Energy's variable rate or the reason its rates are disconnected from changes in wholesale costs.

160. Thus, Just Energy's energy pricing does not comply with its customer contract's requirement that variable prices be "determined by business and market conditions." Instead, consumers are charged rates that are substantially higher those of competitors, especially Just Energy's main competitors—the utilities, and untethered from the factors specified in the contract.

TOLLING OF THE STATUTES OF LIMITATION

I. Discovery Rule Tolling

161. Plaintiffs and the Class had no way of discovering Just Energy's unlawful conduct. Even New York's public utility regulator, the PSC, has concluded that "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."[57] By contrast, Just Energy was so intent on expressly hiding the fact that consumers had been duped by Defendants' deceptive teaser rates, Defendants concocted a scheme to misrepresent the rates it would charge once the teaser rates expire. Defendants further failed to give customers advance notice of the variable rates it was going to assess, even though Defendants knew well in advance what those rates would be.

162. Within the period of any applicable statutes of limitation, Plaintiffs and the other Class Members could not have discovered Just Energy's illegal conduct through the exercise of reasonable diligence.

[57] CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 11 (Feb. 20, 2014).

163. Plaintiffs and the other Class Members did not discover and did not know of facts that would have caused a reasonable person to suspect they were victims of Just Energy's illegal conduct.

164. All applicable statutes of limitation have been tolled by operation of the discovery rule.

II. Fraudulent Concealment Tolling

165. All applicable statutes of limitation have also been tolled by Just Energy's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the period relevant to this action.

166. Instead of disclosing that its quoted rates are teaser rates, when those rates will expire, that its energy rates are consistently higher than the rates a customer's existing utility charges, and giving consumers advance notice of the rates Defendants will charge, Just Energy used its teaser rates to falsely represent the cost of its energy and actively misrepresented the rates Defendants would charge once the teaser rate expired.

III. Estoppel

167. Just Energy was under a continuous duty to disclose to Plaintiffs and the other Class Members the truth about its energy rates.

168. Just Energy knowingly, affirmatively, and actively concealed the true nature of its rates from consumers.

169. Just Energy was also under a continuous duty to disclose to Plaintiffs and Class Members that it was receiving thousands of complaints from customers who had been led to believe that they would save money with Just Energy compared to their incumbent utility.

170. Based on the foregoing, Just Energy is estopped from relying on any statutes of

limitations in defense of this action.

CLASS ACTION ALLEGATIONS

171. Plaintiffs sue on their own behalf and on behalf of a Class for damages, injunctive, and all other available relief under Rules 23(a), (b)(2), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure.

172. The Class, preliminarily defined as two subclasses ("Subclasses"), is as follows:

a. The Multistate Class, preliminarily defined as all Just Energy customers in the United States (including customers of companies Just Energy acts as a successor to) who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment.

b. The State Classes, preliminarily defined as all Just Energy customers in the state of [e.g., New York, California, etc.] (including customers of companies Just Energy acts as a successor to) who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment.

173. Excluded from the Subclasses (hereafter collectively the "Class" unless otherwise specified) are the officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or have had a controlling interest. Also excluded are all federal, state and local government entities; and any judge, justice or judicial officer presiding over this action and the members of their immediate families and judicial staff.

174. Plaintiffs reserve the right, as might be necessary or appropriate, to modify or amend the definition of the Class and/or add additional Subclasses, when Plaintiffs file their motion for class certification.

175. Plaintiffs do not know the exact size of the Class, since such information is in the exclusive control of Defendants. Plaintiffs believe, however, that based on the publicly available

data concerning Just Energy's customers in the United States, the Class encompasses more than one million individuals whose identities can be readily ascertained from Defendants' records. Accordingly, the members of the Class are so numerous that joinder of all such persons is impracticable.

176. The Class is ascertainable because its members can be readily identified using data and information kept by Defendants in the usual course of business and within their control. Plaintiffs anticipate providing appropriate notice to each Class Member, in compliance with all applicable federal rules.

177. Plaintiffs are adequate class representatives. Their claims are typical of the claims of the Class and do not conflict with the interests of any other members of the Class. Plaintiffs and the other members of the Class were subject to the same or similar conduct engineered by Defendants. Further, Plaintiffs and members of the Class sustained substantially the same injuries and damages arising out of Defendants' conduct.

178. Plaintiffs will fairly and adequately protect the interests of all Class Members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and those of the Class.

179. Questions of law and fact are common to the Class and predominate over any questions affecting only individual Class Members, and a class action will generate common answers to the questions below, which are apt to drive the resolution of this action:

a. Whether Defendants' conduct violates New York General Business Law §349-d;

b. Whether Defendants' conduct violates New York General Business Law §349;

c. Whether Defendants' conduct violates various other state consumer protection statutes;

d. Whether Defendants' representations are fraudulent;

e. Whether Defendants engaged in fraudulent concealment;

f. Whether Defendants were unjustly enriched as a result of their conduct;

g. Whether Defendants breached their customer contracts;

h. Whether Defendants violated the duty of good faith and fair dealing;

i. Whether Class Members have been injured by Defendants' conduct;

j. Whether any or all applicable limitations periods are tolled by Defendants' acts;

k. Whether, and to what extent, equitable relief should be imposed on Defendants to prevent them from continuing their unlawful practices; and

l. The extent of class-wide injury and the measure of damages for those injuries.

180. A class action is superior to all other available methods for resolving this controversy because i) the prosecution of separate actions by Class Members will create a risk of adjudications with respect to individual Class Members that will, as a practical matter, be dispositive of the interests of the other Class Members not parties to this action, or substantially impair or impede their ability to protect their interests; ii) the prosecution of separate actions by Class Members will create a risk of inconsistent or varying adjudications with respect to individual Class Members, which will establish incompatible standards for Defendants' conduct; iii) Defendants have acted or refused to act on grounds generally applicable to all Class Members; and iv) questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

181. Further, the following issues are also appropriately resolved on a class-wide basis under FED. R. CIV. P. 23(c)(4):

a. Whether Defendants' conduct violates New York General Business Law §349-d;

b. Whether Defendants' conduct violates New York General Business Law §349;

c. Whether Defendants' conduct violates various other state consumer protection statutes;

d. Whether Defendants' representations are fraudulent;

e. Whether Defendants engaged in fraudulent concealment;

f. Whether Defendants were unjustly enriched as a result of their conduct;

g. Whether Defendants breached their customer contracts;

h. Whether Defendants violated the duty of good faith and fair dealing;

i. Whether any or all applicable limitations periods are tolled by Defendants' conduct; and

j. Whether, and to what extent, equitable relief should be imposed on Defendants to prevent them from continuing their unlawful practices.

182. Accordingly, this action satisfies the requirements set forth under FED. R. CIV. P. 23(a), 23(b), and 23(c)(4).

CAUSES OF ACTION

COUNT I

N.Y. GEN. BUS. LAW § 349-D(3)

(ON BEHALF OF THE NEW YORK CLASS)

183. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

184. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 349-d(3) on their own behalf and on behalf of each member of the New York Class who became a Just Energy customer on or after January 10, 2011, the operative date of Section 349-d.

185. N.Y. GEN. BUS. LAW §349-d(3) provides that "[n]o person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services."

186. Defendants offer for sale energy services for and on behalf of an ESCO.

187. Defendants have engaged in, and continue to engage in, deceptive acts and practices in violation of N.Y. GEN. BUS. LAW § 349-d(3), including:

a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;

b. Failing to adequately disclose that quoted rates are introductory teaser rates;

c. Failing to adequately disclose when Defendants' introductory teaser rates expire;

d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;

e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges; and

f. Failing to provide customers advance notice of the variable rate Defendants will charge.

188. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

189. N.Y. GEN. BUS. LAW § 349-d(10) provides that "any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the

court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff."

190. As a direct and proximate result of Defendants' unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than $500 for each violation, such damages to be trebled, plus attorneys' fees.

191. Plaintiffs and the other Class Members further seek an order enjoining Defendants from undertaking any further unlawful conduct. Pursuant to N.Y. GEN. BUS. LAW § 349-d(10), this Court has the power to award such relief.

COUNT II

N.Y. GEN. BUS. LAW § 349

(ON BEHALF OF THE NEW YORK CLASS)

192. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

193. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 349 on their own behalf and on behalf of each member of the New York Class.

194. Defendants have engaged in, and continue to engage in, deceptive acts and practices in violation of N.Y. GEN. BUS. LAW § 349, including:

a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;

b. Failing to adequately disclose that quoted rates are introductory teaser rates;

c. Failing to adequately disclose when Defendants' introductory teaser rates expire;

d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;

e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges; and

f. Failing to provide customers advance notice of the variable rate Defendants will charge.

195. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

196. As a direct and proximate result of Defendants' unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than $50 for each violation, such damages to be trebled, plus attorneys' fees.

197. Plaintiffs and the Class Members further seek equitable relief against Defendants. Pursuant to N.Y. GEN. BUS. LAW § 349, this Court has the power to award such relief, including but not limited to, an order declaring Defendants' practices as alleged herein to be unlawful, an order enjoining Defendants from undertaking any further unlawful conduct, and an order directing Defendants to refund to Plaintiffs and the Class all amounts wrongfully assessed, collected, or withheld.

COUNT III

N.Y. GEN. BUS. LAW § 349-D(7)

(ON BEHALF OF THE NEW YORK CLASS)

198. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

199. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 349-d(7) on their own behalf and on behalf of each member of the New York Class who became a Just Energy customer on or after January 10, 2011.

200. Section 349-d(7) provides that "[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified." N.Y. GEN. BUS. LAW § 349-d(7).

201. The marketing materials Defendants provided to Plaintiffs fail to disclose the actual factors that contribute to Just Energy's variable rates, much less do they make the required disclosure in a clear and conspicuous manner.

202. The marketing materials Defendants provided to Plaintiffs fail to clearly and conspicuously disclose that Plaintiffs will be charged variable rates.

203. The consumer contract Defendants provided to Plaintiffs—while they still had an opportunity to cancel without penalty—likewise does not clearly and conspicuously inform consumers about the actual factors affecting Just Energy's variable rates.

204. The consumer contract Defendants provided to Plaintiffs does not clearly and conspicuously disclose that Plaintiffs will be charged variable rates.

205. The welcome emails Defendants sent Plaintiff Donin do not clearly and conspicuously disclose that Plaintiffs will be charged variable rates. The emails do not even contain the word "variable."

206. Through their conduct described above, Defendants have violated N.Y. GEN. BUS. LAW § 349-d(7) and have caused financial injury to Plaintiffs and Just Energy's other variable rate customers in New York.

207. As a direct and proximate result of Defendants' conduct, Plaintiffs and the New York Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than $500 for each violation, such damages to be trebled, plus attorneys' fees.

208. Plaintiffs and the other Class Members further seek an order enjoining Defendants from undertaking any further unlawful conduct. Pursuant to N.Y. GEN. BUS. LAW § 349-d(10), this Court has the power to award such relief.

COUNT IV

UNFAIR AND DECEPTIVE ACTS AND PRACTICES

(ON BEHALF OF EACH STATE CLASS OTHER THAN NEW YORK, WHICH UPON INFORMATION AND BELIEF ARE CALIFORNIA, DELAWARE, FLORIDA, GEORGIA, ILLINOIS, INDIANA, MARYLAND, MASSACHUSETTS, MICHIGAN, NEW JERSEY, OHIO, PENNSYLVANIA, AND TEXAS)

209. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

210. As described above, Plaintiffs and the Class have suffered ascertainable losses of money and have otherwise been harmed as a result of Defendants' unfair and deceptive practices, including:

a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;

b. Failing to adequately disclose that quoted rates are introductory teaser rates;

c. Failing to adequately disclose when Defendants' introductory teaser rates expire;

d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;

e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges; and

f. Failing to provide customers advance notice of the variable rate Defendants will charge.

211. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policies of California, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, Texas, and any other state where Just Energy sells variable rate energy, all of which aim to protect consumers.

212. Plaintiffs and the members of each State Class are entitled to recover damages, and all other available relief for Defendants' unfair and deceptive practices under the laws of their states of residence:[58] California—CAL. BUS. & PROF CODE § 17200 *et seq.*, and CAL. CIV. CODE § 1750 *et seq.*, Delaware—DEL. CODE ANN. TIT. 6 SEC. 2511 *et seq.*, Florida—FLA. STAT.§ 501.201, *et seq.*, Georgia—GA. CODE. ANN. § 10-1-393(a) *et seq.*, and GA. CODE. ANN. § 10-1-371(5) *et seq.*, Illinois—815 ILL. COMP. STAT. § 505/1, *et seq.*, Indiana—IND. CODE § 24-5-0.5-3 *et seq.*, Maryland— MD. CODE COM. LAW § 13-303 *et seq.*, Massachusetts—MASS. GEN. LAWS CH. 93A, § 1 *et seq.*, Michigan— MICH. COMP. LAWS § 445.903(1) *et seq.*, New Jersey— N.J. STAT. ANN. § 56:8-2 *et seq.*, Ohio— OHIO REV. CODE § 1345.02 *et seq.*, Pennsylvania— 73 P.S. § 201-2(4) *et seq.*, Texas— TEX. BUS. & COM. CODE § 17.46(a) *et seq.*.

213. On October 2, 2017 Plaintiffs sent a letter complying with CAL. CIV. CODE § 1782(a). Because Plaintiffs did not receive a full and satisfactory response to their letter within 30 days, they now claim relief under CAL. CIV. CODE § 1750 *et seq.* and seek all damages and relief to which the California Class is entitled.

214. On October 2, 2017 Plaintiffs sent a letter complying with GA. CODE ANN § 10-1-399(b). Because Plaintiffs did not receive a full and satisfactory response to their letter within 30

[58] There is no material conflict between New York's consumer fraud law and the state statutes listed here.

days, they now claim relief under GA. CODE. ANN. § 10-1-393(a) *et seq.* and seek all damages and relief to which the Georgia Class is entitled.

215. On October 2, 2017, Plaintiffs sent a letter complying with IND. CODE § 24-5-0.5-5(a). Because Plaintiffs did not receive a full and satisfactory response to their letter within 30 days, they now claim relief under IND. CODE § 24-5-0.5-3 *et seq.* for "curable" acts and seek all damages and relief to which the Indiana Class is entitled. Plaintiffs also seek full relief for Defendants' "incurable" acts on behalf of the Indiana Class.

216. On October 2, 2017, Plaintiffs sent a letter complying with MASS. GEN. LAWS CH. 93A, § 9(3). Because Plaintiffs did not receive a full and satisfactory response to their letter within 30 days, they now claim relief under MASS. GEN. LAWS CH. 93A, § 1 *et seq.* and seek all damages and relief to which the Massachusetts Class is entitled.

217. Plaintiffs complied with N.J. Stat. Ann. § 56:8-20. Within ten (10) days of filing of Plaintiffs' initial complaint on October 3, 2017 Plaintiffs mailed a copy of the initial Class Action Complaint to New Jersey's Attorney General.

218. On October 2, 2017, Plaintiffs sent Defendants a letter complying with TEX. BUS. & COM. CODE § 17.505(a). Because Plaintiffs did not receive a full and satisfactory response to their letter within 30 days, they now claim relief under TEX. BUS. & COM. CODE § 17.46(a) *et seq.* and seek all damages and relief to which the Texas Class is entitled.

219. Plaintiffs complied with TEX. BUS. & COM. CODE § 17.501. Specifically, within thirty days of filing Plaintiffs' initial Class Action Complaint, Plaintiffs provided the consumer protection division of the Texas Attorney General's office a copy of the initial Class Action Complaint.

COUNT V

COMMON LAW FRAUD

(ON BEHALF OF A MULTISTATE CLASS UNDER THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)

220. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

221. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Multistate Class under the laws of the states where Defendants sold variable rate energy, and on behalf of each member of the individual State Classes under the laws of those States.

222. As discussed above, Defendants (i) used introductory teaser rates to misrepresent the cost of Defendants' energy, and (ii) actively misrepresented the rates Defendants would charge when the teaser rates expire.

223. In deciding to become and remain Just Energy customers, Plaintiffs and the Class reasonably relied on these misrepresentations to form the mistaken belief that Just Energy's teaser rates were representative of Just Energy's ordinary rates and that thus they would save money on their energy compared to what their local utility would have charged.

224. To solidify and further their fraud, Defendants committed numerous fraudulent omissions including (i) failing to adequately disclose that quoted rates are introductory teaser rates, (ii) failing to adequately disclose when Defendants' introductory teaser rates expire, (iii) failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges, and (iv) failing to provide customers advance notice of the variable rate Defendants will charge.

225. Defendants' fraudulent conduct was knowing and intentional. The misrepresentations and omissions made by Defendants were intended to induce and actually induced Plaintiffs and Class Members to become and remain Just Energy customers.

226. Defendants' fraud caused damage to Plaintiffs and the Class, who are entitled to damages and other legal and equitable relief as a result.

227. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT VI

FRAUD BY CONCEALMENT

(ON BEHALF OF A MULTISTATE CLASS UNDER THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)

228. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

229. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Multistate Class under the laws of the states where Defendants sold variable rate energy, and on behalf of each member of the individual State Classes under the laws of those States.

230. Defendants concealed material facts concerning their variable energy rates including (i) failing to adequately disclose that quoted rates are introductory teaser rates, (ii) failing to adequately disclose when Defendants' introductory teaser rates expire, (iii) failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges, and (iv) failing to provide customers advance notice of the variable rate Defendants will charge.

231. Defendants sold Plaintiffs energy without disclosing these material facts and took active steps to conceal them including by (i) using introductory teaser rates to misrepresent the cost of Defendants' energy, and (ii) actively misrepresenting the rates Defendants would charge when the teaser rates expire.

232. Defendants' material omissions and misrepresentations were intentional and were committed to protect Defendants' profits, avoid damage to Defendants' image, and to save Defendants money, and Defendants did so at Plaintiffs' expense.

233. The information Defendants concealed was material because price is the most important consideration for consumers' energy purchasing decisions.

234. Defendants had a duty to disclose the material information they concealed because this information was known and accessible only to Defendants; Defendants had superior knowledge and access to the facts, and Defendants knew the facts were not known to, or reasonably discoverable by Plaintiffs. Defendants also had a duty to disclose because Just Energy made affirmative misrepresentations about its energy rates, which were misleading, deceptive, and incomplete without disclosure of the material information.

235. Just Energy still has not made full and adequate disclosures and continues to defraud Class Members and conceal material information regarding Just Energy's rates.

236. Plaintiffs were unaware of these omitted material facts and would not have become Just Energy customers if they had known these concealed and/or suppressed facts; and/or would not have continued to be Just Energy customers for as long as they were. Plaintiffs' actions were justified.

237. In deciding to become and remain Just Energy customers, Plaintiffs and the Class reasonably relied on Just Energy's misrepresentations and omissions to form the mistaken belief

that Just Energy's teaser rates were representative of Just Energy's ordinary rates and that thus they would save money on their energy compared to what their local utility would have charged.

238. Defendants' fraud by concealment caused damage to Plaintiffs and the Class, who are entitled to damages and other legal and equitable relief as a result.

239. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT VII

UNJUST ENRICHMENT

(ON BEHALF OF A MULTISTATE CLASS UNDER NEW YORK LAW, OR, ALTERNATIVELY THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)

240. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

241. Plaintiffs bring this claim on their own behalf and on behalf of each member of the individual State Classes.

242. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Multistate Class under New York law, or, alternatively, the laws of the states where Defendants sold variable rate energy, or, alternatively, on behalf of each member of the individual State Classes under the laws of those States.

243. This claim is brought under the laws of all states where Just Energy does business that permit an independent cause of action for unjust enrichment, as there is no material difference in the law of unjust enrichment as applied to the claims and questions in this case.

244. As a result of their unjust conduct, Defendants have been unjustly enriched.

245. By reason of Defendants' wrongful conduct, Defendants have benefited from receipt of improper funds, and under principles of equity and good conscience, Defendants should not be permitted to keep this money.

246. As a result of Defendants' conduct it would be unjust and/or inequitable for Defendants to retain the benefits of their conduct without restitution to Plaintiffs and the Class. Accordingly, Defendants must account to Plaintiffs and the Class for their unjust enrichment.

COUNT VIII

BREACH OF CONTRACT

(ON BEHALF OF A MULTISTATE CLASS UNDER NEW YORK LAW, OR, ALTERNATIVELY THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)

247. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

248. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Multistate Class under New York law, or, alternatively, the laws of the states where Defendants sold variable rate energy, or, alternatively, on behalf of each member of the individual State Classes under the laws of those States.

249. Plaintiffs and the Class entered into a valid contract with Defendants for the provision of residential energy.

250. Defendants' customer contract explicitly incorporates the terms of any of Defendants' welcome emails into the contract.

251. Defendants sent Plaintiffs and the Class welcome emails that state that after the "intro rate" expired consumers would be charged a specified energy rate.

252. Defendants' customer contract states that Just Energy's variable rates "will not increase more than 35% over the rate from the previous billing cycle."

253. Defendants' customer contract states that the company's variable rates are "determined by business and market conditions."

254. Pursuant to the contract, Plaintiffs and the Class paid the rates charged by Defendants.

255. Notwithstanding Defendants' contractual promise, Just Energy consistently charged Plaintiffs and the Class more than the amounts specified in the welcome emails.

256. Notwithstanding Defendants' contractual promise, Just Energy increased Plaintiffs and Class' prices more than 35% over the rate from the previous billing cycle.

257. Notwithstanding Defendants' contractual promise, Just Energy variable rates are not "determined by business and market conditions."

258. Plaintiffs and the Class were damaged as a result of Defendants' breaches of contract because they were billed, and they paid energy rates that were not consistent with the rates required under Defendants' customer contract.

259. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiffs and the other members of the Class for the damages that they have suffered as a result of Defendants' actions, the amount of such damages to be determined at trial.

COUNT IX

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

BOTH IN THE ALTERNATIVE TO BREACH OF CONTRACT AND AN ALTERNATIVE BREACH OF CONTRACT COUNT

(ON BEHALF OF A MULTISTATE CLASS UNDER NEW YORK LAW, OR, ALTERNATIVELY THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)

260. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

261. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Multistate Class under New York law, or, alternatively, the laws of the states where Defendants sold variable rate energy, or, alternatively, on behalf of each member of the individual State Classes under the laws of those States.

262. Every contract applicable to Plaintiffs and the Class contains an implied covenant of good faith and fair dealing in the performance and enforcement of the contract. The implied covenant is an independent duty and may be breached even if there is no breach of contract's express terms.

263. Under the Defendants' customer contract, Defendants have unilateral discretion to set the variable rates for electricity based on "business and market conditions."

264. Plaintiffs reasonably expected that Defendants' variable energy rates would reflect business and market conditions and that Defendants would refrain from price gouging. Without reasonable expectations, Plaintiffs and other Class members would not have agreed to buy energy from Defendants.

265. Defendants breached the implied covenant of good faith and fair dealing by arbitrarily and unreasonably exercising its unilateral rate-setting discretion to price gouge and

frustrate Plaintiffs and other Class members' reasonable expectations that the variable rates for electricity would be "determined by business and market conditions."

266. Defendants' acted in bad faith when they made contractual promises to base its rates on "business and market conditions" knowing full well that its rates were substantially higher than rates that are actually based on these criteria.

267. As a result of Defendants' breach, Defendants are jointly and severally liable to Plaintiffs and other Class members for actual damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

(a) Issue an order certifying the Classes defined above, appointing the Plaintiffs as Class Representatives, and designating the undersigned firms as Class Counsel;

(b) Find that Defendants have committed the violations of law alleged herein;

(c) Render an award of compensatory damages of at least $100,000,000, the precise amount of which is to be determined at trial;

(d) Issue an injunction or other appropriate equitable relief requiring Defendants to refrain from engaging in the deceptive practices alleged herein;

(e) Declare that Defendants have committed the violations of law alleged herein;

(f) Render an award of punitive damages;

(g) Enter judgment including interest, costs, reasonable attorneys' fees, costs, and expenses; and

(h) Grant all such other relief as the Court deems appropriate.

Dated: April 27, 2018
Armonk, New York

WITTELS LAW, P.C.

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This is Exhibit "C" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X
FIRA DONIN and INNA GOLOVAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JUST ENERGY GROUP INC., JUST ENERGY NEW YORK CORP., and JOHN DOES 1 TO 100,

Defendants.
---X

DECISION & ORDER
17-CV-5787 (WFK)(SJB)

WILLIAM F. KUNTZ, II, United States District Judge:
On April 27, 2018, Fira Donin and Inna Golovan ("Plaintiffs") filed an Amended Putative Class Complaint ("Amended Complaint") against Just Energy Group, Inc, Just Energy New York Corp., and Johns Does 1 to 100 ("Defendants") setting forth claims for violations of the New York General Business Law, unfair deceptive acts and practices, common law fraud, fraud by concealment, unjust enrichment, breach of contract, and breach of covenant of good faith and fair dealing. ECF No. 17. Defendants now move to dismiss the Amended Complaint in its entirety pursuant to Rules 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure. *See* ECF Nos. 27–30. For the reasons that follow, Defendants' motion to dismiss is GRANTED in part and DENIED in part.

BACKGROUND[1]

Fira Donin and Inna Golovan (together, "Plaintiffs") are residents of Brooklyn, New York who allege they were gas and electricity customers of Just Energy NY from June 2012 through August 2016 and August 2012 through April 2015, respectively. *See* Amended Complaint ("Compl.") ¶¶ 36, 40–41, 44, ECF No. 17. Just Energy Group and Just Energy New York ("JE" and "JENY," respectively, together, "Defendants"), are energy service companies ("ESCOs"), which provide a "free-market alternative" to local utility companies. *See* Def. Mem.

[1] These allegations are either drawn from the Amended Complaint or are properly incorporated into the Amended Complaint and are assumed to be true for the purposes of this motion.

in Support of Mot. to Dismiss ("Def. Mem.") at 2, ECF No 27-1. Just Energy NY "is the corporate entity that supplied Plaintiffs' energy." Compl. ¶ 64. Just Energy NY customers elect not to purchase energy from the local utility provider in their region, like Con Edison, and instead contract to purchase their energy supply from an ESCO. Def. Mem. at 2. Just Energy NY customers enter into a contract, by which Just Energy NY agrees to provide gas and/or electricity to the customer at agreed-upon terms. *Id.* The physical delivery of the gas or electricity to the customer's home, along with the reading of customer meters and determining usage amounts for billing purposes, remain the local utility's responsibility. *Id.* Plaintiffs allege "Defendants John Does 1 to 100 are the shell companies and affiliates similar to Just Energy New York Corp. through which Defendant Just Energy Group Inc. does business in New York and elsewhere. John Does 1 to 100 are also the Just Energy management and employees who perpetrated the unlawful acts described herein." Compl. ¶ 69.

Plaintiffs allege that Just Energy's "deceptive marketing and sales practices are unlawful in multiple ways including:

a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;

b. Failing to adequately disclose that quoted rates are introductory teaser rates;

c. Failing to adequately disclose when Defendants' introductory teaser rates expire;

d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;

e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges;

f. Failing to provide customers advance notice of the variable rate Defendants will charge; and

g. Failing to clearly and conspicuously identify in its contract and marketing materials the variable charges in Defendants' variable energy plans." Compl. ¶ 9; *see also* Compl. ¶¶ 3, 187, 194, 210, 231.

Specifically, Plaintiffs allege they were contacted by representatives associated with Just Energy in 2012, and shown "teaser rates" not reflective of Just Energy's actual rates. Compl. ¶¶ 37–38, 42–43. Plaintiff Donin alleges that after agreeing to switch her gas and electric accounts to Just Energy, she received emails from Just Energy that misrepresented Just Energy's rates. Compl. ¶ 39. Plaintiffs allege Just Energy lures consumers with a marketing campaign that touts low rates and fails to disclose that Just Energy's actual rates will not only be higher than those teaser rates, but will also be consistently and substantially higher than those charged by the utility. *Id.* ¶ 3.

Plaintiffs allege the "company also provides customers a set of documents, including a "welcome email" and "General Terms and Conditions," which together comprise the contract. Def. Mem. at 10. Plaintiffs allege that in this contract, Just Energy promises (1) to charge a specified energy rate, (2) not to increase customers' rates "more than 35% over the rate from the previous billing cycle," *see* Compl. ¶ 5, and (3) to base their variable rates on "business and market conditions," *id.* ¶ 6. Plaintiffs allege Defendants breach all three promises. *Id.* ¶¶ 4–6, 10, 31–35, 142–46, 255–56. Through these practices, Plaintiffs allege Defendants breached New York's General Business Law §§ 349, 349-D(3) and 349-D(7) (Counts I–III); engaged in unfair and deceptive acts and practices (Count IV); committed common law fraud (Count V) and fraud by concealment (Count VI); were unjustly enriched at the consumers' expense (Count VII); breached its contract (VIII); and violated the Covenant of Good Faith and Fair Dealing (Count

IX). For the reasons that follow, the Court GRANTS in part and DENIES in part Defendants' motion to dismiss.

LEGAL STANDARD

To survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A sufficiently pleaded complaint provides "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* Indeed, a complaint that merely offers labels and conclusions, a formulaic recitation of the elements, or "'naked assertions' devoid of 'further factual enhancement,'" will not survive a motion to dismiss. *Id.* (quoting *Twombly,* 550 U.S. at 557). At the motion-to-dismiss stage, this Court accepts all factual allegations in the Amended Complaint as true and draws all reasonable inferences in favor of Plaintiff, the nonmovant. *Harris v. Mills*, 572 F.3d 66, 71 (2d Cir. 2009). But the Court need not credit "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 72 (quoting *Iqbal*, 556 U.S. at 678) (alteration omitted). Rather, legal conclusions must be supported by factual allegations. *Iqbal*, 556 U.S. at 678.

DISCUSSION

Defendants move to dismiss the Complaint in its entirety on the basis that: (1) this Court has no personal jurisdiction over Just Energy, Inc. or the alleged John Does; (2) Plaintiff Donin has no standing; and (3) Plaintiffs otherwise fail to state a claim for which relief can be granted. For the reasons state below, this Court finds it has personal jurisdiction over Just Energy, Inc. and Plaintiff Donin has standing to proceed in this case. Furthermore, Plaintiffs' claims for

breach of contract and breach of the covenant of good faith and fair dealing survive Defendants' motion to dismiss. Plaintiffs' remaining claims are DISMISSED.

I. Personal Jurisdiction

Defendants argue this Court does not have personal jurisdiction over Just Energy, Inc. and John Does #1–100. This Court finds it has personal jurisdiction over Just Energy, Inc., but does not have personal jurisdiction over the John Does.

a. The Court has personal jurisdiction over Just Energy, Inc.

New York's long arm statute, N.Y. C.P.L.R. 302, permits jurisdiction over a non-domiciliary "who in person or through an agent: 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or 2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act[.]" N.Y. C.P.L.R. 302(a)(1)-(2) (McKinney 2018). Courts have emphasized that, in the personal jurisdiction context, "[w]hile a plaintiff may plead facts alleged upon information and belief where the belief is based on factual information that makes the inference of culpability plausible, such allegations must be accompanied by a statement of the facts upon which the belief is founded." *Vista Food Exch., Inc. v. Champion Foodservice, L.L.C.*, 14-CV-804, 2014 WL 3857053, at *9 (S.D.N.Y. Aug. 5, 2014) (Sweet, J.) (internal quotations omitted). Pleadings based on "information and belief" are acceptable as long as they are allegations, not conclusions. *Geo Grp., Inc. v. Cmty. First Servs., Inc.*, 11-CV-1711, 2012 WL 1077846, at *5 (E.D.N.Y. Mar. 30, 2012) (Amon, J.) ("Second Circuit has expressly held that information and belief pleading is permissible for facts 'peculiarly within the possession and control' of the defendant.") (citing *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 121 (2d Cir. 2010))).

This Court has personal jurisdiction over Just Energy, Inc. pursuant to New York's long-arm statute. Plaintiffs have sufficiently alleged JE "transacts any business within the state or contracts anywhere to supply goods or services in the state" and that the instant case arises from that transaction. Pl's Opp. to Def. Mem. ("Pl. Opp.") at 4, ECF No. ECF. Plaintiffs allege that JE itself "states that it sells [energy] in New York," *see* Compl. ¶ 78, "receives payment from New York utilities for it," *see id.* ¶ 77, "issues news releases about New York," *id.* ¶ 65, "sign[ed] up [New York customers] through its advertisements, sales staff, independent sales contractors and website," *id.* ¶¶ 65, 67, 76, its employees "drafted the customer contract at issue," *id.* ¶ 66, and its executives presented an overview of Group's strategies at a conference in New York, *id.* ¶ 75. *See Amorphous v. Morais*, 17-CV-631, 2018 WL 1665233, at *5, 7 (S.D.N.Y. Mar. 15, 2018) (Buchwald, J.) (finding "defendants availed themselves of the privilege of doing business in the New York" when defendants filled orders to New York customers, participated in New York trade shows, and sent representatives to New York and that "not only N.Y. C.P.L.R. § 302(a)(1), but also due process's requirement of sufficient minimum contacts"). These facts directly contrast with Mr. Teixeira's declaration, *see* ECF No. 30-4, that JE "does not engage in any business in New York," *id.* ¶ 9.

Here, Plaintiffs allege specifically "that the subsidiary engaged in purposeful activities in this State, that those activities were for the benefit of and with the knowledge and consent of the defendant, and that the defendant exercised some control over the subsidiary in the matter that is the subject of the lawsuit." *Jensen v Cablevision Sys. Corp.*, 17-CV-00100, 2017 WL 4325829, at *7 (E.D.N.Y. Sept. 27, 2017) (Spatt, J.). Drawing all reasonable inferences in favor of Plaintiffs, the Court is satisfied that Plaintiff has alleged facts showing personal jurisdiction over JE is proper.

Furthermore, this Court's exercise of personal jurisdiction over JE satisfies Constitutional Due Process. Defendants claim the exercise of personal jurisdiction over JE fails to comport with due process "in light of the Supreme Court's recent holding in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773 (2017). Defs.' Mem. at 7–8. However, unlike *Bristol-Myers*, where nonresident plaintiffs suffered harm out of state and tried to join their claims with those of in-state plaintiffs, here, there is a direct "connection between the forum and the specific claims at issue." *Id*. at 1781. Defendant JE allegedly solicited and defrauded customers in *New York* and supplied their energy services to *New York* residents in *New York*. This constitutes sufficient contacts for purposes of due process. *Licci ex rel. Licci v. Lebanese Can. Bank, SAL*, 673 F.3d 50, 62 (2d Cir. 2012) (holding a single in-state act performed by a non-domiciliary is sufficient for long-arm jurisdiction under CPLR §302(a)); *Bradley v. Staubach*, 03-CV-4160, 2004 WL 830066, at *4 (S.D.N.Y. Apr. 13, 2004) (Scheindlin, J.) (holding "[c]ontacts sufficient to establish jurisdiction under C.P.L.R. § 302(a)(1) are sufficient to meet the minimum contacts requirements of the Due Process clause").

b. The Court does not have jurisdiction over John Does 1–100.

However, Plaintiffs have not sufficiently alleged facts to show this Court has jurisdiction over John Does 1 to 100. Plaintiffs describe John Does 1 to 100 as "shell companies and affiliates" through which Just Energy Inc. does business in and outside of New York, as well as "Just Energy management and employees who perpetrated the unlawful acts." Compl. ¶ 69. This vague and conclusory statement, without additional factual support, is insufficient to establish prima facie evidence of jurisdiction. *See, e.g.*, *Yao Wu v. BDK DSD*, 14-CV-5402, 2015 WL 5664256, at *3 (E.D.N.Y. Aug. 31, 2015) (Gold, Mag.) (dismissing complaint *sua sponte* for lack of personal jurisdiction over John Doe defendants where plaintiffs had averred no

factual allegations to support a finding of personal jurisdiction), *report and recommendation adopted*, 14-CV-5402, 2015 WL 5664534 (E.D.N.Y. Sept. 22, 2015) (Amon, J.). Accordingly, the Court hereby DISMISSES all claims against John Does 1–100 for lack of personal jurisdiction.

II. Plaintiff Donin has standing.

To demonstrate standing, the named plaintiff must have (1) suffered a direct personal injury, (2) fairly traceable to the defendant's allegedly unlawful conduct, (3) that is likely to be redressed by the requested relief. *See Crist v. Commn. on Presidential Debates,* 262 F.3d 193, 195 (2d Cir, 2001); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Furthermore, "[t]here must be a direct, personal relationship between the party seeking relief, and the parties to the action for which that relief is sought." *Howard v. Koch*, 575 F. Supp. 1299, 1301 (E.D.N.Y. 1982) (Costantino, J.) (dismissing allegations of misconduct toward plaintiff's girlfriend for lack of standing); *see also Galtieri v. Kelly*, 441 F. Supp. 2d 447, 456 (E.D.N.Y.2006) (Bianco, J.) (holding the wife of a policeman lacked standing to challenge the police department's decision to comply with court order to garnish the policeman's benefits).

Defendants argue Plaintiff Fira Donin has no standing in this case because Defendants sent the emails in question to her husband Stanislav Donin, the accountholder with Just Energy, and because Plaintiff Donin is not a party to the contract at issue. Def. Mem. at 9. This Court disagrees. Plaintiff Donin was the recipient of the "welcome emails," which were sent to her by the Just Energy customer service representative who pitched to her in person. *See* Complaint ¶¶ 28, 39. The addressee of the emails is "fsdonin@juno.com." Pl. Mem. at 8. Furthermore, although Plaintiff Donin is not a signatory to the contract, she is a third-party beneficiary of the contract and can thus assert a claim of breach. *See Logan-Baldwin v. L.S.M. Gen. Contractors,*

Inc., 94 A.D.3d 1466, 1468 (2012) ("Where, as here, performance is rendered directly to the third party, it is presumed that the contract was for his or her benefit."); *see also Mirkin v. Viridian Energy, Inc.*, 15-CV-1057, 2016 WL 3661106, at *2 n.2 (D. Conn. July 5, 2016) (denying motion to dismiss breach of contract claim based on ESCO's alleged overcharges even though plaintiff "Mr. Mirkin is not a party to the agreement with Viridian"). Accordingly, Fira Donin has standing to assert her contractual claims against Defendants.

III. Fraud-Based Claims

Counts V and VI of Plaintiff's Complaint allege common law fraud and fraud by concealment. To state a claim for fraud in New York, a plaintiff must allege "(1) a misrepresentation or omission of material fact; (2) which the defendant knew to be false; (3) which the defendant made with the intention of inducing reliance; (4) upon which the plaintiff reasonably relied; and (5) which caused injury to the plaintiff." *Schwartzco Enterprises LLC v. TMH Mgmt., LLC*, 60 F. Supp. 3d 331, 344 (E.D.N.Y. 2014) (Spatt, J.) (citing *Wynn v. AC Rochester*, 273 F.3d 153, 156 (2d Cir. 2001)). To survive a motion to dismiss, a plaintiff must: "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Id.* Plaintiff must also "allege facts that give rise to a strong inference of fraudulent intent." *Id.* (citing cases). "A cause of action to recover damages for fraud does not lie when . . . the only fraud charged relates to the breach of a contract[.]" *Individuals Sec., Ltd. v. Am. Int'l Grp.*, 34 A.D.3d 643, 644 (2d Dep't 2006) (holding there was "no evidence that the defendants violated any duty extraneous to the bond thereby giving rise to an actionable tort").

Plaintiffs' fraud claims fail because they have not "allege[d] a breach of duty which is collateral or extraneous to the contract between the parties." *Krantz v. Chateau Stores of Canada*

Ltd., 256 A.D.2d 186, 187 (1st Dep't 1998). The relationship between Plaintiffs and Defendants exists solely from their commercial contract. *See* Compl. Additionally, Plaintiffs have not sufficiently alleged a duty to disclose, as is also required for fraudulent concealment. *TVT Records v. Is. Def Jam Music Group*, 412 F.3d 82, 91 (2d Cir. 2005). Again, Plaintiffs plead no special relationship between the parties, outside of the contract that would produce a duty to disclose. *See* Compl. Thus, Plaintiffs' claims for fraud and fraudulent concealment are hereby DISMISSED.

IV. Plaintiff's GBL claims are untimely.

The New York General Business Law ("GBL") has a three-year limitations period for statutory causes of action. *See* N.Y. C.P.L.R. 214 (McKinney 2018); *Gaidon v. Guardian Life Ins. Co. of Am.*, 750 N.E.2d 1078, 1083 (2001) (applying "the three-year period of limitations for statutory causes of action under CPLR 214 (2)" to GBL § 349 claims). An action under the GBL "accrues 'when all of the factual circumstances necessary to establish a right of action have occurred, so that the plaintiff would be entitled to relief.'" *Globe Surgical Supply v. Allstate Ins. Co.*, 31 Misc. 3d 1227(A), 2011 WL 1884729, at *5 (Sup. Ct. Nassau Cnty. Apr. 18, 2011) (citation omitted). If an action is commenced outside the statute of limitations, "it is the plaintiff's burden to 'demonstrate that any delay was caused by fraud, misrepresentation or deception and that his reliance on the asserted misrepresentations was justifiable.'" *Davidson v. Perls*, 42 Misc. 3d 1205(A), 2013 WL 6797665, at *7–8 (Sup. Ct. N.Y. Cnty. Dec. 23, 2013) (collecting cases); *see also Marshall v. Hyundai Motor Am.*, 51 F. Supp. 3d 451, 463 (S.D.N.Y. 2014) (Karas, J.) ("[T]he party seeking to invoke the doctrine bears the burden of demonstrating that it was diligent in commencing the action within a reasonable time after the facts giving rise to the estoppel have ceased to be operational." (internal quotations omitted)).

Plaintiffs' claims accrued in 2012 at the latest, when they first received their energy bills showing the rates they were charged by Defendants. This date predates the filing of the Complaint by over three years. *See Heslin v. Metro. Life Ins. Co.*, 287 A.D.2d 113, 115–16 (3d Dep't 2001) (holding that the statute of limitations for a GBL § 349 action is "three years and accrues when the owner of a 'vanishing premium' life insurance policy s first called upon to pay an additional premium"). Furthermore, an "[a]ccrual of a § 349 claim 'is not dependent upon any date when discovery of the alleged deceptive practice is said to occur.'" And so, Plaintiff's claims cannot be tolled. *Statler v. Dell, Inc.*, 841 F. Supp. 2d 642, 648 (E.D.N.Y. 2012) (Wexler, J.). Plaintiffs' claims began accruing in 2012, either when they purportedly enrolled with Just Energy NY or when they first received their energy bills showing the rates they were charged by Just Energy NY. *See* Compl. ¶ 4. Under either accrual event, Plaintiffs would have had to file their Complaint long before October 2017 to state a timely claim under the controlling statute of limitations. *Pike v. New York Life Ins. Co.*, 72 A.D.3d 1043, 1048 (2d Dep't 2010) ("Although the plaintiffs allege that they were induced to purchase unsuitable policies, and that they were unaware that they would have to pay 'substantial' premiums, they do not point to any specific wrong that occurred each time they paid a premium, other than having to pay it. Thus, any wrong accrued at the time of purchase of the policies, not at the time of payment of each premium."). Accordingly, the Court hereby DISMISSES Plaintiff's GBL claims as untimely.

V. **Plaintiffs' claims for unfair and deceptive practices outside of New York are dismissed.**

To assert claims on behalf of out-of-state, nonparty class members with claims subject to different state laws, the named plaintiffs' claims must not be time barred. *Langan v. Johnson & Johnson Consumer Companies, Inc.*, 897 F.3d 88, 93 (2d Cir. 2018). Because the named

Plaintiffs' claims are time barred under the GBL, they cannot assert the out-of-state claims on behalf of the out-of-state class members. Furthermore, courts in this district have held that plaintiffs lack standing to "bring claims on behalf of a class under the laws of the states where the named plaintiffs have never lived or resided." *In re HSBC Bank, USA, N.A., Debit Card Overdraft Fee Litig.*, 1 F. Supp. 3d at 50 (holding that the plaintiffs lacked standing to "bring claims under state laws to which Plaintiff have not been subjected" and noting that, even if the plaintiff amended to add representatives from each state, "it would be difficult for the Court to adjudicate claims" under the various state laws); *see also Ellinghaus v. Educ. Testing Serv.*, 15-CV-3442, 2016 WL 8711439, at *9 (E.D.N.Y. Sept. 30, 2016) (Feuerstein, J.) (dismissing non-New York consumer protection claims on a motion to dismiss); *Simington v. Lease Fin. Grp., LLC*, 10-cv-6052, 2012 WL 651130, at *9 (S.D.N.Y. Feb. 28, 2012) (Forrest, J.) ("Where plaintiffs themselves do not state a claim under their respective state's consumer statutes, . . . they do not have standing to bring claims under other state statutes—even where they are named plaintiffs in a purported class action."). Here, the two named Plaintiffs reside not only in the same state, but in the same borough of the city of New York, and—consistent with the holdings of numerous courts in the Second Circuit—are not entitled to bring state law claims asserting violations of consumer protection statutes outside New York. Compl. ¶¶ 36, 41. As such, these claims are DISMISSED.

VI. Plaintiffs have sufficiently stated a breach of contract claim.

To state a claim for breach of contract, a plaintiff must show "(1) the existence of a contract between [plaintiff and defendant]; (2) performance of the plaintiff's obligations under the contract; (3) breach of the contract by that defendant; and (4) damages to the plaintiff caused by that defendant's breach." *Diesel Props S.r.l. v. Greystone Bus. Credit II LLC*, 631 F.3d 42, 52

(2d Cir. 2011). Plaintiffs claim Defendants breached the Agreements "by (a) charging rates higher than the rates set forth in the welcome emails Defendants sent to consumers (b) violating the contract's requirement that Defendants 'will not increase more than 35% over the rate from the previous billing cycle,' and (c) violating the contract's requirement that Defendants charge variable rates 'determined by business and market conditions.'" Compl. ¶ 35.

Defendants argue the Agreement expressly states that the rates charged are "variable," meaning they did not contract to charge Plaintiffs particular rates, and thus they did not breach the contract. However, Defendants ignore Plaintiff's allegations which specify that Defendants "made contractual promises to i) charge a specified energy rate (in Ms. Donin's case, 8¢ per kWh and 63¢ per therm), Compl. ¶ 4, ii) not to increase their rates "more than 35% over the rate from the previous billing cycle," *id.* ¶ 5, and iii) base their variable rates on "business and market conditions," *id.* ¶ 6, and that the Defendants breached these three promises.

First, Plaintiffs have put forth facts showing that Defendant charged them over a specific energy rate. Notwithstanding the contractual promise, Plaintiffs allege Just Energy consistently charged Plaintiff Donin more than 8¢ per kWh. *See* Compl. ¶ 4. Plaintiffs allege they have provided billing data during a four-year period showing there was only one month when Just Energy charged Ms. Donin less than the 8¢ per kWh contractual rate. *Id.* Similarly, Plaintiffs maintain the same allegations regarding her gas account. *Id.* Plaintiff Donin alleges that during the seventeen months of billing, Just Energy's rate was higher than 63¢ per therm. *Id.*

Second, Plaintiffs have put forth facts showing Defendants increased their rates more than 35% from previous billing cycles. Plaintiffs maintain that in August 2013 Defendants raised Plaintiff Donin's electricity price by more than 80% over the prior month's rate. *Id.* ¶ 5.

Similarly, in May 2016, Plaintiffs allege Just Energy increased Ms. Donin's May 2016 gas rate by more than 36% compared to the rate she paid in April 2016. *Id.*

Finally, Plaintiffs have put forward facts to substantiate their claim that Defendant's failed to base their variable rates on "business and market conditions." The Complaint sets forth a month-by-month comparison of what Con Ed would have charged during each of the months for which Plaintiffs' billing data is presently available, showing both the difference and the percent difference between a rate based on "business and market conditions" and the rate Defendants charged. Compl. ¶¶ 142–44. Based on these tables, Plaintiffs show "that Just Energy's variable rate was consistently significantly higher than Con Ed's rates and that the rate did not fluctuate with commodity prices." *Id.* ¶ 147. The Complaint also clearly shows that "Just Energy's variable rate often increased while wholesale costs declined," further substantiating its claim that Defendants' rates are untethered to "business and market conditions." *Id.* ¶¶ 153–56. This is sufficient to state a breach of contract claim for an ESCO's failure to charge contracted-for market-based rates, and thus a claim for breach of contract.

VII. Plaintiffs sufficiently allege a claim for breach of the covenant of good faith and fair dealing.

A "claim for breach of an implied covenant of good faith and fair dealing does not provide a cause of action separate from a breach of contract claim" when based on the same facts. *Atlantis Info. Tech., GmbH v. CA, Inc.*, 485 F. Supp. 2d 224, 230 (E.D.N.Y. 2007) (Spatt, J.); *Esposito v. Ocean Harbor Cas. Ins. Co.*, 13-CV-7073, 2013 WL 6835194, at *2 (E.D.N.Y. Dec. 19, 2013) (Feuerstein, J.). In New York, "all contracts contain an implied covenant of good faith and fair dealing, under which neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Claridge*

v. N. Am. Power & Gas, LLC, 15-CV-1261, 2015 WL 5155934, at *6 (S.D.N.Y. Sept. 2, 2015) (Castel, J.). "Where the contract contemplates the exercise of discretion, this pledge includes a promise not to act arbitrarily or irrationally in exercising that discretion." *Dalton v Educ. Testing Serv.*, 663 N.E.2d 289, 291 (N.Y. 1995). Whether a defendant exercised bad faith is an issue of fact for a jury to decide. *See First Niagara Bank N.A. v Mortg. Builder Software, Inc.*, 13-CV-592, 2016 WL 2962817, at *7 (W.D.N.Y. May 23, 2016) (Skretny, J.).

The Court finds some factual allegations overlap in Plaintiff's claims. However, because Just Energy contests the viability of the contract claim, the Court allows Plaintiffs to alternatively maintain the good faith and fair dealing claim, as is routinely allowed in federal court. *See, e.g.*, *Claridge*, 2015 WL 5155934, at *6 (allowing both claims to proceed and noting that "[g]iven the ambiguous language of the Agreement, the plaintiffs plausibly allege that [defendant ESCO] could have exercised its discretion in a manner contrary to customers' expectations"); *Hamlen v. Gateway Energy Services Corp.*, 16-CV-3526, 2017 WL 892399, at *5 (S.D.N.Y. Mar. 6, 2017) (Briccetti, J.); *Edwards v. N. Am. Power and Gas, LLC*, 120 F. Supp 3d. 132, 147 (D. Conn. 2015) ("[I]n pleading that [defendant's] prices were arbitrarily high and unreasonable, [plaintiff] . . .sufficiently alleged a claim of breach of the covenant of good faith and fair dealing."). Accordingly, Plaintiffs' "claim for breach of an implied covenant of good faith and fair dealing survives Defendants' motion to dismiss.

VIII. Plaintiff's unjust enrichment claim is dismissed.

Unjust enrichment "may not be plead in the alternative alongside a claim that the defendant breached an enforceable contract." *King's Choice Neckwear, Inc. v. Pitney Bowes, Inc.*, 09-CIV-3980, 2009 WL 5033960, at *7 (S.D.N.Y. Dec. 23, 2009) (Cote, J.), *aff'd*, 396 Fed. App'x 736 (2d Cir. 2010) (summary order); *see also Ainbinder v. Money Ctr. Fin. Grp., Inc.*, 10-

CV-5270, 2013 WL 1335997, at *8 (E.D.N.Y. Feb. 28, 2013) (Tomlinson, Mag.) (collecting cases), *report and recommendation adopted,* 10-CV-5270, 2013 WL 1335893 (E.D.N.Y. Mar. 25, 2013) (Feuerstein, J.). Unlike Plaintiffs' claim for breach of covenant of good faith and fair dealing, here all facts of Plaintiff's breach of contract claim overlap with their breach of unjust enrichment claims. There is no dispute as to the existence of a contract, and thus, a claim for unjust enrichment cannot survive. Accordingly, Plaintiff's unjust enrichment claim is DISMISSED.

CONCLUSION

In sum, the Defendants' motion to dismiss is GRANTED in part and DENIED in part. The Court finds it has personal jurisdiction over Defendant Just Energy, Plaintiff Donin has standing, and Plaintiffs have sufficiently alleged their breach of contract and breach of the covenant of good faith and fair dealing claims. All other claims are hereby DISMISSED. The Clerk of Court is respectfully directed to close the motion pending at ECF No. 27 and to remove John Does 1–100 from the caption.

SO ORDERED.

s/ WFK

____

HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: September 24, 2021
Brooklyn, New York

This is Exhibit “D” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____

A Commissioner for taking Affidavits (or as may be)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TREVOR JORDET, Plaintiff, v. JUST ENERGY SOLUTIONS, INC., Defendant.	Civil Action No. **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Trevor Jordet, by his attorneys, as and for his class action complaint, alleges, with personal knowledge as to his own actions, and upon information and belief as to those of others, as follows:

NATURE OF THIS CASE

1. This action seeks to redress the deceptive and bad faith pricing practices of Just Energy Solutions, Inc. ("Just Energy" or "Defendant") that has caused thousands of Pennsylvania consumers to pay considerably more for their natural gas than they should otherwise have paid.

2. Just Energy has exploited the deregulation of the retail natural gas market in Pennsylvania by luring consumers into switching natural gas suppliers using a bait-and-switch scheme designed to deceive reasonable consumers. Just Energy lures its customers into switching to its natural gas supply service by offering teaser rates that are fixed for a limited period of time and initially lower than the local utilities' rates for natural gas. Once the initial rate expires, Just Energy switches its customers over to its market variable rate, which is invariably higher than the initial teaser rate. Just Energy's market variable rate is likewise

substantially higher than the competing local utilities' and independent energy companies' ("ESCOs") rates, and is disconnected from true market-based rates.

3. As a result, Pennsylvania consumers are being fleeced millions of dollars in exorbitant charges for natural gas.

4. This suit is brought pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), and Pennsylvania common law of on behalf of a class of Pennsylvania consumers who were charged a variable rate for natural gas by Just Energy from March 2012 to the present (the "Class" or "Class Members"). It seeks, *inter alia*, injunctive relief, actual damages and refunds, treble damages, punitive damages, attorneys' fees, and the costs of this suit.

PARTIES

5. Plaintiff Trevor Jordet is a citizen of Pennsylvania residing in Norristown, Pennsylvania. Mr. Jordet was a customer of Just Energy from approximately 2012 through approximately February 2018, and as a result of Just Energy's deceptive conduct, he incurred excessive charges for natural gas.[1]

6. Defendant Just Energy was incorporated in California, and its principal place of business or corporate headquarters is in Houston, Texas.

[1] Mr. Jordet initially contracted with Commerce Energy for his natural gas services. According to a Just Energy press release, on April 1, 2017, Commerce Energy rebranded as Just Energy Solutions Inc. Press Release, JUST ENERGY GROUP INC., *Commerce Energy Sheds Name to Begin Operating Under the Just Energy Brand* (Apr. 3, 2017), http://www.marketwired.com/press-release/commerce-energy-sheds-name-to-begin-operating-under-the-just-energy-brand-nyse-je-2207232.htm. "The change represents a transition in name only, and does not affect the status of existing customer contracts, business licenses, or any other legal documentation." *Id.*

7. Upon information and belief, Just Energy provides natural gas and natural gas services to thousands of customers in Pennsylvania, and in other states including but not limited to Illinois, Michigan, and Virginia.

JURISDICTION

8. The Court has specific personal jurisdiction over Defendant Just Energy because Plaintiff's claims arise out of and relate to Defendant's conduct in Pennsylvania.

9. Subject matter jurisdiction in this civil action is authorized pursuant to 28 U.S.C. § 1332(d)(2)(A), as the amount in controversy is in excess of $5 million and Plaintiff and many class members are citizens of Pennsylvania, whereas Defendant is a citizen of California and Texas.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2).

OPERATIVE FACTS

The History Of Pennsylvania's Energy Industry

11. In 1999, Pennsylvania's state legislature made the decision to deregulate the market for retail natural gas and natural gas supply by passing the Natural Gas Choice and Competition Act, a major break with past policy. Before deregulation, retail residential consumers had to purchase both the supply and the delivery of natural gas from the local utility. The public policy motivation for allowing consumers a choice of natural gas suppliers is to enable retail customers to take advantage of competition between suppliers in the open market, as compared to the monopolistic and heavily regulated utility. The premise behind this policy is that competition would result in ESCOs being more aggressive than the monopoly utility in reducing wholesale purchasing costs and thereby lower prices and costs for retail customers.

12. ESCOs such as Just Energy have various options to buy natural gas at wholesale for resale to retail customers, including: owning natural gas production facilities; purchasing natural gas from wholesale marketers and brokers at the price available at or near the time it is used by the retail consumer; and by purchasing natural gas in advance of the time it is used by consumers, either by purchasing physical gas to be used in the future or by purchasing futures contracts for the delivery of natural gas in the future at a predetermined price. The purpose of deregulation is to allow ESCOs to use these and other innovative purchasing strategies to reduce natural gas costs, and pass those savings on to consumers.

13. Consumers who do not choose to switch to an ESCO for their energy supply continue to receive their supply from their local utility. However, if a customer switches to an ESCO, the customer will have his or her energy "supplied" by the ESCO, but still "delivered" by their existing utility. The customer's existing utility continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is which company sets the price for the customer's energy supply.

14. As part of the deregulation plan, ESCOs (like Just Energy) do not have to file or seek approval for the natural gas rates they charge with the state public services commissions or the method by which they set their rates.

15. Just Energy exploits the deregulation and the lack of regulatory oversight in the energy market by luring customers with enticing teaser rates and false promises that it will offer market-based variable rates when, in fact, Just Energy's rates are substantially higher than its own fixed rates, competing ESCOs rates, and the local utilities' rates, and are untethered from changes in wholesale rates.

Mr. Jordet's Experience

16. Just Energy solicited Mr. Jordet in or around 2012, representing that it would charge a rate lower than the local utility, PECO. Expecting to save money on his natural gas bills, Mr. Jordet expressed interest in Just Energy's offer.

17. Just Energy then provided Mr. Jordet its standard and uniform residential natural gas disclosure statement and terms of service (the "Agreement") that would govern their relationship. Just Energy also provided Mr. Jordet with a rescissionary period during which he could rescind the Agreement prior to its commencement should he not agree to its terms. During that rescissionary period, the Agreement served as a solicitation in which Just Energy identified the basis upon which the promised market-based variable rate would be determined.

18. According to the Agreement, customers are initially charged a fixed introductory rate (the "Introductory Rate") for a set number of months. Once the Introductory Rate expires, Just Energy automatically converts customers to its monthly variable rate.

19. The Agreement also represents that the variable rate, which is set by Just Energy, would be set "according to business and market conditions, including but not limited to, the wholesale cost of natural gas supply, transportation, distribution and storage[.]"

20. Any reasonable consumer, including Mr. Jordet, would understand based on Just Energy's representations concerning business and market conditions that its variable rate would primarily reflect the two main components of business and market conditions facing ESCOs like Just Energy, namely the wholesale cost of purchasing the natural gas it sells to its customers, and the business and market prices charged by Just Energy's competitors (*i.e.*, the local utility and other ESCOs).

21. Mr. Jordet switched from PECO to Just Energy for his natural gas services in or around 2012, and cancelled his Agreement with Just Energy in February 2018. The following table identifies the billing periods for the past twenty-two months, the variable rate Just Energy charged Mr. Jordet, the corresponding rate PECO would have charged (which, as discussed below, is a reasonable representation of a market-based rate), and the differences between Just Energy's and PECO's contemporaneous rates:

Billing Period	Just Energy Rate Per Ccf[2]	PECO Rate Per Ccf	Difference	Percent Difference
4/15/16 – 5/16/16	$0.5895	$0.3422	$0.2453	71.3%
5/16/16 – 6/15/16	$0.6725	$0.3501	$0.3224	92.1%
6/15/16 – 7/15/16	$0.7183	$0.3501	$0.3858	105.2%
7/15/16 – 8/15/16	$0.7183	$0.3501	$0.3682	105.2%
8/15/16 – 9/14/16	$0.744	$0.2916	$0.4524	155.1%
9/14/16 – 10/13/16	$0.7056	$0.2916	$0.414	142%
10/13/16 – 11/11/16	$0.6014	$0.2916	$0.3098	106.2%
11/11/16 – 12/14/16	$0.6099	$0.3215	$0.2884	89.7%
12/14/16 – 1/18/17	$0.616	$0.3215	$0.2945	92%
1/18/17 – 2/16/17	$0.616	$0.3215	$0.2945	91.6%
2/16/17 – 3/17/17	$0.616	$0.3993	$0.2167	54.3%
3/17/17 – 4/17/17	$0.616	$0.3993	$0.2167	54.3%
4/17/17 – 5/16/17	$0.616	$0.3993	$0.2167	54.3%
5/16/17 – 6/15/17	$0.616	$0.4465	$0.1695	38%

[2] Quantities of natural gas are occasionally measured in terms of volume. A Ccf is a volumetric measure of the amount of gas contained in a space equal to one hundred cubic feet.

Billing Period	Just Energy Rate Per Ccf[2]	PECO Rate Per Ccf	Difference	Percent Difference
6/15/17 – 7/17/17	$0.616	$0.4465	$0.1695	38%
7/17/17 – 8/15/2017	$0.7233	$0.4465	$0.2768	62%
8/15/17 – 9/13/17	$0.84	$0.3858	$0.4542	117.7%
9/13/17 – 10/14/17	$0.84	$0.3858	$0.4542	117.7%
10/14/17 – 11/10/17	$0.84	$0.3858	$0.4542	117.7%
11/10/17 – 12/13/17	$0.844	$0.3991	$0.7779	111%
12/13/17 – 1/17/18	$0.84	$0.3991	$0.4409	110.5%
1/17/18 – 2/15/18	$0.84	$0.3991	$0.4409	110.5%

22. Additionally, the following table likewise identifies the billing periods for the past twenty-two months, Just Energy's variable rate, and the U.S. Energy Information Administration's ("EIA") official cost of wholesale natural gas delivered to Pennsylvania ("Citygate rate")[3]:

Billing Period	Just Energy Rate Per Ccf	Citygate Rate Per Ccf
4/15/16 – 5/16/16	$0.5895	$0.328
5/16/16 – 6/15/16	$0.6725	$0.435
6/15/16 – 7/15/16	$0.7183	$0.636
7/15/16 – 8/15/16	$0.7183	$0.655
8/15/16 – 9/14/16	$0.744	$0.557
9/14/16 – 10/13/16	$0.7056	$0.592

[3] *Natural Gas Citygate Price in Pennsylvania*, EIA, https://www.eia.gov/dnav/ng/hist/n3050pa3m.htm (last visited Apr. 4, 2018).

Billing Period	Just Energy Rate Per Ccf	Citygate Rate Per Ccf
10/13/16 – 11/11/16	$0.6014	$0.398
11/11/16 – 12/14/16	$0.6099	$0.408
12/14/16 – 1/18/17	$0.616	$0.372
1/18/17 – 2/16/17	$0.616	$0.407
2/16/17 – 3/17/17	$0.616	$0.420
3/17/17 – 4/17/17	$0.616	$0.386
4/17/17 – 5/16/17	$0.616	$0.507
5/16/17 – 6/15/17	$0.616	$0.537
6/15/17 – 7/17/17	$0.616	$0.685
7/17/17 – 8/15/2017	$0.7233	$0.730
8/15/17 – 9/13/17	$0.84	$0.623
9/13/17 – 10/14/17	$0.84	$0.542
10/14/17 – 11/10/17	$0.84	$0.467
11/10/17 – 12/13/17	$0.844	$0.408
12/13/17 – 1/17/18	$0.84	$0.349
1/17/18 – 2/15/18	$0.84	$0.3991

23. That Just Energy's variable rate is not in fact a competitive market rate based on the wholesale cost of natural gas is demonstrated by the fact that Just Energy's variable rate was consistently significantly higher than PECO's rates and that the rate did not fluctuate with commodity prices.

24. Indeed, from April 2016 through February 2018 (his most recent bill), Just Energy's rate was higher than PECO's rate *every single month.* In fact, of the twenty-two months listed above, Just Energy's variable rate was *more than double* PECO's rate for ten months. In fact, on average, Just Energy's rate was 93% higher than PECO's rate.

25. PECO's rates serve as an ideal indicator of market conditions because they are based on the wholesale natural gas and the associated market costs (*e.g.*, procurement costs, transportation, distribution, and storage -- the same costs ESCOs such as Just Energy incur). PECO and other Pennsylvania utilities can only adjust its rates quarterly based on changes in its wholesale supply costs and simply pass actual costs on to their customers -- without any markups or profit.[4] Because Pennsylvania utility rates do not include any profits, they serve as pure reflections of average market costs of wholesale natural gas, associated costs, and distribution over time.

26. While PECO and Just Energy may not purchase natural gas and associated costs in precisely the same manner, over time the wholesale costs they incur should be commensurate. In fact, Just Energy has a tactical advantage over the utility as it can purchase natural gas from a highly competitive natural gas market for future use, and therefore its cost for purchasing natural gas should at the very least reflect (if not undercut) market prices, albeit over a longer term. Therefore, while PECO's rates may not precisely match Just Energy's rates, they should be commensurate. But they are instead wildly disparate.

27. For example, when PECO's rate declined from $0.3501 to $0.2916 per Ccf (a decline of 17%) from August to September 2016, Just Energy increased its already exorbitant

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[4] *Price to Compare Sample Methodology*, PECO, https://www.peco.com/SiteCollectionDocuments/Sample%20Gas%20PTC%20Methodology.pdf (last visited Apr. 4, 2018).

prices from $0.7183 to $0.744 per Ccf (an increase of 4%). Likewise, when PECO's rate declined from $0.4465 to $0.3858 per Ccf (decreasing by 14%) between August to September 2017, Just Energy's rate rose from $0.7233 to $0.84 per Ccf (increasing 16%). Even when PECO's rate remained constant at $0.3501 per Ccf between June and July 2016, Just Energy's rate increased from $0.6725 to $0.7183 per Ccf (an increase of 7%).

28. The disparities are also evident over time. For instance, while PECO's rate generally declined between June 2017 and February 2018 from $0.4465 to $0.3991 per Ccf (declining 11%), Just Energy's rates increased from $0.616 to $0.84 per Ccf (increasing by 36%).

29. Just Energy's stark rate disparities with those of the local utility, wherein Just Energy's rates were higher 100% of time from May 2016 through February 2018, considered together with the fact that Just Energy's rates do not reflect market fluctuations, demonstrate that Just Energy does not charge a rate based on business and market conditions as it states in its Agreement, but rather gouges its customers by charging outrageously high rates.

30. The disconnect between Just Energy's variable rate and changes in wholesale costs is also demonstrated by the fact that Just Energy's variable rate often increased while wholesale costs declined. The Citygate rate identified by the EIA is the actual wholesale price of natural gas in Pennsylvania. Between August 2017 and February 2018, the Citygate rate drastically declined from $0.730 to $0.3991 per Ccf (decreasing 45%), PECO's variable rate steadily increased from $0.7233 to $0.84 per Ccf (increasing 16%).

31. The cost of wholesale natural gas is the primary component of the non-overhead costs Just Energy incurs. Indeed, Just Energy concedes and represents as much, listing "the

wholesale cost of natural gas supply" as the first factor in its list of business and market pricing components.

32. Just Energy's identification of "business" conditions among the factors it considers likewise does not justify its outrageously high rates. A reasonable consumer might understand that an ESCO will attempt to make a reasonable margin on the commodity it sells to consumers. However, such a consumer would also expect that such profits would be consistent with profit margins obtained by other suppliers of natural gas in the market, and also that Just Energy's profiteering at the expense of its customers would not be so extreme that its rate bears no relation to market prices but is instead outrageously higher. That other ESCOs' rates are lower, even though they purchase natural gas from the wholesale market, demonstrates that Just Energy sets its profit margins in bad faith. Similarly, PECO's rate reflects a rate that Just Energy could charge (because Just Energy could purchase natural gas in the same way and at the same cost as PECO) plus a reasonable margin. No reasonable consumer would consider a margin that is on average 93% to be fair or commercially reasonable.

33. Any potentially conceivable additional business and market costs that are not explicitly disclosed in the Agreement (such as taxes, fees, and assessments) are relatively insignificant in terms of the overall costs Just Energy incurs to provide retail natural gas, and do not fluctuate over time. Therefore, these other cost factors cannot explain the drastic increases in Just Energy's variable rate or the reason its rates are disconnected from changes in wholesale costs.

34. Thus, Just Energy's statements with respect to the natural gas rates it will charge are materially misleading because consumers do not receive a price based on the specified factors like wholesale costs and competitor pricing. Instead, consumers are charged rates that are

substantially higher (often more than double) those of competitors and untethered from the specified market factors. Just Energy intentionally fails to disclose this material fact to its customers because no reasonable consumer -- including Mr. Jordet -- who knows the truth about Just Energy's exorbitant rates would choose Just Energy as a natural gas supplier.

35. Just Energy's statements and omissions regarding its natural gas rates are materially misleading because the only consideration for any reasonable consumer when choosing an energy supplier is price.

36. In fact, all that Just Energy offers customers is natural gas delivered by local utilities, a commodity that has the exact same qualities as natural gas supplied by other ESCOs or local utilities. Other than potential price savings, there is nothing to differentiate Just Energy from other ESCOs or local utilities. Accordingly, the potential for price savings is the only reason any reasonable consumer would enter into a contract for natural gas supply with Just Energy.

37. Just Energy knows full well that it charges a rate that is unconscionably high, and the misrepresentations it makes with regard to the rate being market-based were made for the sole purpose of inducing consumers to sign up for Just Energy's natural gas supply so that it can reap outrageous profits to the direct detriment of its consumers without regard to the consequences high utility bills cause such consumers. As such, Just Energy's actions were actuated by actual malice or accompanied by wanton and willful disregard for consumers' well-being.

CLASS ACTION ALLEGATIONS

38. Plaintiff brings this action on his own behalf and additionally, pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of a class of all Just

Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present (the "Class" or "Class Members").

39. Plaintiff also brings this action on behalf of a sub-class of Just Energy's Pennsylvania customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present (the "Pennsylvania Sub-Class").

40. Excluded from the Class and Pennsylvania Sub-Class (collectively, the "Classes") are Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant has or had a controlling interest, or which Defendant otherwise controls or controlled; and any officer, director, legal representative, predecessor, successor, or assignee of Defendant.

41. This action is brought as a class action for the following reasons:

a. The Classes consist of thousands of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

b. There are questions of law or fact common to the Classes that predominate over any questions affecting only individual members, including:

i. whether Defendant violated 73 PA. CONS. STAT. § 201 *et seq.*;

ii. whether Defendant breached its contract with its consumers by charging variable rates not based on the factors specified in the customer agreements;

iii. whether Defendant breached the covenant of good faith and fair dealing by exercising its unilateral price-setting discretion in bad faith, *i.e.*, to price gouge;

iv. whether Plaintiff and the Class have sustained damages and, if so, the proper measure thereof; and

v. whether Defendant should be enjoined from continuing to charge variable rates not based on market conditions;

c. The claims asserted by Plaintiff are typical of the claims of Class Members;

d. Plaintiff will fairly and adequately protect the interests of the Classes, and Plaintiff has retained attorneys experienced in class and complex litigation, including class litigation involving consumer protection and ESCOs;

e. Prosecuting separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for Defendant;

f. Defendant has acted on grounds that apply generally to the Classes, namely representing that its variable rates are based on market conditions, *i.e.*, competitive and reflective of the wholesale market, when Defendant's rates are in fact substantially higher, such that final injunctive relief prohibiting Defendant from continuing its deceptive practices is appropriate with respect to the Classes as a whole;

g. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, for at least the following reasons:

i. Absent a class action, as a practical matter Class Members will be unable to obtain redress, Defendant's violations of its legal obligations will continue without remedy, additional consumers and purchasers will be harmed, and Defendant will continue to retain its ill-gotten gains;

ii. It would be a substantial hardship for most individual Class Members if they were forced to prosecute individual actions;

iii. When the liability of Defendant has been adjudicated, the Court will be able to determine the claims of all Class Members;

iv. A class action will permit an orderly and expeditious administration of class claims, foster economies of time, effort, and expense and ensure uniformity of decisions;

v. The lawsuit presents no difficulties that would impede its management by the Court as a class action; and

vi. Defendant has acted on grounds generally applicable to Class Members, making class-wide monetary and injunctive relief appropriate.

42. Defendant's violations Pennsylvania's UTPCPL and common law apply to all Class Members, and Plaintiff is entitled to have Defendant enjoined from engaging in illegal and deceptive conduct in the future.

FIRST CAUSE OF ACTION
Violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law
(On Behalf of the Pennsylvania Sub-Class)

43. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

44. Defendant has engaged in, and continues to engage in, fraudulent and deceptive conduct in violation of 73 PA. CONS. STAT. § 201-3.

45. Defendant's acts are willful, fraudulent, deceptive, unfair, unconscionable, and contrary to the public policy of Pennsylvania, which aims to protect consumers.

46. Defendant's misrepresentations and false, deceptive, and misleading statements and omissions with respect to the variable rates it charges for natural gas, as described above, constitute deceptive practices in connection with the marketing, advertising, promotion, and sale of natural gas in violation of 73 PA. CONS. STAT. § 201-3.

47. Defendant's fraudulent and deceptive conduct was designed to and did result in

misunderstandings on the part of Mr. Jordet and other reasonable consumers.

48. Defendant's false, deceptive, and misleading statements and omissions would have been material to any potential consumer's decision to purchase natural gas from Just Energy.

49. Defendant knew at the time it promised prospective customers that they will be billed a variable rate based on wholesale costs of natural gas and other business and market conditions that its promise was false because at the time of contract formation Just Energy knew that its variable rate was untethered from business and market conditions.

50. Defendant's intentional concealments were designed to deceive current and prospective variable rate customers into believing that rates will be commensurate with market conditions and the factors specified in the Agreement. By concealing its actual pricing strategy (presumably maximizing profits), Defendant benefits from reliance and deprive consumers from informed purchasing decisions and savings.

51. Defendant also baits and switches potential customers by enticing them with deceptively low Introductory Rates, only to shift them on to Just Energy's exorbitant variable rate plan shortly thereafter.

52. Defendant's practices are unconscionable and outside the norm of reasonable business practices.

53. As a direct and proximate result of Defendant's unlawful deceptive acts and practices, Plaintiff and Class Members entered into agreements to purchase natural gas from Just Energy and suffered and continue to suffer an ascertainable loss of monies based on the difference in the rate they were charged versus the rate they would have been charged had Defendant charged a rate based on business and market conditions as specified in the Agreement

or had they not switched to Defendant from their previous supplier. By reason of the foregoing and pursuant to 73 PA. CONS. STAT. § 201-9.2(a), Defendant is liable to Plaintiff and the Class for trebled actual damages, attorneys' fees, and the costs of this suit.

54. Plaintiff and Class Members further seek equitable relief against Defendant. Pursuant to 73 PA. CONS. STAT. § 201-9.2(a), this Court has the power to award such relief, including but not limited to, an order declaring Defendant's practices as alleged herein to be unlawful, an Order enjoining Defendant from undertaking any further unlawful conduct, and an order directing Defendant to refund to Plaintiff and the Class all amounts wrongfully assessed, collected, or withheld.

55. Defendant knows full well that it charges an unconscionably high rate, and the misrepresentations it makes with regard to the rate being market based were made for the purpose of inducing consumers to sign up for Defendant's natural gas supply so that it can reap outrageous profits to the direct detriment of Pennsylvania consumers without regard to the consequences high utility bills cause such consumers. As such, Defendant's actions are unconscionable and actuated by bad faith, lack of fair dealing, actual malice, or accompanied by wanton and willful disregard for consumers' well-being. Defendant is therefore additionally liable for punitive damages, in an amount to be determined at trial.

SECOND CAUSE OF ACTION
Breach of Contract and the Implied Covenant of Good Faith and Fair Dealing
(On Behalf of the Class)

56. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

57. Plaintiff and the Class entered into valid contracts with Defendant for the provision of natural gas.

58. Pursuant to the Agreement, Defendant agreed to charge a variable rate for natural gas based business and market conditions, such as the wholesale cost of natural gas supply, transportation, distribution, and storage.

59. Pursuant to the Agreement, Plaintiff and the Class paid the variable rates charged by Defendant for natural gas.

60. However, Defendant failed to perform its obligations under the Agreement. Indeed, Defendant charged a variable rate for natural gas that was untethered from the pricing components set forth in the parties' contract.

61. No reasonable consumer, including Mr. Jordet, would interpret the Agreement as granting Defendant with unfettered discretion to price gouge its customers.

62. Plaintiff and the Class were injured as a result because they were billed, and they paid, a charge for natural gas that was higher than it would have been had Defendant based its rate on the agreed upon factors.

63. By reason of the foregoing, Defendant is liable to Plaintiff and Class Members for the damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial.

64. Additionally, every contract in Pennsylvania contains an implied covenant of good faith and fair dealing in the performance and enforcement of the contract. The implied covenant is an independent duty and may be breached even if there is no breach of a contract's express terms.

65. Under the contract, Defendant had unilateral discretion to set the variable rate for natural gas based on market conditions and other factors, such as the amount of profit Defendant hoped to earn from the sale of natural gas in a customer's utility area.

66. Plaintiff reasonably expected that the variable rates for natural gas would, notwithstanding Defendant's profit goals, reflect the market and wholesale prices for natural gas and that Defendant would refrain from price gouging. Without these reasonable expectations, Plaintiff and other Class Members would not have agreed to buy natural gas from Defendant.

67. Defendant breached the implied covenant of good faith and fair dealing by arbitrarily and unreasonably exercising its unilateral rate-setting discretion to price gouge and frustrate Plaintiff and other Class Members' reasonable expectations that the variable rate for natural gas would be commensurate with market conditions.

68. As a result of Defendant's breach, Defendant is liable to Plaintiff and Class Members for actual damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
Unjust Enrichment
(On Behalf of the Class)
(In the Alternative to Count II)

69. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

70. By engaging in the conduct described above, Defendant has unjustly enriched itself and received a benefit beyond what was contemplated in the contract, at the expense of Plaintiff and the Class.

71. It would be unjust and inequitable for Defendant to retain the payments Plaintiff and the Class made for excessive natural gas charges.

72. By reason of the foregoing, Defendant is liable to Plaintiff and the other members of the Class for the damages that they have suffered as a result of Defendant's actions, the amount of which shall be determined at trial.

WHEREFORE, Plaintiff respectfully requests that the Court should enter judgment against Defendant as follows:

1. Certifying this action as a class action, with a class and a sub-class as defined above;

2. On Plaintiff's First Cause of Action, awarding against Defendant damages that Plaintiff and Pennsylvania Sub-Class Members have suffered, trebled, and granting appropriate equitable relief;

3. On Plaintiff's Second Cause of Action, awarding against Defendant damages that Plaintiff and Class Members have suffered as a result of Defendant's actions;

4. On Plaintiff's Third Cause of Action, awarding against Defendant damages that Plaintiff and Class Members have suffered as a result of Defendant's actions;

5. Awarding Plaintiff and the Class punitive damages;

6. Awarding Plaintiff and the Class interest, costs, and attorneys' fees; and

7. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury.

Dated: April 6, 2018

Respectfully Submitted By:

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* *Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Class

This is Exhibit “E” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TREVOR JORDET,

Plaintiff,

v.

DECISION AND ORDER

18-CV-953S

JUST ENERGY SOLUTIONS, INC.,

Defendant.

I. Introduction

This case alleges that Defendant imposed improper pricing for natural gas upon Plaintiff and the proposed class of Defendant's customers (Docket No. 1, Compl.). Before this Court is Defendant's Motion to Dismiss (Docket No. 19)[1] the Complaint.

For the reasons stated herein, Defendant's Motion to Dismiss is granted in part, denied in part.

II. Background

This is a diversity jurisdiction class action under Pennsylvania common law and statute challenging terms of Defendant's utility supply contract (see Docket No. 1, Compl.). Plaintiff commenced the action in the United States District Court for the Eastern District of Pennsylvania, but it was later transferred to this District (Docket No. 23).

[1] In support of its motion to dismiss, Defendant submits its attorney's Declaration with exhibits (an example of Defendant's contract and Pennsylvania Public Utility Commission's Natural Gas Suppliers List) and Memorandum of Law, Docket No. 20. In opposition, Plaintiff submits his Memorandum of Law, Docket No. 26. Defendant filed a timely Reply Memorandum, Docket No. 32. Plaintiff moved to file a Sur-Reply, Docket No. 35, which this Court granted, Docket No. 38. He then filed the Sur-Reply, Docket No. 39.

Plaintiff then filed supplemental authorities, Docket Nos. 41 (Gonzales v. Agway Energy Servs., LLC, No. 18-235-MAD-ATB, 2018 WL 5118509 (N.D.N.Y. Oct. 22, 2018)), 42 (Mirkin v. XOOM Energy, LLC, 931 F.3d 173 (2d Cir. 2019)), presenting cases that denied motions to dismiss.

Plaintiff is a Pennsylvanian who was a customer of Defendant (incorporated in California with its principal place of business in Texas) from 2012 through February 2018 (Docket No. 1, Compl. ¶¶ 6, 5).

Pennsylvania deregulated natural gas in 1999 (id., Compl. ¶ 11; see Docket No. 20, Def. Memo. at 2). The purpose for deregulation was to allow energy supply companies ("ESCOs") to use their natural gas facilities, purchased gas from wholesalers and brokers or purchasing futures contracts at set prices, and other innovations to reduce natural gas costs and pass the savings to consumers (Docket No. 1, Compl. ¶ 12).

Customers only select an ESCO for supplying natural gas while continuing to use the utility for delivery and billing (id. ¶ 13). The only difference from utility-furnished natural gas is the price of energy supply (id.). ESCOs' supply rates, including Defendant's, are not approved by the Pennsylvania public service commission (id. ¶ 14).

A. Pleadings

Plaintiff charges that Defendant entices customers with a low teaser rates and "false promises that it will offer market-based variable rates," then shifts the accounts to variable pricing that are "untethered from changes in wholesale rates" (id. ¶ 15).

In or around 2012, Defendant solicited Plaintiff to change natural gas supplier to Defendant, "representing that [Defendant] would charge a rate lower than the local utility, PECO" (id. ¶ 16). Defendant's agreement contained a rescissionary period when Plaintiff could change his mind and terminate without penalty (id. ¶ 17). Defendant charged Plaintiff a fixed, discounted introductory rate for a number of months then converted the account to a variable price (id. ¶ 18). The agreement represented that the variable price "would be set 'according to business and market conditions, including but not limited to,

the wholesale cost of natural gas supply, transportation, distribution and storage'" (id. ¶ 19).

Plaintiff alleges that a reasonable consumer (like him) would conclude that business and market conditions were the vendor's wholesale costs and the amounts charged by competitors (id. ¶ 20). Instead, Defendant set the variable price higher than Plaintiff's utility (PECO) and Defendant's ESCO competitors (id. ¶¶ 21, 22). Plaintiff contends that Defendant's prices were not competitive market rates; for example, these prices did not fluctuate with changes in natural gas prices (id. ¶¶ 23, 24). Instead, Plaintiff believes that PECO's rates were indicators of the market since it includes supply costs, transportation, distribution, and storage costs (id. ¶ 25). Plaintiff, however, fails to acknowledge that PECO's rates are approved by the public service commission. Even with the advantage of purchasing natural gas from a highly competitive market, Defendant's prices were higher and were not commensurate with PECO's rates (id. ¶¶ 26-30). Plaintiff characterizes these prices as "wildly disparate" (id. ¶ 26). He concedes, however, that Defendant had discretion to set variable prices (id. ¶ 65).

As for market conditions, Plaintiff states that a reasonable customer recognizes the vendor should recoup a reasonable margin on sales of gas (id. ¶ 32), which Plaintiff contends should be the same as other ESCOs and the utility. Because other ESCOs' rates are lower than Defendant's, Plaintiff claims that the profit margin sought by Defendant is in bad faith (id.). Defendant's undisclosed costs in taxes, fees, and assessments Plaintiff deems to be insignificant and not a justification for the disparity in Defendant's pricing from its competitors or PECO (id. ¶ 33). Plaintiff, however, does not state the profit or profit margin of these ESCOs or of PECO.

Plaintiff alleges three causes of action. The First Cause of Action alleges violation of Pennsylvania Unfair Trade Practice and Consumer Protection Law ("UTPCPL") (id. ¶¶ 44-55), with this claim specifically addressed to a subclass of Pennsylvania residents (id.). The Second Cause of Action alleges breach of contract (including breach of the implied covenant of good faith and fair dealing, not distinct causes of action under Pennsylvania law) (id. ¶¶ 57-68). The Third Cause of Action alleges unjust enrichment, as alternative to the Second Cause of Action (id. ¶¶ 70-72).

Plaintiff alleges a class of Defendant's customers who also were charged variable rates for residential natural gas services from April 2012 to the present (id. ¶ 38; see also id. ¶ 39 (subclass of Pennsylvania customers so charged)). The Second and Third Causes of Action apply to the full class, while the First Cause of Action applies to the broader class and also the subclass of Pennsylvania customers.

B. Procedural History

Plaintiff filed this action in the United States District Court for the Eastern District of Pennsylvania on April 6, 2018 (Docket No. 1, Compl.).

With consent, Defendant moved to transfer venue to this District (Docket No. 17), see 28 U.S.C. § 1404(a). There, Defendant argued that the interest of justice supported transfer, in part because of a similar case that then was pending in this Court (Docket No. 18, Def. Memo. at 3, 4-7), see Nieves v. Just Energy New York, No. 17CV561. The district court for the Eastern District of Pennsylvania granted the transfer (Docket No. 23; see Docket No. 24 (transmitted docket)).

On the same day Defendant moved to transfer, Defendant moved to dismiss (Docket No. 19). The parties stipulated to set Plaintiff's response to the Motion to Dismiss

to twenty-one days from the adopting Order (Docket No. 22), or by September 4, 2018. Following transfer to this District and upon the parties' stipulation to extend Defendant's time to reply (Docket No. 28), this Court set the deadline for Defendant's reply for October 5, 2018 (Docket No. 29). After filing a timely Reply (Docket No. 32), Sur-Reply (Docket No. 39), and supplemental authorities from Plaintiff (Docket Nos. 41, 42), the motion to dismiss was deemed submitted without oral argument.

In its Motion to Dismiss, Defendant provides an example of an unexecuted contract (Docket No. 20, Def. Atty. Decl. Ex. 1). The definitional section there defined "Variable Price" as "the monthly rate that you will be charged per Ccf after expiration of the 12 month Intro Price. The Variable Price will not change more than once each billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions." (Id.) In Section 5.1, Natural Gas Charges, the contract provides that

> "the Variable Price during the first billing cycle in which the Variable Price is in effect will be equal to the Intro Price. The Variable Price will not change more than once each monthly billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions, including but not limited to, the wholesale cost of natural gas supply, transportation, distribution and storage, and will not increase more than 35% over the rate from the previous billing cycle."

(Id.; see also Docket No. 1, Compl. ¶ 19).

III. Discussion

A. Applicable Standards

1. Motion to Dismiss

Defendant has moved to dismiss the Complaint on the grounds that it states a claim for which relief cannot be granted (Docket No. 19). Under Rule 12(b)(6) of the

Federal Rules of Civil Procedure, the Court cannot dismiss a Complaint unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), a Complaint must be dismissed pursuant to Rule 12(b)(6) if it does not plead "enough facts to state a claim to relief that is plausible on its face," id. at 570 (rejecting longstanding precedent of Conley, supra, 355 U.S. at 45-46); Hicks v. Association of Am. Med. Colleges, No. 07-00123, 2007 U.S. Dist. LEXIS 39163, at *4 (D.D.C. May 31, 2007). To survive a motion to dismiss, the factual allegations in the Complaint "must be enough to raise a right to relief above the speculative level," Twombly, supra, 550 U.S. at 555; Hicks, supra, 2007 U.S. Dist. LEXIS 39163, at *5. As reaffirmed by the Court in Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009),

> "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' [Twombly, supra, 550 U.S.] at 570 . . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556 . . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Ibid. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."' Id., at 557 . . . (brackets omitted)."

Iqbal, supra, 556 U.S. at 678 (citations omitted).

A Rule 12(b)(6) motion is addressed to the face of the pleading. The pleading is deemed to include any document attached to it as an exhibit, Fed. R. Civ. P. 10(c), or any document incorporated in it by reference. Goldman v. Belden, 754 F.2d 1059 (2d Cir. 1985). This Court deems incorporated here the contract since it is integral to Plaintiff's

claim even if Plaintiff did not incorporate the actual document by reference, Chambers v. Time Warner, Inc., 282 F.3d 147, 152-53 (2d Cir. 2002); 5B Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1357, at 376, 377 (Civil 3d ed. 2004). Neither party, however, produced Plaintiff's actual contract with Defendant (or any potential class member's contract). The Complaint alleges key terms of that agreement (Docket No. 1, Compl. ¶ 19), while Defendant's moving papers contains a facsimile of its Natural Gas Customer Agreement for the Natural Gas Rate Flex Pro Program (Docket No. 20, Def. Atty. Decl. ¶ 1, Ex. 1). Both sides cite to an identical provision about variable prices. And, absent objection from Plaintiff, this Court will consider the Natural Gas Customer Agreement and its definition of "Variable Price" and its terms for natural gas charges (id., Secs. 1, 5.1).

In considering such a motion, the Court must accept as true all of the well pleaded facts alleged in the Complaint. Bloor v. Carro, Spanbock, Londin, Rodman & Fass, 754 F.2d 57 (2d Cir. 1985). However, conclusory allegations that merely state the general legal conclusions necessary to prevail on the merits and are unsupported by factual averments will not be accepted as true. New York State Teamsters Council Health and Hosp. Fund v. Centrus Pharmacy Solutions, 235 F. Supp. 2d 123 (N.D.N.Y. 2002).

2. Pennsylvania Unfair Trade Practices and Consumer Protection Law

Pennsylvania courts construe the Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. §§ 201-3, et seq. (the "UTPCPL"), liberally to effectuate the goal of consumer protection, Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC, 40 A.3d 145, 151 (Pa. Super. Ct. 2012), citing Commonwealth by Creamer v. Monumental

Properties, Inc., 459 Pa. 450, 459, 329 A.2d 812, 816 (1974) (see Docket No. 26, Pl. Memo. at 20).

The UTPCPL creates a cause of action for any person who purchases services primarily for personal, family, or household purposes and thereby suffers ascertainable loss of money as a result of employment by any person of a method, act, or practice declared unlawful by the Act, 73 Pa. Cons. Stat. § 201-9.2 (Docket No. 26, Pl. Memo. at 19). Plaintiff has to allege a deceptive act, an ascertainable loss of money or property, that resulted from the use or employment of a method, act, or practice declared unlawful by the UTPCPL, and that plaintiff justifiably relied on the deceptive conduct, Abraham v. Ocwen Loan Servicing, LLC, 321 F.R.D. 125, 154 n.11 (E.D. Pa. 2017) (Docket No. 20, Def. Memo. at 17); Landau v. Viridian Energy PA LLC, 223 F. Supp.3d 401, 418 (E.D. Pa. 2016) (Docket No. 26, Pl. Memo. at 20).

Unlawful methods of competition and unfair or deceptive acts or practices include false advertising, 73 Pa. Cons. Stat. § 201-2(4)(v) ("Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have"), (vii) ("Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another"), (ix) ("Advertising goods or services with intent not to sell them as advertised") (Docket No. 20, Def. Memo. at 17; see Docket No. 26, Pl. Memo. at 19-20). To state a claim for false advertising as the unlawful method, a plaintiff has to allege that defendant's representations were false, that the representations actually deceived or tended to deceive, and the representation likely made the difference in the purchasing

decision, Price v. Foremost Indus. Ins., No. CV 17-00145, 2017 WL 6596726, at *9 (E.D. Pa. Dec. 22, 2017) (citing Seldon v. Home Loan Servs., Inc., 647 F. Supp.2d 451, 466 (E.D. Pa. 2009) (Docket No. 20, Def. Memo. at 18). The Third Circuit explains "Material representations must be contrasted with statements of subjective analysis or extrapolations, such as opinions, motives and intentions, or general statements of optimism, which constitutes no more than puffery," EP Medsystems, Inc. v. EchoCath, Inc., 235 F.3d 865, 872 (3d Cir. 2000). Puffery, however, is not actionable as false advertising under Pennsylvania law, Castrol, Inc. v. Pennzoil Co., 987 F.2d 939 (3d Cir. 1993); Commonwealth v. Golden Gate Nat'l Senior Care LLC, 158 A.3d 203, 215 (Pa. Commw. Ct. 2017), aff'd in part, rev'd in part, 648 Pa. 604, 194 A.3d 1010 (2018) (reversing dismissal of UTPCPL claims). Whether a statement is puffery is a question of fact to be resolved by a fact finder, Commonwealth v. Golden Gate Nat'l Senior Care LLC, 642 Pa. 604, 626-27, 194 A.3d 1010, 1024 (2018).

Unlawful methods also include a generic category of fraudulent and deceptive conduct. To plead this catchall provision for fraudulent or deceptive conduct, 73 Pa. Cons. Stat. § 201-2(4)(xxi) ("Engaging in any other fraudulent or deceptive conduct which creates likelihood of confusion or of misunderstanding"), plaintiff needs to allege a deceptive act, that is conduct likely to deceive a consumer acting reasonable under similar circumstances; justifiable reliance based on the misrepresentations or deceptive conduct; and ascertainable loss caused by justifiable reliance, Landau, supra, 223 F. Supp. 3d at 418 (Docket No. 26, Pl. Memo. at 20).

3. Pennsylvania Contract Law and Unjust Enrichment

Briefly, under Pennsylvania law, a breach of contract has these elements: the existence of a contract, including its essential terms; breach of a duty imposed by the contract; and resultant damages, Gillis v. Respond Power, LLC, No. 14-3856, 2018 WL 3247636, at *4 (E.D. Pa. July 16, 2018) (Docket No. 20, Def. Memo. at 8); Landau v. Viridian Energy PA LLC, 223 F.Supp.3d 401, 408 (E.D. Pa. 2016) (Docket No. 26, Pl. Memo. at 6) The only element at issue is allegation of breach of the agreement by Defendant.

An implied covenant of good faith and fair dealing is contained in all contracts under Pennsylvania law, and breach of that duty is subsumed in the breach of contract claim, Kantor v. Hiko Energy, LLC, 100 F. Supp. 3d 421, 430 (E.D. Pa. 2015) (quoting Burton v. Teleflex Inc., 707 F.3d 417, 432 (3d Cir. 2013)) (Docket No. 26, Pl. Memo. at 16); see Hatchigian v. State Farm Ins. Co., No. 13-2880, 2014 WL 176585, at *7 (E.D. Pa. Jan. 16, 2014) (breach of implied covenant and breach of contract is a single cause of action under Pennsylvania law), aff'd, 574 F. App'x 103 (3d Cir. 2014) (Docket No. 20, Def. Memo. at 8).

Under Pennsylvania law, unjust enrichment is inapplicable when the relationship is founded on a written agreement or express contract, Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3d Cir. 1987) (Docket No. 20, Def. Memo. at 24-25 (citing Pennsylvania state decisions)). "[T]o sustain a claim of unjust enrichment, the claimant must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be unconscionable for that party to retain without compensating the provider," Hershey Foods, supra, 828 F.2d at 999;

Torchia on behalf of Torchia v. Torchia, 346 Pa. Super. 229, 499 A.2d 581 (1985). Unjust enrichment cannot be alleged while alleging a breach of contract unless the validity of the contract itself is actually disputed, Grudkowski v Foremost Ins. Co., 556 F. App'x 165, 170 n.8 (3d Cir. 2014) (Docket No. 32, Def. Reply Memo. at 8).

B. Motion to Dismiss Contentions

Defendant argues that Plaintiff fails to allege plausible claims for breach of contract and his other contract claims (Docket No. 20, Def. Memo. at 8-16). Defendant invokes Pennsylvania's statute of limitations of four years to bar claims prior to April 6, 2014 (id. at 16-17), 42 Pa. Cons. St. Ann. § 5525(a). Defendant asserts Plaintiff also failed to plead violations of the UTPCPL, namely the asserted violations in advertising and the catchall provision for fraudulent and deceptive conduct (id. at 17-18, 18-21, 21-24). Defendant also contends that Pennsylvania's gist of the action doctrine prohibits a plaintiff from recasting a contract claim as a tort, as Plaintiff did here in alleging unfair trade practice violations (id. at 23-24; see Docket No. 32, Def. Reply Memo. at 7, citing Pollock v. National Football League, 171 A.3d 773, 77 n.2 (Pa. Super. Ct. 2017)). Defendant concludes that Plaintiff cannot invoke unjust enrichment while an express contract exists (Docket No. 20, Def. Memo. at 24-25; see also Docket No. 32, Def. Reply Memo. at 8).

Plaintiff contends that he plausibly alleged his three claims (Docket No. 26, Pl. Memo. at 5-25). The breach of contract here was the manner in which Defendant set variable pricing. Plaintiff responds that Defendant is "hang[ing] its hat on the implausible assertion that the phrase 'business and market conditions' could mean something other than wholesale costs, competitor pricing, or charges Just Energy incurs to supply natural gas (like transmission costs, which are minimal and steady)" (id. at 3). Plaintiff argues

that Pennsylvania law requires Defendant, as an ESCO, to disclose to Plaintiff the conditions of variability in its variable pricing, 52 Pa. Code § 62.75(c)(2)(i) (id. at 7). That provision requires the disclosure of the "conditions of variability (state on what basis prices will vary) including the [ESCO's] specific prescribed variable pricing methodology," id. Plaintiff counters that the gist of the action doctrine was not applicable, allowing his UTPCPL claim as distinct from his contract claim (id. at 23, citing Landau, supra, 223 F. Supp.3d at 408-19 (E.D. Pa. 2016)).

Plaintiff presents a table comparing Defendant's variable prices to the average Pennsylvania ESCO's billing rate from April 2016-February 2018, with Defendant's variable prices exceeding the competitor's average rates (from U.S. Energy Information Administration table) in a range between 7% (in March-April 2017) to 102% (in August-September 2017) (Docket No. 27, Pl. Atty. Decl. Ex. 7).

Defendant replies that Plaintiff concedes that Defendant did not promise to set rates based upon any single factor and that "business and market conditions" included a variety of nonexclusive factors (Docket No. 32, Def. Reply Memo. at 1), that Plaintiff alleged facts only for one factor in a multiple factor process (id. at 2-3). Plaintiff fails to plead in particularity (id. at 3 & n.2). Defendant points out that the Complaint failed to allege competitor ESCO rates (id. at 1, 4-5). Defendant denies that the difference between its rates and PECO's rates creates claims, thus Plaintiff failed to allege a benchmark for market prices (id. at 1-2).

Next, Defendant argues that Plaintiff has not established a violation of the catchall provision for the UTPCPL (id. at 6-7). Defendant asserts that Plaintiff's UTPCPL claim violates the gist of the action doctrine (id.; see Docket No. 20, Def. Memo. at 23-24).

Finally, Defendant distinguishes the motion to dismiss cases cited by Plaintiff (Docket No. 32, Def. Reply Memo. at 8-10 & nn.9-13).

The Sur-Reply argues that U.S. Energy Information Administration data includes pricing data from Pennsylvania for its ESCOs' rates (Docket No. 39). This, however, does not address the contention that the Complaint does not allege ESCO data was collected in Pennsylvania, Docket No. 32, Def. Reply at 1. As a motion to dismiss it rests solely on the four corners of pleadings where additional materials not integral to Plaintiff's claims were not incorporated by reference, cf. 5B Federal Practice and Procedure, supra, § 1357, at 376.

Plaintiff supplemented with two other cases in which motions to dismiss were denied in what he claims were similar circumstances (Docket Nos. 41, 42). In Gonzalez v. Agway Energy Services, LLC, No. 18-235-MAD-ATB, 2018 WL 5118509 (N.D.N.Y. Oct. 22, 2018) (Docket No. 41, Pl. Supp'al Auth. [Gonzalez]), the plaintiff alleged that Agway Energy misled by representing its variable rates for electricity were based on the cost of acquisition of electricity, transmission and distribution charges, market-related factors, plus applicable taxes, fees, charges, or other assessments, and Agway Energy's costs, expenses, and margins, at *1 (Docket No. 41, Pl. Supp'al Auth. at 1-2). In Mirkin v. XOOM Energy, LLC, 931 F.3d 173 (2d Cir. 2019) (Docket No. 42, Pl. Supp'al Auth. [Mirkin]), the Second Circuit reversed the grant of a motion to dismiss. Plaintiffs alleged that XOOM set its variable rate based on XOOM's "actual and estimated supply costs which may include but not be limited to prior period adjustments, inventory and balancing costs," id. at 175 (Docket No. 42, Pl. Supp'al Auth. at 1). They alleged XOOM breached the contract by charging a variable rate that did not reflect the factors in the contract (id. at 2).

After discussing the contract provision at issue here, this Court will consider (out of order) the common law causes of action of breach of contract and unjust enrichment and conclude with Plaintiff's First Cause of Action under the UTPCPL.

C. Variable Price Provision

Each of the three causes of action required Defendant to breach the standard of business and market conditions for imposing variable pricing. The key clause is Section 5.1, Natural Gas Charges of the Terms and Conditions of the contract, specifically declaring that

> "the Variable Price during the first billing cycle in which the Variable Price is in effect will be equal to the Intro Price. The Variable Price will not change more than once each monthly billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions, including but not limited to, the wholesale cost of natural gas supply, transportation, distribution and storage, and will not increase more than 35% over the rate from the previous billing cycle."

(Docket No. 20, Def. Atty. Decl. Ex. 1). The contract stated in the definition section that changes in "Variable Price" would "be determined by Just Energy according to business and market conditions" (id.).

This case, like Nieves v. Just Energy New York, No. 17CV561, 2020 WL 6803056 (W.D.N.Y. Nov. 19, 2020) (Skretny, J.), and its variable rate provision, turns on the meaning of the phrase "business and market conditions." In Nieves, this Court relied upon the Second Circuit's decision in Richards v. Direct Energy Services, 915 F.3d 88 (2d Cir. 2019), and its definition of the terms "business and market conditions," recognizing that these terms (absent restriction or definition) was broad enough to cover the supplier's discretion in setting variable rates or prices, Nieves, supra, 2020 WL 6803056 at *5. This Court distinguished Jordet's contract from Nieves because it

provided some definition of what Defendant considered business and market conditions, id. at *6, from the inclusion of natural gas costs as a factor in rate setting.

D. Breach of Contract and Breach of Implied Covenant of Good Faith (Second Cause of Action)

As a breach of implied covenant of good faith, Plaintiff concedes that Defendant had unilateral discretion in setting the variable rate (Docket No. 1, Compl. ¶ 65). As one noted commentator found, "there can be no breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the actions being challenged, and the defendant acts in accordance with the express terms of the contract," 23 Williston on Contracts § 63:22 (4th ed. 2018); see Richards v. Direct Energy Services, supra,, 915 F.3d at 99.

As a breach of contract, the terms refer to Defendant setting variable prices based upon business and market conditions, defined (in part) to include wholesale natural gas supply costs, transportation, distribution, and storage. Plaintiff reads this as the extent of what are business and market conditions. The cost of natural gas was a factor in business and market conditions (see id. ¶ 19; Docket No. 20, Def. Atty. Decl. Ex 1, Sec. 5.1), but not the exclusive factor. While Defendant has some discretion in setting variable rates, the contract gives some direction in that action.

Pennsylvania law, however, requires a natural gas supplier charging a variable rate to disclose the conditions for variation, 52 Pa. Code § 62.75(c)(2)(i). "Conditions of variability (state on what basis prices will vary) including the [natural gas supplier's] specific prescribed variable pricing methodology," id. This provision is part of natural gas supply regulation that mandates "all natural gas providers enable customers to make informed choices regarding the purchase of all natural gas services offered by providing

adequate and accurate customer information," provided in "an understandable format that enables customers to compare prices and services on a uniform basis," 52 Pa. Code § 62.71(a). Marketing materials advertising variable pricing has to "factor in all costs associated with the rate charged to the customer for supply service," 52 Pa. Code § 62.77(b)(2).

Plaintiff alleges a breach of contract where Defendant's only stated basis for variable pricing is its natural gas acquisition costs and does not specifically include the other, undisclosed factors Defendant used to set the variable prices.

As in Nieves, Jordet cites to cases in other courts that deny motions to dismiss on similar contract provisions (Docket No. 26, Pl. Memo. at 5 & n.2, 8; Docket No. 41, Pl. Supp'al Auth. [Gonzales]; Docket No. 42, Pl. Supp'al Auth. [Mirkin]). Again, these cases have limited precedential value because each is fact specific, resting upon different contract terms and governing law, see Claridge v. North Am. Power & Gas, LLC, No. 15-1261, 2015 WL 5155934, at *5 (S.D.N.Y. Sept. 2, 2015) (denying dismissal); Nieves, supra, 2020 WL 6803056, at *6 (see also Docket No. 32, Def. Reply Memo. at 8-10). Plaintiff cites (Docket No. 26, Pl. Memo. at 5 n.2) cases analogous to the "business and market conditions" provision for Defendant's variable prices where the provisions in these cases specified wholesale costs as part of the calculation, Landau, supra, 223 F. Supp.3d at 406; Steketee v. Viridian Energy, Inc., No. 15-585 (D. Conn. Apr. 14, 2016) (Docket No. 27, Pl. Atty. Decl., Ex. 1, Steketee Tr. at 2-3); Sanborn v. Viridian Energy, Inc., No. 14-1731 (D. Conn. Apr. 1, 2015) (id., Ex. 3, Sanborn Tr. at 3); Fritz v. North Am. Power & Gas, LLC, No. 14-634 (D. Conn. Jan. 29, 2015) (id., Ex. 4, Fritz Tr. at 2). In Landau, plaintiff Steven Landau alleged that associates from defendant represented that he would

enjoy lower rates than offered by utility PECO and that he would never have to worry about defendant suddenly increasing rates, Landau, supra, 223 F. Supp. 3d at 406. The variable rates may fluctuate based upon "wholesale market conditions applicable to the [defendant electric distribution company's] service territory," id. In Steketee, plaintiff amended the Complaint to allege that the variable rate was based on wholesale market conditions and added that a representative of defendant explained to plaintiff that defendant's variable rate would be based on wholesale market conditions (id., Ex. 1, Steketee Tr. at 2-3). In Fritz, defendant's variable market-based rate plan "may increase or decrease to reflect price changes in the wholesale power market" (Docket No. 27, Pl. Atty. Decl. Ex. 4, Fritz Tr. at 2).

In Sanborn, the court noted two statements at issue (id., Ex. 3, Sanborn Tr.). The first statement contained in the contract's terms and conditions provision stated that price may fluctuate from month-to-month "based on wholesale market conditions applicable" to defendant's service area. The second statement is a Massachusetts required disclosure statement that variable rates comes from a variety of factors including the wholesale market. (Id., Ex. 3, Sanborn Tr. at 3-4.)

Although noting that these cases do not present the actual contract texts, Defendant's contract here is like those supply agreements in these cited cases (see id., Ex. 3, Sanborn Tr. at 3-4). In all these contracts the variable rates were set by a combination of operating costs, the costs of purchasing fuel, and a "catch-all of other factors" (id., Sanborn Tr. at 3). As Defendant characterized Sanborn and similar cases, the courts found that the agreements there did not contain specific factors on which the variable rates would be set (Docket No. 32, Def. Reply Memo. at 10 & n.13). The factors

stated in each of these cases provided a basis for those plaintiffs to allege breaches when the defendants set rates at variance with those standards or consistent with objective supply costs. Plaintiff plausibly states a claim where "business and market conditions" has some standard that Defendant had to apply in setting its variable pricing but apparently failed to adhere to in its pricing. Plaintiff also plausibly alleges this breach as natural gas wholesale prices decreased while Defendant's pricing increased (Docket No. 26, Pl. Memo. at 8). Plaintiff also claims Defendant made representations of savings as compared with utility prices for natural gas (Docket No. 1, Compl. ¶ 16) as was alleged in other cases, Landau, supra, 223 F. Supp.3d at 406; Steketee, supra, (Docket No. 27, Pl. Atty. Decl. Ex. 1, Steketee Tr. at 3). In general, Plaintiff plausibly alleges a breach of contract claim.

E. Statutes of Limitations

Under Pennsylvania law, an action upon a contract "must be commenced within four years," 42 Pa. Cons. Stat. § 5525(a)(1). For an action for breach of contract, this limitations period begins to run from the time of breach, Baird v. Marley Co., 537 F. Supp. 156, 157 (E.D. Pa. 1982) (citing cases). With the filing of the Complaint here in April 6, 2018 (Docket No. 1, Compl.), breach of contract claims prior to April 6, 2014, are time barred. Plaintiff did not argue the timeliness of the April 2012 to April 6, 2014, breach of contract claims (either his or the purported class members).

Plaintiff alleged that he signed with Defendant as his natural gas supplier in 2012 (id. ¶ 21). Plaintiff cites PECO and Defendant's rates from April 2016 to February 2018 (id. ¶¶ 21-22). Plaintiff complains the rates charged by Defendant from that period were

higher than PECO's prices (id. ¶¶ 21-22, 24). Plaintiff also alleges a class of similar consumers of Defendant from April 2012 to the present (id. ¶¶ 38-39).

Under Defendant's contract, Defendant charged Plaintiff a fixed introductory rate for a number of months (id. ¶ 18). According to the model gas supply contract Defendant produced in its motion (Docket No. 20, Def. Atty. Decl. Ex. 1), that introductory rate lasted twelve months (id., Definition "Variable Price"). Thus, Plaintiff had claims from variable pricing (the alleged breach of contract) from 2013. Under § 5525, Plaintiff's claims prior to April 6, 2014, are time barred; similarly, the purported class's claims prior to that date also are barred. Defendant's Motion to Dismiss (Docket No. 19) these untimely claims is granted.

Therefore, Defendant's Motion to Dismiss the Second Cause of Action for breach of contract is granted in part, denied in part. The motion is granted for untimely breach of contract claims but denied as to the timely claims.

An action under the UTPCPL has a six-year statute of limitations, 42 Pa. Cons. Stat. Ann. § 5527(b); Morse v. Fisher Asset Mgmt., LLC, 206 A.3d 521, 526 (Pa. Super. Ct. 2019). Plaintiff's Third Cause of Action (and class claims) thus is timely. This Court below address the substance of Plaintiff's statutory claim.

F. Unjust Enrichment (Third Cause of Action)

Under Pennsylvania law, a plaintiff cannot allege an unjust enrichment where there is an existing contract, Hersey Foods, supra, 828 F.3d at 999; Umbelina v. Adams, 34 A.3d 151, 162 n.4 (Pa. Super. Ct. 2011) (Docket No. 20, Def. Memo. at 24-25 (citing cases); see also Docket No. 32, Def. Reply Memo. at 8 & n.8 (citing case)). Plaintiff counters that she is alleging this cause of action in the alternative under Federal

Rule 8(d)(2) (Docket No. 26, Pl. Memo. at 25). Defendant replies that, under Third Circuit precedent, where an express contract governs, a plaintiff may not plead unjust enrichment, even in the alternative, unless 'the validity of the contract itself is actually disputed'" (Docket No. 32, Def. Reply Memo. at 8, quoting Grudkowski v. Foremost Ins. Co., 556 F. App'x 165, 170 n.8 (3d Cir. 2014)). Plaintiff expressly alleged that he entered into a valid contract (id., citing Docket No. 1, Compl. ¶ 57).

Rule 8 allows for alternative pleading; the Second Circuit differs from the Third Circuit in this respect, cf. Kaufman v. Sirius XM Radio, Inc., 474 F. App'x 5, 9 (2d Cir. 2012); U.S. ex rel. Kester v. Novartis Pharm. Corp., No. 11 Civ. 8196 (CM), 2014 WL 4401275, at *12 (S.D.N.Y. Sept. 4, 2014). Under the Erie doctrine, this Court applies Pennsylvania substantive law but federal (here Second Circuit) procedures. The question thus is whether Plaintiff alleges an unjust enrichment claim separate from his contract claim.

Plaintiff's unjust enrichment claim, however, cannot be separated from the contract. Plaintiff alleges in the Third Cause of Action (after repeating and realleging prior allegations acknowledging an express contract, Docket No. 1, Compl. ¶¶ 69, 57)), that "by engaging in the conduct described above, Defendant has unjustly enriched itself and received a benefit beyond what was contemplated in the contract, at the expense of Plaintiff and the Class" (Docket No. 1, Compl. ¶ 70, emphasis supplied). His unjust enrichment claim measures from what Defendant should have been entitled to under the contract. Since he has (and purported class members had) an express contract with Defendant, Plaintiff cannot also allege an unjust enrichment claim. Plaintiff has not

alleged that Defendant had a legal duty independent of that contract in setting its variable rates.

Thus, Defendant's Motion to Dismiss (Docket No. 19) Plaintiff's Third Cause of Action is granted.

G. Pennsylvania Unfair Trade Practices and Consumer Protection Law (First Cause of Action)

Finally, this Court considers dismissal of the First Cause of Action under the Pennsylvania UTPCPL.

As for the element of alleging a deceptive act, Plaintiff alleges deception from the offer made during the initial rescission period, arguing that this offer was a solicitation in which Defendant represented that variable prices would be determined in accordance with business and market conditions (Docket No. 26, Pl. Memo. at 20-21; Docket No. 1, Compl. ¶ 19). He also asserts that the deception was the setting of variable prices untethered to wholesale prices or competitively to other ESCOs (Docket No. 26, Pl. Memo. at 21-22).

By alleging paying higher rates than were charged for natural gas by his former utility or other ESCOs, Plaintiff has alleged a loss of money (see Docket No. 1, ¶¶ 53, 50), either the difference he paid Defendant under the variable price from what Defendant ought to have charged had it applied business and market conditions or the difference from what he paid from his utility's rates (Docket No. 26, Pl. Memo. at 22-23). Plaintiff has not specified either the ESCOs' rates or what Defendant charged from 2013 (after the introductory rate expired) through March 2016 under variable pricing (cf. Docket No. 1, Compl. ¶¶ 21-22) to establish that defendant charged Plaintiff higher rates.

As for Plaintiff's justifiable reliance on Defendant's representation, he alleges deceptive conduct that, but for Defendant's representation about the variable pricing, he would not have contracted with Defendant (id. at 22; Docket No. 1, Compl. ¶¶ 47-53, 66).

As for use of or employment of an illegal method, act or practice, Plaintiff does not allege specific violations of the UTPCPL(see Docket No. 20, Def. Memo. at 17). Both sides now agree Plaintiff alleges wrongful methods of false advertising (Docket No. 20, Def. Memo. at 17; Docket No. 26, Pl. Memo. at 20-21) and fraudulent and deceitful conduct, falling under the Act's catchall provision, 42 Pa. Cons. Stat. § 201-2(4) (xxi) (Docket No. 20, Def. Memo. at 17; Docket No. 26, Pl. Memo. at 19-20, 21-22). He claims this deceptive activity refers to false advertising or solicitation and the catchall of prohibited fraudulent or deceptive conduct. Defendant refutes two theories of deception contending that there is no allegation of false advertising (Docket No. 20, Def. Memo. at 18-21) or fraudulent conduct to meet the catchall provision (id. at 21-23).

1. False Advertising

a. Oral Representation

Plaintiff states that Defendant made a representation that, if he joined Defendant, his natural gas rates would be less than PECO's rates (Docket No. 1, Compl. ¶ 16). After agreeing, Plaintiff argues that he was given a three-day rescission period before the contract went into effect, thus deeming this to be a solicitation regulated by the UTPCPL (Docket No. 26, Pl. Memo. at 20-21). Plaintiff believed that the offer of the proposed agreement represented that Defendant's variable prices would be competitive with other ESCOs, but the actual rates were not (id. at 21).

Defendant argues that Plaintiff fails to allege violation for false advertising (Docket No. 20, Def. Memo. at 17). Defendant claims that the Complaint does not allege a misrepresentation, deception or fraudulent conduct (id.) or make promises regarding the variable pricing (id. at 5-6). The Complaint, however, alleges that Defendant represented to Plaintiff that Defendant would charge lower rates than PECO, his natural gas utility (Docket No. 1, Compl. ¶ 16). Defendant counters that this allegation is parol evidence that is barred pursuant to Pennsylvania law (Docket No. 20, Def. Memo. at 6, 20, 22), see Scardino v. American Int'l Ins. Co., No. CIV.A.07-282, 2007 WL 3243753, at *7-8 (E.D. Pa. Nov. 2, 2007). Defendant denies any representation that under the agreement Defendant would beat utility prices or guarantee financial savings (id.; see Docket No. 20, Def. Atty. Decl., Ex. 1, model contract, at 1, Customer Disclosure Statement).

To allege false advertising as the unlawful method under the Act, Plaintiff has to allege that Defendant's representations were false. Defendant raises threshold objections that the oral representation is barred by Pennsylvania's parol evidence rule and that the agreement is not an advertisement. Courts in Pennsylvania have granted motions to dismiss because of the parol evidence rule, Bernardine v. Weiner, 198 F. Supp. 3d 439, 441, 443-44 (E.D. Pa. 2016). Pennsylvania law bars parol evidence and fraud in the inducement claim based on parol evidence, id. Here, Plaintiff alleges that Defendant represented that its rates would be less than PECO, inducing Plaintiff to sign up. This is parol evidence and fails to state a claim. Even if this oral representation remains, Plaintiff has not alleged that variable pricing after the introductory price expired.

Furthermore, the Eastern District of Pennsylvania held that representations by individual employees or agents of a defendant are not advertisements under the UTPCPL

and cannot constitute a violation of that act, Seldon, supra, 647 F. Supp. 2d at 466; see Thompson v. The Glenmede Trust Co., No. 04428, 2003 WL 1848011, at *1 (Pa. Ct. Com. Pl. Feb. 18, 2003). The court also noted that 73 Pa. Cons. Stat. § 201-2(4)(ix) false advertising requires allegation of intent, Seldon, supra, 647 F. Supp.2d at 466; Karlsson v. FDIC, 942 F. Supp. 1022, 1023 (E.D. Pa. 1996), aff'd, 107 F.3d 862 (3d Cir. 1997). Plaintiff here, however, has not alleged that Defendant intentionally engaged in false advertising; the Complaint merely alleges that Defendant intentionally concealed its pricing strategy while representing that it would base variable prices on business and market conditions (cf. Docket No. 1, Compl. ¶ 50).

Finally, Plaintiff's alleged representation is threadbare, merely alleging that Defendant's unnamed representative solicited Plaintiff representing lower rate than PECO (Docket No. 1, Compl. ¶ 16). This is similar to the allegations rejected by the United States District Court for the Western District of Pennsylvania in Corsale v. Sperian Energy Corp., 412 F. Supp. 3d 556, 563 (W.D. Pa. 2019). In Corsale, plaintiffs alleged that Sperian Energy Corp. advertised that it offered "competitive" rates; the Western District of Pennsylvania held this was threadbare and the vague claim of competitive rates was nonactionable puffery, id. Therefore, Defendant's motion to dismiss the First Cause of Action for claims under Complaint ¶ 16 is granted.

b. Cancellation Provision Making Contract an Advertisement

The second representation or solicitation alleged is the offered agreement during a recessionary period (see Docket No. 1, Compl. ¶ 17). Plaintiff argues that its terms was an advertisement until it came into effect when Plaintiff did not reject the agreement. According to the model Natural Gas Customer Agreement furnished by Defendant, the

customer could cancel that agreement up to three business days after receipt of the agreement without penalty (Docket No. 20, Def. Atty. Decl. Ex. 1, at 1). The agreement repeats in all capital letters "THE CUSTOMER MAY RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF THIS AGREEMENT WITHOUT PENALTY" (id. (emphasis in original)).

Plaintiff argues that there was thus no contract for that three-day period because of his ability to rescind without penalty, concluding that the document he received was a solicitation or advertisement until those three days passed (Docket No. 26, Pl. Memo. at 21). Plaintiff cites for example In re Estate of Rosser, 821 A.2d 615, 623 (Pa. Super. Ct. 2003), where whether a contract had consideration or mutuality of obligation was necessary to determine if a decedent's conveyance could be voided by the survivors. To the contrary, Plaintiff and Defendant had mutuality of obligations even during the three-day rescissionary period. Plaintiff had to act to cancel the contract within those three days to terminate the agreement without penalty while Defendant still had to supply natural gas. Plaintiff has not cited other cases where the UTPCPL applied to the recessionary period of a contract by deeming that to be a solicitation or advertisement. He also has not cited authorities that render an agreement like the one in this case illusory merely because a party can opt out after a brief initial period. Pennsylvania law recognizes binding contracts that contain cancellation provisions, e.g., Samuel Williston, Williston on Contracts § 7:13 (2020), recognizing valid agreement with provision that one party may cancel provided the method to do so is limited. Reservation, for example, of right to cancel upon written notice or after a definite period after giving notice, "there is consideration for the promisor's promise, despite the fact that the promisor may in fact be

able to avoid its obligation," id.; see also Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 51 A. 973 (1902). That an agreement contains this initial cancellation provision does not invalidate it as a contract and render it into a mere offer.

This Court has not found precedent under the UTPCPL that considered an agreement as an advertisement. This Court agrees with the Eastern District of Pennsylvania in Price, supra, 2018 WL 1993378, at *5 (see also Docket No. 20, Def. Memo. at 21), that "to the extent Plaintiffs rely on the sales agreement itself for their claim, that claim is duplicative of the breach of contract claim." The distinction Plaintiff argues from the lack of a recessionary period makes little difference; as discussed above, Plaintiff entered the contract with a recessionary period. A claim that this agreement is also advertising merely alleges a duplicative claim under common law and the UTPCPL.

Thus, Defendant's Motion to Dismiss (Docket No. 19) so much of the Complaint alleging the contract was advertising in violation of the UTPCPL is granted.

2. UTPCPL's Catchall for Fraudulent and Deceptive Practices and Federal Rule 9 Pleading Requirements

Defendant argues that Plaintiff has not alleged fraud and deception under the UTPCPL with specificity as required by Federal Rule of Civil Procedure 9(b) (Docket No. 20, Def. Memo. at 22-23). The parties dispute whether Plaintiff alleged fraud and thus under Rule 9(b) needed to plead fraud with particularity. Defendant argues that violation of the UTPCPL needs to be alleged with particularity (Docket No. 20, Def. Memo. at 18 n.4, citing, e.g., Dolan v. PHI Variable Ins. Co., No. 3:15-CV-01987, 2016 WL 6879622, at *5 (M.D. Pa. Nov. 22, 2016) (Rule 9(b) heightened specificity extends to all claims that sound in fraud, citations to District of New Jersey case omitted). The court in

Dolan held that Rule 9(b) applied to state fraud claims including alleged violations of the UTPCPL, id.

Plaintiff counters that under Landau, supra, 223 F. Supp. 3d at 418, pleading under the UTPCPL need not be particularized (Docket No. 26, Pl. Memo. at 20 n.8). The court in Landau considered the amendment to the catchall provision adding deceptive conduct and the court held that pleading deceptive conduct only required Rule 8(a) normal pleading and not the heightened fraud pleading of Rule 9(b), 223 F. Supp. 3d at 418.

An Erie doctrine issue arises whether Pennsylvania law (here, as construed by federal courts in that Commonwealth) applies or does this Court's (or the Second Circuit's) procedural caselaw applies on the particularity issue. Both sides here cite federal decisions from Pennsylvania. Under the Erie doctrine, while state law governs the substantive issues, procedural law in diversity cases is federal procedures, e.g., Loreley Financing (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 182 n.14 (2d Cir. 2015); NCC Sunday Inserts, Inc. v. World Color Press, Inc., 692 F. Supp. 327, 330 (S.D.N.Y. 1988) (applying Rule 9(b) to Connecticut Unfair Trade Practices Act claim, "while state law governs substantive issues of state law raised in federal court, it is federal law which governs procedural issues of state law raised in federal court, and Rule 9(b) is a procedural rule"). Where this Court or the Second Circuit has ruled on a procedure, this Court is bound to apply it. Absent that precedent, this Court reviews the decisions of other districts and may adopt its rationale.

As of 2016, the Second Circuit has not held that Rule 9(b) applies to similar state unfair trade practices laws, see L.S. v. Webloyalty.com, Inc., 673 F. App'x 100, 105 (2d Cir. 2016) (summary Order), where the court noted that Connecticut law did not require

a plaintiff to allege or prove fraud for violations of the Connecticut Unfair Trade Practices Act (or "CUTPA"), see Willow Springs Condo. Ass'n, Inc. v. Seventh BRT Dev. Corp., 245 Conn. 1, 43, 717 A.2d 77, 100 (1998). Acknowledging there that a CUTPA violation may overlap with common law claims, the Second Circuit and Connecticut courts recognize that "to the extent that they diverge, dismissal of a plaintiff's CUTPA claim is not warranted unless the facts as alleged do not independently support a CUTPA claim," L.S., supra, 673 F. App'x at 105. The Second Circuit then stated "we are doubtful, even assuming Rule 9(b) applies to certain CUTPA claims, Rule 9(b)'s particularity requirement would apply to a CUTPA claim premised" on the facts alleged, id., concluding that those alleged facts nevertheless would satisfy Rule 9(b) pleading requirements, id.

Magistrate Judge Hugh Scott of this District once found that an allegation under the New York General Business Law was not pled, Navitas LLC v. Health Matters Am., Inc., No. 16CV699, 2018 WL 1317348, at *19-20 (W.D.N.Y. Mar. 14, 2018) (Report & Rec), but did not require that pleading with particularity under Rule 9(b). There, co-defendant Bio Essentials asserted crossclaims for fraud and presumably for violation of New York General Business Law § 349 against defendant Health Matters America but not expressing alleging the claim under that statute, id. at *19, 3. Health Matters then moved to dismiss some of the crossclaims, including those alleging fraud and unfair business practices, id. at *4, 14-15. In two crossclaims, Bio Essentials alleged Health Matters false statements damaged Bio Essentials either as unfair trade practices or as fraudulent statements, id. at *14-15. Given Bio Essentials' relatively vague pleading, Health Matters argued that the fraud and unfair trade practice crossclaims violated Rule 9(b), id. at *15-16. Bio Essentials argued that only its fraud crossclaim required

pleading under Rule 9(b), id. at *17. Magistrate Judge Scott then applied Rule 9(b) to the fraud crossclaim while recommending dismissal of the unfair practices crossclaims for failure to allege the elements of General Business Law § 349 claims, id. at *17-19, quoting Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 N.Y.2d 20,24-25, 623 N.Y.S.2d 529, 532 (1995).

Both L.S. and Navitas skirt applying Rule 9(b) particularity for state unfair trade practices actions, recognizing that they are distinct from common law fraud claims that would require particular pleading. Deceptive acts under the UTPCPL's catchall provision has been held not to be fraud and could be plead under Rule 8(a), Landau, supra, 223 F. Supp. 3d at 418. But the UTPCPL catchall refers to "engaging in fraudulent or deceptive conduct," 73 Penn. Cons. Stat. § 201-2(4)(xxi), which includes fraud. Therefore, so much of Plaintiff's catchall claim that alleges fraudulent conduct requires particular allegation under Rule 9(b), see 5A Charles A. Wright, Arthur R. Miller & A. Benjamin Spencer, Federal Practice and Procedure § 1297, at 63-64 (Civil 2018).

Even if Rule 9(b) is not required for allegations under the UTPCPL, Twombly and Iqbal require pleading details to allege a plausible claim, see Price v. Foremost Indus., Inc., Civil Action No.17-00145, 2018 WL 1993378, at *5 (E.D. Pa. Apr. 26, 2018) (plaintiffs' alleging UTPCPL violations stated misrepresentations that were "devoid of the details that Twombly and Iqbal require").

The allegations here, however, do not meet the plausibility standard of Twombly and Iqbal without regard to Rule 9(b) particularization, id. It is not clear what the deceptive act is here. The agreement ultimately gave Defendant discretion to set its variable pricing with one stated factor but allowing discretion to set it based upon "business and market

conditions". Plaintiff alleges his understanding of what "business and market conditions" is (or ought to have been) but he does not allege that Defendant represented that this understanding was what it meant.

Defendant's Motion to Dismiss (Docket No. 19) the First Cause of Action under the UTPCPL is granted.

H. How This Case Differs from Nieves v. Just Energy New York Corp.

Since Plaintiff's counsel in this case also represented Malta Nieves and the same defense counsel represent the Just Energy Defendants in both cases, a comparison of the result here and in Nieves is in order. Defendant moved to transfer this case to the Western District of New York because of the then-pending Nieves action was before this Court. Factually, the cases are distinguishable. First, the language of the variable terms differs between this case and Nieves. In Nieves, Just Energy New York ("Just Energy") set the variable electricity rate solely based on "business and market conditions" without that phrase being defined or giving specific examples of those conditions. This Court held that Just Energy had unfettered discretion in setting these rates without reference to wholesale electricity rates or competitors' charges, Nieves, supra, 2020 WL 6803056, at *4. Malta Nieves did not allege representations by Just Energy that she would pay less than the electrical utility; Nieves merely claimed that Just Energy represented that she would save money, id., at *2.

Second, Nieves arose in New York and argued breach of contract and other claims under New York law. Pennsylvania law expressly required natural gas suppliers to specify the basis for variable pricing while New York law does not. Third, the energy supplied differed, with Nieves involving electricity. There was no express breakdown of

the cost of electrical supply, transmission, or storage as was in Defendant's gas supply contract with Jordet in this case. Fourth, both cases involve different corporate Defendants that might be affiliates but each Defendant was incorporated and had principal place of business in different jurisdictions.

The crucial difference between Nieves and this case is the variable terms in the supply contracts. Defendant here listed some (but not all) elements toward establishing business and market conditions in variable pricing, whereas Just Energy in Nieves has more open concept of that phrase "business and market conditions."

IV. Conclusion

Plaintiff's understanding of what a reasonable customer might expect is not the terms of the contract he signed with Defendant. That agreement gave Defendant some discretion to set variable rates, but expressly included natural gas costs as factors for business or market conditions. As summarized in wholesale gas costs (as Plaintiff argues), this is an element of Defendant's pricing but not necessarily the entirety of the business and market conditions.

Deregulation of natural gas supply rates moved the marketplace from regulated monopoly (rates set by PECO, for example, as approved by the Pennsylvania regulators) to those set in the marketplace. Defendant, as an ESCO, did not have its rates set by a public agency or by its competitors (including utilities like PECO). But Pennsylvania law in establishing deregulation required natural gas suppliers to furnish information for the basis of their pricing to have informed consumers.

Defendant's Motion to Dismiss (Docket No. 19) is granted in part, denied in part. Defendant's Motion to Dismiss the First Cause of Action for violation of the Pennsylvania

Unfair Trade Practices and Consumer Protection Law is granted for both the advertising and fraudulent and deceptive conduct violations. Defendant's Motion to Dismiss (id.) the Second Cause of Action for breach of contract is denied. Its Motion to Dismiss (id.) the Third Cause of Action for unjust enrichment is granted. Defendant shall answer the surviving Second Cause of Action within fourteen (14) days after entry of this Decision and Order. This Court then will refer this case to a Magistrate Judge for conducting pretrial proceedings.

V. Orders

IT HEREBY IS ORDERED, that Defendant's Motion to Dismiss (Docket No. 19) is GRANTED in part, DENIED in part. Defendant shall answer the surviving Causes of Action within fourteen (14) days after entry of this Decision and Order. This Court will refer this case to a Magistrate Judge for pretrial proceedings.

SO ORDERED.

Dated: December 7, 2020
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

This is Exhibit “F” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES[1]

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

1. Name of Just Energy Entity or Entities (the "Debtor(s)") the Claim is being made against[2]:

Debtor(s): ______________________________

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: ______________________________

Name of Contact ______________________________

Address

____

____

Title ______________________________

Phone # ______________________________

Fax # ______________________________

City ____________________ Prov /State __________

Email ______________________________

Postal/Zip Code ____________________

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

[2] List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "Claims Procedure Order"), a copy of which is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: ______________________ Name of Contact ______________________

Address ______________________ Title ______________________

______________________ Phone # ______________________

______________________ Fax # ______________________

City ______________ Prov /State ________ Email ______________________

Postal/Zip Code ____________

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of Pre-Filing Claim (including interest up to and including March 9, 2021)[3]:	Whether Claim is Secured:	Value of Security Held, if any[4]:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

Restructuring Period Claims

Debtor Name:	Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

[3] Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

[4] If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation[5]

Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: ______________________	Witness[6]: ______________________ (signature)
Name: ______________________	______________________ (print)
Title: ______________________	

Dated at ______________________ this __________ day of ______________, 2021.

6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

[5] If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

[6] Witnesses are required if an individual is submitting this Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

This is Exhibit “G” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

A Commissioner for taking Affidavits (or as may be)

PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES[1]

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

1. Name of Just Energy Entity or Entities (the "Debtor(s)") the Claim is being made against[2]:

Debtor(s): ______________________________

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: ______________________________

Name of Contact ______________________________

Address

____

____

Title ______________________________

Phone # ______________________________

Fax # ______________________________

City ____________________ Prov /State __________

Email ______________________________

Postal/Zip Code __________________

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

[2] List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "Claims Procedure Order"), a copy of which is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: ______________________ Name of Contact ______________________

Address ______________________ Title ______________________

______________________ Phone # ______________________

______________________ Fax # ______________________

City ______________ Prov /State ________ Email ______________________

Postal/Zip Code ____________

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of Pre-Filing Claim (including interest up to and including March 9, 2021)[3]:	Whether Claim is Secured:	Value of Security Held, if any[4]:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

Restructuring Period Claims

Debtor Name:	Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

[3] Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

[4] If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation[5]

Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: ______________________	Witness[6]: ______________________ (signature)
Name: ______________________	______________________ (print)
Title: ______________________	

Dated at ______________ this ________ day of ____________, 2021.

6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

[5] If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

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Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

This is Exhibit “H” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

CLAIM DOCUMENTATION

I. Relevant Background and Summary of Claim Documentation

Claimants Fira Donin, Inna Golovan, and Trevor Jordet have pending proposed class action lawsuits against the Just Energy Entities in two United States Federal District Courts. Claimants Donin's and Golovan's case is captioned *Donin et al. v. Just Energy Group Inc. et al.*, No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.) (hereafter "*Donin* Dkt.") and Claimant Jordet's case is captioned *Jordet v. Just Energy Solutions, Inc.*, No. 18 Civ. 953 (WMS) (W.D.N.Y.) (hereafter "*Jordet* Dkt"). Fira Donin, Inna Golovan, and Trevor Jordet, as well as the other individuals who have retained undersigned Class Counsel to sue the Just Energy Entities on a class-wide basis are referred to hereafter as the "Representative Plaintiffs."[1, 2]

Pursuant to the expert Affidavit of Dr. Serhan Ogur (the "Expert Report"), the Representative Plaintiffs hereby submit a general unsecured claim of **US$3,662,444,442**, which reflects the Just Energy Entities' liability to their U.S. customers for *inter alia* breaching the pricing terms of their residential and commercial contracts to supply electricity and gas. The Representative Plaintiffs' damages calculations are derived from the difference between the prices the Just Energy Entities were contractually bound to charge U.S. customers as compared to the prices ultimately charged. A true and correct copy of the Expert Report is attached hereto as **Exhibit 1**. In support of their calculations, the Representative Plaintiffs provide the following chart summarizing their class-wide damages calculations.

Class-Wide Damages Calculations	
U.S. Residential Electric Damages	$1,144,609,092
U.S. Residential Gas Damages	$717,711,010
U.S. Commercial Electric Damages	$449,392,725
U.S. Commercial Gas Damages	$68,624,767
Total:	**$2,380,337,594**

In addition to damages of US$2,380,337,594, the Representative Plaintiffs calculate that US$**1,282,106,848** is owed to them as pre-judgment interest, which amount has been added to their damages calculation to make up the remainder of their claim.[3]

[1] Those other individuals are: New York resident Todd Orsi; California residents Danielle Greer, Hannad Naveed, and Naveed Yamin; Michigan residents Nicholas Aldridge, Ariel Meserva, Jessica Smith Mixon, and Vernon Van Halm; and Texas residents Kadidja Fofana and Lisa Widner.

[2] Please note that while the Representative Plaintiffs are submitting proofs of claim for each of the two pending proposed class actions (*Donin* and *Jordet*), they are submitting identical claim documentation and amounts for each case.

[3] U.S. state law governs statutory pre-judgment interest. *Schipani v. McLeod*, 541 F.3d 158, 164 (2d Cir. 2008). The class actions challenge the Just Energy Entities' conduct in 11 jurisdictions— California,

Footnote continued on next page.

By way of brief background, on October 3, 2017, Fira Donin and Inna Golovan filed proposed class action lawsuits on behalf of themselves and all other U.S. customers alleging *inter alia* that the Just Energy Entities breached their contractual obligations to base their variable gas and electricity rates on "business and market conditions," breached their contractual obligation to charge a specified energy rate, and breached the implied covenant of duty of good faith and fair dealing. *See, e.g.*, *Donin* Complaint ¶¶ 26-35, attached hereto as **Exhibit 2**. On September 24, 2021, Judge William F. Kuntz of the U.S. District Court for the Eastern District of New York denied the Just Energy Entities' motion to dismiss all of the aforementioned class action claims on behalf of all U.S. customers, ruling *inter alia* that Plaintiffs Donin and Golovan had adequately alleged that the Just Energy Entities breached their contractual obligation to charge market-based rates, breached their contractual obligation to charge a specified energy rate, and breached the implied covenant of good faith and fair dealing. Decision & Order at 3, 12–15, *Donin* Dkt. No. 111 attached hereto as **Exhibit 3.**

Similarly, on April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers alleging *inter alia* that the Just Energy Entities breached their contractual obligations to base their variable gas rates on "business and market conditions." *See, e.g.*, *Jordet* Complaint ¶¶ 19-37 attached hereto as **Exhibit 4**. On December 7, 2020, Judge William M. Skrenty of the U.S. District Court for the Western District of New York denied the Just Energy Entities' motion to dismiss the aforementioned class action breach of contract claim on behalf of all U.S. customers, holding that "'business and market conditions' has some standard that [the Just Energy Entities] had to apply in setting [their] variable pricing but apparently failed to adhere to in [their] pricing." *See* Decision & Order at 18, *Jordet* Dkt. No. 43, attached hereto as **Exhibit 5.**

As set forth on pp. 18-19 below, the Representative Plaintiffs' claims encompass the damages of **millions** of U.S. Just Energy customers. These claims are founded in well-established principals of contract, are buttressed by a legion of U.S. case law, regulation, and statue. The claims also represent paradigmatic class action claims that are readily certifiable (and have been certified on four separate occasions), are pleaded in tandem with increasing regulatory scrutiny (including outright bans) of the exact practices the Just Energy Entities employed throughout the U.S., and follow in the footsteps of at least **six** regulatory actions against the Just Energy Entities.

Delaware, Illinois, Massachusetts, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas. Each of these jurisdictions award pre-judgment interest as a matter of right. *See generally Allapattah Servs., Inc. v. Exxon Corp.*, 157 F. Supp. 2d 1291, 1311–12 (S.D. Fla. 2001), *aff'd*, 333 F.3d 1248 (11th Cir. 2003). The Representative Plaintiffs here have applied the forum state's (New York) pre-judgment interest rate (9% per annum) as well as the forum law on the date from which to calculate interest. New York courts usually pick the midpoint of the class period as the period from which to calculate pre-judgment interest, or any other reasonable date as "[t]he choice of the date from which to compute prejudgment interest is left to the discretion of the court." *Chuchuca v. Creative Customs Cabinets Inc.*, No. 13 Civ. 2506 (RLM), 2014 WL 6674583, at *16 (E.D.N.Y. Nov. 25, 2014)(collecting cases); *see also Marfia v. T.C. Ziraat Bankasi*, 147 F.3d 83, 91 (2d Cir. 1998) ("New York law leaves to the discretion of the court the choice of whether to calculate prejudgment interest based upon the date when damages were incurred or 'a single reasonable intermediate date,' which can be used to simplify the calculation.").

II. The Class Action Claims Are Strong and Supported by Ample Precedent

A. U.S. Courts Regularly Hold That ESCOs like Just Energy Are Liable When They Promise to Charge Market-Based Rates but Actually Charge Rates That Are Much Higher

As a result of deregulation in states across the United States, consumers and businesses can purchase natural gas and electricity through third-party suppliers while continuing to receive delivery of the energy from their existing public utilities. These third-party energy suppliers are known as energy service companies, or "ESCOs."

ESCOs like the Just Energy Entities play a middleman role: they purchase energy directly or indirectly from energy producers and then sell that energy to end-user consumers. However, ESCOs do not deliver energy to consumers. Rather, the companies that produce energy deliver it to consumers' utility companies, which in turn deliver it to the end-user. ESCOs merely buy gas and electricity and then sell that energy to end-users with a mark-up. Thus, ESCOs are essentially brokers and traders: they neither make nor deliver gas or electricity, but merely buy energy from a producer and re-sell it.

If a customer switches to an ESCO, the customer's existing utility continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is whether the customer's energy supply rate is set by the ESCO or the utility.

Numerous courts have held that consumers may recover against ESCOs like Just Energy who promise to base their rates on business and market conditions when plaintiffs show that the defendant ESCO's rate is higher than that of public utilities or where they show that rates do not otherwise change in a manner commensurate with market conditions. *See, e.g.*, *Burger v. Spark Energy Gas, LLC*, 507 F. Supp. 3d 982, 990 (N.D. Ill. 2020) ("Burger[] . . . alleg[es] that the Terms of Service provided that the variable rate 'may vary based on market conditions' and that [the ESCO] exercised its discretion contrary to consumers' reasonable expectations by setting a variable rate that did not fluctuate in connection with market conditions. Therefore . . . Burger can proceed on her contract claim concerning the variable rate based on a breach of the implied duty of good faith and fair dealing."); *Mirkin v. Viridian Energy, Inc.*, No. 15-1057, 2016 WL 3661106, at *8 (D. Conn. July 5, 2016) (holding that the plaintiffs plausibly alleged breach of contract where the contract provided that variable rates will be "based on wholesale market conditions" and variable rate failed to track wholesale market rates) (citing *Sanborn v. Viridian Energy, Inc.*, No. 14-1731, and *Steketee v. Viridian Energy, Inc.*, No. 15-585); *Melville v. Spark Energy, Inc.*, No. 15-8706 (RBK/JS), 2016 WL 6775635, at *3 (D.N.J. Nov. 15, 2016) ("Here, the [contract] states that the flex-rate plan uses a rate that 'may vary according to market conditions.' Plaintiffs argue that rates charged . . . were not market-based and, in support, list the rates charged by Spark in comparison to [the utility] during several months from 2013 to 2014. . . . [T]he Court finds that Plaintiffs have proffered sufficient evidence to state a claim for relief . . . Plaintiffs provided comparisons of rates offered by Spark to those of a competing energy provider. Such evidence supports the allegation that Spark's prices were untethered to those of the market at large."); *Oladapo v. Smart One Energy, LLC*, No. 14-7117, 2016 WL 344976, at

*4 (S.D.N.Y. Jan. 27, 2016) (holding that "the fact that Smart One's rates consistently rose over time, while those set by [the local utility] fluctuated, indicates that Smart One was not setting its rates in response to 'changing gas market conditions,' as it represented[.]"); *Landau v. Viridian Energy PA LLC*, 223 F. Supp. 3d 401, 408-09 (E.D. Pa. 2016) (holding that where a plaintiff introduces evidence demonstrating that "[an ESCO's] rates increased or stayed the same even when the average wholesale market price for the region decreased[,]" the plaintiff has sufficiently alleged a breach of contract claim); *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 426 (S.D.N.Y. 2020) (holding that "there is a reasonable contract interpretation that 'Market' meant that Defendant's variable rate would be tethered to some degree to supply costs or to competitors' rates . . . upward variation from local utility rates may also demonstrate how Defendant's consumer rates are materially disconnected from their supply costs."); *Edwards v. N. Am. Power & Gas, LLC*, 120 F. Supp. 3d 132, 42-43 (D. Conn. 2015) (sustaining claim where contract promised "[t]he variable rate may increase or decrease to reflect the changes in the wholesale power market" and the plaintiff alleged that "the rates [the ESCO] charged were significantly higher than the wholesale market rate and did not always increase or decrease when the wholesale market rates did."); *Chen v. Hiko Energy, LLC*, No. 14-1771, 2014 WL 7389011, at *6 (S.D.N.Y. Dec. 29, 2014) (where contract provided that variable rate would be based on wholesale costs and other market-related conditions, plaintiffs plausibly alleged that the ESCO "breached . . . by charging them 'a rate that was not based on the factors upon which the parties agreed the rate would be based'" and noting the same disconnect between the ESCO's rates and utility rates alleged here).

In both pending class actions, the Representative Plaintiffs can prove that Just Energy's rates were substantially higher than utility rates and not commensurate with market conditions. *See* Compl. at 44-47, *Donin* Dkt. No. 17 (showing Just Energy's rate was typically between 30% and 50% higher than the utility rate); Compl. at 6-8, *Jordet* Dkt. No. 1 (showing Just Energy's rate was frequently more than double the utility rate and that its rate increased when wholesale costs declined).

B. Courts Regularly Certify Classes of Consumers Against ESCOs That Charge Rates Higher Than Allowed under the ESCOs' Customer Contracts

Four courts have addressed a contested motion to certify a class of customers of ESCOs like Just Energy who were overcharged under the terms of their written customer agreements, and each held that certification was appropriate. *See Bell v. Gateway Energy Services Corp.*, No. 31168/2018 (Rockland Cnty. Super. Ct. Jan. 8, 2021), NYSCEF Doc. No. 152; *BLT Steak LLC v. Liberty Power Corp, L.L.C.*, No. 151293/2013 (N.Y. Cnty., Super. Ct Aug. 14, 2020), NYSCEF Doc. No. 376 (a case in which the plaintiff was represented by FBFG, one of the law firms representing the Representative Plaintiffs); *Claridge v. N. Am. Power & Gas, LLC*, No. 15-1261, 2016 WL 7009062 (S.D.N.Y. Nov. 30, 2016) (a case in which the plaintiff was represented by FBFG); *Roberts v. Verde Energy, USA, Inc.*, No. X07HHDCV156060160S, 2017 WL 6601993 (Conn. Super. Ct. Dec. 6, 2017), *aff'd*, 2019 WL 1276501 (Conn. Super. Ct. Feb. 1, 2019).[4]

[4] Numerous other courts have followed suit in the settlement context. *See, e.g.*, *Edwards v. N. Am. Power & Gas, LLC*, 2018 WL 3715273, at *6–8 (D. Conn. Aug. 3, 2018) (granting final approval of settlement class, finding the requirements for class certification satisfied); *Silvis v. Ambit Energy L.P.*, 326 F.R.D. 419, 428–29 (E.D. Pa. 2018) (same); *Hamlen v. Gateway Energy Services Corp.*, Case No. 16-3526, ECF

Footnote continued on next page.

Indeed, there are few cases better suited for class certification than the instant actions. The Representative Plaintiffs' claims, like those of each Class Member, arise out of uniform misrepresentations regarding the pricing methodology for Just Energy's variable rate made in its standard customer agreements. Additionally, not only are the misrepresentations concerning Just Energy's variable rate uniform, but the resultant injury to Class Members is also uniform because when Just Energy sets its variable rates each month, it uses standardized procedures within each utility region. Thus, the proposed Class is easily amenable to certification.

III. The Increasing Regulatory Denunciation of Just Energy's Pricing Practices Strongly Supports the Class Action Claims

Almost all of the states in the U.S. that deregulated their energy markets did so in the mid-to-late 1990s. This wave of deregulation was pushed by then-corporate superstar Enron. For example, in December 1996 when energy deregulation was being considered in Connecticut, Enron CEO Jeffrey Skilling, dubbed "[t]he most aggressive proponent" of deregulation, said:

> Every day we delay [deregulation], we're costing consumers a lot of money . . . . It can be done quickly. The key is to get the legislation done fast.[5]

Operating under this concocted sense of urgency, states in the U.S. that deregulated suffered serious consumer harm. For example, in 2001, forty-two states had started the deregulation process or were considering deregulation. Today, the number of full or partially deregulated U.S. states has dwindled to only seventeen and the District of Columbia. Even within those states, several have recognized deregulation's potential harm to everyday consumers and thus only allow large-scale consumers to purchase from ESCOs.

Responding to shocking energy prices, many key players that supported deregulation now regret the role they played. For example, reflecting on Maryland's deregulation experience, a Maryland Senator commented that "[d]eregulation has failed. We are not going to give up on re-regulation till it is done."[6]

A Connecticut leader who participated in that state's foray into energy deregulation was similarly regretful:

No. 141 (S.D.N.Y. Sept. 13, 2019) (same); *In re Hiko Energy LLC Litig*., Case No. 14-1771, ECF No. 93 (S.D.N.Y. May 9, 2016) (same); *Wise v. Energy Plus Holdings, LLC*, Case No. 11-7345, Dkt. No. 75 (S.D.N.Y. Sept. 17, 2013) (same).

[5] Keating, Christopher, "Eight Years Later . . . 'Deregulation Failed,'" *Hartford Courant*, Jan. 21, 2007.

[6] Hill, David, "State Legislators Say Utility Deregulation Has Failed in its Goals," *The Washington Times*, May 4, 2011.

> Probably six out of the 187 legislators understood it at the time, because it is so incredibly complex . . . . If somebody says, no, we didn't screw up, then I don't know what world we are living in. We did.[7]

As a result of the widespread improper pricing practices by ESCOs like Just Energy, more than a decade ago states like New York began enacting remedial legislation meant to "establish[] important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers."[8] As the drafters of this legislation noted, New York's ESCO Consumers Bill of Rights, codified as G.B.L. Section 349-d, in 2010 sought to end the exact type of conduct that harmed the Just Energy Entities' U.S. customers:

> Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process.
>
> * * *
>
> High-pressure and misleading sales tactics, onerous contracts with unfathomable fine print, short-term "teaser" rates followed by skyrocketing variable prices—many of the problems recently seen with subprime mortgages are being repeated in energy competition.[9]

State regulators have for years also denounced predatory pricing practices like those challenged in the class actions. For example, in 2014 the New York's Public Service Commission (the "NYPSC") declared that New York's retail energy markets were plagued with "marketing behavior that creates and too often relies on customer confusion."[10] The NYPSC further noted "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."[11] The NYPSC concluded as follows:

> [A]s currently structured, the retail energy commodity markets for residential and small nonresidential customers cannot be considered

[7] Keating, *supra*.

[8] ESCO Consumers Bill of Rights, New York Sponsors Memorandum, 2009 A.B. 1558, at 1 (2009).

[9] *Id*. at 3–4.

[10] CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 4 (Feb. 25, 2014).

[11] *Id*. at 11.

> to be workably competitive. Although there are a large number of suppliers and buyers, and suppliers can readily enter and exit the market, the general absence of information on market conditions, particularly the price charged by competitors, is an impediment to effective competition . . . .[12]

The NYPSC's consumer complaint data confirms this. The number of deceptive marketing allegations against ESCOs far exceed the combined number of complaints submitted regarding all other utilities in New York, including the lightly regulated telecommunications industry.

Many NYPSC complaints concern variable rate pricing like that practiced by the Just Energy Entities. Under this pricing practice, during an initial teaser or fixed rate period, the customer's energy supply costs are more or less as advertised, but after the initial period expires, instead of switching the consumer back to the utility, the ESCO uses customer inaction to substantially increase the price without further notice or explanation as to how the new rate is determined.

The conduct of ESCOs like the Just Energy Entities has been devastating to consumers across the United States. For example, "[a]ccording to the data provided by [New York's] utilities, the approximately two million New York State residential utility customers who took commodity service from an ESCO collectively paid almost $1.2 billion more than they would have paid if they purchased commodity from their distribution utility during the 36-months ending December 31, 2016."[13] "Additionally, small commercial customers paid $136 million more than they would have paid if they instead simply remained with their default utilities for commodity supply for the same 36-month period."[14] Combining these two groups, New York consumers have been "'overcharged' by over $1.3 billion dollars over this time period."[15]

Based on the flood of consumer complaints, negative media reports, and data demonstrating massive overcharges, the NYPSC announced in December 2016 an evidentiary hearing to consider primarily whether ESCOs should be "completely prohibited from serving their current products" to New York residential consumers.[16] Then, on December 16, 2016, the NYPSC permanently prohibited ESCOs from serving low-income customers, because of "the persistent ESCO failure to address (or even apparently to acknowledge) the problem of overcharges to [low income] customers . . . ."[17]

[12] *Id*. at 10.

[13] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 2 (Mar. 30, 2018).

[14] *Id.* at 3.

[15] *Id.*

[16] CASE 12-M-0476, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, at 3 (December 2, 2016).

[17] CASE 12-M-0476, Order Adopting a Prohibition On Service To Low-Income Customers By Energy Services Companies, at 3 (Dec. 16, 2016).

Following the first part of the evidentiary hearing announced in December 2016, on March 30, 2018, NYPSC staff announced the following conclusions about ESCOs:

> [A]s the current retail access mass markets are structured, customers simply cannot make fully informed and fact-based choices on price . . . since the terms and pricing of the ESCO product offerings are not transparent to customers. For variable rate products this is due, in large part, to the fact that ESCOs often offer "teaser rates" to start, and after expiration of the teaser rate, the rate is changed to what is called a "market rate" that is not transparent to the customer, and the contract signed by the customer does not provide information on how that "market rate" is calculated.[18]
>
> * * *
>
> ESCOs take advantage of the mass market customers' lack of knowledge and understanding of, among other issues, the electric and gas commodity markets, commodity pricing, and contract terms (which often extend to three full pages), and in particular, the ESCOs' use of teaser rates and "market based rate" mechanisms that customers are charged after the teaser rate expires. In fact, ESCOs appear to be unwilling to provide the necessary product pricing details as to how those "market based rates" are derived to mass market customers in a manner that is transparent so as to enable an open and competitive marketplace where customers can participate fairly and with the necessary knowledge to make rational and fully informed decisions on whether it is in their best interest to take commodity service from their default utility, or from a particular ESCO among competing but equally opaque choices.[19]

In response to these criticisms, the ESCOs claimed that their marketing and overhead costs explain the overcharges, but NYPSC staff found that these costs do "not justify the significant overcharges."[20] Likewise, when the ESCOs claimed that their provision to consumers of so-called value-added products such as light bulbs and thermostats contributed to their excessive rates, NYPSC staff found that "these sorts of value-added products is at best de minimis and does not explain away the significantly higher commodity costs charged by so many ESCOs."[21]

[18] CASE 12-M-0476, Department of Public Service Staff Unredacted Initial Brief, at 41–42 (Mar. 30, 2018).

[19] *Id.* at 86 (citations omitted).

[20] *Id.* at 37.

[21] *Id.* at 87.

Similarly, the NYPSC staff found that the "claim that at least a portion of the significant delta between ESCO and utility charges is explained by ESCOs offering renewable energy is disingenuous at best. ESCOs may be charging a premium for green energy, but they are not actually providing a significant amount of added renewable energy to customers in New York."[22]

Instead, NYPSC staff reached the following conclusion:

> The massive $1.3 billion in overcharges is the result of higher, and more often than not, significantly higher, commodity costs imposed by the ESCOs on unsuspecting residential and other mass market customers. These overcharges are simply due to (1) the lack of transparency and greed in the market, which prevents customers from making rational economic choices based on facts rather than the promises of the ESCO representative, and (2) obvious efforts by the ESCOs to prevent, or at least limit, the transparency of the market. These obvious efforts include the lack of a definition for "market rate" in their contracts, resulting in the fattening of ESCOs' retained earnings.[23]

Following these conclusions, in December 2019 the NYPSC **banned** the exact same variable rate pricing practices the Representative Plaintiffs challenge in the class actions. The NYPSC's press release announcing the ban on variable energy rates does not mince words, stressing that it was intended to "prevent[] bad actors among ESCOs from overcharging New York consumers" and that the regulations only went forward after "the state's highest court definitively halted ESCOs' attempts to use litigation to evade and/or delay consumer-protection regulation."[24] The regulations themselves likewise condemn ESCOs' conduct and declare that "avoiding accountability" has become a "business model" in the deregulated energy market:

> Based upon the number of customer complaints that continue to be made against ESCOs, and the likely need for increased enforcement activities, the large number of ESCO customers that pay significant premiums for products with little or no apparent added benefit, . . . it appears that a material level of misleading marketing practices continues to plague the retail access market.
>
> * * *

[22] *Id.* at 69.

[23] *Id*.

[24] Press Release, "PSC Enacts Significant Reforms to the Retail Energy Market," December 12, 2019, *available at*: http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/Web/51A7902329FEA7B7852584CE005CF88D/$File/pr19110.pdf?OpenElement.

> The persistence of complaints related to ESCO marketing practices is indicative of some ESCOs continuing to skirt rules and attempting to avoid accountability as part of their business model.[25]

The NYPSC's variable rate ban followed a two-year investigation of ESCO practices that culminated in a 10-day evidentiary hearing to examine evidence submitted by 19 parties and to hear the testimony and cross-examination of 22 witnesses and witness panels.[26]

The NYPSC prefaced the ban with the observation that variable energy rates—like those the Just Energy Entities charged the Representative Plaintiffs and the Class—are "[t]he most commonly offered ESCO product" and that this popular product is frequently provided at "a higher price than charged by the utilities."[27] The absurdity of consumers paying ESCOs more for the exact same energy offered by regulated utilities was not lost on the NYPSC:

> If market participants are unwilling, or unable, to provide material benefits to consumers beyond those provided by utilities in exchange for a regulated, just and reasonable rate, the market serves no proper purpose and should be ended.[28]

In fact, the NYPSC found it "troubling" that even after considering reams of evidence "neither ESCOs nor any other party have shown . . . that ESCO charges above utility rates were generally – or in any specific instances – justified."[29] This fact only highlighted the NYPSC's "long-held concern that many customers may only be taking ESCO service due to their misunderstanding of [ESCOs'] products and/or prices."[30]

Accordingly, and on this record, the NYPSC banned variable energy rates like those the Just Energy Entities charged to the Representative Plaintiffs and the Class.[31] In place of these floating variable rates, the NYPSC required ESCOs to guarantee that their variable rates would save customers money compared to what the utility would have charged.[32] Under the new regulations, if the ESCO charges the consumer more than the utility, the consumer is owed a

[25] December 12, 2019 Order at 88–90.

[26] *Id.* at 3–4.

[27] *Id.* at 11.

[28] *Id.* at 12.

[29] *Id.* at 30.

[30] *Id.* at 31.

[31] *Id.* at 39.

[32] *Id.*

refund for the difference.[33] In the Representative Plaintiffs' class actions, the difference between what the Just Energy Entities charged consumers for the exact same energy that Class Members' utilities would have charged is more than US$2 billion. The NYPSC's regulations took effect in April 2021. Around the same time, the Just Energy Entities ceased offering service in New York and attempted to reframe the state's ban on the Just Energy Entities' core business practice as "regulatory constraints . . . requiring certain variable rate customers to be dropped to the utility."[34]

IV. Just Energy's Damning Public Dossier Further Supports the Class Actions

The Just Energy Entities have amassed a damning public dossier that includes at least **six** regulatory enforcement actions, reams of investigative journalism exposing Just Energy's deceptive practices, and countless negative customer reviews.

For example, on December 31, 2014, Just Energy agreed to settle claims brought by the Massachusetts Attorney General that are strikingly similar to those of the Representative Plaintiffs', making various concessions related to its deceptive energy sales and billing practices in Massachusetts.[35]

The Massachusetts Attorney General alleged that Just Energy made misleading, false, and unlawful representations and omissions concerning its energy, including that:

> Just Energy represented to consumers that purchasing residential gas and/or electricity from Just Energy will save customers money;
>
> Just Energy failed to disclose complete and accurate pricing information; and
>
> Just Energy failed to disclose to consumers that its rates following any introductory period may be higher than the rates charged by consumers' traditional utilities.[36]

In response to the Massachusetts Attorney General's allegations, Just Energy agreed to refund a total of US$4,000,000 to Massachusetts customers along with implementing several key changes to its marketing and sales practices, as follows:

[33] *Id.*

[34] Ring, Paul, Energy Choice Matters, Aug. 16, 2021, http://www.energychoicematters.com/stories/20210816a.html

[35] Assurance of Discontinuance, *In the Matter of Just Energy Group, Inc., et al.*, Mass. Sup. Ct., Suffolk, (Dec. 31, 2014).

[36] *Id.* ¶¶ 19(a), 20(a)–(b).

> Just Energy must cease making representations, either directly or by implication, about savings that consumers may realize by switching to Just Energy, unless Just Energy contractually obligates itself to provide such savings to consumers.[37]
>
> Where Just Energy quotes introductory teaser rates in its marketing material or in any verbal representation, the rate quote must be accompanied by a statement informing consumers that the quoted rate is an introductory rate and state when the rate will expire.[38]

Just Energy was banned for three years from enrolling Massachusetts consumers into variable rate energy products unless it complied with the following requirements:

> Within 30 days of a customer enrolling in a variable energy rate product, Just Energy must provide the customer with written notice of the date on which the introductory rate will expire.
>
> Any new contracts for variable rate products shall either (i) include the calculation that will be used to set monthly rates under the contract such that the customer can calculate the cost of Just Energy's residential energy, or (ii) make the rates available 60 days in advance via phone and the internet.[39]

Additionally, for three years Just Energy was banned from charging Massachusetts consumers variable electricity rates in excess of 14.25¢ per kWh.[40, 41] The settlement further provided that:

> For current Just Energy variable rate customers, the company is required to clearly and conspicuously post its current variable rates and post subsequent variable rates with at least 45 days advance notice.[42] Just Energy is also required to mail notice to all existing Massachusetts variable rate customers alerting them to the fact that advance pricing information is now available via phone and on Just

[37] *Id.* ¶ 26(a).

[38] *Id.* ¶ 26(c).

[39] *Id.* ¶ 28(a)–(b), (d).

[40] *Id.* ¶ 30(a).

[41] Just Energy charged Representative Plaintiff Donin electricity rates higher than this very high rate for 17 months while she was a Just Energy customer. 14 of those 17 months were consecutive. For the 10 months of billing data Representative Plaintiff Golovan possesses, Just Energy charged her more than the 14.25¢ cap **every single month**.

[42] *Id.* ¶ 30(b).

> Energy's website, and that these customers can cancel their Just Energy contracts without paying termination fees.[43]
>
> Just Energy must at its own expense hire an independent monitor for three years to audit *inter alia* Just Energy's Massachusetts marketing materials, billing data, consumer communications, and direct marketing efforts.[44]
>
> Just Energy must distribute a copy of the Assurance of Discontinuance to current and future (for three years) principals, officers, directors, and supervisory personnel responsible for the Massachusetts market.[45] Just Energy must also secure and maintain these individuals' signed acknowledgement of receipt of the Assurance of Discontinuance.

The Massachusetts Attorney General's sweeping action was far from the first time the Just Energy Entities had been targeted by regulators.

For example, in June 2003, the *Toronto Star* reported that Just Energy (then operating under the name Ontario Energy Savings Corp.) was fined for violating the Ontario Energy Board's code of conduct by fraudulently enrolling customers.[46]

In 2008, the Illinois Attorney General sued U.S. Energy Savings Corp. (whose name was changed to Just Energy in 2012), alleging violations of Illinois' consumer fraud laws. The May 2009 Press Release announcing a US$1 million settlement noted that the Illinois Attorney General had "received a nearly unprecedented number of calls from consumers who were deceived by false assurances that they would receive significant savings by switching to this alternative gas supplier."[47] According to the Attorney General's complaint, among other deceptive conduct "consumers were led to believe that they would automatically save money by enrolling in the U.S. Energy Savings program."[48]

During this same period, the Citizens Utility Board (the "CUB") and AARP filed a formal complaint with the Illinois Commerce Commission (the "ICC") alleging, *inter alia*, that Just Energy told customers they would "save money" by signing up, that consumers would not see

[43] *Id*. ¶ 30(c).

[44] *Id*. ¶ 44, Attachment 2.

[45] *Id*. ¶ 46.

[46] Spears, John, "*Energy marketers fined over forgeries*," Toronto Star (June 21, 2003).

[47] Press Release, "Madigan Secures $1 Million in Consumer Restitution from Alternative Gas Supplier for Deceptive claims," May 14, 2009.

[48] *Id*.

any gas price increases if they signed up, and that Just Energy presented false and misleading information about its prices.[49] In April 2010, the ICC found that Just Energy's sales and marketing practices were deceptive, fined the company US$90,000, and ordered an independent audit of its practices.[50]

In July 2008, New York's Attorney General announced a US$200,000 settlement with Just Energy (then named U.S. Energy Savings) and noted that the Attorney General's "office received hundreds of consumer complaints that sales contractors promised immediate savings on utility bills, but the price of gas was actually more than the price charged by the local utility because the price was locked in for a multi-year period."[51]

In November 2016, Ohio's Public Utilities Commission (the "PUCO") fined Just Energy **for a second time** for misleading marketing practices. An article in the *Columbus Dispatch* notes that Just Energy is an "energy company with a track record of misleading marketing," that it was fined by the PUCO in 2010 for deceptive marketing, and that it "sells energy contracts that often cost more than customers would pay if they received the standard service price."[52] The article also mentions that some of the complaints that led to the PUCO's action "stemmed from contracts sold on behalf of Just Energy by another company, saveonenergy.com."[53]

There are also thousands of complaints about the Just Energy Entities on the internet. Over the last three years alone, Just Energy has had at least 282 complaints filed against it with the Better Business Bureau (the "BBB").[54] Even though Just Energy is listed on the BBB's website as having been in business for 24 years, the BBB clearly declares that "THIS BUSINESS IS NOT BBB ACCREDITED" and displays the following "Pattern of Complaint" warning to the consuming public:

> BBB files indicate that this business has a pattern of complaints concerning door to door sales representatives who are using misleading sales tactics, misrepresenting themselves as the consumer's current energy or gas company, and not being transparent about cancellations fees which may be charged by their

[49] Verified Original Complaint ¶19, Illinois Commerce Commission Docket 08-0175 (March 3, 2008).

[50] Press Release, "Illinois Commerce Commission Fines Just Energy for Deceptive Sales and Marketing Practices, Orders Audit," April 15, 2010.

[51] Press Release, "Attorney General Cuomo Stops WNY Natural Gas Provider From Deceiving Consumers by Misrepresenting Service Contracts," (July 4, 2008).

[52] Gearino, Dan, "Electricity marketer Just Energy fined over complaints,'" The Columbus Dispatch, (Nov. 4, 2016).

[53] *Id.*

[54] Business Profile: Just Energy Group, Inc., BBB.org, https://www.bbb.org/us/tx/houston/profile/electric-companies/just-energy-group-inc-0915-16000393.

> current provider for switching their services. Additionally, consumers allege Just Energy's representatives display poor customer service when the business is contacted to resolve billing and contract concerns.
>
> In November 2019, consumers also began filing customer reviews alleging sales representatives stationed at a local warehouse club were not being truthful about the rates for natural gas. We also received a customer review that stated the Just Energy employee was wearing a t-shirt with the warehouse club's logo.

Media reports about Just Energy equally condemn the Just Energy Entities. When the confidential results of the Illinois Commerce Commission's audit referenced above were made public, Chicago's CBS affiliate reported that between 2010 and 2011 Just Energy received over 29,729 customer complaints.[55] "There were so many complaints over so many years with so little company oversight on how they were handled that the audit said, '[a]n adequate compliance culture at the top levels of the organization is not evident.'"[56]

A 2014 exposé by Canada's Global News highlights that the "CUB, the Better Business Bureau (BBB), the Ontario Energy Board, among others, have been inundated with complaints from consumers about the sales methods employed by Just Energy. The most common grievance is Just Energy promises people savings that don't materialize."[57]

The exposé further reported that Just Energy's founder Rebecca MacDonald has "raked in an estimated $150 million from the company since she established it in the 1990s" and is facing accusations "over whether she's misled investors in her company."[58] Those accusations include that MacDonald faked her credentials and the conclusions by "two of Canada's top forensic accounting firms" that Just Energy used "an unregulated form of accounting to paint a much rosier picture of the company's financial situation," which in turn allowed Just Energy to show an "artificial profit."[59]

The Global News exposé also contains a 22-minute video entitled the "Just Energy Hustle." Below is an excerpt of a Global News journalist's videotaped interview with Just Energy's then-Co-CEO Deborah Merril. Despite having joined Just Energy in 2007, in the 2014 interview the

[55] Zekman, Pam, "Alternative Energy Supplier Has Long Record Of Fraud Complaints," *CBS2*, (Jan. 15, 2013).

[56] *Id*.

[57] Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014). *Available at:* https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/.

[58] *Id*.

[59] *Id*.

Co-CEO denies even knowing about the many criticisms leveled at Just Energy's marketing and sales practices:

> JOURNALIST: "Critics have accused your company of underhanded sales tactics, sleazy tactics to try to get people to sign their name to a contract."
>
> CO-CEO MERRIL: "I have not heard those accusations, so, nobody said that to me, no."
>
> JOURNALIST: "Really, this is news to you?"
>
> CO-CEO MERRIL: "No, nobody's said that to me. I think it's . . . ."
>
> JOURNALIST: "It's your company. I mean, you know . . . ."
>
> CO-CEO MERRIL: "I would disagree with that."
>
> JOURNALIST: "You would disagree that there's a view that your company is doing things at the door that it shouldn't be doing?"
>
> CO-CEO MERRIL: "No, I'm saying that mistakes happen and we take 'em very seriously."

"The Just Energy Hustle," Timestamp 18:35 to 19:18.[60]

More than a year prior to the Global News exposé, on July 31, 2013, New York-based investment management firm Spruce Point Capital Management released an investment analysis that labeled Just Energy as "a company that U.S. consumers and investors are quickly realizing has become toxic to their wallets through deceptive energy marketing practices, and harmful to their brokerage accounts."[61] The report signaled that Just Energy's "growth appears to be the result of deceptive sales tactics, now at risk of unravelling" which is "evidenced by a large body of consumer fraud complaints."[62] The report also highlights how Just Energy uses a teaser rate to deceive consumers:[63]

[60] Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014). *Available at:* https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/.

[61] Spruce Point Capital Management, "Just Energy: Another Dividend Cut Poses An Above Average Risk to Investors" at 2 (July 31, 2013), *available at:* http://www.sprucepointcap.com/just-energy/.

[62] *Id*. at 3.

[63] *Id*. at 4–5.

As noted in the table and analysis excerpted below, Just Energy (referred to in the report as "JE") "appears" to offer the lowest price fixed contract, but there's a 'catch:'

	ConEd Solutions	Constellation	Spark Energy	Greenlight Energy	US Gas & Electric	Just Energy	Constellation	Spark Energy	Greenlight Energy	Just Energy
Commodity	Electric	Electric	Electric	Electric	Electric	Electric	Gas	Gas	Gas	Gas
Term (months)	12	12	12	None	5	60	12	12	None	60
Initiation Fee	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Cancellation Fee	-	-	-	-	$50.00	$50.00	-	-	-	$50.00
Monthly Fee	-	-	-	-	-	-	-	4.95	-	
Unit Cost (¢/KWh | ¢/therm)	**10.45¢**	**10.99¢**	**10.49¢**	**10.00¢**	**10.50¢**	**7.15¢**	**67.90¢**	**77.50¢**	**66.00¢**	**62.00¢**

Source: ConEdison website and company websites. End of April 2013

JE's gas RateFlex prices are fixed *only for three* months – despite the 5-year term – and after three months, the contract reverts to a *fluctuating* price based on "*business and market conditions*." The Electric RateFlex is fixed for 2 months. JE then gives its customers the option of locking in this new, variable and unknown price. The company tries to reassure consumers that the rate won't fluctuate that much by guaranteeing that the variable rate won't increase by more than *35% per month* (see*:* section 7). Just Energy also allows consumers to cancel their contract free within 30 days – before the misleadingly low introductory price expires – but charges a $50 "Exit Fee" if cancelled thereafter. Of course, most consumers don't bother to read the fine print, particularly if salesmen are pushing quick cash back incentives with Visa Gift Cards for registering and referring friends.

A May 8, 2019 article in the *Chicago Reporter* tells a similar story. The article showcased the experience of a 45-year-old carpenter who, over the course of 10 years, paid Just Energy more than US$20,000 more than he would have paid his local utility.[64] This Just Energy customer's experience was used to highlight the then-proposed Illinois Home Energy Affordability & Transparency Act ("HEAT"). On August 27, 2019, Illinois Governor J.B. Pritzker signed HEAT into law. Effective January 1, 2020, HEAT requires *inter alia* ESCOs like Just Energy operating in Illinois to include the utility's comparison price on all marketing materials, during telephone or door-to-door solicitations, and on every consumer's utility bill so consumers can make informed price comparisons.

In addition, on May 9, 2019, *CommonWealth* featured the Massachusetts Attorney General's findings that Massachusetts consumers who switched to ESCOs paid US$177 million more over a two-year period than they would have if they had stayed with the local utility.[65] The *CommonWealth* article references the fact that the Massachusetts Attorney General brought successful lawsuits against ESCOs "including Just Energy" which actions resulted "in almost $10 million in refunds to consumers and forc[ed] the defendant companies to cease their unfair practices." *Id.*

[64] *Available at:* https://www.chicagoreporter.com/illinois-bill-aims-to-curb-alternative-energy-scams-by-forcing-transparency/.

[65] Harak, Charlie et al., "DPU failing to protect Mass. Consumers," *CommonWealth*, May 9, 2019. *Available at:* https://commonwealthmagazine.org/opinion/dpu-failing-to-protect-mass-consumers/.

V. The Class Actions Encompass Approximately 8,000,000 U.S. Just Energy Customers

Using Just Energy's public 2015 Annual Report (which covers the year ended March 31, 2015), Class Counsel calculated the approximate number of Class Members during the relevant period of 2011 to present:

A. U.S. Residential Electric Class Members – 2,481,640 RCEs[66]

B. U.S. Residential Gas Class Members – 1,096,180 RCEs

C. U.S. Commercial Electric Class Members – 3,702,200 RCEs

D. U.S. Commercial Gas Class Members – 596,040 RCEs

Total U.S. Residential Class Members (Electric and Gas Combined) – 3,577,820 RCEs

Total U.S. Commercial Class Members (Electric and Gas Combined) – 4,298,240 RCEs

Total U.S. Class Members (All Combined) – **7,876,060 RCEs**

Regarding Class Counsel's methodology for calculating the U.S. class size, Just Energy's 2015 Annual Report discloses (a) the number of worldwide Just Energy gas RCEs by commodity and the number of worldwide Just Energy electric RCEs by commodity for the year ended April 1, 2014, and (b) the "additional" number of worldwide gas and worldwide electric RCEs by commodity added in the one-year period from April 1, 2014, to March 31, 2015. The 2015 Annual Report also identifies the percentage of Just Energy's customer base that takes service in the U.S. and distinguishes between commercial and residential RCEs.

Beginning with the April 1, 2014 current customer data, Class Counsel used the percentage of U.S. Just Energy customers to calculate the number of U.S. residential and commercial gas and electric customers as of April 1, 2014. Class Counsel then took the number of additional gas and electric customers added in the one-year period from April 1, 2014 to March 31, 2015 and multiplied it by the percentage of U.S. Just Energy customers to determine the number of U.S. gas and electric customers added at each service level during this one-year period. For example, Just Energy's 2015 Annual Report states that as of April 1, 2014 Just Energy had 1,198,000 RCEs and that 72% of Just Energy customer base takes service in the U.S. Class Counsel thus calculate that as of the April 1, 2015, the Just Energy Entities had approximately 862,560 U.S. residential electric customers (i.e. 1,198,00 RCEs x .72). The 2015 Annual Report also states that Just Energy added 489,000 residential RCEs in the one-year period from April 1, 2014, to March 31, 2015. Using the same percentage of U.S. based customers (72%), Class Counsel

[66] According to Just Energy's 2021 Annual Report, an "RCE" means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m3 (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada.

calculates that during this one-year period Just Energy added approximately 352,080 U.S. residential electric customers (i.e. 489,000 RCEs x .72).

During each of the reporting years from 2015 to 2021, Just Energy reported figures for the number of additional residential and commercial gas and electric RCEs as well as the percentage of Just Energy's U.S. customer base. Beginning with the 2014 total customer count and using only the "additional" U.S. residential and commercial RCEs added each year, Class Counsel calculated the approximate total class size. The following chart summarizes Class Counsel's class size calculations:

Year	U.S. Residential Electric Customers Added	U.S. Residential Gas Customers Added	U.S. Commercial Electric Customers Added	U.S. Commercial Gas Customers Added
2014[67]	862,560	537,840	1,627,920	146,880
2015	352,080	133,920	503,280	48,240
2016	271,440	105,120	395,280	61,920
2017	237,850	85,200	234,300	38,340
2018	260,000	115,700	274,950	110,500
2019	226,800	87,570	291,690	88,200
2020	142,120	25,160	259,760	59,840
2021	128,790	5,670	115,020	42,120
Total	2,481,640	1,096,180	3,702,200	596,040
Total Customers Across All Four Customer Categories:				**7,876,060**

Please note that due to missing data from the 2011 to 2014 period, these calculations are **underinclusive**. With discovery, the Representative Plaintiffs' expert will be able to provide the exact class size.

[67] 2014 figures represent current U.S. Just Energy customers as of April 1, 2014.

Dated: November 1, 2021
Armonk, New York

By: /s/ Steven L. Wittels

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Class Counsel for the Representative Plaintiffs and the Class

Exhibit 1

EXPERT REPORT OF DR. SERHAN OGUR

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Exhibit A – Resume of Serhan Ogur, Ph.D

I. Introduction and Qualifications

My name is Serhan Ogur, Ph.D., and I am a Senior Economist and Principal at Exeter Associates, Inc. ("Exeter"). Exeter is an economics consulting firm specializing in regulated energy industries (e.g., electricity and natural gas) and in competitive wholesale and retail electric power markets.

In this report, I have been asked by the Plaintiffs' counsel to offer my expert opinions on the following topics:

1. How energy service companies ("ESCOs"), such as Just Energy Group Inc., Just Energy Solutions Inc., and other affiliated Just Energy entities (collectively, "Just Energy") can procure electricity and natural gas for their customers;
2. Whether ESCOs like Just Energy bear more or less risk to service fixed- or variable-rate customers; and
3. How much Just Energy variable-rate customers were overcharged from 2011 to 2020.

I have worked on electric power market issues for 20 years, including both wholesale and retail market issues. Prior to joining Exeter, I was employed by the Illinois Commerce Commission ("ICC"); PJM Interconnection, LLC ("PJM"); and Fellon-McCord & Associates, LLC ("Fellon-McCord").

At the ICC, I worked at the Federal Energy Program ("FEP") under the Energy Division. The FEP's function is to advise ICC's commissioners on all energy-related matters that fall within the jurisdiction of the federal government (e.g., the Federal Energy Regulatory Commission ["FERC"], the Federal Trade Commission, the U.S. Department of Justice). The duties I performed at the FEP included reviewing federal and state rate cases, reviewing utility filings at the FERC regarding the formation of regional transmission organizations ("RTOs"), and serving as the ICC Staff's expert witness at ICC regulatory proceedings. While at the ICC, I testified in an electric utility merger case and in a case that established auction-based default service electric supply procurement and pricing mechanisms for the major investor-owned utilities ("IOUs") in Illinois.

At PJM, I was assigned to the Market Strategy and Performance Compliance departments. The duties I performed at PJM included periodic reporting to the board of managers, the senior

management, and PJM's stakeholder committees on the performance of all markets and services administered by PJM.

At Fellon-McCord, I worked as the lead analyst at the Power Control Center, which was the department responsible for performing all wholesale and retail electricity market operation and compliance tasks of large customers that were their own load-serving entities ("LSEs") (rather than taking retail supply service from the incumbent utility or from a mass-market competitive supplier). My role at Fellon-McCord required me to be familiar with all wholesale and retail tasks (e.g., scheduling, forecasting, settlements, billing, risk management) related to supplying electric power to wholesale and retail end-users.

As previously noted, my current role is as a Senior Economist and Principal at Exeter Associates. The majority of Exeter's client base consists of federal and state government agencies, including the U.S. Air Force, the U.S. Army, and the U.S. Department of Energy ("DOE") (as purchasers of electricity and natural gas from competitive retail suppliers in retail choice states and from the utility in bundled states); state offices of consumer advocate; state public utility commission ("PUC") staffs; and state offices of attorneys general. That work entails assisting federal government agencies (Air Force bases, Army installations, DOE national laboratories) with optimizing their utility services (electricity, natural gas, potable water, and wastewater) and minimizing their supply procurement costs, which requires in-depth knowledge of all facets of wholesale and retail electricity and natural gas markets. Exeter's work also entails supporting state governments and state agencies in energy-related formal proceedings (e.g., rate cases, default service implementation cases, utility merger and acquisition applications) before state PUCs and the FERC.

I have testified numerous times in front of the Pennsylvania PUC in default electric service design and implementation cases on behalf of the Pennsylvania Office of Consumer Advocate ("PA OCA"). I am a trusted advisor for the PA OCA in all matters related to electric utility regulation, wholesale and retail electricity markets, and electric power procurement and risk management.

I am the main consultant to the Defense Logistics Agency – Energy ("DLA Energy"), which in turn is one of the major power and natural gas procurement agencies for federal government sites (alongside the General Services Administration ["GSA"]), with competitive electricity acquisitions in some of the same markets, states, and utility service territories in which Just Energy is also active. I helped DLA Energy issue solicitations for competitive supply, evaluate

the price and service offers, and draft contract terms in various markets. The states in which I helped DLA Energy procure competitive supply include Illinois, Maryland, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Texas. I have extensive experience in the procurement of fixed-rate, variable-rate, and hybrid-type (arrangement with both fixed- and variable-rate elements) contracts.

I hold a doctorate degree in Economics from Northwestern University, where my studies focused on competition in deregulated wholesale electricity markets. My undergraduate degree is also in Economics from Bogazici University (Istanbul, Turkey). My resume, containing the state PUC dockets in which I have submitted written and oral testimony, is provided in Exhibit A.

II. Electricity and Natural Gas Markets

Historically, states have regulated the retail electricity and natural gas markets within their borders, including how utilities procure or supply electricity and natural gas, the retail prices charged for electricity and natural gas, and the distribution of electricity and natural gas to end-use customers.[1,2] The predominant electric utility model relied on fully vertically integrated local monopolies. These monopolies oversaw all aspects of electricity provision: generation, transmission and distribution, and the full suite of retail services.[3] Similarly, the regulated natural gas industry relied on the competitive procurement of natural gas in wholesale markets and the distribution of that gas to its retail customers.[4] States granted for-profit utilities licenses to operate these monopolies, subject to regulatory oversight. This arrangement is often referred to as the "state regulatory compact."

Under the state regulatory compact, state-regulated utilities agreed to provide safe and reliable public utility service. In return, the regulating body gave the utilities an exclusive franchise territory and allowed the utilities the opportunity to recover their reasonably and

[1] Regulation is typically provided by a public utility commission—a quasi-judicial, independent, administrative body also referred to as a public service commission ("PSC"), commerce commission, board of public utilities, public utilities regulatory authority, etc., depending on the state.

[2] For a comprehensive overview of the history of the regulation of the electricity and natural gas sectors in their various forms, see: Phillips, C. F. (1993). *The Regulation of Public Utilities: Theory and Practice*. Public Utilities Reports, Inc. Arlington, Virginia.

[3] For an overview of each aspect of electricity provision, see: U.S. Energy Information Administration (October 22, 2020). "Electricity explained: How electricity is delivered to consumers." Retrieved from: https://www.eia.gov/energyexplained/electricity/delivery-to-consumers.php.

[4] For an overview of each aspect of natural gas provision, see: U.S. Energy Information Administration (December 9, 2020). "Natural gas explained." Retrieved from: https://www.eia.gov/energyexplained/natural-gas/.

prudently incurred costs.[5] In addition to cost recovery, the regulator provided the utilities an opportunity—but not a guarantee—to earn a fair return on their invested capital.[6]

Starting in the late 1980s and early 1990s, many states began considering the potential benefits of restructuring electricity and natural gas markets.[7] In particular, states evaluated the potential to deregulate—meaning substitute the forces of market competition for administrative control—portions of electricity and natural gas service to reduce costs and improve efficiency. Developments towards the deregulation of electricity and natural gas markets followed similar efforts in the airline, trucking, and telecommunications industries.[8]

During the late 1990s and early 2000s, several states officially unbundled their electricity and natural gas markets; that is, these states separated the functions of providing electric and natural gas service into competitive and non-competitive components.[9] Some components, such as the distribution of electricity and natural gas, both of which require significant amounts of upfront capital, were thought to be "natural" monopolies and, therefore, these functions were generally left to the traditional local monopoly providers. These non-competitive services remained subject to cost-of-service regulation and the regulatory compact. Other portions of electric and natural gas service, such as electric generation and natural gas supply procurement, were opened to market competition, in this case from independent power producers in electricity markets and independent retail natural gas suppliers in natural gas markets. Providers of these services no longer received the same guarantee of cost recovery, meaning they absorbed greater risk. They also, however, gained the ability to compete in previously closed markets and earn a market return.

In some states, policymakers went further by also opening the provision of retail services to competition. This last reform is referred to as retail deregulation, retail restructuring, or retail

[5] See: Regulatory Assistance Project (2011). *Electricity Regulation in the U.S.: A Guide*. Retrieved from: https://www.raponline.org/wp-content/uploads/2016/05/rap-lazar-electricityregulationintheus-guide-2011-03.pdf.

[6] State and federal utility regulatory commissions must provide regulated public utilities with a reasonable opportunity to earn a fair rate of return ("ROR") on prudently incurred capital investments (net of depreciation, and as adjusted by the regulator). No such requirement applies to unregulated utility providers.

[7] See: Flores-Espino, F., T. Tian, I. Chernyakhoyvskiy, *et al*. (2016). *Competitive Electricity Market Regulation in the United States: A Primer*. National Renewable Energy Laboratory. Retrieved from: https://www.nrel.gov/docs/fy17osti/67106.pdf.

[8] For an overview of efforts toward restructuring these markets, see: Winston, C. (1993). "Economic Deregulation: Days of Reckoning for Microeconomists." Journal of Economic Literature, 31(3), 1263-1289.

[9] For a contemporaneous account of unbundling efforts, including descriptions of various electricity reforms, see: Warwick, W.M. (2002). *A Primer on Electric Utilities, Deregulation, and Restructuring of U.S. Electricity Markets*. Pacific Northwest National Laboratory. Retrieved from: https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-13906.pdf.

choice.[10] As many as 20 states have pursued electricity retail deregulation to some degree, including New York, the state in which Plaintiffs Ms. Fira Donin and Ms. Inna Golovan reside.[11] Similarly, as many as 25 states have implemented natural gas deregulation to some degree, including New York and Pennsylvania, the states in which Plaintiffs Ms. Donin and Mr. Trevor Jordet, respectively, reside. In electricity or natural gas retail choice states, customers have the option to purchase supply (i.e., unbundled service) from ESCOs under market-based rates.[12] This means that customers can "shop" among competing ESCOs for energy supply instead of relying on service from the local monopoly provider.

In retail choice states, apart from electricity supply in Texas, retail electricity and natural gas customers that either cannot switch to, or choose not to adopt service from, a competitive supplier are allowed to continue receiving service from the regulated local monopoly utility (i.e., bundled service).[13] Supply for default service is procured by the utilities (which serve as the default service providers in their respective service territories) in the competitive market. This procurement task takes various forms including default service auctions and procuring directly from wholesale markets,[14] depending on the state and the customer class.[15] The utilities rely on market-provided electric generation supply or competitively procured natural gas supply to serve their default service customers. In the case of electric power utilities, they are generally precluded from owning electric generation resources to avoid potentially anti-competitive impacts on the wholesale and retail markets.[16] Default service is provided by the utilities to default service customers without any, or with very little, markup. As a result, the supply price (or rate) associated with the energy component of default service, also known

[10] See: National Renewable Energy Laboratory (2017). *An Introduction to Retail Electricity Choice in the United States*. Retrieved from: https://www.nrel.gov/docs/fy18osti/68993.pdf.

[11] See: American Coalition of Competitive Energy Suppliers (2021). "State-by-State Information." Retrieved from: https://competitiveenergy.org/consumer-tools/state-by-state-links/.

[12] ESCOs are also referred to as alternative retail electric suppliers, third-party suppliers, retail electric providers, and retail electricity suppliers, depending on the state.

[13] Service from the local utility is also referred to as "default service" or "standard offer service."

[14] Default service auctions, also known in the industry as basic generation service auctions, are a way for the utilities to assign the responsibility or cost of serving the generation supply portion of their default service customers' loads to unregulated wholesale suppliers through a transparent procurement mechanism (auctions or requests for proposals) overseen by the PUCs.

[15] For an overview of default service procurement for residential customers in states with retail deregulation, see: Littlechild, S. (2018). *The Regulation of Retail Competition in US Residential Electricity Markets*. Energy Policy Research Group, University of Cambridge. Retrieved from: https://www.eprg.group.cam.ac.uk/wp-content/uploads/2018/03/S.-Littlechild_28-Feb-2018.pdf.

[16] See: Hunt, S. (2002). *Making competition work in electricity*. John Wiley & Sons. Retrieved from: https://regulationbodyofknowledge.org/wp-content/uploads/2013/03/Hunt_Making_Competition_Work.pdf.

as the default service rate or the default price, reflects the costs of competitive, market-provided energy.[17]

The default service rate is also referred to as the "price to compare" ("PTC") in the energy industry. The PTC is the rate (or price) charged by the local utility to customers who are on default service for the portion of their electric and natural gas service that is open to competition. The default rate can change as frequently as monthly. Nevertheless, for residential customers in most states, the major components of default service rates change no more frequently than quarterly or semi-annually. It is typical that retail customers may leave or return to default service at any time without penalty from the default utility.

ESCOs procure electric power and natural gas on behalf of the customers they serve in a variety of ways. These include: (1) making short-term (day-ahead in the case of natural gas, and day-ahead or real-time in the case of electricity) purchases on wholesale markets established to facilitate the buying and selling of electricity and natural gas;[18] (2) purchasing electricity and natural gas in the wholesale market directly from power plants and from natural gas suppliers; (3) generating electricity from power plants owned or contracted for by the ESCO; (4) purchasing power and natural gas from wholesale brokers or marketers, including other ESCOs; and (5) any number of combinations of the above options.

In deregulated markets, the wholesale price of electricity and natural gas at any given time is determined by supply and demand conditions.[19] Supply factors include the price of fuels, the availability of generating and transmission and pipeline resources, and external conditions that could, for example, affect the availability of solar and wind generation (affecting electricity prices) or the production and transportation of natural gas. Demand is affected by weather conditions, time of day and day of week, and general economic conditions. In organized electricity and natural gas markets, the price is constantly changing, typically daily for natural gas and multiple times within each hour for electricity.

There are a variety of rate arrangements that ESCOs offer to shopping customers. Variable rates, which can change monthly, are the type of rate arrangement at issue in this case. Just

[17] See: Tsai, C-H & Y-L Tsai (2018). "Competitive Retail Electricity Market under Continuous Price Regulation." Energy Policy, Vol. 114, 274-287.

[18] In the case of electricity, these organized wholesale power markets are administered by RTOs or independent system operators (ISOs).

[19] For additional information regarding electricity markets, see: Federal Energy Regulatory Commission (2020). *Energy Primer: A Handbook for Energy Market Basics*. Retrieved from: https://www.ferc.gov/sites/default/files/2020-06/energy-primer-2020_Final.pdf.

Energy offered customers service at a fixed rate for an initial period, often several months.[20] These fixed rates tended to be low or competitive relative to the PTC.[21] Thereafter, customers were automatically switched to variable-rate service. In the retail energy (electricity or natural gas) markets, the nature of the pricing arrangement between the ESCO and the end-use customer affects the way in which the energy supply can be rationally procured by the ESCO in the wholesale market.

When an ESCO acquires a fixed-rate customer, it has a strong incentive to hedge the purchase price of its projected sales to that customer for the duration of the term of the fixed-price retail supply contract at the time the contract is executed. Hedging refers to an attempt to eliminate most of or all the price risk associated with serving a customer's future consumption by entering into various transactions prior to the delivery period. Hedging to support a fixed rate for a specific contract duration allows the ESCO to try to lock in a profit by acquiring the customer's estimated future energy needs at a predetermined cost that is lower than the fixed rate at which the customer has agreed to pay the ESCO. If the ESCO does not hedge to avoid cost fluctuations for energy to serve a fixed-price contract, it incurs the risk of paying more for the customer's energy supply than the fixed rate at which the customer agreed to pay the ESCO. ESCOs typically hedge almost all of their expected fixed-rate supply contract exposure. However, if customers' actual usage is higher than expected, the ESCO faces the risk that the electricity or natural gas purchased to fill the gap between expected and actual usage will be more expensive than the hedged price or the fixed rate. Similarly, if the ESCO ends up being over-hedged due to unexpectedly low consumption or contract cancellations, the ESCO may have to sell the excess energy supply at a lower price and, as a result, incur a loss.

ESCOs have the opposite incentive for variable-rate supply contracts that are based on business and market conditions; that is, their incentive is to <u>not</u> hedge any of the variable-rate commitments. Hedging in this circumstance <u>increases</u> the ESCO's risk since the agreement between the ESCO and the variable-rate customer is such that the ESCO can pass through the market costs that the ESCO incurs to serve the customer's load, plus a reasonable profit margin. Therefore, the ESCO is assured of a profit if the ESCO serves the variable-rate customer's energy consumption through wholesale market purchases without any hedging.

[20] Civil Action No. 17-5787 (E.D.N.Y.), First Amended Class Action Complaint and Jury Demand, pp. 1-2; Civil Action No. 18-953 (W.D.N.Y.), December 7, 2020, Decision and Order at 2.

[21] Id.

III. Goals and Expectations of Electricity and Natural Gas Industry Restructuring

Energy industry restructuring consists of a variety of reforms intended to improve economic outcomes for market participants, including customers.[22] The typical reform model includes unbundling competitive market components such as electric generation, initiating new or expanded wholesale markets, and introducing competitive procurement of supply.

Retail deregulation (rather than just wholesale deregulation) is a relevant part of overall energy industry restructuring because it establishes how the benefits of wholesale restructuring can potentially be realized by retail customers.[23] Competition in retail markets should, theoretically, result in the convergence of retail and wholesale prices. ESCOs, unlike the franchised monopolies that previously supplied electricity and natural gas, are not guaranteed a customer base or the opportunity to earn a reasonable return. Thus, to be able to compete in an open market in which participants have reasonable access to relevant information, ESCOs should pass through cost savings to their customers, offer novel products and services, and better align service offerings with customer preferences. Additionally, to manage the risk inherent with serving load, ESCOs have an incentive to develop innovative procurement methods and practices.

There are two major risk categories associated with serving fixed-rate customers: volume risk and market price risk.[24] Volume risk refers to the consumption risk associated with such factors as the weather, increases and decreases in the number of customers, and general business and economic conditions. Market price risk stems from the need to balance energy requirements with purchases in the wholesale market.

Mistakes in procurement, marketing, or pricing to end-use consumers—including failure to account for the impacts of market forces—can result in economic losses to an ESCO. Success in managing these factors, meanwhile, can (but is not guaranteed to) provide economic gains.

[22] See: Joskow, P.L. & Schmalensee, R. (1983). *Markets for Power: An Analysis of Electric Utility Deregulation* MIT Press; Peltzman, S. (1989); "The Economic Theory of Regulation after a Decade of Deregulation." Brookings Papers on Economic Activity: Microeconomics, 1-41; and Stigler, G. J., & Friedland, C. (1962). "What Can Regulators Regulate? The Case of Electricity." The Journal of Law & Economics, Vol. 5, 1.

[23] See: Littlechild, S. (2002). "Competition in Retail Electricity Supply." Journal des Economistes et des Etudes Humaines, 12(2). Also see: Hunt, S. (2002). *Making Competition Work in Electricity*. John Wiley & Sons.

[24] See: Bartelj, L., A. F. Gubina, D. Paravan & R. Golob (2010). "Risk management in the retail electricity market: the retailer's perspective." IEEE PES General Meeting, 1-6.

These gains should reflect success with competing in the retail market based on the relative merit of the ESCO's competitive offerings.

The availability of default service provides a backstop to the competitive retail market. It also establishes a benchmark against which one can evaluate ESCOs' rates and the extent to which they offer a competitive rate. In other words, the PTC allows a comparison of the prices offered by ESCOs to what is available from the local monopoly utility, whose rates reflect market conditions.

An ESCO providing energy under a fixed-price arrangement will typically procure almost all of the needed supply using hedging instruments in order to lock in a price for a defined period into the future for a specified quantity of electricity.[25] The same is true for natural gas. The period of such hedges can extend out from days to several years. There is typically additional cost associated with forward-looking purchases since the wholesale supplier is being asked to absorb the market price risk, for which some degree of compensation is required. As the procurement period gets further away (i.e., the fixed-price contract extends further out), the cost of hedged energy generally becomes more expensive, holding all else equal. It is also important to note that some additional electricity and natural gas will need to be purchased to exactly match demand. Consequently, regardless of the hedging strategy, the ESCO will need to incur some degree of risk in serving its fixed-price customers. The potential benefit of a fixed-rate arrangement to the end-use customer is that rates remain stable for the duration of the contract period; that is, the market price risk is borne by the suppliers (some by the wholesale supplier(s) and some by the retail supplier).

Selling energy under a variable-rate arrangement in which the customer agreement provides that the rate may vary according to business or market conditions, as was done by Just Energy, relieves the supplier of almost all the risks applicable to fixed-price rates. If demand increases (e.g., due to weather conditions) or market prices increase, the ESCO can pass on the increased costs to its customers consistent with the contract arrangements under which the ESCO's customers agreed to receive service. In essence, the variable-rate arrangement shifts the burden of risk away from the ESCO and on to the end-use customer. The theoretical benefit of a variable-rate arrangement to the end-use customer is that the customer can expect that, on average, prices will be lower than they would be under a fixed-rate

[25] See Dupuis, D., Gauthier, G., & Godin, F. (2016). "Short-term Hedging for an Electricity Retailer." The Energy Journal, 37(2), 31-59. Retrieved from http://www.jstor.org/stable/24696747.

arrangement due to the difference in the incidence of risk, that is, because the ESCO bears less risk for variable-rate customers. Alternatively stated, variable-rate customers should incur a lower risk premium than fixed-price customers, which should translate into lower average prices.

IV. Calculation of Just Energy Overcharges

I am informed by the Plaintiffs' counsel that, in both the *Jordet* case and the *Donin* case, Just Energy's motions to dismiss were denied by the court and discovery will commence. In the absence of data that the Plaintiffs' counsel expects to be provided by Just Energy, I used publicly available data, as described in each relevant section below, to estimate how much the class of affected Just Energy customers were overcharged from 2011 to 2020. The affected class consists of the residential and commercial electricity and natural gas supply customers of Just Energy (and its affiliates) in the United States who purchased supply from Just Energy under variable rates between 2011 and the present day.[26] The overcharge theory is based on the difference between the electricity and natural gas rates the affected class were charged versus what they would have been charged if Just Energy's rates were based on business and market conditions.

A. Summary of Just Energy Overcharges

In the relevant sections of this report, I describe the methods by which I estimated Just Energy overcharges to the affected class by commodity (electricity and natural gas) and customer class (residential and commercial). Table 1 shows my estimates of Just Energy overcharges for residential electricity customers, commercial electricity customers, residential natural gas customers, and commercial natural gas customers, as well as the total overcharges.

[26] Just Energy also supplies electric and natural gas customers outside the U.S. Sales to those customers, and any potential overcharges related to those sales, are not included in this analysis, which is limited to only U.S. customers.

Table 1. Just Energy Overcharges by Commodity and Customer Class, 2011-2020	
Commodity and Customer Class	**Overcharges**
Electricity – Residential	$1,144,609,092
Electricity – Commercial	$717,711,010
Natural Gas – Residential	$449,392,725
Natural Gas – Commercial	$68,624,767
Total	**$2,380,337,594**

I derived an estimate of Just Energy's overcharges to customers using two public sources of information: the Energy Information Administration's ("EIA's") Form 861, and Just Energy's annual reports. More specifically, I referenced the following information from each source:

- EIA Form 861: I downloaded the annual "Sales to Ultimate Customers" data from 2011-2020. The Sales to Ultimate Customers dataset, according to EIA's website, is "compiled from data collected on the Form EIA-861 and an estimate from Form EIA-861S for data by customer sector." It includes the following information: "retail revenue, sales, and customer counts by state, balancing authority, and class of service (including the transportation sector which was added in 2003) for each electric distribution utility or energy service provider."
- Just Energy Annual Reports: I downloaded the complete annual reports from Fiscal Years ("FYs") 2011-2021. In these reports, I referenced several measures of Just Energy's gross margin (i.e., net sales less the cost of goods sold) and load served. Load served is represented in terms of Residential Customer Equivalent ("RCE"). Just Energy subdivides gross margin and RCE by geographic region (e.g., U.S., Canada, United Kingdom), customer type (e.g., residential or commercial), and commodity type (e.g., natural gas or electricity). The availability of any particular cross-sectional data point (e.g., RCEs for U.S.-based residential gas customers), however, depends on the report year.

In addition to the above public sources, I also referenced utility billing data provided by the Plaintiffs' counsel (from the two complaints in *Jordet* and *Donin*). More specifically, I referenced the following four datasets:

- Mr. Jordet's natural gas supply bills: Provided data include the Just Energy natural gas supply rate for service between April 15, 2016 and February 15, 2018 (22 billing periods) and the PECO Energy Corporation ("PECO") default natural gas service rate for the same period. The provided information was converted from per-hundred-cubic-feet ("CCF") to per-therm using a conversion ratio of 1 therm = 1.037 CCF.

- <u>Ms. Donin's natural gas supply bills</u>: Provided data include the Just Energy natural gas supply rate for service between January 5, 2015 and July 5, 2016 (17 billing periods) and the National Grid USA Service Company, Inc. ("National Grid") default natural gas service rate for the same period. Both rates are represented as per-therm.
- <u>Ms. Donin's electricity supply bills</u>: Provided data include the Just Energy electricity supply rate for service between June 26, 2011 and July 28, 2016 (49 billing periods) and the Consolidated Edison, Inc. ("ConEd") default electricity service rate for the same period. Both rates are represented as per-kilowatt-hour ("kWh").
- <u>Ms. Golovan's electricity supply bills</u>: Provided data include the Just Energy electricity supply rate for service between July 10, 2014 and May 11, 2015 (10 billing periods) and the ConEd default electricity service rate for the same period. Both rates are represented as per-kWh.

For each of the four customer class/commodity pairings (i.e., residential electric, commercial electric, residential natural gas, commercial natural gas), I estimated overcharges using two key measures: Just Energy's excess margin and the quantity of affected Just Energy load. Excess margin represents the amount by which Just Energy is estimated to have charged variable-rate customers in excess of rates that reflect market conditions. The quantity of affected load represents the estimated aggregate class size (i.e., energy usage subject to Just Energy's excess margin). The product of the excess margin and quantity of affected load is equal to the total overcharges incurred by the affected class. The assumptions used to estimate both of these factors differ by customer type (i.e., residential versus commercial) and by utility type (i.e., natural gas versus electricity) due to the nature of provided and/or available data. The following subsections discuss the applicable assumptions for the estimates provided above in Table 1.

The price a variable-rate customer should have been charged in any given month or billing period can be calculated based on a number of benchmarks, including the PTC, or Just Energy's realized cost of serving that customer during that billing period (plus a reasonable profit margin). Once discovery is conducted (and monthly customer-level sales and price data, and cost of sales data, are provided by Just Energy), overcharges can be calculated more precisely for each member of the affected class as well as for the entire class.

I summarize the caveats to my analysis and estimates in the last subsection of this section.

B. Estimated Overcharges to Residential Electricity Customers

I estimated excess margins for all residential electricity customers using the average excess electricity margin applicable to Ms. Donin between June 2012 and July 2016. For each separate billing month within this time frame, I subtracted the default supply rate (i.e., the ConEd PTC rate) from Ms. Donin's Just Energy supply rate. The difference between the Just Energy and default service rate represents the excess margin. The magnitude and direction of the excess margin varies by month. To account for this variability, I used the average excess margin for the full period of provided data.[27] Ms. Donin's average excess electricity margin over these 49 billing periods was $0.0340/kWh.

I estimated the quantity of affected residential electricity load using annual reporting (provided by Just Energy) captured in EIA Form 861. More specifically, I summed the total quantity of reported residential load served by Just Energy and each of Just Energy's affiliates for each year between 2011 and 2020. Available information includes data for Just Energy, Just Energy New York Corp., Amigo Energy, Commerce Energy, Hudson Energy Services, and Tara Energy, LLC. These entities collectively serve or served customers in the following 11 states: California, Delaware, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas. EIA Form 816 data include customers served under various retail rate products, including variable- and fixed-rate plans. I account for the inclusion of non-class volumes (i.e., fixed-rate contracts) in EIA Form 861 data by scaling the total volume by half (i.e., 50%). I selected 50% as a reasonable mid-point given the absence of further information about the nature of Just Energy's customer book and the share of customers served under rates included within the Plaintiffs' proposed class.

I estimated overcharges to residential electricity customers as follows:

Overcharges = Total EIA-Reported Sales x Class Volume Adjustment x Excess Margin
= 67,260,022,000 kWh x 0.5 x $0.0340/kWh
= $1,144,609,092[28]

[27] The electric billing for Ms. Donin is inclusive of the time frame during which Just Energy served another Plaintiff, Ms. Golovan. Further, Ms. Golovan also received Just Energy service in place of default supply from ConEd. I elected to exclude Ms. Golovan's electric billing data to avoid over-weighting the overlapped time period (i.e., July 2014 – May 2015). I note that including Ms. Golovan's excess margins in the excess residential electricity margin calculation would have increased the resulting excess residential electricity margin. Therefore, calculating the excess residential electricity margin based solely on Ms. Donin's billing data is a conservative assumption.

[28] The mismatch is due to independent rounding.

C. Estimated Overcharges to Commercial Electricity Customers

I estimated the excess margin for commercial electricity customers by using the excess electricity margin I calculated for residential customers (see Subsection B above) as the starting point. I adjusted the residential customer excess margin to reflect the average difference in Just Energy's gross margin for residential and commercial customers, as reported by Just Energy on an RCE basis. In general, gross margin for commercial customers is lower than gross margin for residential customers. I evaluated several data points in Just Energy's annual reports to identify the appropriate scaling ratio, and ultimately used 27.3%. This scaling factor equals the ratio of realized base gross margin per RCE for commercial electricity customers to the realized base gross margin per RCE for residential electricity customers, averaged over a two-year period (FY 2020 and FY 2021). Just Energy does not provide a similar measure of realized base gross margin per RCE (as distinguished by commodity and customer class) in its annual reports prior to 2020. However, other potential metrics yield similar average ratios despite being less precise.[29] Multiplying the excess residential electricity margin (i.e., $0.0340/kWh) by the 27.3% adjustment factor for commercial customers yields an estimated excess commercial electricity margin of $0.0093/kWh.

I estimated the quantity of affected electricity customer load using annual reporting (provided to EIA by Just Energy) captured in EIA Form 861. More specifically, I summed the total quantity of reported commercial load served by Just Energy and each of Just Energy's affiliates for each year from 2011 through 2020. The affiliates and the states are the same for commercial and residential customer segments, except for the inclusion of Tara Energy Resources for commercial customers. Similar to the assumption I employed in the residential electricity subsection, I scaled the total volume by half (i.e., 50%) to account for the inclusion of non-class volumes in EIA Form 861 data.

[29] The ratio of average gross margin per RCE (not accounting for commodity type) for commercial and residential customers ranges from 23% to 42% and averages 35% from FY 2013 through FY 2021. A calculated average base gross margin per RCE using reported electricity base gross margin and electricity end-of-fiscal year RCEs (i.e., a point-in-time total, rather than inclusive of all points in time during the period) adjusted for U.S.-only RCEs yields a ratio that ranges from 17% to 36% and averages 23% from FY 2011 through FY 2021.

I estimated overcharges to commercial electricity customers as follows:

Overcharges = Total EIA-Reported Sales x Class Volume Adjustment x Excess Margin
= 154,577,982,000 kWh x 0.5 x $0.0093/kWh
= $717,711,010[30]

D. Estimated Overcharges to Residential Natural Gas Customers

I estimated the excess margin for all residential natural gas customers using the average excess natural gas margin applicable to Plaintiffs Mr. Jordet and Ms. Donin from April 2016 to February 2018 and from January 2015 to July 2016, respectively. For each separate billing month within this time frame (for both customers), I subtracted the default supply rate (i.e., PECO or National Grid service rate) from the applicable Just Energy supply rate. To account for variability, I used the average excess margin for the full period of provided data. The average excess natural gas margin over these 22 billing periods for Mr. Jordet and 17 billing periods for Ms. Donin was $0.2478/therm.

I estimated the quantity of affected residential natural gas load using RCE data provided in Just Energy's annual reports. First, I identified the end-of-period RCE quantities by customer class and commodity type. These data points are available as far back as FY 2013. For FY 2011 and FY 2012, Just Energy's RCE reporting does not distinguish between residential and commercial customers. For these years, I apportioned the provided total RCEs between customer classes using the average ratio of residential to commercial RCEs from the FY 2013 through FY 2021 period. Second, I adjusted the provided RCE data to remove non-U.S. customers. This adjustment was made using a percentage share of RCEs attributable to U.S. customers. The best available data from Just Energy were used for each review period year when adjusting for U.S. versus non-U.S. location.[31] Third, I converted RCEs into therms using Just Energy's provided definition of 1 RCE = 1,000 therms per year for natural gas customers. Fourth, I shifted the data to a calendar year basis (versus fiscal year basis) using period weighting. The estimated RCE data in each Annual Report represent an end-of-period, point-in-time estimate as of the last day (March 31) of the applicable FY. I derived 25% of the weighted total for a calendar year from the FY report starting in the same year, and the

[30] The mismatch is due to independent rounding.

[31] From FY 2017 to FY 2021, this share is differentiated by customer type but not by commodity type. From FY 2013 to FY 2016, this share is only provided on a book-wide basis (i.e., not differentiated by customer type or by commodity type). From FY 2011 to FY 2012, this share is differentiated by commodity type but not by customer type.

remaining 75% portion for the FY report starting in the next year.[32] Fifth, I adjusted the RCE to better approximate actual load to account for distinctions between RCEs (an aggregate, imprecise measure) and customer usage. The scaling factor applied to this adjustment is calculated based on the observed relationship between residential electricity RCEs (converted into kWh using a similar process as Steps 1 through 4 outlined above) and EIA-reported annual residential usage. For residential customers, this scaling factor equals 86% (i.e., actual load is lower than RCE load) based on the average ratio between Just Energy RCEs and EIA Form 861 kWh load from 2011 through 2020 for residential customers. Finally, similar to the approach I followed as described in the previous subsections, I account for the inclusion of non-class volumes in Just Energy's RCE totals by scaling the total volume by half (i.e., 50%).

I estimated overcharges to residential natural gas customers as follows:

Overcharges = Total Sales x Class Volume Adjustment x Excess Margin
= 3,626,720,117 therms x 0.5 x $0.2478/therm
= $449,392,725[33]

E. Estimated Overcharges to Commercial Natural Gas Customers

I estimated the excess margin for commercial natural gas customers by using the excess natural gas margin I calculated for residential customers (see above) as the starting point. I adjusted the excess natural gas margin for residential customers to reflect the average difference in Just Energy's gross margin for residential and commercial customers. I evaluated several data points in Just Energy's annual reports to identify the appropriate scaling ratio, and ultimately used 25.1%. This ratio equals the ratio of the realized base gross margin per RCE for commercial gas customers to the realized base gross margin per RCE for residential gas customers, averaged over a two-year period (FY 2020 and FY 2021). As noted above, Just Energy does not provide a similar measure of realized base gross margin per RCE (as distinguished by commodity and customer class) in its annual reports prior to 2020. Multiplying the residential excess natural gas margin (i.e., $0.2478/therm) by the 25.1% adjustment factor for commercial customers yields a commercial excess natural gas margin of $0.0622/therm.

[32] For example, the calendar year 2020 RCE total is estimated based on 25% of the FY 2020 reported RCE (i.e., as of March 31, 2020) and 75% of the FY 2021 reported RCE (i.e., as of March 2021).

[33] The mismatch is due to independent rounding.

I estimated the quantity of affected commercial natural gas load using RCE data provided in Just Energy's annual reports. The steps to convert fiscal year RCEs into calendar year therms for commercial customers are similar to those applicable to residential customers, except I used the data reported by Just Energy for commercial customers. Like the adjustment I performed for residential natural gas customers, I adjusted the RCE to better approximate actual load to account for distinctions between RCEs and customer usage. For commercial customers, this scaling factor equals 108% (i.e., actual load is higher than RCE load) based on the average ratio between Just Energy RCEs and EIA Form 861 kWh load from 2011 through 2020 for commercial customers. I scaled the total volume by half (50%) to account for the inclusion of non-class volumes in Just Energy's RCE data.

I estimated overcharges to commercial natural gas customers as follows:

Overcharges = Total Sales x Class Volume Adjustment x Excess Margin
= 2,204,852,190 therms x 0.5 x $0.0622/therm
= $68,624,767[34]

F. Caveats

The overcharge estimates provided above are based on the best available information at this time. In several cases, I made assumptions regarding the volume of the affected class load and the applicable excess margin due to the absence of more detailed determinants. Plaintiffs' counsel informed me that the more detailed determinants applicable to these calculations will be available through discovery. Therefore, I reserve the right to modify my findings based upon new information. This includes updating the methodology described above to account for more precise or disaggregate determinants and measures of overcharges.

The major simplifying assumptions employed in my analysis and overcharge estimates include the following:

- The excess electricity margin for residential customers was derived using one customer's billing data. Due to this small sample size, my estimate for the residential excess electricity margin is subject to potentially significant modification with the availability of additional data. The average realized excess electricity margin for all of

[34] The mismatch is due to independent rounding.

Just Energy's residential variable-rate customers may be higher or lower than the estimate contained in this report.

- The excess electricity margin for commercial customers was derived using my estimate for the excess electricity margin for residential customers and an adjustment factor for the difference between Just Energy's unitized gross margin for commercial and residential customers. Therefore, my estimate for the commercial excess electricity margin is also subject to potentially significant modification with the availability of additional data. The average realized excess electricity margin for all of Just Energy's commercial variable-rate customers may be higher or lower than the estimate contained in this report.

- The excess natural gas margin for residential customers was derived using two customers' billing data. Due to this small sample size, my estimate for the residential excess natural gas margin is subject to potentially significant modification with the availability of additional data. The average realized excess natural gas margin for all of Just Energy's residential variable-rate customers may be higher or lower than the estimate contained in this report.

- The excess natural gas margin for commercial customers was derived using my estimate of the excess natural gas margin for residential customers and an adjustment factor for the difference between Just Energy's unitized gross margin for commercial and residential customers. Therefore, my estimate for the commercial excess natural gas margin is also subject to potentially significant modification. The average realized excess natural gas margin for all of Just Energy's commercial variable-rate customers may be higher or lower than the estimate contained in this report.

- I estimated Just Energy's (and its affiliates') total electricity sales to residential and commercial customers based on the data published annually by EIA. While I expect that the customer-level data that the Plaintiffs' counsel anticipates receiving from Just Energy as part of the discovery process will result in similar volumes, they may differ from the EIA-reported sales volume data for various reasons such as adjustments and reporting discrepancies.

- I estimated Just Energy's (and its affiliates') total natural gas sales to residential and commercial customers based on the RCE data reported by Just Energy in its annual reports and various conversion and adjustment factors to convert these RCE data into relevant units (kWh for electricity, therms for natural gas). While I expect that the customer-level data that the Plaintiffs' counsel anticipates receiving from Just Energy as part of the discovery process will result in similar volumes, they may differ from my estimates due to the assumptions I relied upon in this conversion process.

- I estimated the affected (variable-rate) volumes of loads for Just Energy's electricity and natural gas customers in the United States as a percentage of my estimates of Just Energy's total electricity and natural gas sales to residential and commercial customers. I assumed that Just Energy's sales to each customer class-commodity pairing made under variable-rate plans account for half of Just Energy's total sales for each such pairing. The true volume of Just Energy's sales customers made under variable-rate plans, which will be able to be calculated from information obtained through the discovery process, potentially can be significantly larger or significantly smaller than the estimates contained in this report.

V. Conclusion

I estimated Just Energy's overcharges to its residential and commercial electricity and natural gas customers using the small sample of customer billing data I received from the Plaintiffs' counsel and two categories of publicly available information: EIA Form 861 and Just Energy's annual reports. Based on the more precise customer-level data and Just Energy's cost-of-sales data that I anticipate receiving as part of the discovery process, I will be able to more accurately calculate Just Energy's overcharges to each class member, and thus for the entire affected class.

This concludes my expert report.

Dated: November 1, 2021

Serhan Ogur, Ph.D.

Exhibit A – Resume of Serhan Ogur, Ph.D.

SERHAN OGUR

Dr. Ogur is a Principal of Exeter Associates, Inc. with 20 years of experience in the energy industry specializing in organized wholesale (Regional Transmission Organization/Independent System Operator) and retail electricity markets. Dr. Ogur's diverse background comprises energy management and consulting; analysis, design, and reporting of RTO electricity markets and products; and state and federal regulation of electric utilities.

Dr. Ogur's coursework in graduate school focused on Microeconomic Theory, Game Theory, and Industrial Organization. His doctoral dissertation investigates imperfect competition in deregulated wholesale electricity markets and oligopolistic competition between private and public generators.

Education

B.A. (Economics) – Bogazici University, Istanbul, Turkey, 1996

Ph.D. (Economics) – Northwestern University, Evanston, IL, 2007

Previous Employment

2014-2015 Senior System Operator
Fellon-McCord & Associates, LLC
Louisville, KY

2005-2014 Senior Economist
PJM Interconnection, LLC
Audubon, PA

2001-2005 Economic Analyst
Illinois Commerce Commission
Springfield, IL

Professional Experience

Dr. Ogur's work at Exeter includes analysis of electricity supply contracts; utility rates and tariffs; energy markets and prices; power procurement; default electric service design; project evaluation; demand response opportunities; congestion hedging strategies; and price forecasting.

Prior to joining Exeter, Dr. Ogur's responsibilities at Fellon-McCord encompassed overseeing and performing the daily tasks of the "24/7" wholesale electricity desk, including all aspects of scheduling, managing, and monitoring direct market participant load and generation assets (mostly in ISO/RTO markets) as well as their settlements and custom reporting. He was also in charge of developing strategies and making recommendations, through analytical, financial, and

market research, for longer-term management of clients' load obligations and generation assets such as Auction Revenue Rights (ARR) nominations; participation in energy, ancillary services, and capacity markets; load forecasting; energy, basis, and capacity price forecasting; hedging; and peak load management. Dr. Ogur also served as the company's lead analyst in various special consulting projects.

In PJM Interconnection's Market Strategy and Market Analysis departments, Dr. Ogur was responsible for analyzing and reporting on all PJM-administered electricity market products, including day-ahead and real-time energy, operating reserve, regulation, synchronized reserve, virtual transactions, financial transmission rights, capacity, demand response, energy efficiency, and renewables. He was part of the team that developed the protocols and business rules for participation of energy efficiency in PJM markets as well as a lead reviewer for energy efficiency plans and post-installation measurement and verification (M&V) reports for PJM's capacity market auctions. He also has training and experience in PJM's stakeholder management process.

Dr. Ogur's responsibilities at the Illinois Commerce Commission (ICC) included monitoring all Illinois-related developments under federal jurisdiction, mostly Federal Energy Regulatory Commission (FERC) filings and rulings concerning major Illinois electric public utilities. In addition, Dr. Ogur reviewed all actions concerning Illinois public utilities at the FERC level (applications to join RTOs, market-based rate authority filings, merger applications, transmission rate cases, etc.), and developed positions and official comments for the consideration of the ICC to file in the related FERC dockets. Dr. Ogur also filed written testimony and served as staff witness (including standing cross-examination) in the ICC dockets establishing auction-based competitive wholesale energy procurement mechanisms for major Illinois electric public utilities.

Expert Testimony

Before the Pennsylvania Public Utility Commission, Docket Nos. A-2021-3025659 and A-2021-3025662, Pike County Light & Power Company and Leatherstocking Gas Company, LLC, 2020, on behalf of the Pennsylvania Office of Consumer Advocate. Testimony addressed public utility merger and acquisition issues.

Before the U.S. District Court for the District of New Jersey, Civil Action No. 3:17-cv-02680-MAS- LHG, 2021, on behalf of Janet Rolland, et al. Testified on systematic overcharges by a retail electric supplier in a class action suit with plaintiffs in eight states.

Before the Pennsylvania Public Utility Commission, Docket No. P-2020-3022988, Pike County Light & Power Company, 2020, on behalf of the Pennsylvania Office of Consumer Advocate. Testimony addressed default service issues.

Before the Pennsylvania Public Utility Commission, Docket No. P-2020-3019907, UGI Utilities, Inc. – Electric Division, 2020, on behalf of the Pennsylvania Office of Consumer Advocate. Testimony addressed default service issues.

Before the Pennsylvania Public Utility Commission, Docket No. P-2020-3019522, Duquesne Light Company, 2020, on behalf of the Pennsylvania Office of Consumer Advocate. Testimony addressed default service issues.

Before the Pennsylvania Public Utility Commission, Docket Nos. P-2020-3019383 and P-2020-3019384, Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company, 2020, on behalf of the Pennsylvania Office of Consumer Advocate. Testimony addressed default service issues.

Before the Pennsylvania Public Utility Commission, Docket No. P-2016-2534980, PECO Energy Company, 2016, on behalf of the Pennsylvania Office of Consumer Advocate. Testimony addressed default service issues.

Before the Illinois Commerce Commission, Docket No. 05-0159, Commonwealth Edison Company, 2005, on behalf of the Staff of Illinois Commerce Commission. Testimony addressed default service design and competitive procurement issues.

Before the Illinois Commerce Commission, Docket Nos. 05-0160, 05-0161, and 05-0162 (Consolidated), Central Illinois Light Company d/b/a AmerenCILCO, 2005, on behalf of the Staff of Illinois Commerce Commission. Testimony addressed default service design and competitive procurement issues.

Before the Illinois Commerce Commission, Docket No. 02-0428, Central Illinois Light Company and Ameren Corporation, 2002, on behalf of the Staff of Illinois Commerce Commission. Testimony addressed competition issues in a utility merger case.

This is Exhibit “I” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

From: Rebecca Kennedy <Rkennedy@tgf.ca>
Sent: Friday, November 12, 2021 12:37 PM
To: Steven Wittels <slw@wittelslaw.com>; Robert Thornton <RThornton@tgf.ca>; Samuel Robinson <SamR@stockwoods.ca>; Stephen Aylward <StephenA@stockwoods.ca>
Cc: Burkett McInturff <jbm@wittelslaw.com>; Susan J. Russell <sjr@wittelslaw.com>; Greg Blankinship <gblankinship@FBFGLaw.com>; Jonathan Shub <jshub@shublawyers.com>; Kevin Laukaitis <klaukaitis@shublawyers.com>; Robert Tannor <rtannor@tannorpartners.com>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; Robinson, Jim <Jim.Robinson@fticonsulting.com>; Wasserman, Marc <MWasserman@osler.com>; De Lellis, Michael <MDeLellis@osler.com>; Dacks, Jeremy <JDacks@osler.com>
Subject: RE: In the Matter of Just Energy Group Inc. et al - Court File No. CV-21-00658423-00CL

Hi Steven,

Thank you for your email.

The Monitor does not have any financial information available to share with you with respect to the restructuring. We think that the request set out below is best directed to the Company. As such, we have copied their counsel here so that you can connect.

We hope that this helps.

Best,
Rebecca

Rebecca Kennedy | | Rkennedy@tgf.ca | Direct Line +1 416 304 0603 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: Steven Wittels [mailto:slw@wittelslaw.com]
Sent: November 11, 2021 6:14 PM
To: Rebecca Kennedy <Rkennedy@tgf.ca>; Robert Thornton <RThornton@tgf.ca>; Samuel Robinson <SamR@stockwoods.ca>; Stephen Aylward <StephenA@stockwoods.ca>
Cc: Burkett McInturff <jbm@wittelslaw.com>; Susan J. Russell <sjr@wittelslaw.com>; Greg Blankinship <gblankinship@FBFGLaw.com>; Jonathan Shub <jshub@shublawyers.com>; Kevin Laukaitis <klaukaitis@shublawyers.com>; Robert Tannor <rtannor@tannorpartners.com>
Subject: In the Matter of Just Energy Group Inc. et al - Court File No. CV-21-00658423-00CL

Ms. Kennedy and Mr. Thornton:

As you know from our filings and yesterday's hearing before the Court, my firm together with the Blankinship and Shub firms represents the Class of millions Just Energy [JE]consumers in the United States who have suffered substantial overcharge damages after switching from their incumbent utility to Just Energy. In order to evaluate any proposed plan of re-organization by JE, our clients need access to certain financial information. Thus, as we discussed at the hearing, and as Ms. Kennedy alluded to, we and our Canadian counsel would like to have a meeting with you to discuss our being provided access to this data. We will of course be prepared to enter the necessary NDA to preserve the integrity of the data.

Please confirm your availability tomorrow Friday November 12 from 8 AM to 10:45 AM ET., or Monday morning, November 14 for a ZOOM conference.

We look forward to hearing from you. Thank you,

Steven L Wittels

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From: "Paplawski, Emily" <EPaplawski@osler.com>
Date: Wednesday, November 10, 2021 at 4:17 PM
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"kelly.bourassa@blakes.com" <kelly.bourassa@blakes.com>, "aneil@hydro.mb.ca" <aneil@hydro.mb.ca>,
"bempey@goodmans.ca" <bempey@goodmans.ca>, "nlepore@schnader.com" <nlepore@schnader.com>,
"rbarkasy@schnader.com" <rbarkasy@schnader.com>, "mkonyukhova@stikeman.com"
<mkonyukhova@stikeman.com>, "davidnoble@puc.nv.gov" <davidnoble@puc.nv.gov>,
"dlomoljo@puc.nv.gov" <dlomoljo@puc.nv.gov>, "tobrien@lzwlaw.com" <tobrien@lzwlaw.com>,
"bmv@energybankinc.com" <bmv@energybankinc.com>, "ben.huff@elevationeg.com"
<ben.huff@elevationeg.com>, "dmichaud@kwhydro.ca" <dmichaud@kwhydro.ca>,
"michael.b@empirearmi.com" <michael.b@empirearmi.com>, "diane.winters@justice.gc.ca"
<diane.winters@justice.gc.ca>, "leslie.crawford@ontario.ca" <leslie.crawford@ontario.ca>,
"insolvency.unit@ontario.ca" <insolvency.unit@ontario.ca>, "paul.fagan@amcapr.com"
<paul.fagan@amcapr.com>, "ihurley@leckerslaw.com" <ihurley@leckerslaw.com>, "tina@leckerslaw.com"
<tina@leckerslaw.com>, "Heather.Kirwin@cdw.ca" <Heather.Kirwin@cdw.ca>, "pat.confalone@cra-arc.gc.ca"
<pat.confalone@cra-arc.gc.ca>, "tbf.minister@gov.ab.ca" <tbf.minister@gov.ab.ca>, "associateminister-rtr@gov.ab.ca" <associateminister-rtr@gov.ab.ca>, "Monique.Sampson@Logix.com"
<Monique.Sampson@Logix.com>, "Credit@Logix.com" <Credit@Logix.com>,
"tonie.bloomingberg@logix.com" <tonie.bloomingberg@logix.com>, "harvey@chaitons.com"
<harvey@chaitons.com>, "Don.Verdon@cbts.com" <Don.Verdon@cbts.com>,
"Yana.Nedyalkova@computershare.com" <Yana.Nedyalkova@computershare.com>,
"John.Poolman@computershare.com" <John.Poolman@computershare.com>,
"Jonathan.ChampouxCadoche@computershare.com" <Jonathan.ChampouxCadoche@computershare.com>,
"james.bartlett@rockpointgs.com" <james.bartlett@rockpointgs.com>, "bcomfort@strategicgroup.ca"
<bcomfort@strategicgroup.ca>, "aaitchison@strategicgroup.ca" <aaitchison@strategicgroup.ca>,
"lnorton@lpc.com" <lnorton@lpc.com>, "bcaravela@LPC.com" <bcaravela@LPC.com>,
"mengelberg@HydroOne.com" <mengelberg@HydroOne.com>, "rmacdonald@foglers.com"
<rmacdonald@foglers.com>, "jleslie@dickinsonwright.com" <jleslie@dickinsonwright.com>,
"lcorne@dickinsonwright.com" <lcorne@dickinsonwright.com>, "rgurofsky@blg.com" <rgurofsky@blg.com>,
"gtremblay@blg.com" <gtremblay@blg.com>, "fgagnon@blg.com" <fgagnon@blg.com>,
"lgalessiere@cglegal.ca" <lgalessiere@cglegal.ca>, "jwuthmann@cglegal.ca" <jwuthmann@cglegal.ca>,
"tdunn@mindengross.com" <tdunn@mindengross.com>, "sskorbinski@mindengross.com"
<sskorbinski@mindengross.com>, "lmorwick@silvercreekmanagement.com"
<lmorwick@silvercreekmanagement.com>, "bjoynt@silvercreekmanagement.com"
<bjoynt@silvercreekmanagement.com>, "colin.brousson@dlapiper.com" <colin.brousson@dlapiper.com>,
"pcho@weirfoulds.com" <pcho@weirfoulds.com>, "mallen@weirfoulds.com" <mallen@weirfoulds.com>,
"andrew@crabtreelaw.ca" <andrew@crabtreelaw.ca>, "rsalsterda@nixonpeabody.com"

<rsalsterda@nixonpeabody.com>, "streusand@slollp.com" <streusand@slollp.com>, "michael.schafler@dentons.com" <michael.schafler@dentons.com>, "jsteiner@lionguardcapital.com" <jsteiner@lionguardcapital.com>, "bedmiston@alvarezandmarsal.com" <bedmiston@alvarezandmarsal.com>, "beth.baker@wvago.gov" <beth.baker@wvago.gov>, "chris.burr@blakes.com" <chris.burr@blakes.com>, "eperal@kelleydrye.com" <eperal@kelleydrye.com>, "emma.dalziel@gowlingwlg.com" <emma.dalziel@gowlingwlg.com>, "scoleman@alvarezandmarsal.com" <scoleman@alvarezandmarsal.com>, "zychk@bennettjones.com" <zychk@bennettjones.com>, "swanr@bennettjones.com" <swanr@bennettjones.com>, "bellp@bennettjones.com" <bellp@bennettjones.com>, "fosterj@bennettjones.com" <fosterj@bennettjones.com>, "rpoorman@metzlewis.com" <rpoorman@metzlewis.com>, "washingtons@natfuel.com" <washingtons@natfuel.com>, "thomas.roussy@avocatsratelle.com" <thomas.roussy@avocatsratelle.com>, "kwoodard@krcl.com" <kwoodard@krcl.com>, "linc.rogers@blakes.com" <linc.rogers@blakes.com>, "Operations-ICENGX-Clearing@TheIce.com" <Operations-ICENGX-Clearing@TheIce.com>, "md@dundon.com" <md@dundon.com>, "er@dundon.com" <er@dundon.com>, "mwinchester@festivalhydro.com" <mwinchester@festivalhydro.com>, "grahamj@festivalhydro.com" <grahamj@festivalhydro.com>, "blaborie@bridgehouselaw.ca" <blaborie@bridgehouselaw.ca>, "stephena@stockwoods.ca" <stephena@stockwoods.ca>, Greg Blankinship <gblankinship@fbfglaw.com>, Jonathan Shub <jshub@shublawyers.com>, Kevin Laukaitis <klaukaitis@shublawyers.com>, Steven Wittels <slw@wittelslaw.com>, Burkett McInturff <jbm@wittelslaw.com>, Steven D Cohen <sdc@wittelslaw.com>, "jbellissimo@cassels.com" <jbellissimo@cassels.com>, Rachel Bengino <RBengino@tgf.ca>, "Rintoul, Andrew" <arintoul@osler.com>, "BlinickJ@bennettjones.com" <BlinickJ@bennettjones.com>, "HancK@bennettjones.com" <HancK@bennettjones.com>, "SolwayG@bennettjones.com" <SolwayG@bennettjones.com>, "nrenner@dwpv.com" <nrenner@dwpv.com>, "dricci@dwpv.com" <dricci@dwpv.com>, "brandon.mason@faegredrinker.com" <brandon.mason@faegredrinker.com>, "Aaron J. Atkinson" <AAtkinson@dwpv.com>
Subject: In the Matter of Just Energy Group Inc. et al - Court File No. CV-21-00658423-00CL

Service List:

Please find attached the two orders granted this afternoon by Justice Koehnen in the above noted matter.

Regards,

OSLER

Emily Paplawski
Associate
403.260.7071 | EPaplawski@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

****

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****

This is Exhibit "J" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

A Commissioner for taking Affidavits (or as may be)

Ernst & Young Corporate Finance LLC
Privileged & Confidential
Attorney Work Product
Preliminary & Tentative

Tannor Capital Advisors LLC

Due Diligence List - Just Energy

Green is we have, Blank we need

	Date	Format

I. Case Catch up and Latest Info

A.
1. Can you please send the Plan term sheets?
2. What are the company projections for 2022, 2023, 2024? Can you provide details?
3. Osler agreed to furnish the DIP loan agreement and modifications on the last call. Can you provide?

B.
1. Are the secured creditors really secured? Can you provide us an opinion on whether the agreements have been deemed to be secured agreements? Can you provide them to us?
2. Why haven't the deeply in the money hedges and forwards been closed out? Why are these instruments showing show much unrealized gains? Is there are match of forwards and hedges to the company's current demand (gas and electricity)? What is the current forecasted demand vs historical demand?
3. Can you walk through the last released financial statement with us, the one showing equity book value?
4. Can you walk us through how the company is thinking about its valuation as it emerges from CCAA proceedings?
5. What is the value proposition to customers that make the business plan viable on a go forward basis? And how is the business plan sustainable from a viability perspective?

II. Financial Information

A. Financial Statements
1. Will you provide us the past 3 years Annual Audited - Income Statement, balance sheet, cash flow with notes?

B. Operations and Customers
1. Can you provide information on historical customer count and usage versus projected customer count and usage?
2. Can you provide information on historical COGS versus future company estimates of COGS?
3. How do the hedges / future / trading instruments fit into the supply - demand profiles?
4. Are the COGS different for variable and fixed revenue customers?

C Revenue Detail

1. Please provide some information on how the company is thinking about its projected revenue breakdown by customer & product offering &Jurisdiction

E Operating Cash Budget

1. Can you please provide copies of budget to actual rolling 13 week, 26 week, X week cash flow reports from inception to current?

F Cash Balances

1. What is the company forecasting for its exit cash needs?
2. What are the current cash balances by bank?
3. What are the escrow account detail?
4. What is the amount of Cash Collateral held by ISOs and all third parties?

G Asset Sales - And closures

1 What are the estimates of final proceeds for all closures (negative numbers) and positive ones for closures and sales?

III. Legal and Restructuring initiatives

A Restructuring initiatives/contracts

1. What restructuring initiatives are being taken to add value to unsecured creditors and unsecured creditor recoveries?
2. Can you provide details on any changes to customer agreements which may have an affect on customer take rates or churn?

C. Insurance

1 Will you provide us details and copies of the D&O Insurance policy?
2 Will you provide us details and copies of all of the insurance policies?
3 Are customer claims covered by any other insurance coverage?

III. Taxes

A. 1 Can you provide us with details of Taxes payable, carry forwards, and refunds owed?

This is Exhibit "K" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

A Commissioner for taking Affidavits (or as may be)

From: Dacks, Jeremy <JDacks@osler.com>
Sent: Wednesday, December 8, 2021 12:05 PM
To: De Lellis, Michael; Wasserman, Marc; Steven Wittels
Cc: Jeff Larry; Ken Rosenberg; rthornton@tgf.ca; rkennedy@tgf.ca; RexHong@tannorcapital.com; Burkett McInturff; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita Sanasie; Megan Bradt; rtannor@tannorcapital.com; Susan J. Russell; Steven D. Cohen; Robert Tannor; Robinson, Jim; Bishop, Paul
Subject: RE: Just Energy Call. Wed Dec 8 1PM. ZOOM
Attachments: Just Energy -- TCA question list - 12-8-2021 -.xlsx; F22 Business Plan - May 2021.pdf; JE - Compiled Term Sheet.PDF; JE - Amendment No. 1 to DIP Term Sheet (Executed)_(75655836_1).pdf; 70951553_1.pdf

PRIVATE AND CONFIDENTIAL

Hi everyone.

Please find enclosed our comments on the TCA question list for our call today, and copies of the Business Plan and DIP Term Sheet and written amendments referred to therein.

Thanks,
Jeremy

OSLER

Jeremy Dacks
Partner
416.862.4923 | 647.406.1500 (cell) | JDacks@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Appointment-----
From: De Lellis, Michael <MDeLellis@osler.com>
Sent: Monday, December 06, 2021 7:32 PM
To: De Lellis, Michael; Wasserman, Marc; Steven Wittels
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy; RexHong@tannorcapital.com; Burkett McInturff; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell; Steven D. Cohen; Robert Tannor; Robinson, Jim; Bishop, Paul
Subject: Just Energy Call. Wed Dec 8 1PM. ZOOM
When: Wednesday, December 08, 2021 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

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Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Or call in (audio only)
+1 437-703-5283,,236562596#   Canada, Toronto
Phone Conference ID: 236 562 596#
Find a local number | Reset PIN

Learn More | Meeting options

____

From: Wasserman, Marc <MWasserman@osler.com>
Sent: Saturday, December 04, 2021 11:35 AM
To: Steven Wittels <slw@wittelslaw.com>
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; De Lellis, Michael <MDeLellis@osler.com>; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; RexHong@tannorcapital.com; Burkett McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>
Subject: Re: Just Energy Call. Wed Dec 8 1PM. ZOOM

Great. We will send a teams or zoom invite and provide answers on your list prior to the call. Have a nice weekend. Marc

Marc Wasserman
Office: 416.862.4908
Mobile: 416.904.3614
MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

On Dec 4, 2021, at 11:29 AM, Steven Wittels <slw@wittelslaw.com> wrote:

Marc:

1. If you have no other time at all Monday or Tuesday, yes we will take 1PM Wednesday.

We'd like it to be a ZOOM video conference. Please advise who will be on the ZOOM and we can set up the invite, or let us know if you want to set it up.

2. Based on the list we sent you Thursday, please email us the documents/data in advance that we requested so we're better prepared to discuss on the call. Please confirm.

Thx. SLW
Steven L Wittels

On 12/4/21, 10:19 AM, "Wasserman, Marc" <MWasserman@osler.com> wrote:

Monday does not work unfortunately, neither does Tuesday. Wednesday does. Do you want the call at 1pm Wednesday?

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Message-----
From: Steven Wittels <slw@wittelslaw.com>
Sent: Saturday, December 04, 2021 10:15 AM
To: Wasserman, Marc <MWasserman@osler.com>; Jeff.Larry@paliareroland.com; Ken.Rosenberg@paliareroland.com; rthornton@tgf.ca
Cc: De Lellis, Michael <MDeLellis@osler.com>; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; RexHong@tannorcapital.com; Burkett McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>
Subject: Re: Just Energy Call. Monday Afternoon

Marc:

We'd like to have this call on Monday afternoon given that we asked for it nearly a week ago, and provided Just Energy and the Monitor the topics we want to discuss and the documents/data we need. Given the expedited time frame for the reorganization, we don't understand why the company is taking so long to respond to our requests for basic information to which we're entitled.

Please coordinate a time for Monday, and advise today.

Thank you, SLW.

Steven L Wittels
WMP | Partner
18 Half Mile Road | Armonk NY 10504
slw@wittelslaw.com |
https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwittelslaw.com%2F&data=04%7C01%7CMWasserman%40osler.com%7C9a1fd3ee03124e2bcfb708d9b7433ebe%7C38b8d7e73b2745709e91cf2ab620b2cd%7C1%7C0%7C637742321704739325%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=ED0TPBq7%2BtkwVaABcjPkN81iIFX%2BFyJy5qtbFuhRimw%3D&reserved=0
Phone: 914 319-9945 Fax: 914 273 2563

On 12/4/21, 9:57 AM, "Wasserman, Marc" <MWasserman@osler.com> wrote:

Does 1pm Wednesday work for the call.

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Message-----
From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>
Sent: Thursday, December 02, 2021 6:17 PM
To: Wasserman, Marc <MWasserman@osler.com>
Cc: De Lellis, Michael <MDeLellis@osler.com>; RThornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; Ken.Rosenberg@paliareroland.com; RexHong@tannorcapital.com; jbm@wittelslaw.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; slw@wittelslaw.com; rtannor@tannorcapital.com
Subject: RE: Just Energy Call

Marc
The list of questions is attached.
Please let us know if we can arrange a call some time tomorrow after 345 or anytime Monday after 11.
Thanks,

From: Wasserman, Marc <MWasserman@osler.com>
Sent: November 30, 2021 6:32 PM
To: Jeff Larry <Jeff.Larry@paliareroland.com>
Cc: De Lellis, Michael <MDeLellis@osler.com>; rthornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; RexHong@tannorcapital.com; jbm@wittelslaw.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>; Megan Bradt <Megan.Bradt@paliareroland.com>; slw@wittelslaw.com; rtannor@tannorcapital.com
Subject: Re: Just Energy Call

Happy to have another call but there is no real utility in have a call without a list of questions that you want answered in advance so we can have the appropriate people on. That is what we discussed on the last call. If can get us the list, we will arrange the call as soon as possible. Marc

Marc Wasserman
Office: 416.862.4908<tel:416.862.4908> | Mobile: 416.904.3614<tel:416.904.3614> | MWasserman@osler.com<mailto:MWasserman@osler.com>

Osler, Hoskin & Harcourt LLP | osler.com<file:///var/tmp/com.apple.email.maild/EMContentRepresentation/com.apple.mobilemail/CC01ADB3-FE4A-45FA-9512-115CCF15F494/https://can01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.osler.com%2F&data=04%7C01%7CMWasserman%40osler.com%7C9a1fd3ee03124e2bcfb708d9b7433ebe%7C38b8d7e73b2745709e91cf2ab620b2cd%7C1%7C0%7C637742321704739325%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Nvielg7vkf%2FR2c86fyvZ2CHEVS1eNTIStBBGqCWDHUs%3D&reserved=0>

On Nov 30, 2021, at 6:07 PM, Jeff.Larry@paliareroland.com<mailto:Jeff.Larry@paliareroland.com> wrote:

All:

We would like to arrange follow-up ZOOM video call.

Can you let us know if these times work:

· tomorrow between 11am-1pm or 3pm-7pm; or

· Thursday at 11:30am or after.

I can confirm that I now have most of the signatures on the NDA back from our side and I will circulate them in advance of the call.

Jeff

Jeffrey Larry, LL.B, MBA
Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
t: 416.646.4330
f: 416.646.4301
c: 416.553.2789
e: jeff.larry@paliareroland.com
<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

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de le divulguer sans autorisation.

****

This is Exhibit “L” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

A Commissioner for taking Affidavits (or as may be)

Just Energy Announces ERCOT's Calculations of Recovery Amounts Under Texas House Bill 4492 of Certain Costs of the Texas Winter Weather Event

December 9, 2021

TORONTO, Dec. 09, 2021 (GLOBE NEWSWIRE) -- Just Energy Group Inc. ("**Just Energy**" or the " **Company**") (TSXV:JE; OTC:JENGQ), announced today an update of the expected recovery by Just Energy from the Electric Reliability Council of Texas, Inc. ("**ERCOT**") of certain costs incurred during the extreme weather event in Texas in February 2021 (the "**Weather Event**") as previously disclosed, which is expected to be approximately USD $147.5 million. On December 7, 2021, ERCOT filed its calculation with the Public Utility Commission of Texas (the "**PUCT**") in accordance with the PUCT final order implementing Texas House Bill 4492 ("**HB 4492**"). ERCOT's calculations are subject to a 15-day verification period and accordingly, remain subject to change.

As previously reported, FTI Consulting Canada Inc. (the "**Monitor**") is overseeing the proceedings of Just Energy under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") as the court-appointed monitor. Further information regarding the CCAA proceedings is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy. Information regarding the CCAA proceedings can also be obtained by calling the Monitor's hotline at 416-649-8127 or 1-844-669-6340 or by email at justenergy@fticonsulting.com.

About Just Energy Group Inc.

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Currently operating in the United States and Canada, Just Energy serves residential and commercial customers. Just Energy is the parent company of Amigo Energy, Filter Group, Hudson Energy, Interactive Energy Group, Tara Energy, and terrapass. Visit https://investors.justenergy.com to learn more.

FORWARD-LOOKING STATEMENTS

This press release may contain forward-looking statements, including with respect to the amount of cost recovery proceeds Just Energy expects to receive from ERCOT under HB 4492. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks may include, but are not limited to, risks with respect to the verification of ERCOT's calculations under HB 4492; the timing for the Company to receive any cost recovery proceeds from ERCOT; the ability of the Company to continue as a going concern; the outcome of proceedings under the CCAA proceedings and similar legislation in the United States; the outcome of any potential litigation with respect to the Weather Event, the outcome of any invoice dispute with ERCOT; the Company's discussions with key stakeholders regarding the CCAA proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com and on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Any forward-looking statement made by Just Energy in this press release speaks only as of the date on which it is made. Just Energy undertakes no obligation to update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

FOR FURTHER INFORMATION PLEASE CONTACT:

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Monitor
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Phone: 416-649-8127 or 1-844-669-6340
justenergy@fticonsulting.com

Media
Boyd Erman
Longview Communications
Phone: 416-523-5885
berman@longviewcomms.ca

Source: Just Energy Group Inc.

This is Exhibit "M" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

Tannor Capital Advisors

Questions on the Just Energy May 2021 Business Plan and Forecast
12/13/21

Please allow us the adequate time to review these questions with JE's representatives.

JE Business Plan from May 2021

1. Hudson is referred to in the business plan – is this the NY subsidiary? Please provide us the list of subsidiaries and the detail of business operations and jurisdiction
2. What is the Digital Channel and how does it differ from Retail, D2D – what is this? Door to Door sales, and describe SMB Mass market channels – what is the channel how does it operate?
3. Page 4– what does the company mean when it says, "assumes access to a competitive wholesale supply"? How many wholesale suppliers does Just Energy ("JE") have? Who are they? Other than one supplier in the BP that says it will not continue – how many will continue, and what will be the effects to working capital with eight suppliers as mentioned in financial filings?
4. Page 4 of Business Plan ("BP") – it appears that churn is a major detractor to the companies' financials because of customer acquisition costs which included marketing headcount, online and advertising costs, SG&A costs associated with new customer acquisition. Can we get the financial analysis showing EBITDA benefit of decreasing churn by 5%? Same question showing EBITDA benefit by increasing marketing and advertising costs (full marketing cost – COGS and SG&A costs) with churn (average customer loss rate per month).
5. Page 4 – plan refers to Strategic Review, please describe the Strategic Review and elements in the strategic review.
6. Page 5 – BP requires multiple suppliers – will JE be successful in gaining multiple suppliers? Define success in this process
7. As of the BP Page 4, JE had 37 TWh of supply – what was the contracted Demand at the time? When will JE reach a need for 52TWh supply if not constrained by supply agreements?
8. Pg. 5 – "Negotiations will be required for almost all supply arrangements in order to emerge from the CCAA process" What is the status of the negotiations? Will renegotiated supply agreements result in a claim against JE? Will any supply agreements result in a claim against JE?
9. For JE's supply agreements in place and assumed going forward in the bankruptcy, which of the supply agreements will be shorter than 1 year in duration which ones will be longer than 1 year in duration?
10. What would the company's debt load post emergence look like compared to the current debt load?
11. Same question as 10, related to supply agreements.
12. Can we obtain the filed claims against JE? We request this to do our own analysis of the secured and unsecured claim pool
13. Pg. 5 – Explain the MtM and Delivery exposure (+50 days) what this means.
14. Same page, what is the cash need resulting in increasing the MtM energy commitments to 68TWh? And why is 68TWh mentioned? When will this energy demand be reached according to JE's forecast?

Tannor Capital Advisors

Questions on the Just Energy May 2021 Business Plan and Forecast
12/13/21

15. What is the current count of MtM customers? What is the count of customers with existing contracts over 50 days? We are just using 50 days because of an unknown division of MtM and Delivery Exposure categories.
16. ISO provided credit in the past (Page 6), what are the ISO's doing which will impact JE's working capital, provide info ISO by ISO.
17. Have the non-supplier collateral requirements grown since the BP?
18. Pg. 6 – How will JE address the need for additional working capital resulting solely from the growth of its customer base? FY22, FY23 etc.
19. We would like to see a comparison of Pg. 7 and 8 to actual for the first 2 quarters of F22 to see if the F21 Base Ebitda is tracking above or below the Normalized F22 numbers shown.
20. Pg. 12 of BP, please provide business plan vs actual count of SMB, D2D, Retail, Digital and Net adds for periods reported periods post printing of the BP vs the numbers on slide 12.
21. Pg. 13 - Why are COAs so different across Mass Market customer groups – CoA – Cost of Acquisition of Customer or CAC – Customer acquisition costs.
22. Pg. 13 – Is D2D – door to door sales? Please provide differences between Digital, Retail, D2D, and SMB channels
23. Page 14 – Why are the Gross Margins ("GM") so different across the sales channels? Provide examples by customer channel. Is higher margin inversely proportional to customer sophistication?
24. Pg. 15 and 16 – JE shows and investment of 54 mm in 2022 for Digital investment. What is the actual time frame from dollars spent to actually having new RCEs? Please provide detailed example of time frame from spend to customer add.
25. Don't marketing and agent costs get spread out over time and paid out not as a one-time cost? What are in marketing costs?
26. Pg. 16 - Why did the increased investment in Digital produce no EBITDA in F22?
27. Pg. 17 – What are the cost components of non-commission selling? Why the massive jump? Please provide a detail of non-commissioned cost increases from F21 to F22 Actual + Forecast of unreported periods.
28. Pg. 18 – When we look at the percentage of (Attrition and Failed to Renew) to Starting RCE's in F21, the percentage is approximately 23%. There is a jump in percentage in F22 in part due to the CCAA proceeding as we would expect. Can you provide us with an updated percentage reflecting on the BP vs Actual for F22?
29. Pg. 18 and 19 – the F23 and F24 attrition and fail to renew numbers go up even though the company is spending more money on the retention of customers. Please provide an explanation of this significant jump in percentages. What will higher attrition and failed to renew numbers do to the EBITDA numbers? For each 1% of Attrition and Failed to Renew, what is the resulting % decline in Ebitda?
30. Pg. 19 and Pg. 20 – Operational KPIs for Mass Markets – ATR? CCR? What does this mean?
31. Pg. 20 – What is the actual renewal rate in F22Q1, and F22Q2?
32. Pg. 20 – What is the actual ATR for F22Q1?
33. Pg. 22 – What is the actual Hudson Base Ebitda for F22 Q1 and Q2? STM definition?
34. Pg. 23 – Provide definitions – we will have more questions after receiving the definitions

Tannor Capital Advisors

Questions on the Just Energy May 2021 Business Plan and Forecast
12/13/21

35. Pg. 23 – What is a Term RCE? And What is an annual RCE – 1 year or longer?
36. Pg. 24 – Please provide Actuals for F22Q1 and F22 Q2 for Term RCEs and Annual RCEs.
37. Pg. 27 and multiple slides – what is the return on investment of marginal dollars allocated to new sales vs customer retention?
38. Pg. 33. Why is JE in these businesses that provide very little Gross Margin to the company? Can you provide Slide 33 with corresponding COGS, SG&A and profitability for F21 to F24?
39. Pg. 34 – Why does ERCOT trading benefit prior years? What are favorable resettlements?
40. Pg. 36 and 37 please explain the calcs for customer Net Present Value ("NPV") and Survival percentages. Are you using a discount rate for NPV or churn rate?
41. Pg. 38 – Explain supplier issue, competitiveness, and growth in the marketplace. Explain abbreviations on Pg. 38.

Follow up questions from last ZOOM call (Dec. 8, 2021)

42. What is the net actual received consideration for the Ecobee transaction?
43. What will the other consideration that will be received for other asset sales or closures?

DIP Deadlines from the 15th Amendment

44. Was a reasonably acceptable Recapitalization Term Sheet delivered to the Lenders on or before November 30, 2021
45. Will counsel for the company submit an order approving a meeting for a vote on a Recapitalization Plan on or before December 21, 2021?
46. And will meeting materials in respect to the Recapitalization Plan be mailed to all relevant stakeholders on or before December 29th?
47. Will a meeting for a vote on the Recapitalization Plan be held on or before February 9, 2022?

Financial Statements

We will provide a follow up questions list on the financial statements shortly.

This is Exhibit “N” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

From: Wasserman, Marc <MWasserman@osler.com>
Sent: Wednesday, December 15, 2021 3:01 PM
To: Steven Wittels
Cc: Jeff Larry; Ken Rosenberg; rthornton@tgf.ca; rkennedy@tgf.ca; RexHong@tannorcapital.com; Burkett McInturff; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita Sanasie; Megan Bradt; rtannor@tannorcapital.com; Susan J. Russell; Steven D. Cohen; Robert Tannor; Robinson, Jim; Bishop, Paul; jcyrulnik@cf-llp.com; efruchter@cf-llp.com; mark.caiger@bmo.com; Dacks, Jeremy; De Lellis, Michael
Subject: RE: Just Energy -- FOLLOW-UP Re Class Counsel's Adjudication Plan for Class Creditor-Plaintiffs' Claims + Further Questions from Tannor Capital Advisors -- Responses Due Wed Dec 15 - Proposed Zoom Mtg Dec 16 or 17

Dear Mr. Wittels.

We acknowledge receipt of your letter dated December 13 and accompanying list of questions from Tannor Capital Advisors.

As you are aware, the Just Energy Entities entered into a Non-Disclosure Agreement with the advisors to the proposed class action plaintiffs in the Jordet and Donin actions to facilitate the provision of information concerning the Just Energy Entities.

To that end, the Just Energy Entities provided their May 2021 Business Plan that has been referred to in their court materials and have organized multiple discussions with your advisor group that have included representatives from Osler, the Monitor and its counsel and the company's financial advisor.

The company and its advisors are currently working hard to develop a going concern restructuring solution for the Just Energy Entities and are not in a position to devote additional resources at this time to answer an unreasonable number of questions and inquiries from your group. The list of questions received on December 13 included 41 questions on the business plan alone. Just Energy Group Inc. is a public company and between its public company court filings, the extensive documentation that has been filed in the CCAA Proceedings to date and the information provided pursuant to the terms of the NDA, there is sufficient information available to your group at this stage of the CCAA Proceedings.

With respect to your proposal for the adjudication of your clients' claims, the Just Energy Entities, in consultation with the Monitor, will be dealing with such claims pursuant to the framework set out in the Court's Claims Procedure Order dated September 15, 2021. Should the company choose to revise or reject your clients' Proof of Claim, you will be sent a Notice of Revision or Disallowance in accordance with the Claims Procedure Order. As you may be aware, you will have 30 days from the receipt of any such disallowance to file a Notice of Dispute. That being said, the Just Energy Entities anticipate further discussions with your group concerning a fair and reasonable method of adjudicating your clients' claims at the appropriate time.

Thanks,
Marc

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Steven Wittels <slw@wittelslaw.com>
Sent: Wednesday, December 15, 2021 1:05 PM
To: Dacks, Jeremy <JDacks@osler.com>; De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; rkennedy@tgf.ca; RexHong@tannorcapital.com; Burkett McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>; Robinson, Jim <Jim.Robinson@fticonsulting.com>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; jcyrulnik@cf-llp.com; efruchter@cf-llp.com
Subject: Just Energy -- FOLLOW-UP Re Class Counsel's Adjudication Plan for Class Creditor-Plaintiffs' Claims + Further Questions from Tannor Capital Advisors -- Responses Due Wed Dec 15 - Proposed Zoom Mtg Dec 16 or 17

Counsel for Just Energy (Osler):

Please confirm that today you will be providing a response to Class Counsel's proposed adjudication plan of our Class Claims that we sent you on Monday, and scheduling a Zoom meeting for tomorrow or Friday, December 16 or 17.

Given that the proposed adjudication plan is straightforward, we anticipate that the company will find it acceptable.

Thank you,

SLW
Steven L Wittels

From: Steven Wittels <slw@wittelslaw.com>
Date: Monday, December 13, 2021 at 8:18 PM
To: "Dacks, Jeremy" <JDacks@osler.com>, "De Lellis, Michael" <MDeLellis@osler.com>, "Wasserman, Marc" <MWasserman@osler.com>
Cc: "Jeff.Larry@paliareroland.com" <Jeff.Larry@paliareroland.com>, "ken.rosenberg@paliareroland.com" <ken.rosenberg@paliareroland.com>, "rthornton@tgf.ca" <rthornton@tgf.ca>, "rkennedy@tgf.ca" <rkennedy@tgf.ca>, "RexHong@tannorcapital.com" <RexHong@tannorcapital.com>, Burkett McInturff <jbm@wittelslaw.com>, Greg Blankinship <gblankinship@fbfglaw.com>, Jonathan Shub <jshub@shublawyers.com>, Kevin Laukaitis <klaukaitis@shublawyers.com>, "JCottle@fbfglaw.com" <JCottle@fbfglaw.com>, "Sarita.Sanasie@paliareroland.com" <Sarita.Sanasie@paliareroland.com>, "Megan.Bradt@paliareroland.com" <Megan.Bradt@paliareroland.com>, "rtannor@tannorcapital.com" <rtannor@tannorcapital.com>, Susan Russell <sjr@wittelslaw.com>, Steven D Cohen <sdc@wittelslaw.com>, Robert Tannor <rtannor@tannorpartners.com>, "Robinson, Jim" <Jim.Robinson@fticonsulting.com>, "Bishop, Paul" <Paul.Bishop@fticonsulting.com>, "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>, "efruchter@cf-llp.com" <efruchter@cf-llp.com>

Subject: Re: Just Energy -- Class Counsel's Adjudication Plan for Class Creditor-Plaintiffs' Claims + Further Questions from Tannor Capital Advisors -- Responses Due Wed Dec 15 - Proposed Zoom Mtg Dec 16 or 17

Counsel for JE (Osler) and Counsel for Monitor (TGF):

Please see attached Letter from Class Counsel describing an Adjudication Plan for Plaintiffs' claims, and further questions from Tannor Capital Advisors.

We look forward to Osler's confirmation of this letter and questions, and Osler's scheduling a Zoom meeting for this Thursday or Friday Dec 16 or 17.

Thank you,
SLW

Steven L Wittels

WMP | Partner
18 Half Mile Road | Armonk NY 10504
slw@wittelslaw.com | https://wittelslaw.com
Phone: 914 319-9945 | Fax: 914 273 2563

From: "Dacks, Jeremy" <JDacks@osler.com>
Date: Wednesday, December 8, 2021 at 12:07 PM
To: "De Lellis, Michael" <MDeLellis@osler.com>, "Wasserman, Marc" <MWasserman@osler.com>, Steven Wittels <slw@wittelslaw.com>
Cc: "Jeff.Larry@paliareroland.com" <Jeff.Larry@paliareroland.com>, "ken.rosenberg@paliareroland.com" <ken.rosenberg@paliareroland.com>, "rthornton@tgf.ca" <rthornton@tgf.ca>, "rkennedy@tgf.ca" <rkennedy@tgf.ca>, "RexHong@tannorcapital.com" <RexHong@tannorcapital.com>, Burkett McInturff <jbm@wittelslaw.com>, Greg Blankinship <gblankinship@fbfglaw.com>, Jonathan Shub <jshub@shublawyers.com>, Kevin Laukaitis <klaukaitis@shublawyers.com>, "JCottle@fbfglaw.com" <JCottle@fbfglaw.com>, "Sarita.Sanasie@paliareroland.com" <Sarita.Sanasie@paliareroland.com>, "Megan.Bradt@paliareroland.com" <Megan.Bradt@paliareroland.com>, "rtannor@tannorcapital.com" <rtannor@tannorcapital.com>, Susan Russell <sjr@wittelslaw.com>, Steven D Cohen <sdc@wittelslaw.com>, Robert Tannor <rtannor@tannorpartners.com>, "Robinson, Jim" <Jim.Robinson@fticonsulting.com>, "Bishop, Paul" <Paul.Bishop@fticonsulting.com>
Subject: RE: Just Energy Call. Wed Dec 8 1PM. ZOOM

PRIVATE AND CONFIDENTIAL

Hi everyone.

Please find enclosed our comments on the TCA question list for our call today, and copies of the Business Plan and DIP Term Sheet and written amendments referred to therein.

Thanks,
Jeremy

Jeremy Dacks
Partner
416.862.4923 | 647.406.1500 (cell) | JDacks@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Appointment-----
From: De Lellis, Michael <MDeLellis@osler.com>
Sent: Monday, December 06, 2021 7:32 PM
To: De Lellis, Michael; Wasserman, Marc; Steven Wittels
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy; RexHong@tannorcapital.com; Burkett McInturff; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell; Steven D. Cohen; Robert Tannor; Robinson, Jim; Bishop, Paul
Subject: Just Energy Call. Wed Dec 8 1PM. ZOOM
When: Wednesday, December 08, 2021 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app
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Learn More | Meeting options

From: Wasserman, Marc <MWasserman@osler.com>
Sent: Saturday, December 04, 2021 11:35 AM
To: Steven Wittels <slw@wittelslaw.com>
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; De Lellis, Michael <MDeLellis@osler.com>; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; RexHong@tannorcapital.com; Burkett

McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>
Subject: Re: Just Energy Call. Wed Dec 8 1PM. ZOOM

Great. We will send a teams or zoom invite and provide answers on your list prior to the call. Have a nice weekend. Marc

Marc Wasserman
Office: 416.862.4908
Mobile: 416.904.3614
MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

On Dec 4, 2021, at 11:29 AM, Steven Wittels <slw@wittelslaw.com> wrote:

Marc:

1. If you have no other time at all Monday or Tuesday, yes we will take 1PM Wednesday.

We'd like it to be a ZOOM video conference. Please advise who will be on the ZOOM and we can set up the invite, or let us know if you want to set it up.

2. Based on the list we sent you Thursday, please email us the documents/data in advance that we requested so we're better prepared to discuss on the call. Please confirm.

Thx. SLW
Steven L Wittels

On 12/4/21, 10:19 AM, "Wasserman, Marc" <MWasserman@osler.com> wrote:

Monday does not work unfortunately, neither does Tuesday. Wednesday does. Do you want the call at 1pm Wednesday?

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Message-----
From: Steven Wittels <slw@wittelslaw.com>
Sent: Saturday, December 04, 2021 10:15 AM
To: Wasserman, Marc <MWasserman@osler.com>; Jeff.Larry@paliareroland.com; Ken.Rosenberg@paliareroland.com; rthornton@tgf.ca
Cc: De Lellis, Michael <MDeLellis@osler.com>; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; RexHong@tannorcapital.com; Burkett McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>
Subject: Re: Just Energy Call. Monday Afternoon

Marc:

We'd like to have this call on Monday afternoon given that we asked for it nearly a week ago, and provided Just Energy and the Monitor the topics we want to discuss and the documents/data we need. Given the expedited time frame for the reorganization, we don't understand why the company is taking so long to respond to our requests for basic information to which we're entitled.

Please coordinate a time for Monday, and advise today.

Thank you, SLW.

Steven L Wittels
WMP | Partner
18 Half Mile Road | Armonk NY 10504
slw@wittelslaw.com |
https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwittelslaw.com%2F&data=04%7C01%7CMWasserman%40osler.com%7C9a1fd3ee03124e2bcfb708d9b7433ebe%7C38b8d7e73b2745709e91cf2ab620b2cd%7C1%7C0%7C637742321704739325%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=ED0TPBq7%2BtkwVaABcjPkN81iIFX%2BFyJy5qtbFuhRimw%3D&reserved=0
Phone: 914 319-9945 Fax: 914 273 2563

On 12/4/21, 9:57 AM, "Wasserman, Marc" <MWasserman@osler.com> wrote:

Does 1pm Wednesday work for the call.

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Message-----
From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>
Sent: Thursday, December 02, 2021 6:17 PM
To: Wasserman, Marc <MWasserman@osler.com>
Cc: De Lellis, Michael <MDeLellis@osler.com>; RThornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; Ken.Rosenberg@paliareroland.com; RexHong@tannorcapital.com; jbm@wittelslaw.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; slw@wittelslaw.com; rtannor@tannorcapital.com
Subject: RE: Just Energy Call

Marc
The list of questions is attached.
Please let us know if we can arrange a call some time tomorrow after 345 or anytime Monday after 11.
Thanks,

From: Wasserman, Marc <MWasserman@osler.com>
Sent: November 30, 2021 6:32 PM
To: Jeff Larry <Jeff.Larry@paliareroland.com>

Cc: De Lellis, Michael <MDeLellis@osler.com>; rthornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; RexHong@tannorcapital.com; jbm@wittelslaw.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>; Megan Bradt <Megan.Bradt@paliareroland.com>; slw@wittelslaw.com; rtannor@tannorcapital.com
Subject: Re: Just Energy Call

Happy to have another call but there is no real utility in have a call without a list of questions that you want answered in advance so we can have the appropriate people on. That is what we discussed on the last call. If can get us the list, we will arrange the call as soon as possible. Marc

Marc Wasserman
Office: 416.862.4908<tel:416.862.4908> | Mobile: 416.904.3614<tel:416.904.3614> | MWasserman@osler.com<mailto:MWasserman@osler.com>

Osler, Hoskin & Harcourt LLP |
osler.com<file:///var/tmp/com.apple.email.maild/EMContentRepresentation/com.apple.mobilemail/CC01ADB3-FE4A-45FA-9512-115CCF15F494/https://can01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.osler.com%2F&data=04%7C01%7CMWasserman%40osler.com%7C9a1fd3ee03124e2bcfb708d9b7433ebe%7C38b8d7e73b2745709e91cf2ab620b2cd%7C1%7C0%7C637742321704739325%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Nvielg7vkf%2FR2c86fyvZ2CHEVS1eNTIStBBGqCWDHUs%3D&reserved=0>

On Nov 30, 2021, at 6:07 PM, Jeff.Larry@paliareroland.com<mailto:Jeff.Larry@paliareroland.com> wrote:

All:

We would like to arrange follow-up ZOOM video call.

Can you let us know if these times work:

- tomorrow between 11am-1pm or 3pm-7pm; or
- Thursday at 11:30am or after.

I can confirm that I now have most of the signatures on the NDA back from our side and I will circulate them in advance of the call.

Jeff

Jeffrey Larry, LL.B, MBA
Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
t: 416.646.4330
f: 416.646.4301
c: 416.553.2789

e: jeff.larry@paliareroland.com
<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

____

____

****

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soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

****

This is Exhibit “O” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

From: Steven Wittels <slw@wittelslaw.com>
Sent: Friday, December 17, 2021 10:57 AM
To: rthornton@tgf.ca; rkennedy@tgf.ca; Bishop, Paul
Cc: Jeff Larry; Ken Rosenberg; Wasserman, Marc; RexHong@tannorcapital.com; Burkett McInturff; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita Sanasie; Megan Bradt; rtannor@tannorcapital.com; Susan J. Russell; Steven D. Cohen; Robert Tannor; Robinson, Jim; jcyrulnik@cf-llp.com; efruchter@cf-llp.com; mark.caiger@bmo.com; Dacks, Jeremy; De Lellis, Michael
Subject: Re: Donin-Jordet Claims in CCAA/Just Energy - Zoom Meeting with Monitor Dec 17 (aft), or Dec 20-24 Re JE Further Questions from Tannor Capital Advisors re JE Reorganization and Financial Status & Class Counsel's Adjudication Plan for Class Creditor-Pla...

Messrs. Thornton and Bishop, and Ms. Kennedy:

On behalf of Class Counsel representing the millions of Donin-Jordet claimants, this is to request a Zoom conference with the Monitor and Monitor's counsel either this afternoon Friday, December 17, or any day next week December 20-24. As you will recall, JE's counsel Mark Wasserman told us all on our December 8 group meeting that we are free to contact the Monitor to discuss the company's financial condition and restructuring plans.

At this point, despite our attempts for more than a month to gain a transparent understanding of Just Energy's financial condition and reorganization plans, the Company has not been forthcoming, and we now need the Monitor's assistance to obtain the requisite information and data so that we can further assist in JE's reorganization process.

Further, we intend to discuss with the Monitor a suitable claims resolution process for our clients' class claims along the lines of what we proposed in our email to you and the Company's counsel on December 13 (*see* below). Justice Koehnen's Claims Procedure Order dated September 15, 2021 specifically provides that for any disputed proof of claim (which JE's counsel has stated are our claims), the Monitor is empowered to "attempt to resolve such dispute and settle the purported Claim with the Claimant." *See* para 35.

Accordingly, we ask that the Monitor be prepared on our Zoom call to also discuss an appropriate and timely resolution procedure for resolution of our claims. We do not intend to wait further to some unspecified time, as suggested by Mr. Wasserman, which we view as simply a delay tactic intended to frustrate our class claimants' rights.

Kindly confirm today a Zoom meeting time for either this afternoon or a day next week, and we will then circulate a Zoom invite to all participants.

Thank you and we look forward to the Monitor and Monitor's counsel cooperating in this process.

Best, SLW

Steven L Wittels

WMP | Partner
18 Half Mile Road | Armonk NY 10504
slw@wittelslaw.com | https://wittelslaw.com
Phone: 914 319-9945 | Fax: 914 273 2563

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From: "Wasserman, Marc" <MWasserman@osler.com>
Date: Wednesday, December 15, 2021 at 3:01 PM
To: Steven Wittels <slw@wittelslaw.com>
Cc: "Jeff.Larry@paliareroland.com" <Jeff.Larry@paliareroland.com>, "ken.rosenberg@paliareroland.com" <ken.rosenberg@paliareroland.com>, "rthornton@tgf.ca" <rthornton@tgf.ca>, "rkennedy@tgf.ca" <rkennedy@tgf.ca>, "RexHong@tannorcapital.com" <RexHong@tannorcapital.com>, Burkett McInturff <jbm@wittelslaw.com>, Greg Blankinship <gblankinship@fbfglaw.com>, Jonathan Shub <jshub@shublawyers.com>, Kevin Laukaitis <klaukaitis@shublawyers.com>, "JCottle@fbfglaw.com" <JCottle@fbfglaw.com>, "Sarita.Sanasie@paliareroland.com" <Sarita.Sanasie@paliareroland.com>, "Megan.Bradt@paliareroland.com" <Megan.Bradt@paliareroland.com>, "rtannor@tannorcapital.com" <rtannor@tannorcapital.com>, Susan Russell <sjr@wittelslaw.com>, Steven D Cohen <sdc@wittelslaw.com>, Robert Tannor <rtannor@tannorpartners.com>, "Robinson, Jim" <Jim.Robinson@fticonsulting.com>, "Bishop, Paul" <Paul.Bishop@fticonsulting.com>, "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>, "efruchter@cf-llp.com" <efruchter@cf-llp.com>, "mark.caiger@bmo.com" <mark.caiger@bmo.com>, "Dacks, Jeremy" <JDacks@osler.com>, "De Lellis, Michael" <MDeLellis@osler.com>
Subject: RE: Just Energy -- FOLLOW-UP Re Class Counsel's Adjudication Plan for Class Creditor-Plaintiffs' Claims + Further Questions from Tannor Capital Advisors -- Responses Due Wed Dec 15 - Proposed Zoom Mtg Dec 16 or 17

Dear Mr. Wittels.

We acknowledge receipt of your letter dated December 13 and accompanying list of questions from Tannor Capital Advisors.

As you are aware, the Just Energy Entities entered into a Non-Disclosure Agreement with the advisors to the proposed class action plaintiffs in the Jordet and Donin actions to facilitate the provision of information concerning the Just Energy Entities.

To that end, the Just Energy Entities provided their May 2021 Business Plan that has been referred to in their court materials and have organized multiple discussions with your advisor group that have included representatives from Osler, the Monitor and its counsel and the company's financial advisor.

The company and its advisors are currently working hard to develop a going concern restructuring solution for the Just Energy Entities and are not in a position to devote additional resources at this time to answer an unreasonable number of questions and inquiries from your group. The list of questions received on December 13 included 41 questions on the business plan alone. Just Energy Group Inc. is a public company and between its public company court filings, the extensive documentation that has been filed in the CCAA Proceedings to date and the information provided pursuant to the terms of the NDA, there is sufficient information available to your group at this stage of the CCAA Proceedings.

With respect to your proposal for the adjudication of your clients' claims, the Just Energy Entities, in consultation with the Monitor, will be dealing with such claims pursuant to the framework set out in the Court's Claims Procedure Order dated September 15, 2021. Should the company choose to revise or reject your clients' Proof of Claim, you will be sent a Notice of Revision or Disallowance in accordance with the Claims Procedure Order. As you may be aware, you will have 30 days from the receipt of any such disallowance to file a Notice of Dispute. That being said, the Just Energy Entities anticipate further discussions with your group concerning a fair and reasonable method of adjudicating your clients' claims at the appropriate time.

Thanks,
Marc

OSLER

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Steven Wittels <slw@wittelslaw.com>
Sent: Wednesday, December 15, 2021 1:05 PM
To: Dacks, Jeremy <JDacks@osler.com>; De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; rkennedy@tgf.ca; RexHong@tannorcapital.com; Burkett McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>; Robinson, Jim <Jim.Robinson@fticonsulting.com>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; jcyrulnik@cf-llp.com; efruchter@cf-llp.com
Subject: Just Energy -- FOLLOW-UP Re Class Counsel's Adjudication Plan for Class Creditor-Plaintiffs' Claims + Further Questions from Tannor Capital Advisors -- Responses Due Wed Dec 15 - Proposed Zoom Mtg Dec 16 or 17

Counsel for Just Energy (Osler):

Please confirm that today you will be providing a response to Class Counsel's proposed adjudication plan of our Class Claims that we sent you on Monday, and scheduling a Zoom meeting for tomorrow or Friday, December 16 or 17.

Given that the proposed adjudication plan is straightforward, we anticipate that the company will find it acceptable.

Thank you,

SLW
Steven L Wittels

From: Steven Wittels <slw@wittelslaw.com>
Date: Monday, December 13, 2021 at 8:18 PM
To: "Dacks, Jeremy" <JDacks@osler.com>, "De Lellis, Michael" <MDeLellis@osler.com>, "Wasserman, Marc"

<MWasserman@osler.com>
Cc: "Jeff.Larry@paliareroland.com" <Jeff.Larry@paliareroland.com>, "ken.rosenberg@paliareroland.com" <ken.rosenberg@paliareroland.com>, "rthornton@tgf.ca" <rthornton@tgf.ca>, "rkennedy@tgf.ca" <rkennedy@tgf.ca>, "RexHong@tannorcapital.com" <RexHong@tannorcapital.com>, Burkett McInturff <jbm@wittelslaw.com>, Greg Blankinship <gblankinship@fbfglaw.com>, Jonathan Shub <jshub@shublawyers.com>, Kevin Laukaitis <klaukaitis@shublawyers.com>, "JCottle@fbfglaw.com" <JCottle@fbfglaw.com>, "Sarita.Sanasie@paliareroland.com" <Sarita.Sanasie@paliareroland.com>, "Megan.Bradt@paliareroland.com" <Megan.Bradt@paliareroland.com>, "rtannor@tannorcapital.com" <rtannor@tannorcapital.com>, Susan Russell <sjr@wittelslaw.com>, Steven D Cohen <sdc@wittelslaw.com>, Robert Tannor <rtannor@tannorpartners.com>, "Robinson, Jim" <Jim.Robinson@fticonsulting.com>, "Bishop, Paul" <Paul.Bishop@fticonsulting.com>, "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>, "efruchter@cf-llp.com" <efruchter@cf-llp.com>
Subject: Re: Just Energy -- Class Counsel's Adjudication Plan for Class Creditor-Plaintiffs' Claims + Further Questions from Tannor Capital Advisors -- Responses Due Wed Dec 15 - Proposed Zoom Mtg Dec 16 or 17

Counsel for JE (Osler) and Counsel for Monitor (TGF):

Please see attached Letter from Class Counsel describing an Adjudication Plan for Plaintiffs' claims, and further questions from Tannor Capital Advisors.

We look forward to Osler's confirmation of this letter and questions, and Osler's scheduling a Zoom meeting for this Thursday or Friday Dec 16 or 17.

Thank you,
SLW

Steven L Wittels

WMP | Partner
18 Half Mile Road | Armonk NY 10504
slw@wittelslaw.com | https://wittelslaw.com
Phone: 914 319-9945 | Fax: 914 273 2563

From: "Dacks, Jeremy" <JDacks@osler.com>
Date: Wednesday, December 8, 2021 at 12:07 PM
To: "De Lellis, Michael" <MDeLellis@osler.com>, "Wasserman, Marc" <MWasserman@osler.com>, Steven Wittels <slw@wittelslaw.com>
Cc: "Jeff.Larry@paliareroland.com" <Jeff.Larry@paliareroland.com>, "ken.rosenberg@paliareroland.com" <ken.rosenberg@paliareroland.com>, "rthornton@tgf.ca" <rthornton@tgf.ca>, "rkennedy@tgf.ca" <rkennedy@tgf.ca>, "RexHong@tannorcapital.com" <RexHong@tannorcapital.com>, Burkett McInturff <jbm@wittelslaw.com>, Greg Blankinship <gblankinship@fbfglaw.com>, Jonathan Shub <jshub@shublawyers.com>, Kevin Laukaitis <klaukaitis@shublawyers.com>, "JCottle@fbfglaw.com" <JCottle@fbfglaw.com>, "Sarita.Sanasie@paliareroland.com" <Sarita.Sanasie@paliareroland.com>, "Megan.Bradt@paliareroland.com" <Megan.Bradt@paliareroland.com>, "rtannor@tannorcapital.com" <rtannor@tannorcapital.com>, Susan Russell <sjr@wittelslaw.com>, Steven D Cohen <sdc@wittelslaw.com>, Robert Tannor <rtannor@tannorpartners.com>, "Robinson, Jim" <Jim.Robinson@fticonsulting.com>, "Bishop, Paul" <Paul.Bishop@fticonsulting.com>
Subject: RE: Just Energy Call. Wed Dec 8 1PM. ZOOM

PRIVATE AND CONFIDENTIAL

Hi everyone.

Please find enclosed our comments on the TCA question list for our call today, and copies of the Business Plan and DIP Term Sheet and written amendments referred to therein.

Thanks,
Jeremy

OSLER

Jeremy Dacks
Partner
416.862.4923 | 647.406.1500 (cell) | JDacks@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Appointment-----
From: De Lellis, Michael <MDeLellis@osler.com>
Sent: Monday, December 06, 2021 7:32 PM
To: De Lellis, Michael; Wasserman, Marc; Steven Wittels
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy; RexHong@tannorcapital.com; Burkett McInturff; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell; Steven D. Cohen; Robert Tannor; Robinson, Jim; Bishop, Paul
Subject: Just Energy Call. Wed Dec 8 1PM. ZOOM
When: Wednesday, December 08, 2021 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Or call in (audio only)
+1 437-703-5283,,236562596#   Canada, Toronto
Phone Conference ID: 236 562 596#
Find a local number | Reset PIN

Learn More | Meeting options

From: Wasserman, Marc <MWasserman@osler.com>
Sent: Saturday, December 04, 2021 11:35 AM
To: Steven Wittels <slw@wittelslaw.com>
Cc: Jeff.Larry@paliareroland.com; ken.rosenberg@paliareroland.com; rthornton@tgf.ca; De Lellis, Michael <MDeLellis@osler.com>; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; RexHong@tannorcapital.com; Burkett McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>
Subject: Re: Just Energy Call. Wed Dec 8 1PM. ZOOM

Great. We will send a teams or zoom invite and provide answers on your list prior to the call. Have a nice weekend. Marc

Marc Wasserman
Office: 416.862.4908
Mobile: 416.904.3614
MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

> On Dec 4, 2021, at 11:29 AM, Steven Wittels <slw@wittelslaw.com> wrote:
>
> Marc:
>
> 1. If you have no other time at all Monday or Tuesday, yes we will take 1PM Wednesday.
>
> We'd like it to be a ZOOM video conference. Please advise who will be on the ZOOM and we can set up the invite, or let us know if you want to set it up.
>
> 2. Based on the list we sent you Thursday, please email us the documents/data in advance that we requested so we're better prepared to discuss on the call. Please confirm.
>
> Thx. SLW
> Steven L Wittels
>
> On 12/4/21, 10:19 AM, "Wasserman, Marc" <MWasserman@osler.com> wrote:
>
> Monday does not work unfortunately, neither does Tuesday. Wednesday does. Do you want the call at 1pm Wednesday?
>
> Marc Wasserman
> Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
> Osler, Hoskin & Harcourt LLP | osler.com
>
> -----Original Message-----
> From: Steven Wittels <slw@wittelslaw.com>
> Sent: Saturday, December 04, 2021 10:15 AM

To: Wasserman, Marc <MWasserman@osler.com>; Jeff.Larry@paliareroland.com; Ken.Rosenberg@paliareroland.com; rthornton@tgf.ca
Cc: De Lellis, Michael <MDeLellis@osler.com>; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; RexHong@tannorcapital.com; Burkett McInturff <jbm@wittelslaw.com>; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; rtannor@tannorcapital.com; Susan J. Russell <sjr@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Robert Tannor <rtannor@tannorpartners.com>
Subject: Re: Just Energy Call. Monday Afternoon

Marc:

We'd like to have this call on Monday afternoon given that we asked for it nearly a week ago, and provided Just Energy and the Monitor the topics we want to discuss and the documents/data we need. Given the expedited time frame for the reorganization, we don't understand why the company is taking so long to respond to our requests for basic information to which we're entitled.

Please coordinate a time for Monday, and advise today.

Thank you, SLW.

Steven L Wittels
WMP | Partner
18 Half Mile Road | Armonk NY 10504
slw@wittelslaw.com |
https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwittelslaw.com%2F&data=04%7C01%7CMWasserman%40osler.com%7C9a1fd3ee03124e2bcfb708d9b7433ebe%7C38b8d7e73b2745709e91cf2ab620b2cd%7C1%7C0%7C637742321704739325%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=ED0TPBq7%2BtkwVaABcjPkN81iIFX%2BFyJy5qtbFuhRimw%3D&reserved=0
Phone: 914 319-9945 Fax: 914 273 2563

On 12/4/21, 9:57 AM, "Wasserman, Marc" <MWasserman@osler.com> wrote:

Does 1pm Wednesday work for the call.

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

-----Original Message-----
From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>
Sent: Thursday, December 02, 2021 6:17 PM
To: Wasserman, Marc <MWasserman@osler.com>
Cc: De Lellis, Michael <MDeLellis@osler.com>; RThornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; Ken.Rosenberg@paliareroland.com; RexHong@tannorcapital.com; jbm@wittelslaw.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita.Sanasie@paliareroland.com; Megan.Bradt@paliareroland.com; slw@wittelslaw.com; rtannor@tannorcapital.com
Subject: RE: Just Energy Call

Marc
The list of questions is attached.
Please let us know if we can arrange a call some time tomorrow after 345 or anytime Monday after 11.
Thanks,

From: Wasserman, Marc <MWasserman@osler.com>
Sent: November 30, 2021 6:32 PM
To: Jeff Larry <Jeff.Larry@paliareroland.com>
Cc: De Lellis, Michael <MDeLellis@osler.com>; rthornton@tgf.ca; rkennedy@tgf.ca; Dacks, Jeremy <JDacks@osler.com>; Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; RexHong@tannorcapital.com; jbm@wittelslaw.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>; Megan Bradt <Megan.Bradt@paliareroland.com>; slw@wittelslaw.com; rtannor@tannorcapital.com
Subject: Re: Just Energy Call

Happy to have another call but there is no real utility in have a call without a list of questions that you want answered in advance so we can have the appropriate people on. That is what we discussed on the last call. If can get us the list, we will arrange the call as soon as possible. Marc

Marc Wasserman
Office: 416.862.4908<tel:416.862.4908> | Mobile: 416.904.3614<tel:416.904.3614> | MWasserman@osler.com<mailto:MWasserman@osler.com>

Osler, Hoskin & Harcourt LLP | osler.com<file:///var/tmp/com.apple.email.maild/EMContentRepresentation/com.apple.mobilemail/CC01ADB3-FE4A-45FA-9512-115CCF15F494/https://can01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.osler.com%2F&data=04%7C01%7CMWasserman%40osler.com%7C9a1fd3ee03124e2bcfb708d9b7433ebe%7C38b8d7e73b2745709e91cf2ab620b2cd%7C1%7C0%7C637742321704739325%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Nvielg7vkf%2FR2c86fyvZ2CHEVS1eNTIStBBGqCWDHUs%3D&reserved=0>

On Nov 30, 2021, at 6:07 PM, Jeff.Larry@paliareroland.com<mailto:Jeff.Larry@paliareroland.com> wrote:

All:

We would like to arrange follow-up ZOOM video call.

Can you let us know if these times work:

- tomorrow between 11am-1pm or 3pm-7pm; or
- Thursday at 11:30am or after.

I can confirm that I now have most of the signatures on the NDA back from our side and I will circulate them in advance of the call.

Jeff

Jeffrey Larry, LL.B, MBA
Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
t: 416.646.4330
f: 416.646.4301
c: 416.553.2789
e: jeff.larry@paliareroland.com
<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

<mailto:jeff.larry@paliareroland.com%0b>

____

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de le divulguer sans autorisation.

****

This is Exhibit “P” referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

A Commissioner for taking Affidavits (or as may be)

From: Ken Rosenberg <Ken.Rosenberg@paliareroland.com>
Sent: Tuesday, January 4, 2022 11:43 AM
To: 'Wasserman, Marc'; RThornton@tgf.ca; Rkennedy@tgf.ca; RNicholson@tgf.ca; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; slw@wittelslaw.com; rtannor@tannorcapital.com; De Lellis, Michael; Dacks, Jeremy; PFesharaki@tgf.ca
Cc: Jeff Larry; Sarita Sanasie
Subject: FW: Just Energy - Scheduling a Case Conference with the Presiding Judge

Happy New Year.

We are not consenting to a further 7 - 10 day pause just to obtain a date, to schedule a date for a motion. We have not received a response from the Company regarding our substantive, timeline, process, transparency and information requests.

We ask the Monitor, when it follows up to obtain a short time/date for a Scheduling Case Conference (10 - 15 minutes is probably all that is required unless the Court has questions and/or comments), to advise the Court of our concerns noted above and below. All coupled with what we understand are the current, imminent reorganization benchmark dates as per the DIP Lenders.

We also ask that the Monitor provide the Judge with all our email correspondence in this chain.

We look forward to hearing from the Monitor, regarding the time/date of a Case Conference.

Thanks

Ken

Paliare Roland Rosenberg Rothstein LLP
Toronto

Cell: 416 735 0673

From: Wasserman, Marc <MWasserman@osler.com>
Sent: December 31, 2021 2:56 PM
To: Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; RThornton@tgf.ca; Rkennedy@tgf.ca; RNicholson@tgf.ca; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff Larry <Jeff.Larry@paliareroland.com>; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>; slw@wittelslaw.com; rtannor@tannorcapital.com; De Lellis, Michael <MDeLellis@osler.com>; Dacks, Jeremy <JDacks@osler.com>; PFesharaki@tgf.ca
Subject: RE: Just Energy - Scheduling a Case Conference with the Presiding Judge

Hi, hope all is well and Ken thanks for the email.   We will not be in a position to have this case conference before the court next week. The Osler teams needs a well-deserved mental health break in particular given the recent surge in

Covid. We asked the monitor to inquire for a date in the latter half of the second week of January 2022. Happy New Year to All and hope everyone gets a break and stays safe and healthy. Marc

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Ken.Rosenberg@paliareroland.com <Ken.Rosenberg@paliareroland.com>
Sent: Friday, December 31, 2021 11:01 AM
To: RThornton@tgf.ca; Rkennedy@tgf.ca; RNicholson@tgf.ca; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff.Larry@paliareroland.com; Sarita.Sanasie@paliareroland.com; slw@wittelslaw.com; rtannor@tannorcapital.com; De Lellis, Michael <MDeLellis@osler.com>; Dacks, Jeremy <JDacks@osler.com>; Wasserman, Marc <MWasserman@osler.com>; PFesharaki@tgf.ca
Subject: RE: Just Energy - Scheduling a Case Conference with the Presiding Judge

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Thanks Bob

To assist, on a with prejudice basis, so please feel free to share these comments and our first email below, with Justice McEwan:

1. To be direct, as discussed with you and the Company, the Class Claimants are of the view that the Company is in essence “killing the clock” on the Class Claimants meaningful participation in this process.

2. So, to your question about timing ………. we prefer a Case Conference next week; the week of January 3rd.

3. We are not in a position to slow down because we are not aware of the actual timing of looming key events. Such as, the release of the Company’s/entrenched managements’ and/or financiers proposed exit transaction/event and its associated proposed approval timeline. If we were meaningfully informed, our answer might be different. But we are not so informed.

4. We of course are available to discuss if/when the Monitor believes that can assist. We could chat sometime today (Friday) or over the next few days.

5. Further background that may assist:

- the Class’s multi-billion dollar claim, which if successful, even for fraction of the claim, would be the dominant unsecured claim in this CCAA estate;

- the Company’s own evidence/most current publicly filed financial statements state the unsecureds are now clearly in the money because these very Company financial statements have equity on the balance sheet. But, we are not aware of any unsecured interest representing the Class Claims in the realization discussions. All despite the fact it now appears the unsecureds are the one’s who’s money now appears actually at risk/on the bubble;

- whatever happened in the past, for more than a month the Class Claimants have been ready and have repeatedly asked to become deeply involved in this CCAA case. The Class Claimants do not see the same enthusiasm on the Company side to engage with the Class Claimants;

- while we are regularly advised by the Company how time-is-of-the-essence respecting the realization issues, we don't know what the real timing is, nor if/how/when the Company and/or the Monitor intend the Class Claims will be provided appropriate access and transparency to do due diligence to assess any Company sponsored exit plan, how and when the Class's claims will be adjudicated, be dealt with in a vote and/or, how the Company intends to put such Company/entrenched management's exit plan before the Court and Creditors for approval; and,

- we must assume, based on what we know from the public record, that a release of a proposed "deal/exit agenda/realization plan" may be imminent. Such Company/entrenched management exit plan may be/could be revealed within e.g., the next 7 days.

6. So, we are not in a position to slow down because of what we do and don't know. Coupled with the Company's continuing advice to us that, time-is-of-the essence.

We look forward to hearing from you.

Happy New Year.

Thanks

Ken

Paliare Roland Rosenberg Rothstein LLP
Toronto

Cell: 416 735 0673

From: Robert Thornton <RThornton@tgf.ca>
Sent: December 30, 2021 5:40 PM
To: Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; Rebecca Kennedy <Rkennedy@tgf.ca>; Rachel Nicholson <RNicholson@tgf.ca>; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff Larry <Jeff.Larry@paliareroland.com>; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>; slw@wittelslaw.com; rtannor@tannorcapital.com; MDeLellis@osler.com; JDacks@osler.com; mwasserman@osler.com; Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; Puya Fesharaki <PFesharaki@tgf.ca>
Subject: Re: Just Energy - Scheduling a Case Conference with the Presiding Judge

Thanks Ken.

I can advise that we were just informed that Mr. Justice McEwen will be assuming carriage of this matter in January when our current judge moves off of the Commercial List.

I propose to email His Honour, copying you and companies' counsel, asking for a case conference/scheduling attendance some time in the first two weeks of January regarding your proposed motion. If you wish, I can mention your desire for such conference to be in the first week if possible, but if I do that, I will also have to mention that the company would prefer a later date, which is my understanding of their position.

Please advise how you would like me to proceed. Happy to have a brief call, should you so wish.

Thanks

Bob

Get Outlook for iOS

Robert I. Thornton | | RThornton@tgf.ca | Direct Line +1 416 304 0560 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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---

From: Ken.Rosenberg@paliareroland.com <Ken.Rosenberg@paliareroland.com>
Sent: Tuesday, December 28, 2021 2:51 PM
To: Robert Thornton; Rebecca Kennedy; Rachel Nicholson; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff.Larry@paliareroland.com; Sarita.Sanasie@paliareroland.com; slw@wittelslaw.com; rtannor@tannorcapital.com; MDeLellis@osler.com; JDacks@osler.com; mwasserman@osler.com; Ken.Rosenberg@paliareroland.com
Subject: Just Energy - Scheduling a Case Conference with the Presiding Judge

To: The Monitor

CC: The Company

Re: Just Energy CCAA -- Scheduling a Case Conference with the Presiding Judge

1 Further to our correspondence and discussions with the Monitor and the Company, will the Monitor please assist in the scheduling of a Case Conference with the presiding Judge in the first week of January, or if necessary, the second week of January. If the Presiding Judge in 2022 will continue to be Justice Koehnen, we expect 10 - 15 minutes is all that will be required. If another Commercial List Judge becomes seized of this Case, we expect it may take more time, if the Judge requires some additional briefing. Once a Case Conference date is obtained, we will of course prepare an appointment and circulate, etc.

2 If the Monitor prefers that we reach out to the Commercial List Office directly to seek a date, we will of course do so.

3 The purpose of the Conference is to set a timetable for a Motion these Class Claimants wish to bring regarding matters including possibly: the depth and breadth of disclosure to them by the Company and/or Monitor under their existing NDA (obviously we are limited at the Case Conference on how much we can say on this subject in the presence of all Creditors/Stakeholders); the participation of the Class Claimants (this includes transparency as to what is going on at the negotiation table) in the realization, sale and/or investment/restructuring process; a process to adjudicate the Class Claimants' Claim within this CCAA process, or/not, ; and, such other timely matters we believe are necessary for adjudication by the Court. If/as discussions unfold on a real time basis with the Company and/or the Monitor, this possible agenda could evolve.

- As discussed with the Monitor, we understand there are currently no Motions or Case management dates set aside by the Court for potential attendances.

- **Proposed timing – we would like a Case Conference in the week of January 3rd , if possible. We are looking for the actual motion date in the 3rd week of January, or at the latest, the 4th week of January.**

4 By way of background, and this may be expanded upon in further discussions and correspondence ……. The Company's very own public financial statements as of Sept 30th 2021, publicly filed on Sedar and apparently prepared in compliance with all necessary accounting standards, state that Just Energy has equity on its balance sheet. Thus, at first instance unsecured creditors are "in the money" based upon the Company's own financial statements. This piece of evidence, plus of course other evidence, will inform part of our narrative, both about process going forward and substance.

Given the tight time frames of this case, we look forward to hearing from you shortly.

Regards

Ken

Paliare Roland Rosenberg Rothstein LLP
Toronto

Cell: 416 735 0673

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****

This is Exhibit "Q" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1]

TO: Fira Donin and Inna Golovan as Representative Plaintiffs (the "**Claimants**")

J. Burkett McIntuff (attorney for Representative Plaintiffs)
jbm@wittelslaw.com
Wittels McInturff Palikovic
18 Half Mile Rd
Armonk, NY
10504
United States

RE: Claim Reference Number: PC-11177-1

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0
B. Restructuring Period Claim			$	$	$
C. Total Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 11th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: ____

Jim Robinson
Senior Managing Director

SCHEDULE A

The Claimants advance a claim against the "Just Energy Entities" in the amount of US$3,662,444,442.00 based on a proposed and uncertified class action filed in the US District Court in the Western District of New York (the "**New York Court**") on April 27, 2018, titled *Fira Donin and Inna Golovan v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB (the "**Donin Action**").

The Just Energy Entities, in consultation with the Monitor, disallow the claim in its entirety.

Status of Litigation

The Donin Action was brought against Just Energy Group Inc. ("**JEGI**") and Just Energy New York Corp. ("**Just Energy NY**") on behalf of a putative class of "all Just Energy customers in the United States […] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment". The Claimants alleged, among other things, that the defendants engaged in fraudulent conduct, violated New York statutes by engaging in deceptive acts and practices, breached contractual provisions to consider "business and market conditions",[2] and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and electricity in New York.

Following a motion to dismiss, the New York Court dismissed all the Claimants' claims except for the breach of contract and implied covenant of good faith claims. The survival of a claim on a motion to dismiss is not an assessment of its merits but only a determination that, accepting as true all of the allegations in the complaint as required on that motion, the plaintiff has alleged a right to relief that is not entirely speculative.[3] The Court did not find that Just Energy NY had improperly exercised its contractually agreed discretion to set rates, or even that Just Energy NY did not consider the many different business and market conditions in setting its rates. These were all matters which could not be resolved solely on the pleadings.

The New York Court also found that it did not have jurisdiction over John Does 1-100, which the Claimants alleged were "shell companies and affiliates" through which JEGI did business in New York and elsewhere, as well as "Just Energy management and employees who perpetrated the

---

[2] The Claimants also allege that the defendants breached the agreement by (i) charging rates higher than the rates set forth in the welcome email sent to consumers and (ii) increasing the variable rate by more than 35% over the rate from the previous billing cycle. With respect to the first allegation, the language of the agreement between the parties made it clear that Just Energy NY would charge the Claimants variable rates and that Just Energy NY did not contract to charge the Claimants particular rates. The second allegation applies to only one of the two proposed representative plaintiffs, and any damages would be limited to the overpayment due to the difference between the actual increase and a 35% increase for the particular months in question. These claims are not amenable to certification and are secondary to the Claimants' main argument that the defendants breached the contract's requirement to charge variable rates "determined by business and market conditions". The Claimants have made no effort to quantify any damages that might arise from these alleged breaches.

[3] *Donin et al v. Just Energy Group Inc. et al,* Decision and Order 17-CV-5787(WFK)(SJB) regarding Motion to Dismiss dated September 24, 2021, Dkt. 111, at 4.

unlawful acts." All claims against these defendants were dismissed, which effectively limits the Donin class, should it be certified, to New York customers.

On January 10, 2020, over the Claimants' objection, the New York Court ordered that factual discovery in this matter was closed and that all pending discovery requests and disputes before that Court were terminated. This ruling came after years of discovery, including the production of documents by the defendants in response to numerous requests by the Claimants. That discovery was also limited to the defendants' New York business, consistent with the limited scope of the claim that remains.

Improper Expansion of Claim

Four years after the commencement of the litigation, the Claimants now purport to advance a claim against all "Just Energy Entities" on behalf of the proposed class, notwithstanding the fact that the only named parties in the Donin Action are JEGI and Just Energy NY. Even if the underlying litigation had any merit (it does not), the Claimants cannot use these CCAA Proceedings to improperly expand the scope of their April 2018 claim to now add new defendants who were never included in the Donin Action. The Claimants' attempt to do so is particularly inappropriate given the New York Court's dismissal of all claims against JEGI's affiliates other than Just Energy NY.

Claim Is Meritless

The claim is contingent, uncertified, speculative, and remote. The Claimants will have to overcome substantial hurdles to be entitled to any recovery, including:

- dispositive motion practice (i.e. motion for summary judgment), which would involve the disclosure of expert reports and supporting evidence from fact witnesses, depositions, potential preliminary motions, written briefs, and oral argument. In particular, the defendants would seek to have the claim dismissed as against JEGI, as it is a holding company that does not contract to provide natural gas or electricity to any customers;

- a contested class certification process, which would include written briefing, presentation of supporting evidence from fact and expert witnesses, and oral argument;

- a trial on the issue of liability, including pretrial submissions and motion practice to resolve evidentiary issues, voir dire, direct testimony and cross-examination of fact and expert witnesses, and legal argument from counsel; and

- resolution of damages of the plaintiffs or certified class(es), which may require bifurcation from the trial on liability (especially if the Claimants continue to allege damages on behalf of a national class, which the defendants argue is impermissible).

A loss by the Claimants at any one of these phases would either entirely eliminate, or severely restrict, the Claimants' potential damages (and those of any other members of any certified class).

The claim is devoid of merit for numerous reasons, including the fact that the applicable contract puts customers (including the Claimants) on clear notice of the variable rates that Just Energy NY would set and to which customers (including the Claimant) will be subject. The language in the operative agreements provides that "This Agreement does not guarantee financial savings" and

that the Claimants were paying a variable rate that "may change every month."[4] In complaining that their local utility's rates ended up being lower for a portion of the Claimants' contract term, the Claimants simply ignore away the operative agreement. There was no obligation under the agreement for Just Energy NY's rates to match or track those charged by the local utility.

Critically, the Claimants' allegation that the defendants breached the parties' contract by failing to set rates "according to business and market conditions" is premised on the erroneous assumption that local public utilities are the main competitors of Just Energy NY, and as such the defendants overcharged when their rates were higher than that of the local utility.[5] In reality, local utility rates are not an appropriate barometer by which to measure the rates of energy service companies (**"ESCOs")** like Just Energy NY (let alone an appropriate proxy for the long list of business and market conditions Just Energy NY was permitted to consider in exercising its discretion to set its rates) for several reasons, including because:

- **Local utilities and ESCOs do not offer the same products and services.** For instance, ESCOs offer 100% green products, fixed-rate products, energy conservation bundled services and products, dedicated customer service, and affinity rebates or refunds that many consumers prefer. ESCO retail commodity prices are part of a bundle of product and service offerings ESCOs provide their customers, in which products and services interact with each other; comparing the prices charged for those products and services with local utility commodity prices results in erroneous, misleading and distorted conclusions.

- **Local utility commodity prices do not reflect wholesale energy prices.** Local utilities are permitted to defer charges (with the approval of the regulator) to smooth price volatility during periods with particularly high wholesale gas and electricity costs (e.g., 2014 polar vortex price spikes). Such utility regulated deferral activity renders the local utility rates a particularly inappropriate proxy for actual wholesale rates and the actual business and market conditions for the given period and makes an accurate comparison between default service prices and ESCO prices for a particular period impossible. ESCOs do not have the ability to shift the costs of energy service over time, nor can they take advantage of regulated rates that ensure full cost recovery to the provider.

- **Local utilities and ESCOs do not have the same business model.** Just Energy NY must compete with other ESCOs to sell energy commodities to consumers. In contrast, local utilities are "default" providers of energy commodities and provide delivery service (gas and electric distribution) regardless of whether the consumer purchases energy commodities from the utility or an ESCO. As a result, local utilities do not face the same costs, risks and market forces that ESCOs face.

- **Local utility commodity prices do not include reasonable profit margins.** Unlike ESCOs, local utility commodity prices are designed to be a pass-through of wholesale costs (sometimes from different periods of time) and not a profit-generating business activity. Moreover, utilities are incentivised to allocate all possible commodity and

---

[4] "Essential Agreement Information" which is provided in the "Customer Disclosure Statement," which is incorporated into the Claimant's agreement with the defendant.

[5] The allegation that the defendant breached the covenant of good faith by failing to act reasonably in exercising its discretion to set rates is based on the same erroneous assumption.

employee/technology costs to a customer's delivery bill, since that is where the utility has a monopoly and is permitted to receive a return on investment. As a result, no accurate comparison is possible between utility commodity prices and ESCO commodity prices.

- **General energy market conditions affect ESCOs and local utilities differently.** ESCOs incur costs well beyond the costs of energy procurement, which are reflected in their prices. In addition to the costs of the product or service bundled with the commodity cost, ESCO prices may also include consideration of competitors' prices, profit margins, and customer retention policies in addition to overhead costs and marketing efforts. ESCOs account for the costs and values associated with their enhanced products and services, including renewables, and need to structure their businesses to successfully offer fixed-rate guarantees to customers who purchase such products. ESCOs face the business conditions of a competitive market—not at all like the business conditions faced by a regulated utility.

The Claimants' expert has failed to even consider the variable rates charged by other ESCOs during the relevant period in calculating the alleged damages.

Not only is the Donin Action devoid of merit, it is not amenable to Rule 23 certification pursuant to the relevant US law, including because:

- Claimants will need to show that the language in the various contracts falling within the class definition are sufficiently similar to present common issues of law, and that those issues predominate over individual issues that different class members face.

- Claimants will need to establish that the proposed representative plaintiffs' claims are representative of the experience other customers may have had. The one-size-fits-all approach taken in the Claimants' damages model does not account for the different products and services offered by Just Energy NY to its customers and the different providers individual customers had prior to contracting to purchase energy services from Just Energy NY, and those differences may be considered at class certification.

- The differences between various contracts and products would be even more pronounced and problematic for purposes of a motion for class certification to the extent the Claimants continue to take the position that they will be seeking to include in the proposed class consumers who are not customers of Just Energy NY whose contracts for variable rate energy fit within Claimants' class definition. Although such an expansion is impermissible for the reasons described above, the proposed class's failure to satisfy the strict requirements of Rule 23 would be exponentially more pronounced where the proposed class includes customers who contracted with different entities, using different contracts, subject to different regulatory regimes, and for different product offerings.

- The Court will also need to find that the proposed representative plaintiffs or other subsets of the proposed class are not subject to unique defenses that would impair the fair and efficient resolution of the action. State specific regulations could present unique claims and

defenses to the extent the Claimants' alleged class extended to Just Energy customers outside of New York.

Expert Report

The Claimants have submitted a report, that purports to be an expert report, in support of their proof of claim, however the Claimants have missed the relevant deadlines set by the New York Court to submit expert reports in the underlying litigation. Given the New York Court's order that discovery is closed in the Donin Action, the Claimants should not be allowed, as part of this proceeding, to cure defects of their own making in the litigation that existed prior to the CCAA Proceedings, in order to attempt to obtain monies to which they are not otherwise entitled.

The quantum of damages set out in the Claimants' expert report is speculative and highly inflated, as it is, among other things, based on several flawed assumptions. For example:

- The report assumes the correct "comparable" to determine "business and market conditions" is that of the local utility, instead of considering the rates charged by other ESCOs. As noted above, this assumption is deeply flawed. This approach fails for a number of reasons, including by failing to account for any ESCO reasonable profit margin on commodity prices, as local utility commodity prices are not designed to generate any profit.

- The report incorrectly includes commercial customers, whose contracts were materially different from (and subject to different regulatory regimes than) those of residential customers. Moreover, very few of Just Energy Entities' commercial customers are contractual counterparties of the named defendants. Commercial customers currently account for approximately 50% of the Just Energy Entities' customers' electricity and gas usage.

- Calculation of damages for residential and commercial gas customers is derived from a calculation that includes the residential gas load served by all Just Energy Entities. However, only Just Energy NY and JEGI are named defendants in the Donin Action, and any damages must be limited to customers who were contractual counterparties with those defendants. This effectively limits the claim to New York customers since JEGI does not contract directly with customers.

- Calculation of damages for residential and commercial electricity customers is derived from a calculation that includes the residential electricity load served by "Just Energy", Just Energy New York Corp., Amigo Energy, Commerce Energy, Hudson Energy Services, and Tara Energy, LLC (and Tara Energy Resources for commercial customers). However:

    - Only Just Energy NY and JEGI are named defendants in the action, and any damages must be limited to customers who were contractual counterparties with those defendants;

    - Including entities like Amigo Energy and Tara Energy, LLC, which only operate in Texas, makes no sense, given that the comparison to local utility rates is the basis of the Claimants' claim for damages and customers in Texas cannot obtain power directly from a local utility (they must obtain power from a retailer). The Just

Energy Entities' Texas customers currently account for approximately 85% of non-commercial electricity usage, and approximately 52% of non-commercial electricity usage that is being charged out based on variable rates.

- The report assumes that 50% of residential and commercial electricity and natural gas usage of the Just Energy Entities' customer base is attributable to customers that are parties to variable rate contracts that would be included in the proposed class. This assumption is incorrect.

    - Currently, only approximately 34.9% of the Just Energy Entities' non-commercial customers' natural gas usage and approximately 6.9% of the Just Energy Entities' non-commercial customers' electricity usage is being charged out based on variable rates. Of that, 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 – the rest being customers who are parties to fixed-rate contracts with Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts.[6] This latter subset of customers would not be properly included in the proposed class.

- The damages calculation includes time-barred claims. Pursuant to the 6-year limitation period applicable under New York law, all breach of contract claims with respect to alleged overcharges prior to October 3, 2011, are time-barred, consistent with other court decisions addressing this issue, including Judge Skretny's decision in the Jordet action.

- The expert report erroneously assumes the same rate of damages applies for the period between 2018 and 2020 as applied to the period before 2018. Given that the Just Energy Entities ceased to market variable-rate contracts to new customers by the end of 2017, the quantum of damages, if any, would have continued to decline materially following 2017 as no new variable rate customers were added to the customer pool.[7]

- The damages in the expert report are based on the calculated excess natural gas margin for residential customers, which was derived using two customers' billing data. The Claimants' expert himself acknowledges that the excess natural gas margin "is subject to potentially significant modification". This miniscule sample size means that the estimate of damages is effectively useless in accurately estimating any alleged damages. The same

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[6] In certain jurisdictions, the Just Energy Entities are required by the relevant regulations to roll over fixed rate customers to variable rates where they do not affirmatively renew their fixed term contract.

[7] As noted above, customers who are parties to fixed rate contracts with the Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts would not be properly included in the class.

issue also applies with respect to the calculation of the excess electricity margin, which was derived using only one customer's data.

- The report assumes, without any evidence, that the differences between the variable rates the Claimants were charged and the local utility rates in New York are the same as that in other states.

- The Claimants' expert acknowledges that he can only calculate overcharges "more precisely for each member of the affected class as well as for the entire class" once additional discovery is conducted, including Just Energy NY's provision of monthly customer level sales and price data and cost of sales data. However, the New York Court ruled that the Claimants are not entitled to additional discovery in the Donin Action.

The speculative nature of the Claimants' damages calculations is further exacerbated to the extent they continue to seek to include in the proposed class consumers who are not customers of Just Energy NY whose contracts for variable rate energy fit within the Claimants' class definition. Although such an expansion is impermissible for the reasons described above, the assumptions underlying the Claimants' proffered damages analysis are even more speculative where different utility rates and regulatory regimes apply in different jurisdictions, with different product offerings and rate structures. These variables are not accounted for at all in the Claimants' rudimentary damages analysis.

Inflated Claim of Prejudgment Interest

For all the reasons outlined above, the inclusion of US$1,282,196,848 in prejudgment interest is also contingent, speculative, remote, and excessive. The prejudgment interest amount calculation is also fundamentally flawed, as it applies New York's prejudgment interest rate of 9% to damages allegedly incurred in California, Delaware, Illinois, Massachusetts, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Texas. Putting aside the fact that there is no basis for the underlying damages figure, the relevant prejudgment interest rates are significantly lower in most of these jurisdictions.

This is Exhibit "R" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

A Commissioner for taking Affidavits (or as may be)

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1]

TO: Trevor Jordet as Representative Plaintiff (the "**Claimant**")

Greg Blankinship (attorney for Representative Plaintiff)
gblankinship@fbfglaw.com
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP
One North Broadway, Suite 900
White Plains, NY
10601
United States

RE: Claim Reference Number: PC-11175-1

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0
B. Restructuring Period Claim			$	$	$
C. Total Claim	Just Energy Entities	USD	$3,662,444,442.00	$0	$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 11th day of January, 2022.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: ____

Jim Robinson
Senior Managing Director

SCHEDULE A

The Claimant advances a claim against the "Just Energy Entities" in the amount of US$3,662,444,442.00 based on a proposed and uncertified class action filed in the Eastern District of Pennsylvania on April 6, 2018, titled *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB (the "**Jordet Action**"). The Jordet Action was subsequently transferred to the US District Court in the Western District of New York (the "**New York Court**").

The Just Energy Entities, in consultation with the Monitor, disallow the claim in its entirety.

Status of Litigation

The Jordet Action was brought solely against Just Energy Solutions, Inc. ("**Just Energy Solutions**") on behalf of a putative class of all "Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present". The Claimant alleged, among other things, that the defendant violated Pennsylvania Unfair Trade Practices and Consumer Protection Law ("**PUTPCP**"), breached contractual provisions and an implied covenant of good faith requiring Just Energy Solutions to consider "business and market conditions" when it charged rates that were more than the local utility rate for natural gas, and was unjustly enriched as a result of the alleged misconduct. The Jordet Action does not purport to deal with any electricity customers of Just Energy Solutions.

Following a motion to dismiss brought by the defendant, the New York Court dismissed the PUTPCP and unjust enrichment claims, such that only the alleged breach of contract claim remains.[2] Moreover, the New York Court held that claims for breach of contract prior to April 6, 2014, are time-barred. The survival of a claim on a motion to dismiss is not an assessment of its merits but only a determination that, accepting as true all of the allegations in the complaint as required on that motion, the plaintiff has alleged a right to relief that is not entirely speculative. Indeed, the Court noted in its decision that it "cannot dismiss a Complaint unless it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"[3] The lone remaining claim turns on whether Just Energy Solutions breached contractual commitments to use its discretion to set rates consistent with "business and market conditions" (defined to include a host of factors), and the Court found that whether Just Energy Solutions'

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[2] As the New York Court noted in its decision on the motion to dismiss, a breach of the implied covenant of good faith is not a distinct cause of action from breach of contract under Pennsylvania law. *Jordet v. Just Energy Solutions Inc.,* Decision and Order 18-CV-953S regarding Motion to Dismiss dated December 7, 2020 ("**Motion to Dismiss Decision**"), Dkt. 43, at 4.

[3] Motion to Dismiss Decision, at 6.

pricing adhered to that discretionary standard could not readily be resolved solely on the pleadings.[4]

Improper Expansion of Claim

Almost four years after the commencement of the litigation, the Claimant now purports to advance a claim against all "Just Energy Entities" on behalf of both gas and electricity customers, notwithstanding the fact that the Jordet Action is limited to natural gas customers of Just Energy Solutions. Even if the underlying litigation had any merit (it does not), the Claimant cannot use these CCAA Proceedings to improperly expand the scope of his April 2018 claim to now add entirely new customer groups and new defendants who were not included in the Jordet Action.

Claim Is Meritless

The claim is contingent, uncertified, speculative, and remote, especially given that the Claimant's claim has not even proceeded to discovery. Even if discovery had taken place, the Claimant would still have to overcome substantial hurdles to be entitled to any recovery, including:

- dispositive motion practice (i.e. motion for summary judgment) following completion of discovery, which would involve the disclosure of expert reports and supporting evidence from fact witnesses, depositions, potential preliminary motions, written briefs, and oral argument;

- a contested class certification process, which would include written briefing, presentation of supporting evidence from fact and expert witnesses, and oral argument;

- a trial on the issue of liability, including pretrial submissions and motion practice to resolve evidentiary issues, voir dire, direct testimony and cross-examination of fact and expert witnesses, and legal argument from counsel; and

- resolution of damages of the plaintiff or certified class(es), which may require bifurcation from the trial on liability (especially if the Claimant continues to allege damages on behalf of a national class, which the defendant argues is impermissible).

A loss by the Claimant at any one of these phases would either entirely eliminate, or severely restrict, the Claimant's potential damages (and those of any other members of any certified class).

The claim is devoid of merit for numerous reasons, including the fact that the applicable contract contains multiple provisions that put customers (including the Claimant) on clear notice of the variable rates that Just Energy Solutions would set and to which customers (including the Claimant) will be subject:

- "**This Agreement does not guarantee financial savings.** However, at the end of your Term, if the Volume Weighted Average Utility Price is less than the Volume Weighted

[4] Motion to Dismiss Decision, at 17-18.

Average Just Energy Price, we will credit you $100 for each commodity included in this Agreement."[5] (emphasis added)

- "By signing for the ***Natural Gas and/or Electricity Rate Flex Pro Program***, I agree to an introductory fixed price, the Intro Price, for the first twelve billing cycles and thereafter be a Variable Price for the remainder of the Term. Changes to the Variable Price will be determined by business and market conditions." [6] (emphasis in original)

- "**Variable Price**: The monthly rate that you will be charged per Ccf[7] after the expiration of the 12 month Intro Price. The Variable Price will not change more than once each billing cycle. Changes to the Variable Price will be determined by Just Energy according to business and market conditions."[8] (emphasis in original)

- "After the Intro Price period expires, you will be charged a Variable Price per Ccf. The Variable Price during the first billing cycle in which the Variable Price is in the [*sic*] effect will be equal to the Intro Price. The Variable Price will not change more than once each monthly billing cycle. **Changes to the Variable Price will be determined by Just Energy according to business and market conditions, including but not limited to, the wholesale cost of natural gas supply, transportation, distribution and storage**…."[9] (emphasis added)

The parties' agreement thus expressly provides that it does not guarantee the financial savings about which the Claimant now complains. In complaining that his local utility's rates ended up being lower for a portion of the Claimant's contract term, the Claimant simply ignores away the operative agreement. There was no obligation under the agreement for Just Energy Solutions' rates to match or track those charged by the local utility.

Critically, the Claimant's allegation that the defendant breached the parties' contract by failing to set rates "according to business and market conditions" is premised on the erroneous assumption that local public utilities are the main competitors of Just Energy Solutions, and as such the defendant overcharged when its rates were higher than that of the local utility.[10] In reality, local utility rates are not an appropriate barometer by which to measure the rates of energy service companies ("**ESCOs")** like Just Energy Solutions (let alone an appropriate proxy for the long list

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[5] "Essential Agreement Information" which is provided in the "Customer Disclosure Statement," which is incorporated into the Claimant's agreement with the defendant.

[6] "Essential Agreement Information" which is provided in the "Customer Disclosure Statement," which is incorporated into the Claimant's agreement with the defendant.

[7] Ccf is a unit of measurement of natural gas that is the volume of 100 cubic feet.

[8] Paragraph 1 of "Natural Gas Disclosure Statement and Terms of Service" incorporated into the Claimant's agreement with the defendant.

[9] Paragraph 5 of "Natural Gas Disclosure Statement and Terms of Service" incorporated into the Claimant's agreement with the defendant.

[10] The allegation that the defendant breached the covenant of good faith by failing to act reasonably in exercising its discretion to set rates is based on the same erroneous assumption.

of business and market conditions Just Energy Solutions was permitted to consider in exercising its discretion to set its rates) for several reasons, including because:

- **Local utilities and ESCOs do not offer the same products and services.** For instance, ESCOs offer 100% green products, fixed-rate products, energy conservation bundled services and products, dedicated customer service, and affinity rebates or refunds that many consumers prefer. ESCO retail commodity prices are part of a bundle of product and service offerings ESCOs provide their customers, in which products and services interact with each other; comparing the prices charged for those products and services with local utility commodity prices results in erroneous, misleading and distorted conclusions.

- **Local utility commodity prices do not reflect wholesale energy prices.** Local utilities are permitted to defer charges (with the approval of the regulator) to smooth price volatility during periods with particularly high wholesale gas and electricity costs (e.g., 2014 polar vortex price spikes). Such utility regulated deferral activity renders the local utility rates a particularly inappropriate proxy for actual wholesale rate and the actual business and market conditions for the given period and makes an accurate comparison between default service prices and ESCO prices for a particular period impossible. ESCOs do not have the ability to shift the costs of energy service over time, nor can they take advantage of regulated rates that ensure full cost recovery to the provider.

- **Local utilities and ESCOs do not have the same business model.** Just Energy Solutions must compete with other ESCOs to sell energy commodities to consumers. In contrast, local utilities are “default” providers of energy commodities and provide delivery service (gas and electric distribution) regardless of whether the consumer purchases energy commodities from the utility or an ESCO. As a result, local utilities do not face the same costs, risks and market forces that ESCOs face.

- **Local utility commodity prices do not include reasonable profit margins.** Unlike ESCOs, local utility commodity prices are designed to be a pass-through of wholesale costs (sometimes from different periods of time) and not a profit-generating business activity. Moreover, utilities are incentivised to allocate all possible commodity and employee/technology costs to a customer’s delivery bill, since that is where the utility has a monopoly and is permitted to receive a return on investment. As a result, no accurate comparison is possible between utility commodity prices and ESCO commodity prices.

- **General energy market conditions affect ESCOs and local utilities differently.** ESCOs incur costs well beyond the costs of energy procurement, which are reflected in their prices. In addition to the costs of the product or service bundled with the commodity cost, ESCO prices may also include consideration of competitors’ prices, profit margins, and customer retention policies in addition to overhead costs and marketing efforts. ESCOs account for the costs and values associated with their enhanced products and services, including renewables, and need to structure their businesses to successfully offer fixed-rate guarantees to customers who purchase such products. ESCOs face the business conditions of a competitive market—not at all like the business conditions faced by a regulated utility.

The Claimant’s expert has failed to even consider the variable rates charged by other ESCOs during the relevant period in calculating the alleged damages, despite the Claimant’s

acknowledgment in the Complaint that "any reasonable consumer" would believe that Just Energy Solutions' variable rates would reflect the market prices *charged by other ESCOs*.[11]

Not only is the Jordet Action devoid of merit, it is not amenable to Rule 23 certification pursuant to the relevant US law, including because:

- Claimant will need to show that the language in the various contracts falling within the class definition are sufficiently similar to present common issues of law, and that those issues predominate over individual issues that different class members face.

- Claimant will need to establish that the proposed representative plaintiff's claims are representative of the experience other customers may have had. The one-size-fits-all approach taken in the Claimant's damages model does not account for the different products and services offered by Just Energy Solutions to its customers and the different providers individual customers had prior to contracting to purchase energy services from Just Energy Solutions, and those differences may be considered at class certification.

- The differences between various contracts and products would be even more pronounced and problematic for purposes of a motion for class certification to the extent the Claimant continues to take the position that they will be seeking to include in the proposed class consumers who are not natural gas customers of Just Energy Solutions whose variable rate contracts fit within the Claimant's class definition. Although such an expansion is impermissible for the reasons described above, the proposed class's failure to satisfy the strict requirements of Rule 23 would be exponentially more pronounced where the proposed class includes customers who contracted with different entities, using different contracts, subject to different regulatory regimes, and for different product offerings.

- The Court will also need to find that the proposed representative plaintiff or other subsets of the proposed class are not subject to unique defenses that would impair the fair and efficient resolution of the action. State specific regulations could present unique claims and defenses to the extent the Claimant's alleged class extended to Just Energy customers outside of Pennsylvania.

Expert Report

The Claimant has submitted a report, that purports to be an expert report, in support of his proof of claim. The quantum of damages set out in the report is speculative and highly inflated, as it is, among other things, based on several flawed assumptions. For example:

- The report includes electricity customers in its calculation of damages, but the proposed class in the Jordet Action is limited to only natural gas customers of Just Energy Solutions.

- The report assumes the correct "comparable" to determine "business and market conditions" is that of the local utility, instead of considering the rates charged by other ESCOs. As noted above, this assumption is deeply flawed. This approach fails for a number

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[11] Jordet Complaint, para 20.

of reasons, including by failing to account for any ESCO reasonable profit margin on commodity prices, as local utility commodity prices are not designed to generate any profit.

- The report incorrectly includes commercial customers, whose contracts were materially different from (and subject to different regulatory regimes than) those of residential customers. Moreover, very few of Just Energy Entities' commercial customers are contractual counterparties of the named defendant. Commercial customers currently account for approximately 50% of the Just Energy Entities' customers' electricity and gas usage.

- Calculation of damages for residential and commercial gas customers is derived from a calculation that includes the residential gas load served by all Just Energy Entities. However, only Just Energy Solutions is a named defendant in the Jordet Action, and any damages must be limited to customers who were contractual counterparties with that defendant.

- The report assumes that 50% of residential and commercial natural gas usage of the Just Energy Entities' customer base is attributable to customers that are parties to variable rate contracts that would be included in the proposed class. This assumption is incorrect.

    - Currently, only approximately 34.9% of the Just Energy Entities' non-commercial customers' natural gas usage is being charged out based on variable rates. Of that, only 2.1% of natural gas usage is attributable to customers who are parties to variable rate contracts with the Just Energy Entities – the rest being customers who are parties to fixed-rate contracts with Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts.[12] This latter subset of customers would not be properly included in the proposed class.

- The damages calculation includes time-barred claims. As Judge Skretny held in his decision dated December 7, 2020, regarding the motion to dismiss, all breach of contract claims with respect to alleged overcharges prior to April 6, 2014, are time-barred.

- The expert report erroneously assumes the same rate of damages applies for the period between 2018 and 2020 as applied to the period before 2018. Given that the Just Energy Entities ceased to market variable-rate contracts to new customers by the end of 2017, the quantum of damages, if any, would have continued to decline materially following 2017 as no new variable rate customers were added to the customer pool.[13]

- The damages in the expert report are based on the calculated excess natural gas margin for residential customers, which was derived using two customers' billing data. The Claimant's expert himself acknowledges that the excess natural gas margin "is subject to

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[12] In certain jurisdictions, the Just Energy Entities are required by the relevant regulations to roll over fixed rate customers to variable rates where they do not affirmatively renew their fixed term contract.

[13] As noted above, customers who are parties to fixed rate contracts with the Just Energy Entities in certain jurisdictions that rolled over to variable rates when they did not renew their fixed rate contracts would not be properly included in the class.

potentially significant modification". This miniscule sample size means that the estimate of damages is effectively useless in accurately estimating any alleged damages.

- The report assumes, without any evidence, that the differences between the variable rates the Claimant was charged and the local utility rates in Pennsylvania are the same as that in other states.

The speculative nature of the Claimant's damages calculations is further exacerbated to the extent he continues to seek to include in the proposed class consumers who are not natural gas customers of Just Energy Solutions whose variable rate contracts fit within the Claimant's class definition. Although such an expansion is impermissible for the reasons described above, the assumptions underlying the Claimant's proffered damages analysis are even more speculative where different utility rates and regulatory regimes apply in different jurisdictions, with different product offerings and rate structures. These variables are not accounted for at all in the Claimant's rudimentary damages analysis.

Inflated Claim of Prejudgment Interest

For all the reasons outlined above, the inclusion of US$1,282,196,848 in prejudgment interest is also contingent, speculative, remote, and excessive. The prejudgment interest amount calculation is also fundamentally flawed, as it applies New York's prejudgment interest rate of 9% to damages allegedly incurred in California, Delaware, Illinois, Massachusetts, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Texas. Putting aside the fact that there is no basis for the underlying damages figure, the relevant prejudgment interest rates are significantly lower in most of these jurisdictions.

This is Exhibit "S" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

____
A Commissioner for taking Affidavits (or as may be)

New York & New Jersey

Steven L. Wittels
Partner
slw@wittelslaw.com

18 Half Mile Road
Armonk, New York 10504
T: (914) 319-9945 F: (914) 273-2563

December 13, 2021

Via Email
Marc Wasserman
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Re: *Donin et al. v. Just Energy Group, Inc., et al.,* No. 17 Civ. 5787 (WFK) (SJB) (E.D.N.Y.)
Jordet v. Just Energy Solutions, Inc., No. 18 Civ. 953 (WMS) (W.D.N.Y.)

Dear Counsel for Just Energy (Osler):

This is to follow up on our meeting this past Wednesday (December 8) during which Class Counsel in the above-captioned New York federal cases proposed that the parties agree on a plan for adjudication of the Donin and Jordet Creditor-Plaintiffs' claims (hereafter collectively "Donin claims" or "Claimants") in the pending CCAA proceeding. This letter sets forth a framework for the proposed adjudication which we believe should be scheduled for hearing the first week of February 2022 before a tripartite panel (the "Claims Officers").

This proposed schedule contemplates receipt of the Claims Officers' decision before any vote on the Recapitalization Plan or subsequent entry by the Canadian Court of approval of such a Plan under the current Claims Procedure Order. If the Claims Officers have not rendered their decision within this time frame, then Class Counsel will move the Court for an appropriate adjournment of the pertinent CCAA deadlines. To the extent Just Energy believes defense counsel in the pending New York federal class actions need to be involved in the claims adjudication process, to avoid delay we are copying them on this communication.

We are also enclosing with this letter our Financial Advisor Tannor Capital's list of questions on the Just Energy Business Plan of May 2021, together with follow-up questions arising from last week's meeting. We ask that JE counsel as well as the Monitor and JE's advisors be prepared to discuss these questions during a Zoom conference later this week.

In order to meet the fast-track adjudication timetable, the parties will need to cooperate on various pre-hearing matters concerning the claims, which we describe below. Thus please provide your feedback on this proposed framework in writing no later than Wednesday this week (Dec. 15). Please also schedule a Zoom meeting for this Thursday or Friday (Dec. 16 or 17) with Osler, the Monitor, FTI, and the Company's US counsel (if warranted) to discuss finalizing the adjudication process, as well as Tannor Capital's questions.

Pre-Hearing Framework & Plan Leading to Hearing by the Claims Officers

We propose that the parties negotiate and agree on the following:

1. Claims Officers' Selection and Authority

The parties should agree on a tripartite panel from JAMS (U.S.) with both (i) prior arbitration experience, and (ii) experience with class action consumer fraud cases. Additionally, pre-hearing discovery and the hearing would be conducted in accordance with the expedited procedures of the JAMS Comprehensive Arbitration Rules and Procedures ("Rules") governing binding Arbitrations of claims. *See* https://www.jamsadr.com/rules-comprehensive-arbitration/ and "Expedited Procedures" -- Rule 16.1. Under this procedure, the Claims Officers will hear and resolve any disputes and motions concerning pre-trial disclosures and process in a manner that moves the cases forward expeditiously.

We propose that each side select one member of the tripartite panel from the JAMS pool of neutrals, with the third to be selected using the strike method set forth in Rule 15 of the JAMS Rules. *Id*.

2. Pre-Trial Disclosures

Given the limited disclosure that has occurred in the New York actions to date, what is needed now for proper adjudication of these claims is sufficient disclosure by the company of its pricing methodology and costs so all parties can access the appropriate measure of damages

In particular, both sides will need sufficient disclosure such as (i) the rates charged and usage data for Just Energy's customers in the various U.S. markets where the company supplies electricity and gas, (ii) JE's costing methodology, (iii) customer agreements utilized, and (iv) marketing materials. As discussed on our call last week, we are prepared to furnish a more detailed list of what is needed pre-hearing and intend to do so once this process is agreed to.

Depending upon the data and disclosures made, it is likely that circumscribed party depositions will be needed. Absent agreement, the Claims Officers will determine the scope of discovery and depositions in accordance with the JAMS Rules.

3. The Hearing

Under the Claims Officers' guidance the parties will work towards a speedy hearing date. We envision the hearing lasting approximately 5-7 days, and the parties presenting both live witness and expert testimony. We expect an expedited written ruling from the Claims Officers, which decision will be binding on all parties for purposes of the CCAA proceeding. This claims procedure will also allow for an appeal pursuant to the Claims Procedure Order.

****

We look forward to (i) your prompt response by this Wednesday (Dec. 15) as to this proposed claims adjudication procedure, and (ii) confirmation of a scheduled Zoom meeting for this Thursday or Friday (Dec. 16 or 17) with Osler, the Monitor, FTI, the company's advisors, as well as JE's U.S. counsel (if warranted), to discuss finalizing the adjudication process and responses to TCA's questions accompanying this letter.

Thank you.

Very Truly Yours,

/s/ Steven L. Wittels________
Steven L. Wittels

cc:
Paul Bishop and Jim Robinson (FTI)
Jason Cyrulnik & Evelyn N. Fruchter
Cyrulnik Fattaruso LLP. (U.S. Litigation counsel for JE)

This is Exhibit "T" referred to in the
Affidavit of Robert Tannor sworn January 17, 2022

A Commissioner for taking Affidavits (or as may be)

Interim condensed consolidated statements of financial position

(unaudited in thousands of Canadian dollars)

	Notes	As at September 30, 2021 (Unaudited)	As at March 31, 2021 (Audited)
ASSETS			
Current assets			
Cash and cash equivalents		**$ 199,952**	$ 215,989
Restricted cash		**3,265**	1,139
Trade and other receivables, net	4(a)	**401,633**	340,201
Gas in storage		**26,005**	2,993
Fair value of derivative financial assets	6	**461,899**	25,026
Income taxes recoverable		**10,626**	8,238
Other current assets	5(a)	**155,855**	163,405
		1,259,235	756,991
Non-current assets			
Investments	16(a)	**61,889**	32,889
Property and equipment, net		**15,732**	17,827
Intangible assets, net		**68,026**	70,723
Goodwill		**163,945**	163,770
Fair value of derivative financial assets	6	**115,606**	10,600
Deferred income tax assets		**7,599**	3,744
Other non-current assets	5(b)	**41,506**	35,262
		474,303	334,815
TOTAL ASSETS		**$ 1,733,538**	$ 1,091,806
LIABILITIES			
Current liabilities			
Trade and other payables	7	**$ 1,024,383**	$ 921,595
Deferred revenue		**9,373**	1,408
Income taxes payable		**3,637**	4,126
Fair value of derivative financial liabilities	6	**17,695**	13,977
Provisions		**835**	6,786
Current portion of long-term debt	8	**630,491**	654,180
		1,686,414	1,602,072
Non-current liabilities			
Long-term debt	8	**358**	1,560
Fair value of derivative financial liabilities	6	**13,262**	61,169
Deferred income tax liabilities		**6,773**	2,749
Other non-current liabilities		**14,155**	19,078
		34,548	84,556
TOTAL LIABILITIES		**$ 1,720,962**	$ 1,686,628
SHAREHOLDERS' EQUITY (DEFICIT)			
Shareholders' capital	11	**$ 1,537,863**	$ 1,537,863
Contributed deficit		**(10,607)**	(11,634)
Accumulated deficit		**(1,610,320)**	(2,211,728)
Accumulated other comprehensive income		**96,030**	91,069
Non-controlling interest		**(390)**	(392)
TOTAL SHAREHOLDERS' EQUITY (DEFICIT)		**12,576**	(594,822)
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)		**$ 1,733,538**	$ 1,091,806

Basis of presentation (Note 3)

Commitments and contingencies (Note 15)

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Scott Gahn
Chief Executive Officer and President

Stephen Schaefer
Corporate Director

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. ET AL.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF ROBERT TANNOR

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Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*

Tab 7

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

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

AFFIDAVIT OF MICHAEL CARTER

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. I have been Just Energy Group Inc.'s ("**JEGI**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of JEGI and its subsidiaries in the CCAA proceedings (collectively, the "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as defined below) to which the protections and authorizations of the Initial Order were extended (collectively with the Applicants, the "**Just Energy Entities**"). As such, I have personal knowledge of the

matters deposed to in this affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Just Energy Group's senior management team and their financial and legal advisors, and in particular U.S. counsel who has carriage of the Putative Class Actions (as defined below) on behalf of the Just Energy Group.

2. I make this affidavit in support of the Applicants' motion for a short extension of the Stay Period (as defined below) to, and including, March 4, 2022, and in response to the Motion for Advice and Directions brought by Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**Plaintiffs' Counsel**"), in their capacity as counsel to the proposed representative plaintiffs in *Donin v. Just Energy Group Inc. et al.*[1] (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions Inc.*[2] (the "**Jordet Action**", together with the Donin Action the "**Putative Class Actions**"), seeking (among other things):

(a) an order declaring that the plaintiff classes in the Putative Class Actions are to be unaffected by this CCAA Proceeding;

(b) in the alternative to the relief sought in paragraph 2(a), above, an order implementing a schedule and process (the "**Claims Adjudication Process**") for the final adjudication of the claims arising from the Putative Class Actions (the "**Putative Class Claims**") prior to any consideration by the Court of the

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[1] No. 17 Civ.5787 (WFK) (SJB)(E.D.N.Y.).

[2] No. 18 Civ. 953 (WMS) (W.D.N.Y.).

Applicants' proposed plan of compromise or arrangement (the "**Plan**") or other event to exit this CCAA Proceeding;

(c) an order directing the Applicants to provide the plaintiffs with access to any data room established by the Applicants in respect of these proceedings, and appointing a mediator/arbitrator (the "**Mediator/Arbitrator**") to resolve all matters pertaining to the production of documents and access to information for restructuring purposes (as distinct from production for the purpose of the Claims Adjudication Process);

(d) in the alternative to the relief sought in paragraph 2(c), above, an order:

(i) directing the specific production of the following documents and information within seven (7) days of the date of the order:

(A) a listing of creditors, the amount claimed by each creditor, whether security or other priority is claimed, and the status of the claim (i.e., allowed/contested/subject to ongoing review/etc.) and the aggregate number of creditors and claims;

(B) the DIP Term Sheet, each of its revisions, the latest current form, a conformed copy of the DIP term sheet with all revisions, any future updates, signature pages, DIP loan amount exhibits by DIP Loan participant, and definitive documents, and any other related non-privileged documents;

(C) copies of all of the Applicants' insurance policies that might respond to the Putative Class Claims, the coverage status, the total amount drawn against the policy to date, and a list of competing claims made against the policies;

(D) a list and the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval;

(E) the restructuring, realization and/or sale or investment process related to any and all exit plans under consideration by the Applicants;

(F) any debt capacity analyses by the company and/or its investment bank;

(G) an updated business plan showing updates of actual results to projected results, an update showing the range of recoveries as per Texas House Bill 4492, the proceeds from the sale of ecobee Shares, and all other updates included in the business plan since it was published in May 2021; and

(H) a statement of the enterprise value of the company with supporting documents showing methodology, multiples, discount rates used, and comparables relied upon;

(ii) directing the Applicants and their necessary advisors to meet with Plaintiffs' Counsel and their advisors within seven (7) days of the completion of production of the foregoing information, to review the information and answer questions; and

(iii) scheduling a further case conference within 21 days of the date of the order to report on the status of its implementation and to schedule such further case conferences or hearings as may be necessary for the effective management and supervision of these proceedings;

3. The Applicants are seeking to have the plaintiff's motion dismissed in its entirety. Among other things:

(a) The Applicants have already provided Plaintiffs' Counsel with confidential information pursuant to an NDA (defined below) in addition to the information available in JEGI's public company filings and the extensive documentation filed in the CCAA Proceedings. The Applicants and the Monitor have also answered questions posed by Plaintiffs' Counsel and attended numerous calls with them. The Applicants have diligently responded to reasonable information requests.

(b) The Applicants are addressing the plaintiffs' claims pursuant to the Claims Procedure Order and are prepared to engage with Plaintiffs' Counsel and the Monitor to appoint a Claims Officer to efficiently determine the claims. To that

end, the Applicants have proposed a fair and reasonable schedule for the adjudication of the claims, subject to the discretion of the Claims Officer; and

(c) The Applicants are currently negotiating a restructuring solution with their funded debt holders to preserve the Just Energy Entities' business as a going concern. Once that process is complete, the Applicants will seek court approval of any restructuring solution. All stakeholders will have an opportunity to make submissions to the Court with respect to the proposed restructuring at the appropriate time.

4. The Applicants and their advisors are spending an inordinate amount of time dealing with two contingent, uncertified, unsecured creditors whose claims have been disallowed in full. The Applicants require breathing space to focus on their restructuring discussions with the stakeholders that have funded the Just Energy Entities and should not be required to expend additional resources responding to extensive information requests at this time.

5. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

A. HISTORY OF THE CCAA PROCEEDINGS

6. On March 9, 2021 (the "**Filing Date**"), the Applicants obtained protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**"). The Applicants' filing for protection under the CCAA was precipitated by the

acute and unforeseen liquidity challenge caused by the unprecedented winter storm in Texas and the Texas regulators' response to same.

7. The Initial Order has twice been amended and restated. The CCAA Court granted an Amended and Restated Initial Order (the "**ARIO**") and a Second Amended and Restated Initial Order (the "**Second ARIO"**) on March 19, 2021, and May 26, 2021, respectively.

8. On April 2, 2021, the United States Bankruptcy Court for the Southern District of Texas granted a Final Recognition Order (the "**Final Recognition Order**") which, among other things, granted the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the CCAA Court, with full force and effect on a final basis with respect to the Just Energy Entities' property located within the United States.[3]

9. On September 15, 2021, the CCAA Court granted the Claims Procedure Order establishing a process (the "**Claims Process**") to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their respective Directors and Officers. The Claims Procedure Order established a Claims Bar Date of November 1, 2021. A copy of the Claims Procedure Order is attached hereto as **Exhibit "A".** Since the Claims Bar Date, the Just Energy Entities have been working diligently with the Monitor to review, record, dispute and, where appropriate, finally determine the amount and characterization of Claims against the Just Energy Entities and their respective Directors and Officers.

10. On November 10, 2021, the CCAA Court granted an Order which, among other things, approved an amendment to the CCAA Interim Debtor-in-Possession Financing Term Sheet, dated

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[3] The Final Recognition Order also provided that, "All parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding."

as of March 9, 2021 (the "**DIP Term Sheet**") to, among other things, extend the maturity date thereunder from December 31, 2021 to September 30, 2022, and extend the Stay Period (as defined in the Second ARIO) to February 17, 2022.

B. EXTENSION TO THE STAY PERIOD

11. Since the Stay Period was last extended on November 10, 2021, the Just Energy Entities, with the assistance of their legal and financial advisors, and in close consultation with the Monitor, have been working in earnest to advance their restructuring. Throughout the past number of months, the Just Energy Entities have continued their extensive engagement with their most significant stakeholders who are financially participating in the restructuring, including the lenders under the DIP Term Sheet (the "**DIP Lenders**") (who are also lenders under the non-revolving term loan established pursuant to the Term Loan Agreement as part of the 2020 balance sheet recapitalization transaction, the assignees of a significant secured supplier claim from BP, and the Plan sponsor under the company's Plan), the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy (U.S.) Corp., dated as of September 28, 2020 (the "**Credit Facility Lenders**"), and Shell[4] (a significant secured supplier), regarding a framework for the recapitalization of the Just Energy Entities and their respective businesses.

12. The Plan is intended to preserve 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), maintain the employment of the Just Energy Entities'

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[4] Collectively, Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC.

more than 1000 employees, and support the long-term viability of the business upon emergence from these CCAA and Chapter 15 proceedings.

13. The discussions regarding the Plan include renegotiation of the complex intercreditor arrangement which governs the secured debt portion of the Just Energy Entities' capital structure, defining the relative priorities of the various parties' security interests and specifying the priority of such interests in accordance with the waterfall defined therein.[5] The company has enjoyed the financial support of its most significant stakeholders to date, including multiple extensions of milestones by the DIP Lender to facilitate the Applicants' going-concern restructuring.

14. Given the nature of the business, the length of time the Applicants have been in the CCAA proceedings, the complexities and time consuming nature of the multiparty negotiations, and the volatility of the energy market, any significant delays in the conclusion of the restructuring could have damaging effects on the outcome for stakeholders and the support of the financial participants for the proposed restructuring. It is therefore imperative that the parties are able to conclude negotiations for the Plan and emerge from these CCAA proceedings as soon as possible. The parties' discussions are in advanced stages and are expected to conclude in the coming weeks.

15. In addition to operating a complicated business and negotiating a series of complex restructuring documents, management of the Just Energy Entities has been preparing since late last week for harsh winter weather that is forecast to significantly impact Texas later this week, which has required many hours of meetings and calls to review the Applicants' commodity supply

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[5] A copy of the intercreditor agreement can be found at Exhibit "P" to my affidavit sworn March 9, 2021 which can be accessed at the following link: http://cfcanada.fticonsulting.com/justenergy/docs/Re%20Just%20Energy%20Inc%20et%20al%20-%20Application%20Record.pdf

positions, hedging strategies and liquidity positions. While the Applicants believe they are prepared to manage through this event, it is prudent that management's time and resources continue be focused on the business' operations. Similar adverse weather events are always a risk and may continue to require significant management attention.

16. The Just Energy Entities are seeking a short, two-week extension to the Stay Period from February 17, 2022 to and including March 4, 2022 to permit them to (i) conclude their discussions with key stakeholders that have financially supported this company during these CCAA proceedings regarding the terms of a proposed Plan, (ii) finalize the Plan, and (iii) file a further motion with this Honourable Court for, among other things, an Order accepting the Plan for filing and authorizing the Just Energy Entities to call, hold and conduct virtual meetings of creditors to consider and vote on resolutions to approve the Plan. The Just Energy Entities currently have March 3, 2022 scheduled for the hearing of such motion.

17. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Since the Stay Period was last extended on November 10, 2021, the Just Energy Entities have, among other things:

(a) continued their extensive and ongoing engagement with the DIP Lenders, the Credit Facility Lenders and Shell regarding the terms of the Plan;

(b) continued reviewing and, in consultation with the Monitor, determining claims received within the Claims Process in accordance with the Claims Procedure Order including, but not limited to, (i) preparing and issuing Notices of Revision or Disallowance and notices of claim acceptance, where appropriate, (ii) engaging with certain claimants to discuss resolution and settlement of ongoing disputes

regarding their claims; and (iii) attending discussions with, and responding to inquiries from, multiple stakeholders and/or the Monitor regarding the Claims Process and Proofs of Claim/D&O Proofs of Claim received within the Claims Process;

(c) commenced litigation against the Electric Reliability Council of Texas ("**ERCOT**") and the Public Utility Commission of Texas (the "**PUCT**") in the US Court on November 12, 2021, seeking to recover payments that were made by various of the Just Energy Entities to ERCOT for certain invoices in February 2021 relating to the unprecedented winter storm in Texas in February 2021. A copy of Just Energy's Press Release announcing commencement of the litigation is attached hereto as **Exhibit "B"**;

(d) received and undertook a review of ERCOT's calculations of recoveries of certain costs to be securitized under House Bill 4492 which ERCOT filed with the PUCT on December 9, 2021 and according to which the Just Energy Entities expect to recover funds of approximately US$147.5 million. A copy of Just Energy's Press Release announcing release of ERCOT's calculations is attached hereto as **Exhibit "C"**;

(e) completed the windup and dissolution of Just Energy Finance Holding Inc. ("**JE Finance**"), and amended the style of cause in these CCAA proceedings to remove JE Finance as an Applicant, all in accordance with the Order of the CCAA Court, granted November 10, 2021. A copy of the Certificate of Dissolution is attached hereto as **Exhibit "D"**.

(f) continued to maintain regular communications with various regulators across Canada and the United States and satisfy all obligations to regulators that license one or more of the Just Energy Entities in the ordinary course. All licenses and registrations that the Just Energy Entities held as of the Filing Date remain valid and in full force and effect;

(g) continued to provide all required reporting to the DIP Lenders, Credit Facility Lenders and the Qualified Commodity/ISO Suppliers in accordance with the ARIO, the DIP Term Sheet, and all Qualified Support Agreements, as applicable, and negotiated changes to certain milestone dates under the DIP Term Sheet, as necessary, to facilitate restructuring discussions; and

(h) operated the business in the normal course with a view to maximizing the value of the Just Energy Entities for the benefit of all stakeholders.

18. I understand that the Monitor will file a report (the "**Monitor's Fifth Report**") that will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Just Energy Entities will have sufficient funds to continue their operations and fund these CCAA proceedings until March 4, 2022. I further understand that the Monitor's Fifth Report will recommend that the Stay Period be extended.

C. BACKGROUND TO THE PUTATIVE CLASS ACTIONS

19. The information in this section is based on my review of court documents, the involvement of the senior management team in the litigation, and information received from Jason Cyrulnik of Cyrulnik Fattaruso LLP, US counsel for the defendants in the Putative Class Actions.

(a) Jordet Action

20. On April 6, 2018, Trevor Jordet filed the Jordet Action solely against Just Energy Solutions, Inc. ("**Just Energy Solutions**") on behalf of a putative class of all "Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present". The plaintiff alleged, among other things, that the defendant violated Pennsylvania Unfair Trade Practices and Consumer Protection Law ("**PUTPCP**"), breached contractual provisions and an implied covenant of good faith requiring Just Energy Solutions to consider "business and market conditions" when it charged rates that were more than the local utility rate for natural gas, and was unjustly enriched as a result of the alleged misconduct.

21. Importantly, the Jordet Action does not purport to deal with any electricity customers of Just Energy Solutions. A copy of the plaintiff's complaint in the Jordet Action is attached as Exhibit "D" to the affidavit of Robert Tannor sworn January 17, 2022 (the "**Tannor Affidavit**") filed in support of the plaintiffs' Motion for Advice and Directions.

22. The Tannor Affidavit at paragraphs 7 and 38 mischaracterizes the result of the motion to dismiss that was brought by the defendant. In fact, the defendant achieved significant success on this motion that restricted the causes of action that may be alleged in the proposed class action. The US District Court in the Western District of New York (the "**WDNY Court**") dismissed the PUTPCP and unjust enrichment claims, such that only the alleged breach of contract claim remains.[6] Moreover, the WDNY Court held that claims for breach of contract prior to April 6,

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[6] As the WDNY Court noted in its decision on the motion to dismiss, a breach of the implied covenant of good faith is not a distinct cause of action from breach of contract under Pennsylvania law. *Jordet v. Just Energy Solutions Inc.,* Decision and Order 18-CV-953S regarding Motion to Dismiss dated December 7, 2020 ("**Jordet Motion to Dismiss Decision**"), Dkt. 43, at 4.

2014, are time-barred. A copy of the WDNY Court's decision on the motion to dismiss dated December 7, 2020 is attached as Exhibit "E" to the Tannor Affidavit.

23. The WDNY Court's decision was based solely on the pleadings being taken as true. Indeed, the WDNY Court noted in its decision that it "cannot dismiss a Complaint unless it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"[7] The lone remaining claim therefore turns on whether Just Energy Solutions breached contractual commitments to use its discretion to set rates consistent with "business and market conditions" (defined to include a host of factors), and the WDNY Court found that whether Just Energy Solutions' pricing adhered to that discretionary standard could not readily be resolved solely on the pleadings.[8] In other words, there was no determination by the Court on the merits of the remaining breach of contract claims asserted by the plaintiff.

24. As a result, the WDNY Court's decision materially narrows the scope of the Jordet Action.

(b) Donin Action

25. On October 3, 2017, Fira Donin and Inna Golovan filed the Donin Action against JEGI, Just Energy New York Corp. ("**Just Energy NY**"), and John Does 1-100, which the plaintiffs alleged were "shell companies and affiliates" through which JEGI did business in New York and elsewhere, as well as "Just Energy management and employees who perpetrated the unlawful acts." The action was brought on behalf of a putative class of "all Just Energy customers in the

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[7] Jordet Motion to Dismiss Decision, at 6.

[8] Jordet Motion to Dismiss Decision, at 17-18.

United States […] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment".

26. The plaintiffs alleged, among other things, that the defendants engaged in fraudulent conduct, violated New York statutes by engaging in deceptive acts and practices, breached contractual provisions to consider "business and market conditions", and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and electricity in New York. A copy of the plaintiffs' complaint in the Donin Action is attached as Exhibit "B" to the Tannor Affidavit.

27. Again, the defendants were largely successful on the motion to dismiss, which significantly narrowed the scope of claims in the Donin Action. The US District Court in the Eastern District of New York (the "**EDNY Court**") dismissed all the plaintiffs' claims except for the breach of contract and implied covenant of good faith claims. A copy of the EDNY Court's decision on the motion to dismiss dated September 24, 2021 is attached as Exhibit "C" to the Tannor Affidavit.

28. As noted by the EDNY Court, the plaintiff in a motion to dismiss must only "state a claim of relief that is plausible on its face", accepting for the purposes of the motion that the factual allegations contained in the complaint are true.[9] The EDNY Court did not make a judicial determination that Just Energy NY had improperly exercised its contractually agreed discretion to set rates, or even that Just Energy NY did not consider the many different business and market conditions in setting its rates. These were all matters which could not be resolved solely on the pleadings.

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[9] *Donin et al v. Just Energy Group Inc. et al,* Decision and Order 17-CV-5787(WFK)(SJB) regarding Motion to Dismiss dated September 24, 2021, Dkt. 111, at 4.

29. The EDNY Court also found that it did not have jurisdiction over John Does 1-100. All claims against these defendants were dismissed. This decision effectively limits the Donin class, should it be certified, to New York customers, as JEGI is a holding company that does not contract with any customers and Just Energy NY only contracts with customers based in New York.

30. On January 10, 2020, over Plaintiffs' Counsel's objection, the EDNY Court ordered that factual discovery in this matter was closed and that all pending discovery requests and disputes before that Court were terminated. This ruling came after years of discovery, including the production of documents by the defendants in response to numerous requests by the plaintiffs. All discovery to date has been limited to the defendants' New York business, consistent with the limited scope of the remaining claim.

(c) Proofs of Claim

31. On November 1, 2021, Plaintiffs' Counsel filed two Proofs of Claim in respect of the Donin and Jordet Actions, each in the unsecured amount of approximately USD$3.66 billion.[10] Copies of the Donin Proof of Claim, the Jordet Proof of Claim and the Claim Documentation included in both Proofs of Claim (excluding Exhibits 2-5, which are copies of the pleadings and motions to dismiss for both Putative Class Actions) are attached to the Tannor Affidavit as Exhibits "F", "G" and "H", respectively.

[10] The damages calculation purports to be a joint, composite damages claim encompassing both lawsuits, notwithstanding the fundamental differences in terms of the defendants, scope of the claim and potential class members in the two actions.

(d) Notices of Disallowance

32. On January 11, 2022, the Monitor sent the proposed representative plaintiffs in the Putative Class Actions Notices of Disallowance in accordance with the Claims Procedure Order (the "**Notices of Disallowance**"). Copies of the Donin Notice of Disallowance and the Jordet Notice of Disallowance are appended to the Tannor Affidavit as Exhibits "Q" and "R", respectively.

33. The Notices of Disallowance disallowed the claims advanced in both Proofs of Claim in full as, among other things, contingent, uncertified, speculative, and remote.

34. The Notices of Disallowance specifically address the plaintiffs' attempts to expand the scope of their claims to add new defendants, new customer groups, and extended class periods. The Proofs of Claim purport to advance claims against all "Just Energy Entities" on behalf of both gas and electricity customers, notwithstanding the fact that:

(a) the Jordet Action only names Just Energy Solutions as defendant and is only brought on behalf of natural gas customers;

(b) the only named defendants in the Donin Action are JEGI and Just Energy NY and the EDNY Court dismissed all claims against JEGI's other affiliates; and

(c) the WDNY Court found claims prior to April 6, 2014 were time-barred in the Jordet Action.

35. The attempted expansion of the plaintiffs' claims is illustrated in the below chart:

	Donin Complaint/ Motion to Dismiss	Donin POC	Jordet Complaint/ Motion to Dismiss	Jordet POC
Defendants	JEGI, Just Energy NY EDNY Court dismissed claims against other JEGI affiliates.	All "Just Energy Entities"	Just Energy Solutions	All "Just Energy Entities"
Defendants' Customer Base[11]	New York	California Delaware Georgia Illinois Indiana Maryland Massachusetts, Michigan Nevada New Jersey New York Ohio Pennsylvania Texas	California Georgia Illinois Maryland Nevada Ohio Pennsylvania Virginia	California Delaware Georgia Illinois Indiana Maryland Massachusetts, Michigan Nevada New Jersey New York Ohio Pennsylvania Texas
Defendants' Customer Type	Largely Residential	Residential and Commercial	Largely Residential	Residential and Commercial
Product Type	Electricity and Natural Gas	Electricity and Natural Gas	Natural Gas Only	Electricity and Natural Gas
Class Period	Pleadings refer to "applicable Statute of Limitations Period"[12]	2011-2020	WDNY Court held claims prior to April 6, 2014 are time-barred.	2011-2020

[11] The customer base in the "Jordet Complaint/ Motion to Dismiss" column reflects the states where natural gas was marketed by Just Energy Solutions. Just Energy Solutions marketed natural gas in these various states for different lengths of time.

[12] I am informed by Mr. Cyrulnik and believe that a six-year statute of limitations period applies to New York contract claims, which would render claims accruing prior to October 3, 2011, time-barred.

36. It is notable that the plaintiffs have not attempted to add any additional defendants (or in the case of Jordet Action, to add electricity customers) to the Putative Class Actions in the approximately four years since they were commenced.

37. Additionally, the Notices of Disallowance state that:

(a) **Contractual Language:** The applicable contracts put customers (including the plaintiffs) on clear notice of the variable rates that the defendants would set and explicitly state that "This Agreement does not guarantee financial savings";

(b) **Comparison to Local Utilities is Flawed:** The plaintiffs' allegation that the defendants breached the parties' contracts by failing to set rates "according to business and market conditions" is premised on the erroneous assumption that local public utilities (not other energy service companies ("**ESCOs**")) are the defendants' main competitors, and as such the defendants overcharged when their rates were higher than that of the local utility. Local utility rates are not an appropriate barometer by which to measure the rates of ESCOs as: (i) local utilities and ESCOs offer different products and services and have different business models; and (ii) local utility commodity prices do not reflect wholesale energy prices and do not include reasonable profit margins; and

(c) **Damages Calculations are Inflated:** The calculation of the quantum of damages in the plaintiffs' purported expert report is speculative, highly inflated and based on a number of flawed assumptions. For instance, the report assumes that 50% of residential and commercial natural gas and electricity usage of the Just Energy Group's customer base is attributable to customers that are parties to variable rate

contracts that would be included in the proposed class. 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.

38. The Tannor Affidavit (para. 50) improperly suggests that the Notices of Disallowance "rejected the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report." To the contrary, the substantive flaws in the expert report are outlined in detail on pages 6-10 of both Notices of Disallowance.

39. The Notices of Disallowance also outlined a number of reasons as to why the Putative Class Actions are not amenable to certification pursuant to the relevant US law.

D. Communication with, and Information Provided to, Plaintiffs' Counsel

40. The Tannor Affidavit suggests that the Applicants and the Monitor have not been responsive to information requests over the last twelve weeks. This is simply not the case.

41. The Just Energy Group 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 (the "**NDA**"), providing Plaintiffs' Counsel with confidential information and documents, answering numerous written questions, and arranging multiple meetings with Plaintiffs' Counsel and its financial advisor, Tannor Capital Advisors ("**Tannor Capital**") that have included, at various times, counsel for the Just Energy Group ("**Osler**"), the Monitor, counsel to the Monitor, and the financial advisor to the Just Energy Group.

42. The Tannor Affidavit (para. 14) notes that "Mr. Wittels also alleged [on November 10, 2021] that the Applicants had not been forthcoming in providing Class Counsel with any information as to the Applicants' financial status." However, this statement is misleading, as Plaintiffs' Counsel made no requests for any information until November 11, 2021 – eight months after the Applicants filed for CCAA protection on March 9, 2021. In fact, the first time that Osler had any interaction with Mr. Wittels was when Mr. Wittels appeared at the November 10, 2021 court hearing to oppose certain relief being sought, without previously advising the Monitor or Osler that he intended to do so.

43. The following is a chronology outlining the communications with, and information provided to, Plaintiffs' Counsel and the plaintiffs' Canadian counsel, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), over the last twelve weeks, based on my discussions with Osler:

Date	**Event**
November 10, 2021	Plaintiffs' Counsel appeared on a motion before Justice Koehnen and objected to the second Key Employee Retention Plan. Plaintiffs' Counsel did not reach out to the Just Energy Group or the Monitor in advance of this Court appearance to advise of his intended opposition.
November 11, 2021	Plaintiffs' Counsel emailed counsel for the Monitor for the first time to request a meeting to discuss being granted access to "certain financial information". On Friday, November 12, 2021, Counsel for the Monitor responded by email to Plaintiffs' Counsel indicating that their information request was best directed to the Just Energy Entities and copied Osler. The following Monday, November 15, 2021, Osler responded by email to Plaintiffs' Counsel and indicated they would be contacting them to discuss the requests.
November 19, 2021	Osler, Monitor's counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital attended a call to discuss Plaintiffs' Counsel's request for information.

November 22, 2021	Osler provided the draft NDA to Plaintiffs' Counsel.
November 24, 2021	Plaintiffs' Counsel and Paliare Roland attended a call with Osler, the Monitor and counsel to the Monitor to discuss comments received from Plaintiffs' Counsel and Paliare Roland on the draft NDA.
November 30, 2021	After various revisions from the parties, JEGI, Plaintiffs' Counsel, Tannor Capital and Paliare Roland entered into the NDA. The NDA explicitly states that it does not create any obligation to share documents with Plaintiffs' Counsel.
December 2, 2021	Plaintiffs' Counsel provided a list of questions to Osler (the "**December 2nd Questions**").
December 8, 2021	Osler provided comments on the December 2nd Questions as well as copies of the Business Plan, DIP Term Sheet, and two Amendments to the DIP Term Sheet. The DIP Term Sheet and two Amendments were previously disclosed in Court filings. A copy of the answers to the December Second Questions and the Business Plan are attached as confidential **Exhibits "E" and Exhibit "F"**, respectively, to this affidavit, as they contain confidential information and were provided pursuant to the terms of the NDA. Osler attended a call with Plaintiffs' Counsel, Tannor Capital, the Monitor, counsel to the Monitor, and the Just Energy Group's financial advisor to discuss the December 2nd Questions as well as the restructuring more generally.
December 13, 2021	Plaintiffs' Counsel emailed an additional list of questions (the "**December 13th Questions**") along with a proposed adjudication schedule to Osler.
December 15, 2021	Osler responded to Plaintiffs' Counsel, noting that: • The Just Energy Group and its advisors were working hard to develop a going concern restructuring solution for the Just Energy Entities and were not in a position to devote additional resources at that time to answer an unreasonable number of questions and inquiries from Plaintiffs' Counsel; • Sufficient information was already available to Plaintiffs' Counsel between JEGI's public company filings, the extensive documentation filed in the CCAA Proceedings, the information that had already been provided pursuant to the terms of the NDA, and the multiple discussions Plaintiffs' Counsel and their advisors had with representatives from Osler, the Monitor and its counsel and the Just Energy Group's financial advisor; and

	• The Just Energy Group would deal with the plaintiffs' claims in the framework of the Claims Procedure Order, the plaintiffs would have 30 days from the receipt of any Notice of Revision or Disallowance to file a Notice of Dispute, and the Just Energy Group anticipated further discussions with Plaintiffs' Counsel concerning a fair and reasonable method of adjudicating the Putative Class Claims at the appropriate time.
December 17, 2021	Plaintiffs' Counsel emailed the Monitor requesting a call regarding its information requests and its proposed adjudication timetable. Copies of the correspondence from December 13-17 is attached to the Tannor Affidavit as Exhibit "O".
December 22, 2021	I understand that the Monitor attended a call with Plaintiffs' Counsel to discuss their requests and to confirm that responses to the December 13th Questions would be forthcoming.
December 23, 2021	The Monitor responded to the December 13th Questions with the assistance of the Just Energy Entities. Among other things, the Monitor noted that in numerous instances, Plaintiffs' Counsel was asking discovery questions that were not relevant to developing an understanding of the restructuring process. A copy of the December 23rd response is attached as confidential **Exhibit "G"** to this affidavit, as this contains confidential information and was provided pursuant to the terms of the NDA.
December 28, 2021	Paliare Roland emailed the Monitor requesting assistance in setting a case conference with the presiding Judge for the first week of January in order to schedule a date for a motion.
December 30, 2021	The Monitor responded with a proposal to email the Court for a case conference in the first two weeks of January. The following day, Osler indicated that it requested that any case conference be heard in the second week of January.
January 4, 2022	Paliare Roland responded that it did not consent to seeking the case conference in the second week of January. I understand that counsel for the Monitor and the Monitor attended a call with Plaintiffs' Counsel to hear directly from them about the nature and background to their purported claims and also provide an anticipated delivery date for the Notices of Revision or Disallowance to be issued. The Monitor responded that same day, confirming that no plan would be presented by January 6, noting that all deadline dates under the DIP Term Sheet were extended by one week and suggesting a call to discuss the timetable for the plaintiffs' motion. A complete copy of the correspondence from December 28-January 4 is attached to this affidavit as **Exhibit "H"**.

January 5, 2022	Osler, the Monitor and its counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital attended another call and discussed, among other things, the timetable for the plaintiffs' motion and the anticipated delivery of Notices of Revision or Disallowance with respect to the Putative Class Actions in accordance with the Claims Procedure Order.

44. With respect to the above chronology, I note that the Tannor Affidavit omitted to reference the following calls and correspondence, which results in an incomplete record:

(a) The November 19, 2021 call amongst Osler, Monitor's counsel, Plaintiffs' Counsel, and Tannor Capital;

(b) The fact that the Applicants' financial advisor attended the December 8th call with Plaintiffs' Counsel, Tannor Capital, Osler, the Monitor, and counsel to the Monitor;

(c) The Monitor's response, with the assistance of the Applicants, to the December 13th Questions on December 23, 2021;

(d) The Monitor's response to Paliare Roland's email on January 4, 2022; and

(e) The January 5, 2022 call amongst Osler, the Monitor and its counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital.

45. The Tannor Affidavit (para. 45) notes that JEGI's September 30, 2021 financial statements indicate that it had approximately $12.6 million in equity on its balance sheet. The plaintiffs extrapolate from this fact that they have a "significant stake in the CCAA Proceedings" and are therefore entitled to extensive information from the Applicants. This assumption is based on a

fundamental misunderstanding of the September 30, 2021 financial statements, a complete copy of which is attached to this affidavit as **Exhibit "I"**.

46. JEGI's balance sheet is prepared in accordance with international financial reporting standards ("**IFRS** ") and does not necessarily represent the fair value of all the assets and liabilities of the Applicants. In particular, JEGI's balance sheet includes approximately $545 million of net derivative financial assets resulting from approximately $580 million of unrealized gains on its derivative instruments in the six months ended September 30, 2021. These derivative instruments are mostly fixed supply contracts which JEGI uses to hedge the future price of electricity and natural gas associated with its fixed price contracts with its customers.[13] These asset values are highly volatile, as they fluctuate depending on current market price for the commodity supply. This approximately $545 million net derivative financial asset was an approximately $40 million net financial derivative liability as at March 31, 2021. IFRS considers the commodity supply contracts to be financial derivatives and therefore these contracts are required to be marked-to-market resulting in unrealized gains (or losses) being recorded in Just Energy's financial statements even though these supply contracts are entered into to lock in the future gross margin of JEGI under its fixed price customer contracts. It is for these reasons that JEGI has historically and consistently excluded these unrealized gains/losses from its calculation of EBITDA, as noted at page 6 of Management's Discussion and Analysis for the three and six months ended September 30, 2021:

> Just Energy ensures that customer margins are protected by entering into fixed-price supply contracts. Under IFRS, the customer contracts are not marked to market; however, there is a requirement to mark to market the future supply

[13] Just Energy enters into derivative instruments in order to manage exposures to changes in commodity prices associated with its fixed price customer contracts. The derivative instruments that are used are designed to fix the price of supply for estimated customer commodity demand and thereby fix gross margins.

> contracts. This creates unrealized and realized gains (losses) depending upon current supply pricing. Management believes that the unrealized mark to market gains (losses) do not impact the long-term financial performance of Just Energy and has excluded them from the Base EBITDA calculation.

47. Given the fact that these unrealized gains/losses are not included in the Base EBITDA calculation, the net financial derivative assets/liabilities must also be excluded when considering the true value of the equity of the company. Absent these net financial derivative assets, JEGI's balance sheet equity would have been approximately negative $540 million as of September 30, 2021. Given the drop in commodity prices during the 3 months ended December 31, 2021, I anticipate that there will be substantial unrealized losses from JEGI's derivative instruments as at December 31, 2021 resulting in significantly lower net financial derivative assets, which will result in a substantial negative balance sheet equity value when JEGI files its financial statements as at December 31, 2021.

48. Additionally, the September 30, 2021 financial statements referred to in the Tannor Affidavit contain a Going Concern note:

> **Going Concern**
>
> Due to the Weather Event and associated CCAA filing, the Company's ability to continue as a going concern for the next 12 months is dependent on the Company emerging from CCAA protection, maintain liquidity, complying with DIP Facility covenants and extending the DIP Facility maturity. The material uncertainties arising from the CCAA filings cast substantial doubt upon the Company's ability to continue as a going concern and, accordingly the ultimate appropriateness of the use of accounting principles applicable to a going concern. These Interim Condensed Consolidated Financial Statements do not reflect the adjustments to carrying values of assets and liabilities and the reported expenses and Interim Condensed Consolidated Statements of Financial Position classifications that would be necessary if the going concern assumption was deemed inappropriate. These adjustments could be material. There can be no assurance that the Company will be successful in emerging from CCAA as a going concern.

49. Similar going concern notes were included in JEGI's audited financial statements for the year ended March 31, 2021 as well as the June 30, 2021 quarterly report. Full copies of these

financial statements are attached to this affidavit as **Exhibits "J" and "K"**, respectively. Additionally, various of JEGI's news releases have contained statements regarding the potential impact of the Texas storm on the company's ability to continue as a going concern since as early as February 22, 2021. A copy of the news release dated February 22, 2021 is attached to this affidavit as **Exhibit "L"**.

50. The information and documents relating to any proposed transaction must, out of necessity, be confidential to ensure a constructive dialogue with financial participants. It is not feasible to have other stakeholders "at the table" to second guess the Applicants or distract management from the task at hand. The Applicants, with the assistance of the Monitor, must exercise their business judgment to frame the negotiations and parties involved to achieve the desired outcome of a going concern transaction.

51. The Applicants and the Monitor have answered the reasonable and appropriate requests for information they have received to date. It is the Applicants' view that Plaintiffs' Counsel's remaining information requests are overbroad, relate to confidential information about the business and restructuring, and/or are more akin to discovery questions that are not relevant to developing an understanding of the restructuring process. The Applicants continue to be willing to, in consultation with the Monitor, engage with Plaintiffs' Counsel to address reasonable and appropriate requests for information.

E. Proposed Adjudication Schedule

52. Plaintiffs' Counsel sent a proposed schedule to Osler on December 13, 2021 (the "**December Proposed Schedule**"), attached as Exhibit S to the Tannor Affidavit. The December Proposed Schedule suggested:

(a) The appointment of a tripartite panel from JAMS (U.S.);

(b) The application of the expedited procedures of the JAMS Comprehensive Arbitration Rules and Procedures governing binding Arbitrations of claims to pre-hearing discovery and the hearing;

(c) "[S]ufficient disclosure" from the Just Energy Group;

(d) "Circumscribed" depositions; and

(e) A hearing lasting approximately 5-7 days to be scheduled for the first week of February 2022.

53. This proposal would have required the parties to start and complete documentary discovery, conduct depositions, prepare and exchange expert reports, and proceed to a hearing on the merits within a two-month period that included the December holiday break. The December Proposed Schedule was not a remotely achievable schedule, especially as the Applicants are in the midst of a critical time in their attempts to reorganize.

54. The December Proposed Schedule omits significant and substantive steps in the adjudication of any proposed class action. For instance, the schedule ignores the need to certify the proposed class actions in advance of any hearing on the merits. It is my understanding, including based on advice from U.S. counsel Mr. Cyrulnik, that, in the case of a class action, the court first needs to certify a class prior to any trial, including by making a determination as to whether the case satisfies the many requirements for proceeding as a class action and, if so, defining the precise scope of the permissible class based on consideration of the questions of law and fact that are common to the proposed class members. Without certifying the classes (the scope

of which are very much in contention given the plaintiffs' attempts to broaden the Putative Class Actions), it will be impossible to conduct a trial or give notice to potential class members to allow them to opt out if either of the Putative Class Actions is certified.

55. Plaintiffs' Counsel notes in their proposed schedule that they require disclosure of "information such as (i) the rates charged and usage data for Just Energy's customers in the various U.S. markets where the company supplies electricity and gas, (ii) JE's costing methodology, (iii) customer agreements utilized, and (iv) marketing materials" and that they are "prepared to furnish a more detailed list of what is needed pre-hearing." These statements conveniently gloss over the EDNY Court's ruling that discovery has been concluded in the Donin Action, as well as the fact that the named defendants in the Putative Class Actions only operated in certain jurisdictions. Similarly, Plaintiffs' Counsel ignores the fact that the time for submitting an expert report in the Donin Action has long passed.

56. The Notices of Disallowance delivered to the plaintiffs on January 11, 2022, both specified the significant steps that are required to be addressed in order to fairly and properly adjudicate the Putative Class Actions – most of which were missing from the plaintiffs' proposed adjudication schedule. In addition to the discovery that must be commenced and concluded in the Jordet Action, both actions require the completion of:

- dispositive motion practice (i.e., motion for summary judgment), which would involve the disclosure of any expert reports and supporting evidence from fact witnesses, depositions, potential preliminary motions, written briefs, and oral argument;
- a contested class certification process, which would include written briefing, presentation of supporting evidence from any fact and expert witnesses, and oral argument;

- a trial on the issue of liability, including pretrial submissions and motion practice to resolve evidentiary issues, voir dire, direct testimony and cross-examination of any fact and expert witnesses, and legal argument from counsel; and
- resolution of damages of the plaintiff or certified class(es), which may require bifurcation from the trial on liability (especially if the plaintiffs continue to allege damages on behalf of a national class, which the defendants argue is impermissible).

57. The plaintiffs' current proposed schedule, as set out in their notice of motion, is largely the same as the December Proposed Schedule. Notably, they are still seeking a hearing on the merits in February 2022 without accounting for the need to address discovery in the Jordet Action and motions for summary judgment and class certification in both Putative Class Actions.

58. On February 1, 2022, the Applicants provided the Applicants' proposed adjudication schedule to Plaintiffs' Counsel (the "**Applicants' Proposed Schedule**"). A copy of the communication to Plaintiffs' Counsel, including the Applicants' Proposed Schedule is attached to this affidavit as **Exhibit "M"**. The Applicants noted that they are willing to discuss the appointment of an arbitrator from Arbitration Place or similar forum as Claims Officer. I am advised by Osler that Arbitration Place has a roster that includes former Supreme Court of Canada and Ontario Court of Appeal judges. The Applicants' Proposed Schedule would be subject to the discretion of the Claims Officer.

59. The proposed expedited schedule for addressing both Putative Class Action Claims, along with the comparable schedule to adjudicate these Putative Class Actions in the ordinary course, is set out below:

Step	Applicants' Proposed Expedited Schedule	Potential Donin Schedule in the Ordinary Course	Potential Jordet Schedule in the Ordinary Course
Fact Discovery	After conducting a meet and confer among counsel, appropriately tailored document production by June 30, 2022 consistent with the status of the Donin and Jordet cases.	Completed/Deadline Passed	April 1, 2023
Expert Discovery	Opening Expert Disclosures: July 29, 2022 Rebuttal Expert Disclosures: August 19, 2022 Expert Depositions: August 29, 2022	Completed/Deadline Passed	Plaintiffs' Expert Disclosures: May 15, 2023 Defendants' Expert Disclosures: July 1, 2023 Expert Depositions: August 1, 2023
Dispositive Motions Hearing	November 10, 2022	September 3, 2022 (assuming pre-motion letters filed by March 3, 2022)	March 7, 2024 (assuming pre-motion letters filed September 7, 2023)
Class Certification Hearing	November 17, 2022	September 30, 2022 (assuming pre-motion letters filed March 31, 2022)	April 5, 2024 (assuming pre-motion letters October 5, 2023)
Joint Pretrial Order/Pretrial Conference	December 9, 2022	June 8, 2023	December 5, 2024
Trial	February 10, 2023	September 11, 2023	January 6, 2025

60. It is my understanding, including based on advice from Mr. Cyrulnik, that the schedules listed in the last two columns of the above chart may well be ambitious estimations of the "ordinary

course" schedules for hearing the Putative Class Actions, based on the assumptions set out in the relevant footnotes in the Applicants' Proposed Schedule.

61. As a reference point, the Applicants' compressed schedule provides for the hearing of the certification and summary judgment motions in November 2022, almost a year and a half before such motions would be heard in the Jordet Action in the ordinary course. If the plaintiffs are successful on both of these motions, a trial with respect to any certified common issues would commence by February 10, 2023 – approximately three years before any such trial would have been heard in the Jordet Action and seven months before any trial would have been heard in the Donin Action.

62. Management of the Applicants will be directly engaged in document production, attending depositions, and supervising and supporting litigation efforts in the Putative Class Actions at a time when they are focused on implementing a going concern restructuring for the business. The first step in the proposed schedule – document production – will be a burdensome step for management, as there has been no discovery in the Jordet Action to date. By way of illustration, document production in the Donin Action took nearly two years to complete. The preliminary list of disclosure requests sought by the plaintiffs is broad and confirms that the discovery process will not be a simple or quick exercise.

63. The Applicants' Proposed Schedule was advanced in an effort to strike a balance between available management resources to both successfully conclude a restructuring transaction and the need to finalize creditor claims in a timely fashion. The complexity of developing a plan for the Applicants was recognized by this Court in granting the Applicants' last request for a stay extension:

> 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.

64. If anything, the time pressure imposed on management to negotiate a restructuring plan while operating the business has become even more intense and all consuming.

65. In the circumstances, the Applicants could not justify a more abridged timetable for adjudicating the Putative Class Actions. The restructuring negotiations of this billion-dollar company must continue to be the focus of management for the benefit of its stakeholders, including any potential class members. Management simply does not have the "bandwidth" to further accelerate the Applicants' Proposed Schedule, as this would undoubtedly be a distraction and strain on management resources during a critical phase of the restructuring. It is also imperative that any schedule allow for a full and fair consideration of the merits of the Putative Class Claims to ensure the integrity of the process and to avoid prejudice to unsecured creditors with competing claims.

SWORN BEFORE ME over video teleconference this 2nd day of February, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
Karin Sachar (LSO No. 59944E)

Michael Carter

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,
SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.	)	WEDNESDAY, THE 15TH
	)	
JUSTICE KOEHNEN	)	DAY OF SEPTEMBER, 2021

SUPERIOR COURT OF JUSTICE
JUSTICIA
COUR SUPÉRIEURE DE JUSTICE

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.
(each, an "**Applicant**", and collectively, the "**Applicants**")

CLAIMS PROCEDURE ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, *inter alia*, establishing a claims procedure for the identification and quantification of certain claims against (i) the Applicants and the partnerships listed in Schedule "A" hereto (the "**JE Partnerships**", and collectively with the Applicants, the "**Just Energy Entities**") and (ii) the current and former

directors and officers of the Just Energy Entities, was heard this day by video conference at Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Michael Carter sworn September 8, 2021 including the exhibits thereto, the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (the "**Monitor**") dated September 8, 2021, and on hearing the submissions of respective counsel for the Just Energy Entities, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Justine Erickson sworn September 8, 2021 and the Affidavit of Service of Anne-Marie Runca affirmed September 9, 2021, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order in these proceedings dated March 9, 2021, as amended and restated on March 19, 2021 and as further amended and restated on May 26, 2021, and as may be further amended, restated, supplemented and/or modified from time to time (the "**Initial Order**").

3. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

(a) "**Assessments**" means current or future claims of Her Majesty the Queen in Right

of Canada or of any province or territory or municipality or any other taxation authority in any Canadian or non-Canadian jurisdiction, including, without limitation, amounts which may arise or have arisen under any current or future notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority (including, for the avoidance of doubt, from any taxation authority in the United States);

(b) "**Bar Date**" means the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable pursuant to the terms of this Order;

(c) "**Business Day**" means, except as otherwise specified herein, a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;

(d) "**CBCA Arrangement**" means the arrangement under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, set out in that certain amended and restated plan of arrangement dated September 2, 2020, which arrangement was approved by a final order of the Ontario Superior Court of Justice (Commercial List) on September 2, 2020 following an application by Just Energy Group Inc. and 12175592 Canada Inc.;

(e) "**CCAA Proceedings**" means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-21-00658423-00CL;

(f) "**Characterization**" means, for the purposes of this Order, solely whether the Claim is a secured or unsecured Claim, Pre-Filing Claim, Restructuring Period

Claim or D&O Claim and, for greater certainty, shall not include any determination of the relative priority of any secured Claim pursuant to the Intercreditor Agreement or otherwise;

(g) "**Claim**" means:

(i) any right or claim of any Person against any of the Just Energy Entities, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Just Energy Entity to such Person, in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or claim with respect to any Assessment, or contract, or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Just Energy Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right or claim, including in connection with indebtedness, liability or obligation, is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any Equity Claim, any claim brought by any proposed or confirmed

representative plaintiff on behalf of a class in a class action, and any claim against any of the Just Energy Entities for indemnification by any Director or Officer in respect of a Pre-Filing D&O Claim (each, a "**Pre-Filing Claim**", and collectively, the "**Pre-Filing Claims**");

(ii) any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Just Energy Entity to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Just Energy Entity on or after the Filing Date of any contract, lease or other agreement, whether written or oral, and including any right or claim with respect to any Assessment (each, a "**Restructuring Period Claim**", and collectively, the "**Restructuring Period Claims**");

(iii) any right or claim of any Person against one or more of the Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments, any claim brought by any proposed or confirmed representative plaintiff on behalf of a class in a class action, and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any

matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a "**Pre-Filing D&O Claim**", and collectively, the "**Pre-Filing D&O Claims**"); and

(iv) any right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a "**Restructuring Period D&O Claim**", collectively, the "**Restructuring Period D&O Claims**");

provided, however, that in any case "**Claim**" shall not include an Excluded Claim or any right or claim of any Person that was previously released, barred, estopped, stayed and/or enjoined pursuant to the CBCA Arrangement, but for greater

certainty, shall include any Claim arising through subrogation against any Just Energy Entity or any Director or Officer;

(h) "**Claimant**" means (a) a Person asserting a Pre-Filing Claim or a Restructuring Period Claim against any Just Energy Entity, or (b) a Person asserting a D&O Claim against any of the Directors or Officers;

(i) "**Claims Agent**" means Omni Agent Solutions, as claims and noticing agent for the Just Energy Entities;

(j) "**Claims Agent's Website**" means https://omniagentsolutions.com/justenergyclaims;

(k) "**Claims Bar Date**" means, in respect of a Pre-Filing Claim or Pre-Filing D&O Claim, 5:00 p.m. on November 1, 2021;

(l) "**Claims Officer**" means the individual(s) designated by the Court pursuant to paragraph 42 of this Order;

(m) "**Claims Process**" means the procedures outlined in this Order in connection with the assertion of Claims against the Just Energy Entities and/or the Directors and Officers;

(n) "**Commodity Agreement**" means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master

power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement;

(o) "**Commodity Supplier**" means any counterparty to a Commodity Agreement;

(p) "**Consultation Parties**" means: (a) the DIP Lenders and their affiliates holding secured Claims against any of the Just Energy Entities, (b) the CA Agent and the CA Lenders, and (c) Shell Energy North America (Canada) Inc. and Shell Energy North America (US), L.P., and their respective counsel and financial advisors;

(q) "**Court**" means the Ontario Superior Court of Justice (Commercial List);

(r) "**Credit Agreement**" means the ninth amended and restated credit agreement dated as of September 28, 2020 among Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, National Bank of Canada, as administrative agent, and the Credit Facility Lenders, as lenders, as may be further supplemented, amended or restated from time to time;

(s) "**Credit Facility Lenders**" means the syndicate of lenders party to the Credit Agreement from time to time, which includes the Canadian Imperial Bank of Commerce, National Bank of Canada, HSBC Bank Canada, JPMorgan Chase and its affiliates, Alberta Treasury Branches, Canadian Western Bank, and Morgan Stanley Senior Funding, Inc., a subsidiary of Morgan Stanley Bank N.A.;

(t) "**D&O Claim**" means any Pre-Filing D&O Claim or Restructuring Period D&O Claim, and "**D&O Claims**" means, collectively, the Pre-Filing D&O Claims and the Restructuring Period D&O Claims;

(u) “**D&O Claim Instruction Letter**” means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “I” hereto;

(v) “**D&O Proof of Claim**” means the proof of claim to be filed by Claimants in connection with any D&O Claim, substantially in the form attached as Schedule “J” hereto, which shall include all available supporting documentation in respect of such D&O Claim;

(w) “**Director**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Just Energy Entities, in such capacity;

(x) “**Employee**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a current or former employee of any of the Just Energy Entities whether on a full-time, part-time or temporary basis, other than a Director or Officer, including any individuals on disability leave, parental leave or other absence;

(y) “**Equity Claim**” has the meaning set forth in section 2(1) of the CCAA;

(z) “**Excluded Claim**” means any:

(i) Claim that may be asserted by any beneficiary of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge, the Cash Management Charge and any other charges granted by the Court in the CCAA Proceedings, with respect to such charges;

(ii) Claim that may be asserted by any federal or provincial energy regulators, provincial regulators of consumer sales that have authority with respect to energy sales, U.S. municipal, state, federal or other foreign energy regulatory bodies or agencies, local energy transmission and distribution companies, or regional transmission organizations or independent system operators (but excluding, for the avoidance of doubt, any Claim by any taxation authority);

(iii) Specified Equity Class Action Claim;

(iv) Intercompany Claim; and

(v) Claim that may be asserted by any of the Just Energy Entities against any Directors and/or Officers;

and for greater certainty, shall include any Excluded Claim arising through subrogation;

(aa) "**Filing Date**" means March 9, 2021;

(bb) "**General Claims Package**" means the document package to be disseminated by the Monitor or the Claims Agent in accordance with the terms of this Order, which shall consist of a Proof of Claim form, a Proof of Claim Instruction Letter, a D&O Proof of Claim form, a D&O Claim Instruction Letter, and such other materials as the Just Energy Entities, in consultation with the Monitor, may consider appropriate;

(cc) "**Indenture**" means the trust indenture dated as of September 28, 2020 between Just Energy Group Inc. and Computershare Trust Company of Canada, as trustee, providing for the issue of a 7% unsecured subordinated note due September 27, 2026, as may be supplemented, amended or restated from time to time;

(dd) "**Intercompany Claim**" means any Claim that may be asserted against any of the Just Energy Entities by or on behalf of any of the Just Energy Entities or any of their affiliated companies, partnerships, or other corporate entities;

(ee) **"Intercreditor Agreement"** means the Sixth Amended and Restated Intercreditor Agreement between Canadian Imperial Bank of Commerce, as collateral agent and Agent for itself as agent and the Lenders (as defined therein); Shell Energy North America (Canada) Inc.; Shell Energy North America (US), L.P.; Shell Trading Risk Management, LLC; BP Canada Energy Group ULC; BP Canada Energy Marketing Corp.; BP Energy Company; Exelon Generation Company, LLC; Bruce Power L.P.; Societe Generale; EDF Trading North America, LLC; National Bank of Canada; Nextera Energy Power Marketing, LLC; Macquarie Bank Limited; Macquarie Energy Canada Ltd.; Macquarie Energy LLC; and each other person identified as an Other Commodity Supplier (as defined therein) from time to time party thereto, and Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as Borrowers (as defined therein) and each of the Guarantors (as defined therein) from time to time party thereto, as amended, dated as of September 1, 2015 (as may be further amended, restated, supplemented or otherwise modified from time to time);

(ff) "**Meeting**" means any meeting of the creditors of the Just Energy Entities called for the purpose of considering and voting in respect of a Plan;

(gg) "**Monitor's Website**" means http://cfcanada.fticonsulting.com/justenergy/;

(hh) "**Negative Notice Claim**" means a Pre-Filing Claim and/or Restructuring Period Claim, as applicable, that is set out in a Statement of Negative Notice Claim prepared by the Just Energy Entities, in consultation with the Monitor, which Claim shall be: (i) valued in accordance with the Just Energy Entities' and the Monitor's assessment of the Claim, based on the books and records of the Just Energy Entities and any negotiations with such Negative Notice Claimants, and (ii) deemed to be accepted in the amount and Characterization set out therein unless otherwise disputed by a Negative Notice Claimant in accordance with the procedures outlined herein, and which, for greater certainty, shall include the following Claims:

(i) the aggregate Claims of the Credit Facility Lenders under the Credit Agreement, which Claims shall be addressed to and resolved by the National Bank of Canada, as administrative agent under the Credit Agreement, on behalf of the Credit Facility Lenders;

(ii) the aggregate Claims of the Term Loan Lenders under the Term Loan Agreement, which Claims shall be addressed to and resolved by Computershare Trust Company of Canada, as administrative agent under the Term Loan Agreement, on behalf of the Term Loan Lenders;

(iii) the aggregate Claims of the Noteholders under the Indenture, which Claims shall be addressed to and resolved by Computershare Trust Company of Canada, as trustee under the Indenture, on behalf of the Noteholders;

(iv) Claims of Commodity Suppliers under Commodity Agreements that have not been terminated as of the date of this Order (provided, for greater certainty, that all Claims of Commodity Suppliers under terminated Commodity Agreements must be submitted through a Proof of Claim in accordance with the procedures outlined herein);

(v) Claims of Employees who were employed as at the Filing Date in respect of the termination of such Employees' employment, including for termination and severance pay, where applicable, which termination and severance Claim shall be calculated based on the greatest of: (i) such Employee's contractual entitlements, if any, (ii) any entitlements under an applicable corporate policy or consistent with past practice prior to the Filing Date, or (iii) any entitlements in accordance with applicable employment standards legislation;

(vi) Claims of any other Persons to whom the Just Energy Entities, in consultation with the Monitor, determine to send a Negative Notice Claim based on the books and records of the Just Energy Entities;

(ii) "**Negative Notice Claimant**" means any Person to whom a Statement of Negative Notice Claim is addressed and delivered by the Monitor or the Claims Agent in accordance with the procedures outlined herein;

(jj) "**Negative Notice Claims Package**" means the document package to be disseminated by the Monitor or the Claims Agent to all Negative Notice Claimants in accordance with the terms of this Order, which shall consist of the Negative

Notice Claimant's Statement of Negative Notice Claim, a Notice of Dispute of Claim form, and such other materials as the Just Energy Entities, in consultation with the Monitor, may consider appropriate;

(kk) "**Noteholders**" means the holders of subordinated notes issued by Just Energy Group Inc. pursuant to the Indenture;

(ll) "**Notice of Dispute of Claim**" means the notice, substantially in the form attached as Schedule "H" hereto, which may be submitted or delivered to the Claims Agent or the Monitor by a Negative Notice Claimant disputing a Statement of Negative Notice Claim, with reasons for its dispute;

(mm) "**Notice of Dispute of Revision or Disallowance**" means the notice, substantially in the form attached as Schedule "F" hereto, which may be delivered to the Monitor by a Claimant disputing a Notice of Revision or Disallowance received by such Claimant;

(nn) "**Notice of Revision or Disallowance**" means the notice, substantially in the form attached as Schedule "E" hereto, which may be prepared by the Just Energy Entities, in consultation with the Monitor, and delivered by the Monitor to a Claimant revising or disallowing, in part or in whole, a Claim submitted by such Claimant in a Proof of Claim or D&O Proof of Claim;

(oo) "**Notice to Claimants**" means the notice for publication by the Monitor as described in paragraph 17 herein, substantially in the form attached as Schedule "B" hereto;

(pp) "**Officer**" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Just Energy Entities, in such capacity;

(qq) "**Order**" means this Claims Procedure Order;

(rr) "**Person**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), joint venture, unincorporated organization, governmental unit, body or agency or any instrumentality thereof, Canadian or non-Canadian regulatory body or agency or any instrumentality thereof, or any other entity;

(ss) "**Plan**" means any proposed plan of compromise or arrangement that may be filed in respect of any or all of the Just Energy Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with the terms thereof;

(tt) "**Proof of Claim**" means the proof of claim to be submitted or delivered to the Claims Agent or the Monitor by a Claimant in respect of any Pre-Filing Claim and/or Restructuring Period Claim for which such Claimant has not received a Statement of Negative Notice Claim, substantially in the form attached as Schedule "D" hereto, which shall include all available supporting documentation in respect of such Claim;

(uu) "**Proof of Claim Instruction Letter**" means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule "C" hereto;

(vv) “**Restructuring Period Claims Bar Date**” means, in respect of a Restructuring Period Claim or Restructuring Period D&O Claim, the later of (i) 30 days after the date on which the Monitor or Claims Agent sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim and (ii) the Claims Bar Date;

(ww) “**Specified Equity Class Action Claim**” means: (i) Civil Action 20-590 *Thaddeus White, et al. v. Just Energy Group Inc., et al.*; (ii) *Gilchrist v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-627174-00CP) commenced on September 11, 2019; (iii) *Saha v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-630737-00CP); and (iv) any claim for contribution or indemnity in respect of or related to those claims listed in (i) to (iii) above;

(xx) “**Statement of Negative Notice Claim**” means the respective statements to be prepared by the Just Energy Entities, in consultation with the Monitor, and disseminated by the Claims Agent or the Monitor to each Negative Notice Claimant in accordance with the terms of this Order, each of which shall state the amount of such Negative Notice Claimant’s Negative Notice Claim and shall include a description of any security in respect of such Negative Notice Claim, and which statements shall be substantially in the form attached as Schedule “G” hereto;

(yy) “**Term Loan Agreement**” means the unsecured amended and restated loan agreement dated as of September 28, 2020 between Computershare Trust Company of Canada, as administrative agent, the Term Loan Lenders, as lenders, and Just

Energy Group Inc., as borrower, as may be supplemented, modified, amended or restated from time to time; and

(zz) "**Term Loan Lenders**" means Sagard Credit Partners, LP and each other person from time to time party to the Term Loan Agreement as a lender.

4. **THIS COURT ORDERS** that, except where otherwise specified herein, all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

5. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation", all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

GENERAL PROVISIONS

6. **THIS COURT ORDERS** that notwithstanding any other provisions of this Order, the solicitation by the Just Energy Entities, the Monitor and the Claims Agent of Proofs of Claim and D&O Proofs of Claim, the delivery by the Monitor or the Claims Agent of Statements of Negative Notice Claim, and the filing by any Claimant of any Proof of Claim, D&O Proof of Claim or Notice of Dispute of Claim shall not, for that reason only, grant any Person any rights, including without limitation, in respect of the nature, quantum and priority of its Claims or its standing in the CCAA Proceedings, except as specifically set out in this Order.

7. **THIS COURT ORDERS** that the Monitor, in consultation with the Just Energy Entities, and if applicable, the relevant Directors and Officers, are hereby authorized to use reasonable

discretion as to the adequacy of compliance with respect to the manner or content in which any forms submitted or delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor, in consultation with the Just Energy Entities, and if applicable, the relevant Directors and Officers, are satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms; provided that it is recognized and understood that certain Claims may be contingent in nature and therefore may not contain particulars of such Claims that are not yet known as at the time they are filed.

8. **THIS COURT ORDERS** that amounts claimed in Assessments shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.

9. **THIS COURT ORDERS** that any Persons that have: (i) issued surety bonds or other credit insurance to any counterparties of the Just Energy Entities, and/or (ii) drawn on any letters of credit or cash collateral issued or provided by any of the Just Energy Entities in their favour to satisfy counterparty claims as a result of any non-payment by any of the Just Energy Entities, shall fully cooperate with the Just Energy Entities and the Monitor by providing information to assist in the assessment of the quantum and validity of Claims.

MONITOR’S ROLE

10. **THIS COURT ORDERS** that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor shall assist the Just Energy Entities in connection with the administration of the Claims Process set out herein, including the determination and resolution of Claims, if

applicable, and is hereby authorized, directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. **THIS COURT ORDERS** that, in carrying out the terms of this Order, the Monitor: (i) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the Just Energy Entities and any information provided by any of the Just Energy Entities, all without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be reasonably required to carry out its duties and obligations pursuant to this Order from the Just Energy Entities or any of their affiliated companies, partnerships, or other corporate entities, including making such inquiries and obtaining such records and information as it deems appropriate in connection with the Claims Process.

CLAIMS AGENT'S ROLE

12. **THIS COURT ORDERS** that the Claims Agent shall assist the Just Energy Entities and the Monitor in connection with the administration of the Claims Process as set out herein, and is hereby authorized, directed and empowered to take such actions and fulfill such roles as are authorized by this Order or incidental thereto.

13. **THIS COURT ORDERS** that, in carrying out the terms of this Order, the Claims Agent: (i) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (ii) shall be entitled to rely on

the books and records of the Just Energy Entities and any information provided by any of the Just Energy Entities, all without independent investigation; (iii) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (iv) may seek such assistance and take such direction as may be reasonably required to carry out its duties and obligations pursuant to this Order from the Just Energy Entities or the Monitor.

NOTICE TO CLAIMANTS

14. **THIS COURT ORDERS** that as soon as practicable, but no later than 5:00 p.m. on the tenth (10th) Business Day following the date of this Order, the Monitor or the Claims Agent shall cause a Negative Notice Claims Package to be sent to every Negative Notice Claimant at its last known municipal or e-mail address as recorded in the Just Energy Entities' books and records. The Monitor and the Just Energy Entities shall specify in the Statement of Negative Notice Claim included in the Negative Notice Claims Package the Negative Notice Claimant's Negative Notice Claim.

15. **THIS COURT ORDERS** that as soon as practicable, but no later than 5:00 p.m. on the tenth (10th) Business Day following the date of this Order, the Monitor or the Claims Agent shall cause a General Claims Package to be sent to: (i) each Person that appears on the Service List (except Persons that are likely to assert only Excluded Claims, in the reasonable opinion of the Just Energy Entities and the Monitor), (ii) any Person who has requested a Proof of Claim in respect of any potential Claim that is not captured in a Statement of Negative Notice Claim, and (iii) any Person known to the Just Energy Entities or the Monitor as having a potential Claim based on the books and records of the Just Energy Entities that is not captured in any Statement of Negative Notice Claim.

16. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants (or a condensed version thereof, as the Monitor, in consultation with the Just Energy Entities, may deem appropriate) to be published once in *The Globe and Mail* (National Edition), the *Wall Street Journal,* the *Houston Chronicle* and the *Dallas Morning News* as soon as practicable after the date of this Order.

17. **THIS COURT ORDERS** that, as soon as practicable after the date of this Order: (i) the Monitor shall cause the Notice to Claimants, the General Claims Package and a blank form of Notice of Dispute of Claim to be posted to the Monitor's Website, (ii) the Claims Agent shall cause the Notice to Claimants, the General Claims Package and a blank form of Notice of Dispute of Claim to be posted to the Claims Agent's Website, and (iii) the Claims Agent shall open the online claims submission portals on the Claims Agent's Website to enable the electronic submission of Proofs of Claim, D&O Proofs of Claim and Notices of Dispute of Claim by Claimants.

18. **THIS COURT ORDERS** that to the extent any Claimant requests documents or information relating to the Claims Process prior to the Claims Bar Date or the applicable Restructuring Period Claims Bar Date, or if the Just Energy Entities and the Monitor become aware of any further Claims after the mailings contemplated in paragraphs 14 and 15, the Claims Agent or the Monitor shall forthwith send such Claimant a General Claims Package or Negative Notice Claims Package, as appropriate, shall direct such Claimant to the documents posted on the Claims Agent's Website or the Monitor's Website, or shall otherwise respond to the request for documents or information as the Just Energy Entities, in consultation with the Monitor, may consider appropriate in the circumstances.

19. **THIS COURT ORDERS** that any notices of disclaimer or resiliation delivered after the date of this Order to potential Claimants in connection with any action taken by the Just Energy

Entities to restructure, disclaim, resiliate, terminate or breach any contract, lease or other agreement, whether written or oral, pursuant to the terms of the Initial Order, shall be accompanied by a Negative Notice Claims Package or General Claims Package, as appropriate.

20. **THIS COURT ORDERS** that the Claims Process and the forms of Notice to Claimants, Proof of Claim Instruction Letter, D&O Claim Instruction Letter, Statement of Negative Notice Claim, Proof of Claim, D&O Proof of Claim, Notice of Revision or Disallowance, Notice of Dispute of Revision or Disallowance, and Notice of Dispute of Claim are hereby approved. Notwithstanding the foregoing, the Just Energy Entities, in consultation with the Monitor, may, from time to time, make minor non-substantive changes to the forms as they may consider necessary or desirable.

21. **THIS COURT ORDERS** that the sending of the Negative Notice Claims Package and the General Claims Package to the applicable Persons as described above, the publication of the Notice to Claimants, each in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient service and delivery of notice of this Order, Claims Bar Date and the Restructuring Period Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

CLAIMS PROCEDURE FOR NEGATIVE NOTICE CLAIMS

(A) Negative Notice Claims

22. **THIS COURT ORDERS** that if a Negative Notice Claimant wishes to dispute the amount or Characterization of its Negative Notice Claim as set out in the relevant Statement of Negative Notice Claim, the Negative Notice Claimant shall deliver to the Claims Agent or the Monitor a

Notice of Dispute of Claim which must be received by the Claims Agent or the Monitor by no later than the applicable Bar Date. A Notice of Dispute of Claim may be submitted to the Claims Agent through the online portal on the Claims Agent's Website or otherwise delivered to the Claims Agent or the Monitor in accordance with paragraph 51 hereto. Such Negative Notice Claimant shall specify therein the details of the dispute with respect to its Claim.

23. **THIS COURT ORDERS** that if a Negative Notice Claimant does not deliver to the Claims Agent or the Monitor a completed Notice of Dispute of Claim such that it is received by the Claims Agent or the Monitor by the applicable Bar Date, disputing its Claims as set out in the Statement of Negative Notice Claim, then (a) such Negative Notice Claimant shall be deemed to have accepted the amount and Characterization of the Negative Notice Claimant's Claims as set out in the Statement of Negative Notice Claim, and (b) any and all of the Negative Notice Claimant's rights to dispute the Claims as determined in the Statement of Negative Notice Claim or to otherwise assert or pursue the Claims set out in the Statement of Negative Notice Claim other than as they are determined in such Statement of Negative Notice Claim shall be forever extinguished and barred without further act or notification. For greater certainty, nothing in this paragraph affects any separate and distinct Claims of a Negative Notice Claimant that are not captured in whole or in part in a Statement of Negative Notice Claim (and are separately asserted in a Proof of Claim or D&O Proof of Claim submitted in accordance with this Order).

(B) Adjudication and Resolution of Negative Notice Claims

24. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, shall review and record all Notices of Dispute of Claim that are received on or before the applicable Bar Date. If the Just Energy Entities, in consultation with the Monitor, determine that it is necessary to finally determine the amount and Characterization of any or all Claims against the

Just Energy Entities or any of them, the Just Energy Entities, in consultation with the Monitor, shall review and finally determine the amount and Characterization of all such Claims for which a Notice of Dispute of Claim has been received on or before the applicable Bar Date in accordance with the relevant adjudication and resolution process set out in this Order.

25. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 24, if the Just Energy Entities, in consultation with the Monitor, disagree with the Claim as set out in the Notice of Dispute of Claim, the Just Energy Entities and the Monitor shall attempt to resolve such dispute and settle the purported Claim with the Negative Notice Claimant. In the event that a dispute is not settled within a time period or in a manner satisfactory to the Just Energy Entities, in consultation with the Monitor, the Just Energy Entities shall, at their election, refer the dispute raised in the Notice of Dispute of Claim to a Claims Officer or the Court for adjudication, and the Monitor shall send written notice of such referral to the Negative Notice Claimant.

CLAIMS PROCEDURE FOR ALL OTHER CLAIMS

(A) Pre-Filing Claims and Pre-Filing D&O Claims

26. **THIS COURT ORDERS** that any Claimant that intends to assert a Pre-Filing Claim that is not captured in a Statement of Negative Notice Claim or a Pre-Filing D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Claims Agent or the Monitor on or before the Claims Bar Date. Proofs of Claim and D&O Proofs of Claim may be submitted to the Claims Agent through the online portal on the Claims Agent's Website or otherwise delivered to the Claims Agent or the Monitor in accordance with paragraph 51 hereto. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed with the Claims Agent or the Monitor by every Claimant in respect of every Pre-Filing Claim that is not captured in a Statement of Negative Notice Claim and every Pre-Filing D&O Claim, regardless of whether

or not a legal proceeding in respect of such Pre-Filing Claim or Pre-Filing D&O Claim has been previously commenced.

27. **THIS COURT ORDERS** that any Claimant (other than any Negative Notice Claimant in respect of its Negative Notice Claim as set out in a Statement of Negative Notice Claim) that does not file a Proof of Claim or D&O Proof of Claim, as applicable, in accordance with paragraph 26 so that such Proof of Claim or D&O Proof of Claim is actually received by the Claims Agent or the Monitor on or before the Claims Bar Date, or such later date as the Monitor, in consultation with the Just Energy Entities, may agree in writing or the Court may otherwise direct:

(a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s) against the Just Energy Entities and all such Pre-Filing Claims or Pre-Filing D&O Claims shall be forever extinguished;

(b) will not be permitted to vote at any Meeting on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s);

(c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings with respect to such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s); and

(d) will not be permitted to participate in any distribution under any Plan or otherwise on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s).

(B) Restructuring Period Claims

28. **THIS COURT ORDERS** that, upon becoming aware of a circumstance giving rise to a potential Restructuring Period Claim or Restructuring Period D&O Claim after the mailings

contemplated in paragraphs 14 and 15 are completed, the Monitor, in consultation with the Just Energy Entities, shall send a Negative Notice Claims Package or General Claims Package, as appropriate, to the Claimant in respect of such Restructuring Period Claim or Restructuring Period D&O Claim in the manner provided for herein.

29. **THIS COURT ORDERS** that any Claimant that intends to assert a Restructuring Period Claim that is not captured in a Statement of Negative Notice Claim or a Restructuring Period D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Claims Agent or the Monitor on or before the Restructuring Period Claims Bar Date. Proofs of Claim and D&O Proofs of Claim may be submitted to the Claims Agent through the online portal on the Claims Agent's Website or otherwise delivered to the Claims Agent or the Monitor in accordance with paragraph 51 hereto. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed with the Claims Agent or the Monitor by every Claimant in respect of every Restructuring Period Claim that is not captured in a Statement of Negative Notice Claim and every Restructuring Period D&O Claim, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or Restructuring Period D&O Claim has been previously commenced.

30. **THIS COURT ORDERS** that any Claimant (other than any Negative Notice Claimant in respect of its Negative Notice Claim as set out in a Statement of Negative Notice Claim) that intends to assert a Restructuring Period Claim or Restructuring Period D&O Claim, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, in accordance with paragraph 29 so that such Proof of Claim or D&O Proof of Claim is actually received by the Claims Agent or the Monitor on or before the Restructuring Period Claims Bar Date, or such later date as the Monitor, in consultation with the Just Energy Entities, may agree in writing or the Court may otherwise direct:

(a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s) and all such Restructuring Period Claims or Restructuring Period D&O Claims shall be forever extinguished;

(b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s);

(c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings with respect to such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s); and

(d) will not be permitted to participate in any distribution under any Plan or otherwise on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s).

(C) Adjudication and Resolution of Claims

31. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, shall review and record all Proofs of Claim and D&O Proofs of Claim that are received on or before the applicable Bar Date. If the Just Energy Entities, in consultation with the Monitor, determine that it is necessary to finally determine the amount and Characterization of any or all Claims against the Just Energy Entities (or any of them) or their directors and/or officers, the Just Energy Entities, in consultation with the Monitor, shall review and finally determine the amount and Characterization of all such Claims asserted in any Proof of Claim or D&O Proof of Claim received on or before the applicable Bar Date in accordance with the adjudication and resolution process set out in this Order.

32. **THIS COURT ORDERS** that the Monitor shall make reasonable efforts to promptly deliver a copy of any D&O Proofs of Claim, Notices of Revision or Disallowance with respect to any D&O Claim, and Notices of Dispute of Revision or Disallowance with respect to any D&O Claim, to the applicable Directors and Officers named therein.

33. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31: (i) the Just Energy Entities, in consultation with the Monitor, shall accept, revise or reject each Claim set out in each Proof of Claim, and (ii) with respect to a D&O Claim set out in a D&O Proof of Claim, the Just Energy Entities, in consultation with the Monitor and the applicable Directors and Officers named in respect of such D&O Claim, shall accept, revise or reject such D&O Claim, provided that the Just Energy Entities shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of the Court.

34. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31, if the Just Energy Entities, in consultation with the Monitor, agree with the amount and Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed in accordance with paragraphs 26 or 29 herein and intend to accept the Claim in accordance with paragraph 33, the Monitor or the Claims Agent shall notify such Claimant of the acceptance of its Claim by the Just Energy Entities.

35. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31, if the Just Energy Entities, in consultation with the Monitor, disagree with the amount or Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed in accordance with paragraphs 26 or 29 herein, the Just Energy Entities shall, in consultation with the Monitor and any applicable Directors or Officers, attempt to resolve such dispute and settle the purported Claim with the Claimant.

36. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31, if the Just Energy Entities and the Monitor intend to revise or reject a Claim that has been filed in accordance with paragraphs 26 or 29 herein, the Monitor shall notify the applicable Claimant that its Claim has been revised or rejected, and the reasons therefor, by sending a Notice of Revision or Disallowance.

37. **THIS COURT ORDERS** that any Claimant who intends to dispute a Notice of Revision or Disallowance sent pursuant to paragraph 36 above shall deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for its dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor, in consultation with the Just Energy Entities, in writing.

38. **THIS COURT ORDERS** that, where a Claimant who receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 37 above, then such Claimant's Claim shall be deemed to be as determined in the Notice of Revision or Disallowance and any and all of the Claimant's rights to dispute the Claim as determined in the Notice of Revision or Disallowance or to otherwise assert or pursue such Claim other than as determined in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.

39. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute of Revision or Disallowance in respect of a Claim, the Just Energy Entities, in consultation with the Monitor and any applicable Directors or Officers, shall attempt to resolve such dispute and settle the purported Claim with the Claimant, and in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Just Energy

Entities, in consultation with the Monitor and any applicable Directors or Officers, the Just Energy Entities shall, at their election, refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication, and the Monitor shall send written notice of such referral to the Claimant.

40. **THIS COURT ORDERS** that notwithstanding any other provisions of this Order, the Just Energy Entities, in consultation with the Monitor and any applicable Directors or Officers, may, at their election, refer any Claim to a Claims Officer or the Court for adjudication at any time, and the Monitor shall send written notice of such referral to the applicable parties.

41. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, may consult with, and/or provide reporting to, any of the Consultation Parties in the review, adjudication and/or resolution of any Claims subject to this Claims Process (other than any Claims subject to the Intercreditor Agreement). Further, the Just Energy Entities shall give seven (7) days' prior written notice to the Consultation Parties of the details of any proposed settlement or allowance of any Claim subject to this Claims Process (other than any Claim subject to the Intercreditor Agreement) in an amount exceeding $5 million, and any Consultation Party may seek the direction of the Court regarding any such proposed resolution of the Claim.

CLAIMS OFFICER

42. **THIS COURT ORDERS** that Mr. Edward Sellers, and such other Persons as may be appointed by the Court from time to time on a motion by the Just Energy Entities or the Monitor, be and are hereby appointed as the Claims Officers for the Claims Process.

43. **THIS COURT ORDERS** that the decision as to whether a disputed Claim should be adjudicated by the Court or a Claims Officer shall be in the discretion of the Just Energy Entities, in consultation with the Monitor.

44. **THIS COURT ORDERS** that, where a disputed Claim has been referred to a Claims Officer, the Claims Officer shall determine the validity and amount of such disputed Claim in accordance with this Order and, to the extent necessary, may determine whether any Claim or part thereof constitutes an Excluded Claim, and shall provide written reasons. Where a disputed Claim has been referred to a Claims Officer, the Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. The Claims Officer shall have the discretion to mediate any dispute that is referred to such Claims Officer at its election. The Claims Officer shall also have the discretion to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid.

45. **THIS COURT ORDERS** that the Monitor, the Claimant, the applicable Just Energy Entity and/or, in respect of any D&O Claim, the relevant Directors or Officers, or any other stakeholder (if applicable) may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the amount and Characterization of a Claimant's Claim or any other matter determined by the Claims Officer in accordance with paragraph 44, appeal such determination to the Court by filing a notice of appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

46. **THIS COURT ORDERS** that, if no party appeals any determination of any Claims Officer within the time set out in paragraph 45 above, the decision of the Claims Officer in determining the amount and Characterization of the Claimant's Claim or any other matter

determined by the Claims Officer in accordance with paragraph 44 shall be final and binding upon the applicable Just Energy Entity, the applicable Directors and Officers in respect of any D&O Claim, the Monitor, the Claimant and any other applicable stakeholder and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

NOTICE TO TRANSFEREES

47. **THIS COURT ORDERS** that from the date of this Order until seven (7) days prior to the date fixed by the Court for the first distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, to the extent required, leave is hereby granted to permit a Claimant to provide to the Claims Agent or the Monitor notice of assignment or transfer of a Claim to any third party.

48. **THIS COURT ORDERS** that, subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns its Claim to another Person, none of the Monitor, the Claims Agent nor any of the Just Energy Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until written notice of such transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Claims Agent or the Monitor and acknowledged by the Just Energy Entities or the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of such Claim and the Just Energy Entities, the Claims Agent and the Monitor shall thereafter only be required to deal with such transferee or assignee and not the original Claimant. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken or not taken in respect of such Claim in accordance with this Order prior to receipt by the Claims Agent or the Monitor and

acknowledgement by the Just Energy Entities or the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the Just Energy Entities and/or the applicable Directors and Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim shall not be entitled to set-off, apply, merge, consolidate or combine any Claim assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Just Energy Entities or the applicable Directors and Officers.

49. **THIS COURT ORDERS** that no transfer or assignment shall be effective for voting purposes at any Meeting unless sufficient notice and evidence of such transfer or assignment has been received by the Claims Agent or the Monitor no later than 5:00 p.m. on the date that is seven (7) days prior to the date fixed by the Court for any Meeting, failing which the original Claimant shall have all applicable rights as the "Claimant" with respect to such Claim as if no transfer or assignment of the Claim had occurred.

SERVICE AND NOTICE

50. **THIS COURT ORDERS** that the Just Energy Entities, the Claims Agent and the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Negative Notice Claims Package, the General Claims Package, and any letters, notices or other documents, to the appropriate Claimants or any other interested Persons by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, shown on the books and records of the Just Energy Entities or, where applicable, as set out in such Claimant's Proof of Claim, D&O Proof of Claim or Notice of Dispute of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within

Ontario or within California, as applicable, the fifth Business Day after mailing within Canada (other than within Ontario) or within the United States (other than within California), as applicable, and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day; provided in each case that where such service or delivery is effected by the Claims Agent, the applicable "Business Day" shall be a day on which banks are generally open for business in Los Angeles, California, and the references as to time shall mean local time in Los Angeles, California.

51. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered by a Claimant to the Claims Agent or the Monitor under this Order shall, unless otherwise specified in this Order, be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if: (i) submitted to the Claims Agent through the online portal on the Claims Agent's Website, where applicable in accordance with this Order, or (ii) delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If to the Monitor:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If to the Claims Agent:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

Any such notice or communication delivered by a Claimant shall be deemed received: (i) if submitted to the Claims Agent on the Claims Agent's Website, as of the time it is submitted, or (ii) if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, upon actual receipt by the Claims Agent or the Monitor thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day; provided that, where such notice or communication is delivered to the Claims Agent in accordance with (ii) above, the applicable "Business Day" shall be a day on which banks are generally open for business in Los Angeles, California, and the references as to time shall mean local time in Los Angeles, California.

52. **THIS COURT ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not be effective, and all notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order, in each case unless otherwise determined by the Monitor, in its reasonable discretion and in consultation with the Just Energy Entities.

MISCELLANEOUS

53. **THIS COURT ORDERS** that the Just Energy Entities or the Monitor may from time to time apply to this Court to extend the time for any action which the Just Energy Entities, the Claims Agent or the Monitor are required to take if reasonably required to carry out their respective duties and obligations pursuant to this Order and for advice and directions concerning the discharge of

their respective powers and duties under this Order or the interpretation or application of this Order.

54. **THIS COURT ORDERS** that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Just Energy Entities' insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any Just Energy Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, the Just Energy Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a Just Energy Entity or Director or Officer, as applicable.

55. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Southern District of Texas, or in any other foreign jurisdiction, to give effect to this Order and to assist the Just Energy Entities, the Monitor and their respective agents, including the Claims Agent, in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby

respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

SCHEDULE "A"

JE Partnerships

Partnerships:

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

SCHEDULE "B"

NOTICE TO CLAIMANTS OF THE JUST ENERGY ENTITIES

RE: NOTICE OF CLAIMS PROCESS FOR 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. (COLLECTIVELY, THE "APPLICANTS") PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (THE "CCAA")

PLEASE TAKE NOTICE that on ●, 2021, the Ontario Superior Court of Justice (Commercial List) issued an order (the "**Claims Procedure Order**") in the CCAA proceedings of the Applicants, requiring that all Persons who assert a Claim (capitalized terms used in this notice and not otherwise defined have the meaning ascribed to them in the Claims Procedure Order) against the Just Energy Entities[1], whether unliquidated, contingent or otherwise, other than any Negative Notice Claimant in respect of its Negative Notice Claim as set out in any Statement of Negative Notice Claim, and all Persons who assert a claim against the Directors and/or Officers of any of the Just Energy Entities (as defined in the Claims Procedure Order, a "**D&O Claim**"), **must file a Proof of Claim (with respect to Claims against any of the Just Energy Entities) or D&O Proof of Claim (with respect to D&O Claims) with Omni Agent Solutions, as claims and noticing agent of the Just Energy Entities (the "Claims Agent"), or FTI Consulting Canada Inc., as Court-appointed monitor of the Just Energy Entities (in such capacity and not in its personal or corporate capacity, the "Monitor") on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the "Claims Bar Date"), or in the case of a Restructuring Period Claim or**

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[1] The "**Just Energy Entities**" are the Applicants and Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Restructuring Period D&O Claim, on or before the applicable Restructuring Period Claims Bar Date.

Pursuant to the Claims Procedure Order, Negative Notice Claims Packages will be sent to all Negative Notice Claimants on or before September 29, 2021, which Negative Notice Claims Packages will contain a Statement of Negative Notice Claim that specifies each Negative Notice Claimant's Negative Notice Claim as valued by the Just Energy Entities, in consultation with the Monitor, based on the books and records of the Just Energy Entities.

The Claims Agent or the Monitor will also send or cause to be sent, on or before September 29, 2021, a General Claims Package (that will include the form of Proof of Claim and D&O Proof of Claim) to: (i) each Person that appears on the Service List (except Persons that are likely to assert only Excluded Claims, in the reasonable opinion of the Just Energy Entities and the Monitor), (ii) any Person who has requested a Proof of Claim in respect of any potential Claim that is not captured in a Statement of Negative Notice Claim, and (iii) any Person known to the Just Energy Entities or the Monitor as having a potential Claim based on the books and records of the Just Energy Entities that is not captured in any Statement of Negative Notice Claim.

Claimants may also obtain the Claims Procedure Order, a General Claims Package or further information or documentation regarding the Claims Process from the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/, the Claims Agent's website at https://omniagentsolutions.com/justenergyclaims, or by contacting the Monitor at 1-844-669-6340 or claims.justenergy@fticonsulting.com or the Claims Agent at 1-866-680-8161 (US & Canada) or 1-818-574-3196 (International).

The Claims Bar Date is 5:00 p.m. (Toronto time) on November 1, 2021. Proofs of Claim in respect of Pre-Filing Claims (i.e., Claims against one or more of the Just Energy Entities arising prior to March 9, 2021) and Pre-Filing D&O Claims must be completed and filed with the Claims Agent or the Monitor on or before the Claims Bar Date.

The Restructuring Period Claims Bar Date is 5:00 pm (Toronto time) on the date that is the later of (i) 30 days after the date on which the Claims Agent or the Monitor sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim, and (ii) the Claims Bar Date. Proofs of Claim and D&O Proofs of Claim in respect of Restructuring Period Claims and Restructuring Period D&O Claims must be completed and filed with the Claims Agent or the Monitor on or before the Restructuring Period Claims Bar Date.

It is your responsibility to ensure that the Claims Agent or the Monitor receives your Proof of Claim or D&O Proof of Claim by the applicable Bar Date if you wish to assert any Claim that is not captured in a Negative Notice Claim. CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

If you have received a Statement of Negative Notice Claim, your Claim will be deemed to be accepted at the amount specified therein, and you do not need to take any further steps with respect to such Claim unless you disagree with the amount specified therein. If you wish to dispute your Claim as specified in your Statement of Negative Notice Claim, you must file a Notice of Dispute of Claim with the Claims Agent or the Monitor on or before the applicable Bar Date.

It is your responsibility to ensure that the Claims Agent or the Monitor receives your Notice of Dispute of Claim by the applicable Bar Date if you wish to dispute the Claim as listed in your Statement of Negative Notice Claim.

Claimants are strongly encouraged to complete and submit their Proof of Claim, D&O Proof of Claim or Notice of Dispute of Claim, as applicable, on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim, D&O Proof of Claim or Notice of Dispute of Claim, as applicable, must be delivered to the Monitor or the Claims Agent by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

DATED this ● day of ●, 2021.

SCHEDULE "C"

PROOF OF CLAIM INSTRUCTION LETTER

This instruction letter has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against the Just Energy Entities[1]. If you have any additional questions regarding completion of the Proof of Claim, please consult the Claims Agent's website at https://omniagentsolutions.com/justenergyclaims or contact the Claims Agent or the Monitor, whose respective contact information is set out below.

If you have received a Statement of Negative Notice Claim, your Claim will be deemed to be accepted at the amount specified therein, and you do not need to take any further steps with respect to such Claim unless you disagree with the amount specified therein. A Proof of Claim package is intended only to be used by Claimants who wish to assert a Claim that is not captured in a Statement of Negative Notice Claim.

Additional copies of the Proof of Claim may be found at the Claims Agent's website set out above or the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on ●, 2021 (the "**Claims Procedure Order**"), the terms of the Claims Procedure Order will govern. Capitalized terms used in this Proof of Claim Instruction Letter and not otherwise defined herein have the meanings ascribed to them in the Claims Procedure Order.

SECTION 1 – DEBTOR(S)

1. The full name of each Just Energy Entity against which the Claim is asserted must be listed (see footnote 1 for complete list of Just Energy Entities), including the full name of any Just Energy Entity that provided a guarantee in respect of the Claim. If there are insufficient lines to record each such name, attach a separate schedule indicating the required information.

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

SECTION 2A – ORIGINAL CLAIMANT

2. A separate Proof of Claim must be filed by each legal entity or person asserting a Claim against the Just Energy Entities, or any of them.

3. The Claimant shall include any and all Claims that it asserts against the Just Energy Entities, or any of them, in a single Proof of Claim filed, except for Claims described in any Statement of Negative Notice Claim sent to such Claimant by the Claims Agent or the Monitor. **Claims included in a Proof of Claim that are already captured in such Claimant's Statement of Negative Notice Claim will not be accepted by the Just Energy Entities.** Any Claimant who wishes to dispute any Claim set out in a Statement of Negative Notice Claim shall file a Notice of Dispute of Claim in respect of such Claim.

4. The full legal name of the Claimant must be provided.

5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

6. If the Claim has been assigned or transferred to another party, Section 2B must also be completed.

7. Unless the Claim is validly assigned or transferred, all future correspondence, notices, etc., regarding the Claim will be directed to the address and contact indicated in this section.

SECTION 2B – ASSIGNEE, IF APPLICABLE

8. If the Claimant has assigned or otherwise transferred its Claim, then Section 2B must be completed, and all documents evidencing such assignment or transfer must be attached.

9. The full legal name of the Assignee must be provided.

10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

11. If the Just Energy Entities, in consultation with the Monitor, are satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc., regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 - AMOUNT AND TYPE OF CLAIM

12. If the Claim is a Pre-Filing Claim within the meaning of the Claims Procedure Order, then indicate the amount each Just Energy Entity was and still is indebted to the Claimant in the Amount of Claim column, including interest, if applicable, up to and including March 9, 2021.

13. If the Claim is a Restructuring Period Claim within the meaning of the Claims Procedure Order, then indicate the Claim amount each Just Energy Entity was and still is indebted to the Claimant in the space reserved for Restructuring Period Claims (which is below the space reserved for Pre-Filing Claims).

For reference, a "**Restructuring Period Claim**" means any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Just Energy Entity to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Just Energy Entity on or after the Filing Date of any contract, lease or other agreement, whether written or oral, and including any right or claim with respect to any Assessment.

14. If there are insufficient lines to record each Claim amount, attach a separate schedule indicating the required information.

Currency

15. The amount of the Claim must be provided in the currency in which it arose.

16. Indicate the appropriate currency in the Currency column.

17. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

Security

18. Check this box ONLY if the Claim recorded on that line is a secured claim. If it is, indicate the value which you ascribe to the assets charged by your security in the adjacent column.

19. If the Claim is secured and/or guaranteed by any other Just Energy Entity, on a separate schedule provide full particulars of the security and/or guarantee, including the date on which the security and/or guarantee was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the relevant documents evidencing the security and/or guarantee.

SECTION 4 - DOCUMENTATION

20. Attach to the Proof of Claim form all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.

21. If the Claimant is a Commodity Supplier within the meaning of the Claims Procedure Order and is submitting a Claim in respect of any marked-to-market amounts that may have crystallized and become owing under any Commodity Agreement with any Just Energy Entity, the Claimant must attach a separate schedule indicating the appropriate calculations of such crystallized marked-to-market Claim(s).

For reference, a "**Commodity Agreement**" means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or

financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement, and a "**Commodity Supplier**" means any counterparty to a Commodity Agreement.

SECTION 5 - CERTIFICATION

22. The person signing the Proof of Claim should:

    (a) be the Claimant or an authorized representative of the Claimant;

    (b) have knowledge of all the circumstances connected with this Claim;

    (c) assert the Claim against Debtor(s) as set out in the Proof of Claim and certify all available supporting documentation is attached; and

    (d) if an individual is submitting the Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, have a witness to its certification.

23. By signing and submitting the Proof of Claim, the Claimant is asserting the Claim against each Just Energy Entity named as a "Debtor" in the Proof of Claim.

SECTION 6 - FILING OF CLAIM AND APPLICABLE DEADLINES

24. If your Claim is a Pre-Filing Claim within the meaning of the Claims Procedure Order (excluding any Negative Notice Claim that is a Pre-Filing Claim), the Proof of Claim MUST be received by the Claims Agent or the Monitor on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the "**Claims Bar Date**").

25. If your Claim is a Restructuring Period Claim within the meaning of the Claims Procedure Order (excluding any Negative Notice Claim that is a Restructuring Period Claim), the Proof of Claim MUST be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the date (the "**Restructuring Period Claims Bar Date**") that is the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date.

26. Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim must be delivered to the Monitor or the Claims Agent by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

SCHEDULE "D"

PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES[1]

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

1. Name of Just Energy Entity or Entities (the "Debtor(s)") the Claim is being made against[2]:

Debtor(s): ______________________

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: ______________________ Name of Contact ______________________

Address Title ______________________

Phone # ______________________

______________________________ Fax # ______________________

City ______________ Prov /State ________ Email ______________________

Postal/Zip Code ______________

2B. Assignee, if claim has been assigned

Legal Name of Assignee: ______________________ Name of Contact ______________________

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

[2] List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Address ______________________ Title ______________________

______________________ Phone # ______________________

______________________ Fax # ______________________

City ____________ Prov /State ________ Email ______________________

Postal/Zip Code ____________

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of Pre-Filing Claim (including interest up to and including March 9, 2021)[3]:	Whether Claim is Secured:	Value of Security Held, if any[4]:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

Restructuring Period Claims

Debtor Name:	Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

[3] Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

[4] If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation[5]

Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: ______________________	Witness[6]: ______________________ (signature)
Name: ______________________	______________________ (print)
Title: ______________________	

Dated at ____________________ this __________ day of _______________, 2021.

6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

[5] If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

[6] Witnesses are required if an individual is submitting this Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

SCHEDULE "E"

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities[1] and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

TO: **[INSERT NAME AND ADDRESS OF CLAIMANT]** (the "**Claimant**")

RE: Claim Reference Number: ______________________

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated ●, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim or D&O Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be as follows:

Type of Claim	**Applicable Debtor(s)**	**Amount as submitted**		**Amount allowed by the Just Energy Entities**	
		Original Currency		**Amount allowed as secured:**	**Amount allowed as unsecured:**
A. Pre-Filing Claim			$	$	$
B. Restructuring Period Claim			$	$	$

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

C. Pre-Filing D&O Claim			$	$	$
D. Restructuring Period D&O Claim			$	$	$
E. Total Claim			$	$	$

Reasons for Revision or Disallowance:

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SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this ● day of ●, 2021.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: ____

SCHEDULE "F"

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against the Just Energy Entities[1] and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

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Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated ●, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. **Particulars of Claimant:**

Claims Reference Number: ________________________________

Full Legal Name of Claimant (include trade name, if different)

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____

(the "**Claimant**")

Full Mailing Address of the Claimant:

____

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[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number: ______________________
Email Address: ______________________
Facsimile Number: ______________________
Attention (Contact Person): ______________________

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐ No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): ______________________

3. **Dispute of Revision or Disallowance of Claim:**

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated ______________________, and asserts a Claim as follows:

Type of Claim	**Applicable Debtor(s)**	**Amount allowed by the Just Energy Entities**		**Amount claimed by Claimant**	
		Amount allowed as secured:	**Amount allowed as unsecured:**	**Secured:**	**Unsecured:**
A. Pre-Filing Claim		$	$	$	$
B. Restructuring Period Claim		$	$	$	$
C. Pre-Filing D&O Claim		$	$	$	$
D. Restructuring Period D&O Claim		$	$	$	$
E. Total Claim		$	$	$	$

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. **Reasons for Dispute:**

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

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5. **Certification**

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: ______________________	Witness: ______________________ (signature)
Name: ______________________	______________________ (print)
Title: ______________________	

Dated at ______________________ this ___________ day of ________________, 2021.

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

SCHEDULE "G"

STATEMENT OF NEGATIVE NOTICE CLAIM

●, 2021

[Name]
[Address]

Dear ●:

Re: Negative Notice Claims in the CCAA Proceedings of the Just Energy Entities[1] (Court File: CV-21-00658423-00CL)

Amount of Negative Notice Claim against [the applicable Just Energy Entity(ies)] has been assessed as a [secured/unsecured] [pre-filing/restructuring period] claim in the amount of [C/US]$●

As you know, the Applicants filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), pursuant to an order (as amended and restated, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") (the "**CCAA Proceedings**"). Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as monitor of the Just Energy Entities to, among other things, oversee the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the "**Monitor**"). A copy of the Initial Order and other information relating to the CCAA Proceedings has been posted to http://cfcanada.fticonsulting.com/justenergy (the "**Monitor's Website**").

The purpose of this Statement of Negative Notice Claim is to inform you about your claim in the claims process approved by the Court on ●, 2021 (the "**Claims Process**"). The Claims Process governs the process for the identification and quantification of certain claims against the Just Energy Entities and their directors and officers in the CCAA Proceedings. All terms used but not defined in this Statement of Negative Notice Claim shall have the meanings ascribed thereto in the Claims Procedure Order of the Court dated ●, 2021 (the "**Claims Procedure Order**"). In the event of any inconsistency between the terms of this Statement of Negative Notice Claim and the terms of the Claims Procedure Order, the terms of the Claims Procedure Order will govern.

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[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Claims Process

Under the Claims Procedure Order, Omni Agent Solutions, as claims and noticing agent of the Just Energy Entities (the "**Claims Agent**") or the Monitor is required to send a notice prepared by the Just Energy Entities, in consultation with the Monitor, to each Negative Notice Claimant outlining the quantum of their Negative Notice Claim that the Just Energy Entities, in consultation with the Monitor, are prepared to allow in the Claims Process ("**Statement of Negative Notice Claim**").

This Statement of Negative Notice Claim contains the full amount of your Negative Notice Claim against the applicable Just Energy Entity(ies) that the Just Energy Entities, in consultation with the Monitor, will allow as an accepted Claim in the Claims Process, which Negative Notice Claim has been valued based on the books and records of the Just Energy Entities and any negotiations that the Just Energy Entities and/or the Monitor have had with you regarding the amounts owed by the applicable Just Energy Entity(ies) to you.

Your total Claim has been assessed by the Just Energy Entities, in consultation with the Monitor, as follows:

Your Negative Notice Claim has been assessed as a [secured/unsecured] [pre-filing/restructuring period] claim in the amount of [C/US]$● against [the applicable Just Energy Entity(ies)]. Details of your claim, including any security granted in respect thereof, are set out in the attached schedule.

If you agree with the Just Energy Entities' assessment of your Claim, you need not take any further action.

IF YOU WISH TO DISPUTE THE ASSESSMENT OF YOUR CLAIM, YOU MUST TAKE THE STEPS OUTLINED BELOW.

Disagreement with Assessment:

If you disagree with the assessment of your Negative Notice Claim set out in this Statement of Negative Notice Claim, you must complete and return to the Claims Agent or the Monitor a completed Notice of Dispute of Claim asserting a Claim in a different amount supported by appropriate documentation. A blank Notice of Dispute of Claim form is enclosed. The Notice of Dispute of Claim with supporting documentation disputing the within assessment of your Claim **must be received by the Claims Agent or the Monitor no later than 5:00 p.m. (Toronto time) on November 1, 2021 (the "Claims Bar Date"), or in the case of a Restructuring Period Claim, no later than 5:00 p.m. (Toronto time) on the later of (i) the date that is 30 days after the date on which this Negative Notice Claims Package was sent by the Claims Agent or the Monitor, and (ii) the Claims Bar Date (the "Restructuring Period Claims Bar Date").**

If no such Notice of Dispute of Claim is received by the Claims Agent or the Monitor by the applicable Bar Date, the amount of your Claim will be, subject to further order of the Court, conclusively deemed to be as shown in this Statement of Negative Notice Claim.

The Notice of Dispute of Claim may be completed and submitted on the Claims Agent's online claims submission portal, which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Notices of Dispute of Claim must be delivered to the Claims Agent or the Monitor by registered mail, personal delivery, courier, facsimile transmission or email (in PDF format) at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Important Deadlines:

If you do not file a Notice of Dispute of Claim by the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, you will have no further right to dispute your Claim, which shall be allowed in the amount and Characterization set out herein, and you will be barred from filing any such dispute in the future.

This Statement of Negative Notice Claim does not affect any Claim other than the Negative Notice Claim referred to herein. This Statement of Negative Notice Claim should include all Claims (as defined in the Claims Procedure Order) that you may have in accordance with the books and records of the Just Energy Entities, unless expressly stated otherwise. If you believe this Statement of Negative Notice Claim does not contain the entirety of your Negative Notice Claim, you must include your whole Claim in the Notice of Dispute of Claim.

If you believe you may have any Claims against any of the Just Energy Entities or any of their Directors and/or Officers that are not captured in whole or in part by this Statement of Negative Notice Claim, then you must submit a Proof of Claim or D&O Proof of Claim in respect of such Claims by the applicable Bar Date. Copies of the Proof of Claim and D&O Proof of Claim forms may be found at the Claims Agent's Website or the Monitor's Website. **Claims against the Just Energy Entities (that are not Negative Notice Claims) and D&O Claims which are not received by the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, will be barred and extinguished forever.**

More Information:

If you have questions regarding the foregoing, you may contact the Monitor at 1-844-669-6340 or claims.justenergy@fticonsulting.com or the Claims Agent at 1-866-680-8161 (US & Canada) or 1-818-574-3196 (International) or https://omniagentsolutions.com/justenergyclaims.

Yours truly,

SCHEDULE "H"

NOTICE OF DISPUTE OF CLAIM

For Negative Notice Claims against the Just Energy Entities[1]

Capitalized terms used but not defined in this Notice of Dispute of Claim shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated ●, 2021 (the "**Claims Procedure Order**"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

1. Particulars of Claimant:

Claims Reference Number: ______________________________

Full Legal Name of Claimant (include trade name, if applicable)

____

____

(the "**Claimant**")

Full Mailing Address of the Claimant:

____

____

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number: ______________________
Email Address: ______________________
Facsimile Number: ______________________
Attention (Contact Person): ______________________

2. **Particulars of original Negative Notice Claimant from whom you acquired the Claim (if applicable):**

Have you acquired this Claim from a Negative Notice Claimant by assignment?

Yes: ☐ No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Negative Notice Claimant: ______________________

3. **Dispute of Negative Notice Claim:**

The Claimant hereby disagrees with the value of its Negative Notice Claim as set out in the Statement of Negative Notice Claim dated _________________ and asserts a Claim as follows:

Claim	**Applicable Debtor(s)**	**Currency**	**Amount Allowed per Statement of Negative Notice Claim:**	**Amount claimed by Claimant:**
Total Claim			$	$

(Insert particulars of your Claim as per the Statement of Negative Notice Claim, and the value of your Claim(s) as asserted by you)

4. **Reasons for Dispute:**

Please describe the reasons and basis for your dispute of the amount or Characterization of your Claim as set out in your Statement of Negative Notice Claim. You may attach a separate schedule if more space is required. Provide all applicable documentation supporting your dispute, including any calculation of the amount, description of transaction(s) or agreement(s), name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by any Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

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5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Claim in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Claim must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: ______________________	Witness[2]: ______________________ (signature)
Name: ______________________	______________________ (print)
Title: ______________________	

Dated at ______________________ this ___________ day of ________________, 2021.

[2] Witnesses are required if an individual is submitting this Notice of Dispute of Claim by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

This Notice of Dispute of Claim MUST be received by the Claims Agent or the Monitor **no later than 5:00 p.m. (Toronto time) on November 1, 2021 (the "Claims Bar Date"), or in the case of a Restructuring Period Claim, no later than 5:00 p.m. (Toronto time) on the later of (i) the date that is 30 days after the date on which the Negative Notice Claims Package was sent by the Claims Agent or the Monitor, and (ii) the Claims Bar Date (the "Restructuring Period Claims Bar Date").**

This Notice of Dispute of Claim may be completed and submitted on the Claims Agent's online claims submission portal, which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, Notices of Dispute of Claim must be delivered to the Claims Agent or the Monitor by registered mail, personal delivery, courier, facsimile transmission or email (in PDF format) at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
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5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF A NOTICE OF DISPUTE OF CLAIM IS NOT RECEIVED BY THE CLAIMS AGENT OR THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE CLAIM AS SET OUT IN THE STATEMENT OF NEGATIVE NOTICE CLAIM WILL BE BINDING ON YOU AND YOU WILL HAVE NO FURTHER RIGHT TO DISPUTE SUCH CLAIM.

SCHEDULE "I"

CLAIMANT'S GUIDE TO COMPLETING THE D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS AND/OR OFFICERS OF THE JUST ENERGY ENTITIES[1]

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim form for claims against the Directors and/or Officers of the Just Energy Entities. If you have any additional questions regarding completion of the Proof of Claim, please consult the Claims Agent's website at https://omniagentsolutions.com/justenergyclaims or contact the Claims Agent or the Monitor, whose respective contact information is set out below.

The D&O Proof of Claim form is ONLY for Claimants asserting a claim against any Directors and/or Officers of the Just Energy Entities, and NOT for claims against the Just Energy Entities themselves. For claims against the Just Energy Entities that are not covered in any Statement of Negative Notice Claim, please use the form titled "Proof of Claim Form for Claims Against the Just Energy Entities", which is available on the Claims Agent's website or the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

Additional copies of the D&O Proof of Claim form may be found at the Claims Agent's website or the Monitor's website.

Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on ●, 2021 (the "**Claims Procedure Order**"), the terms of the Claims Procedure Order will govern. Capitalized terms used in this D&O Proof of Claim Instruction Letter and not otherwise defined herein have the meanings ascribed to them in the Claims Procedure Order.

SECTION 1 – DEBTOR(S)

1. The full name and position of all the Directors or Officers (present and former) of the Just Energy Entities against whom the D&O Claim is asserted must be listed (see footnote 1 for

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

a complete list of the Just Energy Entities). If there are insufficient lines to record each such name, attach a separate schedule indicating the required information.

SECTION 2A. – ORIGINAL CLAIMANT

2. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against the Just Energy Entities' Directors or Officers.

3. The Claimant shall include any and all D&O Claims that it asserts against the Just Energy Entities' Directors or Officers in a single D&O Proof of Claim.

4. The full legal name of the Claimant must be provided.

5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

6. If the D&O Claim has been assigned or transferred to another party, Section 2B, described below, must also be completed.

7. Unless the D&O Claim is validly assigned or transferred, all future correspondence, notices, etc., regarding the D&O Claim will be directed to the address and contact indicated in this section.

SECTION 2B. – ASSIGNEE, IF APPLICABLE

8. If the Claimant has assigned or otherwise transferred its claim, then Section 2B must be completed, and all documents evidencing such assignment or transfer must be attached.

9. The full legal name of the Assignee must be provided.

10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

11. If the Just Energy Entities, in consultation with the Monitor, are satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc., regarding the claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 – AMOUNT AND TYPE OF D&O CLAIM

12. If the D&O Claim is a Pre-Filing D&O Claim within the meaning of the Claims Procedure Order, then indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the space reserved for Pre-Filing D&O Claims in the Amount of Claim column, including interest, if applicable, up to and including March 9, 2021.[2]

13. If the D&O Claim is a Restructuring Period D&O Claim within the meaning of the Claims Procedure Order, then indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the space reserved for Restructuring Period D&O

[2] Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

Claims (which is below the space reserved for Pre-Filing D&O Claims) in the Amount of Claim column.

14. If there are insufficient lines to record each D&O Claim amount, attach a separate schedule indicating the required information.

Currency

15. The amount of the D&O Claim must be provided in the currency in which it arose.

16. Indicate the appropriate currency in the Currency column.

17. If the D&O Claim is denominated in multiple currencies, use a separate line to indicate the claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

SECTION 4 – DOCUMENTATION

18. Attach to the D&O Proof of Claim form all particulars of the D&O Claim and all available supporting documentation, including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

SECTION 5 – CERTIFICATION

19. The person signing the D&O Proof of Claim should:

    (a) be the Claimant or an authorized representative of the Claimant;

    (b) have knowledge of all of the circumstances connected with this claim;

    (c) assert the claim against the Debtor(s) as set out in the D&O Proof of Claim and certify all available supporting documentation is attached; and

    (d) if an individual is submitting the D&O Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, have a witness to its certification.

20. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Debtor(s) specified therein.

SECTION 6 – FILING OF D&O CLAIM AND APPLICABLE DEADLINES

21. If your D&O Claim is a Pre-Filing D&O Claim within the meaning of the Claims Procedure Order, the D&O Proof of Claim MUST be received by the Claims Agent or the Monitor on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the "**Claims Bar Date**").

22. If your D&O Claim is a Restructuring Period D&O Claim within the meaning of the Claims Procedure Order, the D&O Proof of Claim MUST be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the date (the "**Restructuring**

Period Claims Bar Date") that is the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period D&O Claim and (ii) the Claims Bar Date.

23. Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, D&O Proofs of Claim must be delivered to the Monitor or the Claims Agent by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
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Toronto, ON, M5K 1G8

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Woodland Hills, CA 91367

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Failure to file your D&O Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your D&O Claims being forever barred and you will be prevented from making or enforcing such D&O Claims against the Directors and Officers of the Just Energy Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such D&O Claims.

SCHEDULE "J"

D&O PROOF OF CLAIM FORM
FOR CLAIMS AGAINST
DIRECTORS OR OFFICERS OF THE JUST ENERGY ENTITIES[1]

This form is to be used only by Claimants asserting a Claim against any Directors and/or Officers of the Just Energy Entities and NOT for Claims against the Just Energy Entities themselves. For Claims against the Just Energy Entities that are not captured in any Statement of Negative Notice Claim, please use the form titled "Proof of Claim Form for Claims Against the Just Energy Entities", which is available on the Claims Agent's website at https://omniagentsolutions.com/justenergyclaims or the Monitor's website at http://cfcanada.fticonsulting.com/justenergy.

Note: Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims.

1. Name(s) and Position(s) of Officer(s) and/or Director(s) (the "Debtor(s)") the Claim is being made against:

Debtor(s): ______________________________

2A. Original Claimant (the "Claimant")

Legal Name of Claimant: ____________________ Name of Contact ____________________

Address Title ____________________

____________________ Phone # ____________________

____________________ Fax # ____________________

City ____________ Prov /State ________ Email ____________________

Postal/Zip Code ________

[1] The "**Just Energy Entities**" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: ____________________ Name of Contact ____________________

Address ____________________ Title ____________________

____________________ Phone # ____________________

____________________ Fax # ____________________

City ____________________ Prov /State __________ Email ____________________

Postal/Zip Code ____________________

3. Amount and Type of D&O Claim

The Debtor(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s) and/or Officer(s)		Currency		Amount of Pre-Filing D&O Claim *(including interest, if applicable, up to and including March 9, 2021)*	Amount of Restructuring Period D&O Claim

4. Documentation

Provide all particulars of the D&O Claim and all available supporting documentation, including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this D&O Proof of Claim form must be true, accurate and complete. Filing a false D&O Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: ______________________	Witness[2]: ______________________ (signature)
Name: ______________________	______________________ (print)
Title: ______________________	

Dated at ______________________ this __________ day of _______________, 2021.

6. Filing of Claims and Applicable Deadlines

For Pre-Filing D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the "**Claims Bar Date**").

For Restructuring Period D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period D&O Claim and (ii) the Claims Bar Date (the "**Restructuring Period Claims Bar Date**").

In each case, Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent's online claims submission portal which can be found at https://omniagentsolutions.com/justenergyclaims. If not submitted at the online portal, D&O Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

[2] Witnesses are required if an individual is submitting this D&O Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
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Toronto, ON, M5K 1G8

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c/o Omni Agent Solutions
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Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your D&O Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your D&O Claims being forever barred and you will be prevented from making or enforcing such D&O Claims against the Directors and Officers of the Just Energy Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such D&O Claims.

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 (collectively, the "**Applicants**")

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

CLAIMS PROCEDURE ORDER

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Michael De Lellis (LSO# 48038U)
Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicants

THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Just Energy Initiates Litigation Against ERCOT and the PUCT In Texas Bankruptcy Court

November 12, 2021

TORONTO, Nov. 12, 2021 (GLOBE NEWSWIRE) -- Just Energy Group Inc. ("**Just Energy**" or the " **Company**") (TSXV:JE; OTC:JENGQ), a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers, today, along with its affiliates Just Energy Texas LP, Fulcrum Retail Energy LLC, and Hudson Energy Services LLC (the "**Just Energy Parties**"), initiated a lawsuit (the " **Lawsuit**") against the Electric Reliability Council of Texas (" **ERCOT**") and the Public Utility Commission of Texas (the "**PUCT**") in the United States Bankruptcy Court for the Southern District of Texas (the " **Texas Bankruptcy Court**"). The Lawsuit seeks to recover payments that were made by the Just Energy Parties to ERCOT for certain invoices relating to February 2021, when a historically severe winter storm known as "Winter Storm Uri" severely impaired Texas' power-generating resources. As previously reported, the Just Energy Parties and certain of their affiliates commenced cases under Chapter 15 of the United States Bankruptcy Code on March 9, 2021 in the Texas Bankruptcy Court. See the Forward-Looking Statements below regarding certain risks with respect to the Lawsuit.

FTI Consulting Canada Inc. (the "**Monitor**") is overseeing the Company's proceedings under the Companies' Creditors Arrangement Act (" **CCAA**") as the court-appointed Monitor. Further information regarding the CCAA proceedings and the Lawsuit is available at the Monitor's website at http://cfcanada.fticonsulting.com/justenergy. Information regarding the CCAA proceedings can also be obtained by calling the Monitor's hotline at 416-649-8127 or 1-844-669-6340 or by email at justenergy@fticonsulting.com.

About Just Energy Group Inc.

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Currently operating in the United States and Canada, Just Energy serves residential and commercial customers. Just Energy is the parent company of Amigo Energy, Filter Group, Hudson Energy, Interactive Energy Group, Tara Energy, and TerraPass. Visit https://investors.justenergy.com to learn more.

FORWARD-LOOKING STATEMENTS

This press release may contain forward-looking statements, including, without limitation, statements with respect to the Lawsuit against ERCOT and PUCT and the amounts that the Company is seeking to recover under such lawsuit. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but are not limited to, risks with respect to: the timing for the Lawsuit to proceed and be determined by the Texas Bankruptcy Court or otherwise settled; the outcome of the Lawsuit including whether such lawsuit is determined adversely to the Just Energy Parties or dismissed by the courts; whether the Just Energy Parties will be able to recover any amounts at all pursuant to the Lawsuit; the ability of the Company to continue as a going concern; the outcome of proceedings under the CCAA and similar legislation in the United States; the outcome of the Lawsuit and any other potential litigation with respect to the February 2021 extreme weather event in Texas (the "**Weather Event**"), the final amount, if any, received by the Company with respect to the financing mechanisms to recover certain costs incurred during the Weather Event, the outcome of any invoice dispute with the ERCOT; the Company's discussions with key stakeholders regarding the CCAA proceedings, restructuring and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com and on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Any forward-looking statement made by Just Energy in this press release speaks only as of the date on which it is made. Just Energy undertakes no obligation to update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

FOR FURTHER INFORMATION PLEASE CONTACT:

Investors
Michael Cummings
Alpha IR
Phone: (617) 982-0475
JE@alpha-ir.com

Monitor
FTI Consulting Inc.
Phone: 416-649-8127 or 1-844-669-6340
justenergy@fticonsulting.com

Media
Boyd Erman
Longview Communications
Phone: 416-523-5885 berman@longviewcomms.ca

Source: Just Energy Group Inc.

THIS IS **EXHIBIT "C"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Just Energy Announces ERCOT's Calculations of Recovery Amounts Under Texas House Bill 4492 of Certain Costs of the Texas Winter Weather Event

December 9, 2021

TORONTO, Dec. 09, 2021 (GLOBE NEWSWIRE) -- Just Energy Group Inc. ("**Just Energy**" or the " **Company**") (TSXV:JE; OTC:JENGQ), announced today an update of the expected recovery by Just Energy from the Electric Reliability Council of Texas, Inc. ("**ERCOT**") of certain costs incurred during the extreme weather event in Texas in February 2021 (the "**Weather Event**") as previously disclosed, which is expected to be approximately USD $147.5 million. On December 7, 2021, ERCOT filed its calculation with the Public Utility Commission of Texas (the "**PUCT**") in accordance with the PUCT final order implementing Texas House Bill 4492 ("**HB 4492**"). ERCOT's calculations are subject to a 15-day verification period and accordingly, remain subject to change.

As previously reported, FTI Consulting Canada Inc. (the "**Monitor**") is overseeing the proceedings of Just Energy under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") as the court-appointed monitor. Further information regarding the CCAA proceedings is available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy. Information regarding the CCAA proceedings can also be obtained by calling the Monitor's hotline at 416-649-8127 or 1-844-669-6340 or by email at justenergy@fticonsulting.com.

About Just Energy Group Inc.

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Currently operating in the United States and Canada, Just Energy serves residential and commercial customers. Just Energy is the parent company of Amigo Energy, Filter Group, Hudson Energy, Interactive Energy Group, Tara Energy, and terrapass. Visit https://investors.justenergy.com to learn more.

FORWARD-LOOKING STATEMENTS

This press release may contain forward-looking statements, including with respect to the amount of cost recovery proceeds Just Energy expects to receive from ERCOT under HB 4492. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks may include, but are not limited to, risks with respect to the verification of ERCOT's calculations under HB 4492; the timing for the Company to receive any cost recovery proceeds from ERCOT; the ability of the Company to continue as a going concern; the outcome of proceedings under the CCAA proceedings and similar legislation in the United States; the outcome of any potential litigation with respect to the Weather Event, the outcome of any invoice dispute with ERCOT; the Company's discussions with key stakeholders regarding the CCAA proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com and on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Any forward-looking statement made by Just Energy in this press release speaks only as of the date on which it is made. Just Energy undertakes no obligation to update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

FOR FURTHER INFORMATION PLEASE CONTACT:

Investors
Michael Cummings
Alpha IR
Phone: (617) 982-0475
JE@alpha-ir.com

Monitor
FTI Consulting Inc.
Phone: 416-649-8127 or 1-844-669-6340
justenergy@fticonsulting.com

Media
Boyd Erman
Longview Communications
Phone: 416-523-5885
berman@longviewcomms.ca

Source: Just Energy Group Inc.

THIS IS **EXHIBIT "D"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,
SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas,
THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Ministry of Government and Consumer Services
Ministère des Services gouvernementaux et des Services aux consommateurs

Certificate of Dissolution

Business Corporations Act

Certificat de dissolution

Loi sur les sociétés par actions

JUST ENERGY FINANCE HOLDING INC.
Corporation Name / Dénomination sociale

2639395
Ontario Corporation Number / Numéro de société de l'Ontario

This is to certify that these articles are effective on

La présente vise à attester que ces statuts entreront en vigueur le

January 18, 2022 / 18 janvier 2022

Director / Directeur
Business Corporations Act / Loi sur les sociétés par actions

The Certificate of Dissolution is not complete without the Articles of Dissolution

Certified a true copy of the record of the Ministry of Government and Consumer Services.

Director/Registrar

Le certificat de dissolution n'est pas complet s'il ne contient pas les statuts de dissolution

Copie certifiée conforme du dossier du ministère des Services gouvernementaux et des Services aux consommateurs.

Directeur ou registrateur

Ministry of Government and
Consumer Services

Articles of Dissolution

Business Corporations Act

Corporation Name (Date of Incorporation/Amalgamation)
JUST ENERGY FINANCE HOLDING INC., (June 06, 2018)

1. The dissolution has been duly authorized under clause 237(a) or (b) (as applicable) of the Business Corporations Act.

2. The corporation has:
- No debts, obligations or liabilities.

3. After satisfying the interests of creditors in all its debts, obligations and liabilities if any, the corporation has:
- Distributed its remaining property rateably among its shareholders according to their rights and interests in the corporation or in accordance with subsection 238(4) of the Business Corporations Act where applicable.

4. If it was at any time a registered owner of land in Ontario, it is no longer a registered owner of land in Ontario.

5. There are no proceedings pending in any court against the corporation.

6. The corporation has obtained consent from the Minister of Finance to the dissolution and has filed all notices and returns under the Corporations Information Act.

The articles have been properly executed by the required person(s).

The Endorsed Articles of Dissolution are not complete without the Certificate of Dissolution
Certified a true copy of the record of the Ministry of Government and Consumer Services.

Barbara Duckitt
Director/Registrar, Ministry of Government and Consumer Services

Supporting Document - MOF Consent

This will confirm that the Minister of Finance consented on January 18, 2022 to the dissolution.

THIS IS **CONFIDENTIAL EXHIBIT "E"** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Confidential Exhibit Omitted

THIS IS **CONFIDENTIAL EXHIBIT "F"** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Confidential Exhibit Omitted

THIS IS **CONFIDENTIAL EXHIBIT "G"** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Confidential Exhibit Omitted

THIS IS **EXHIBIT "H"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Del Rizzo, Francesca

From: Jeff.Larry@paliareroland.com
Sent: Tuesday, January 04, 2022 4:50 PM
To: RThornton@tgf.ca; Ken.Rosenberg@paliareroland.com; Wasserman, Marc; Rkennedy@tgf.ca; RNicholson@tgf.ca; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; slw@wittelslaw.com; rtannor@tannorcapital.com; De Lellis, Michael; Dacks, Jeremy; PFesharaki@tgf.ca
Cc: Sarita.Sanasie@paliareroland.com
Subject: RE: Just Energy - Scheduling a Case Conference with the Presiding Judge

Thanks Bob. That is fine.

In terms of the timing for call, tomorrow anytime between 11 am and 5 is better for our team.

If that window can't work, most of us can make Thursday at 3 work.

Let us know.

From: Robert Thornton <RThornton@tgf.ca>
Sent: January 4, 2022 4:14 PM
To: Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; MWasserman@osler.com; Rebecca Kennedy <Rkennedy@tgf.ca>; Rachel Nicholson <RNicholson@tgf.ca>; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; slw@wittelslaw.com; rtannor@tannorcapital.com; MDeLellis@osler.com; JDacks@osler.com; Puya Fesharaki <PFesharaki@tgf.ca>
Cc: Jeff Larry <Jeff.Larry@paliareroland.com>; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>
Subject: Re: Just Energy - Scheduling a Case Conference with the Presiding Judge

Thanks Ken and Happy New Year to you as well.

We just concluded a call with companies' counsel. They have confirmed that no plan will be presented by January 6 and that all DIP deadline dates have been extended by one week (for now- further extensions may be required). Hopefully, you will agree that this development removes a certain element of urgency regarding a case conference this week.

Instead, companies' counsel proposes that they and you have a call this Thursday at 3:00 pm Eastern to discuss a timetable for your motion. The Monitor and its counsel will attend that call to help the parties reach an agreement on such a timetable, which might avoid the necessity for a scheduling hearing. If, after that call, you or the companies' counsel confirm that you still require a case conference, we can contact the Court regarding scheduling such a conference for next week (the week of January 10).

Please advise if this course of action is acceptable to you and your team.

Thanks,

Bob

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Robert I. Thornton | RThornton@tgf.ca | Direct Line +1 416 304 0560 | www.tgf.ca
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and delete this e-mail without forwarding it or making a copy.

From: Ken.Rosenberg@paliareroland.com <Ken.Rosenberg@paliareroland.com>
Sent: Tuesday, January 4, 2022 11:43 AM
To: MWasserman@osler.com; Robert Thornton; Rebecca Kennedy; Rachel Nicholson; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com; gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; slw@wittelslaw.com; rtannor@tannorcapital.com; MDeLellis@osler.com; JDacks@osler.com; Puya Fesharaki
Cc: Jeff.Larry@paliareroland.com; Sarita.Sanasie@paliareroland.com
Subject: FW: Just Energy - Scheduling a Case Conference with the Presiding Judge

Happy New Year.

We are not consenting to a further 7 - 10 day pause just to obtain a date, to schedule a date for a motion. We have not received a response from the Company regarding our substantive, timeline, process, transparency and information requests.

We ask the Monitor, when it follows up to obtain a short time/date for a Scheduling Case Conference (10 - 15 minutes is probably all that is required unless the Court has questions and/or comments), to advise the Court of our concerns noted above and below. All coupled with what we understand are the current, imminent reorganization benchmark dates as per the DIP Lenders.

We also ask that the Monitor provide the Judge with all our email correspondence in this chain.

We look forward to hearing from the Monitor, regarding the time/date of a Case Conference.

Thanks

Ken

Paliare Roland Rosenberg Rothstein LLP
Toronto

Cell: 416 735 0673

From: Wasserman, Marc <MWasserman@osler.com>
Sent: December 31, 2021 2:56 PM
To: Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; RThornton@tgf.ca; Rkennedy@tgf.ca; RNicholson@tgf.ca; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com;

klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff Larry <Jeff.Larry@paliareroland.com>; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>; slw@wittelslaw.com; rtannor@tannorcapital.com; De Lellis, Michael <MDeLellis@osler.com>; Dacks, Jeremy <JDacks@osler.com>; PFesharaki@tgf.ca
Subject: RE: Just Energy - Scheduling a Case Conference with the Presiding Judge

Hi, hope all is well and Ken thanks for the email. We will not be in a position to have this case conference before the court next week. The Osler teams needs a well-deserved mental health break in particular given the recent surge in Covid. We asked the monitor to inquire for a date in the latter half of the second week of January 2022. Happy New Year to All and hope everyone gets a break and stays safe and healthy. Marc

OSLER

Marc Wasserman
Office: 416.862.4908 | Mobile: 416.904.3614 | MWasserman@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Ken.Rosenberg@paliareroland.com <Ken.Rosenberg@paliareroland.com>
Sent: Friday, December 31, 2021 11:01 AM
To: RThornton@tgf.ca; Rkennedy@tgf.ca; RNicholson@tgf.ca; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff.Larry@paliareroland.com; Sarita.Sanasie@paliareroland.com; slw@wittelslaw.com; rtannor@tannorcapital.com; De Lellis, Michael <MDeLellis@osler.com>; Dacks, Jeremy <JDacks@osler.com>; Wasserman, Marc <MWasserman@osler.com>; PFesharaki@tgf.ca
Subject: RE: Just Energy - Scheduling a Case Conference with the Presiding Judge

---

Thanks Bob

To assist, on a with prejudice basis, so please feel free to share these comments and our first email below, with Justice McEwan:

1. To be direct, as discussed with you and the Company, the Class Claimants are of the view that the Company is in essence “killing the clock” on the Class Claimants meaningful participation in this process.

2. So, to your question about timing ………. we prefer a Case Conference next week; the week of January 3rd.

3. We are not in a position to slow down because we are not aware of the actual timing of looming key events. Such as, the release of the Company’s/entrenched managements’ and/or financiers proposed exit transaction/event and its associated proposed approval timeline. If we were meaningfully informed, our answer might be different. But we are not so informed.

4. We of course are available to discuss if/when the Monitor believes that can assist. We could chat sometime today (Friday) or over the next few days.

5. Further background that may assist:

- the Class’s multi-billion dollar claim, which if successful, even for fraction of the claim, would be the dominant unsecured claim in this CCAA estate;

- the Company's own evidence/most current publicly filed financial statements state the unsecureds are now clearly in the money because these very Company financial statements have equity on the balance sheet. But, we are not aware of any unsecured interest representing the Class Claims in the realization discussions. All despite the fact it now appears the unsecureds are the one's who's money now appears actually at risk/on the bubble;

- whatever happened in the past, for more than a month the Class Claimants have been ready and have repeatedly asked to become deeply involved in this CCAA case. The Class Claimants do not see the same enthusiasm on the Company side to engage with the Class Claimants;

- while we are regularly advised by the Company how time-is-of-the-essence respecting the realization issues, we don't know what the real timing is, nor if/how/when the Company and/or the Monitor intend the Class Claims will be provided appropriate access and transparency to do due diligence to assess any Company sponsored exit plan, how and when the Class's claims will be adjudicated, be dealt with in a vote and/or, how the Company intends to put such Company/entrenched management's exit plan before the Court and Creditors for approval; and,

- we must assume, based on what we know from the public record, that a release of a proposed "deal/exit agenda/realization plan" may be imminent. Such Company/entrenched management exit plan may be/could be revealed within e.g., the next 7 days.

6. So, we are not in a position to slow down because of what we do and don't know. Coupled with the Company's continuing advice to us that, time-is-of-the essence.

We look forward to hearing from you.

Happy New Year.

Thanks

Ken

Paliare Roland Rosenberg Rothstein LLP
Toronto

Cell: 416 735 0673

From: Robert Thornton <RThornton@tgf.ca>
Sent: December 30, 2021 5:40 PM
To: Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; Rebecca Kennedy <Rkennedy@tgf.ca>; Rachel Nicholson <RNicholson@tgf.ca>; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff Larry <Jeff.Larry@paliareroland.com>; Sarita Sanasie <Sarita.Sanasie@paliareroland.com>; slw@wittelslaw.com; rtannor@tannorcapital.com; MDeLellis@osler.com; JDacks@osler.com; mwasserman@osler.com; Ken Rosenberg <Ken.Rosenberg@paliareroland.com>; Puya Fesharaki

<PFesharaki@tgf.ca>
Subject: Re: Just Energy - Scheduling a Case Conference with the Presiding Judge

Thanks Ken.

I can advise that we were just informed that Mr. Justice McEwen will be assuming carriage of this matter in January when our current judge moves off of the Commercial List.

I propose to email His Honour, copying you and companies' counsel, asking for a case conference/scheduling attendance some time in the first two weeks of January regarding your proposed motion. If you wish, I can mention your desire for such conference to be in the first week if possible, but if I do that, I will also have to mention that the company would prefer a later date, which is my understanding of their position.

Please advise how you would like me to proceed. Happy to have a brief call, should you so wish.

Thanks

Bob

Get Outlook for iOS

Robert I. Thornton | | RThornton@tgf.ca | Direct Line +1 416 304 0560 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: Ken.Rosenberg@paliareroland.com <Ken.Rosenberg@paliareroland.com>
Sent: Tuesday, December 28, 2021 2:51 PM
To: Robert Thornton; Rebecca Kennedy; Rachel Nicholson; Paul.Bishop@fticonsulting.com; Jim.Robinson@fticonsulting.com; Evan.Bookstaff@fticonsulting.com
Cc: gblankinship@fbfglaw.com; jshub@shublawyers.com; sjr@wittelslaw.com; jbm@wittelslaw.com; klaukaitis@shublawyers.com; JCottle@fbfglaw.com; Jeff.Larry@paliareroland.com; Sarita.Sanasie@paliareroland.com; slw@wittelslaw.com; rtannor@tannorcapital.com; MDeLellis@osler.com; JDacks@osler.com; mwasserman@osler.com; Ken.Rosenberg@paliareroland.com
Subject: Just Energy - Scheduling a Case Conference with the Presiding Judge

To: The Monitor

CC: The Company

Re: Just Energy CCAA -- Scheduling a Case Conference with the Presiding Judge

1 Further to our correspondence and discussions with the Monitor and the Company, will the Monitor please assist in the scheduling of a Case Conference with the presiding Judge in the first week of

January, or if necessary, the second week of January. If the Presiding Judge in 2022 will continue to be Justice Koehnen, we expect 10 - 15 minutes is all that will be required. If another Commercial List Judge becomes seized of this Case, we expect it may take more time, if the Judge requires some additional briefing. Once a Case Conference date is obtained, we will of course prepare an appointment and circulate, etc.

2 If the Monitor prefers that we reach out to the Commercial List Office directly to seek a date, we will of course do so.

3 The purpose of the Conference is to set a timetable for a Motion these Class Claimants wish to bring regarding matters including possibly: the depth and breadth of disclosure to them by the Company and/or Monitor under their existing NDA (obviously we are limited at the Case Conference on how much we can say on this subject in the presence of all Creditors/Stakeholders); the participation of the Class Claimants (this includes transparency as to what is going on at the negotiation table) in the realization, sale and/or investment/restructuring process; a process to adjudicate the Class Claimants' Claim within this CCAA process, or/not, ; and, such other timely matters we believe are necessary for adjudication by the Court. If/as discussions unfold on a real time basis with the Company and/or the Monitor, this possible agenda could evolve.

As discussed with the Monitor, we understand there are currently no Motions or Case management dates set aside by the Court for potential attendances.

Proposed timing – we would like a Case Conference in the week of January 3rd , if possible. We are looking for the actual motion date in the 3rd week of January, or at the latest, the 4th week of January.

4 By way of background, and this may be expanded upon in further discussions and correspondence ……. The Company's very own public financial statements as of Sept 30th 2021, publicly filed on Sedar and apparently prepared in compliance with all necessary accounting standards, state that Just Energy has equity on its balance sheet. Thus, at first instance unsecured creditors are "in the money" based upon the Company's own financial statements. This piece of evidence, plus of course other evidence, will inform part of our narrative, both about process going forward and substance.

Given the tight time frames of this case, we look forward to hearing from you shortly.

Regards

Ken

Paliare Roland Rosenberg Rothstein LLP
Toronto

Cell: 416 735 0673

****

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****

THIS IS **EXHIBIT "I"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

2022
SECOND QUARTER REPORT TO SHAREHOLDERS
Q2

Management's discussion and analysis – November 9, 2021

The following management's discussion and analysis ("MD&A") is a review of the financial condition and operating results of Just Energy Group Inc. ("Just Energy" or the "Company") for the three and six months ended September 30, 2021. This MD&A has been prepared with all information available up to and including November 9, 2021. This MD&A should be read in conjunction with Just Energy's unaudited Interim Condensed Consolidated Financial Statements (the "Interim Condensed Consolidated Financial Statements") for the three and six months ended September 30, 2021. The financial information contained herein has been prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"). All dollar amounts are expressed in Canadian dollars unless otherwise noted. Quarterly reports, the annual report and supplementary information can be found on Just Energy's corporate website at www.investors.justenergy.com. Additional information can be found on SEDAR at www.sedar.com or on the U.S. Securities and Exchange Commission's ("SEC") website at www.sec.gov.

WEATHER EVENT AND CREDITOR PROTECTION FILINGS

In February 2021, the State of Texas experienced extremely cold weather (the "Weather Event"). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. ("ERCOT") when due, and accordingly, on March 9, 2021, Just Energy applied for and received creditor protection under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") and under Chapter 15 ("Chapter 15") in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division (the "Court Orders" or "CCAA Proceedings"). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD $125 million Debtor-In-Possession ("DIP Facility") financing with certain affiliates of Pacific Investment Management Company ("PIMCO"). The Company entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The Company entered into a Lender Support Agreement with the lenders under its Credit Facility (for details refer to note 8(c) in the Interim Condensed Consolidated Financial Statements). The filings and associated USD $125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the U.S. and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On September 15, 2021, the stay period under the CCAA Proceedings was extended by the Ontario Court to December 17, 2021.

On November 1, 2021, Generac Holdings Inc. ("Generac") announced the signing of an agreement to acquire all of the issued and outstanding shares of ecobee Inc. ("ecobee"), including all of the ecobee shares held by the Company. The Company holds approximately 8% of the ecobee and at closing anticipates receiving approximately $61 million, comprised of approximately $18 million cash and $43 million of Generac stock. The Company can receive up to an additional approximate CAD $10 million in Generac stock over calendar 2022 and 2023, provided that certain performance targets are achieved by ecobee. Generac stock trades on the New York Stock Exchange under the symbol GNRC. The Company has designated these investments at fair value through profit and loss under the IFRS 9, "*Financial Instruments*" ("IFRS 9"). As a result of the above-mentioned transaction, a fair value gain of $29 million has been recorded in the Interim Condensed Consolidated Statement of Income in the three months ended September 30, 2021.

On November 3, 2021, the Company filed an application with the Ontario Court seeking an extension of the maturity date of the DIP Facility until September 30, 2022. The Company also requested that the stay period under the CCAA Proceedings be extended to February 17, 2022. The Ontario Court scheduled a hearing on November 10, 2021 to consider these matters.

As at September 30, 2021, in connection with the CCAA Proceedings, the Company identified $1,032.4 million of liabilities subject to compromise (see Note 1 in the Interim Condensed Consolidated Financial Statements). The Company also recorded Reorganization Costs (defined below in Key Terms) of $38.6 million in the six months ended September 30, 2021 (see Note 13 in the Interim Condensed Consolidated Financial Statements).

On September 15, 2021, the Ontario Court approved the Company's request to establish a claims process to identify and determine claims against the Company and its subsidiaries that are subject to the ongoing CCAA Proceedings. As a result of the establishment of the claims process, additional claims may be made against the Company and ultimately determined that are not currently reflected in the Interim Condensed Financial Statements.

The Common Shares, no par value, of the Company (the "Common Shares") are listed on the TSX Venture Exchange under the symbol "JE" and on the OTC Pink Market under the symbol "JENGQ".

SECURITIZATION UNDER HOUSE BILL 4492

On June 16, 2021, Texas House Bill 4492 ("HB 4492") became law in Texas. HB 4492 provides a mechanism for recovery of (i) ancillary service charges above USD $9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently "short-paid" to market participants, including Just Energy, (collectively, the "Costs"), incurred by various parties, including the Company, during the Weather Event, through certain securitization structures.

On July 16, 2021, ERCOT filed the request with the Public Utility Commission of Texas (the "Commission") and on October 13, 2021, the Commission issued its final order (the "PUCT Order"). The ultimate amount of proceeds that Just Energy will receive has not been fully determined, as entities eligible to opt-out have until November 29, 2021 to decide pursuant to the PUCT Order. However, Just Energy anticipates that it will recover at least USD $100 million of Costs with such proceeds expected to be received in the fourth quarter of fiscal year 2022. The total amount that the Company may recover through the PUCT Order may change materially based on a number of factors, including the entities that decide to opt-out, the outcome of the dispute resolution process initiated by the Company with ERCOT, and any potential challenges to the PUCT Order. There is no assurance that the Company will be able to recover all of the Costs.

Forward-looking information

This MD&A may contain forward-looking statements, including, without limitation, statements with respect to the Company's strategic investment in digital marketing, rebound of face-to-face retail channels following the impacts of the COVID-19 pandemic, navigating a challenging margin environment and working closely with the Company's stakeholders towards a successful restructuring plan. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but are not limited to, risks with respect to the ability of the Company to continue as a going concern; the final amount received by the Company with respect to the implementation of Texas House Bill 4492 to recover certain costs incurred during the Weather Event; the outcome of any invoice dispute with the Electric Reliability Council of Texas in connection with the Weather Event; the outcome of any potential litigation with respect to the Weather Event; the outcome of the Company's proceedings under the CCAA and similar legislation in the United States; the quantum of the financial loss to the Company from the Weather Event and its impact on the Company's liquidity; the Company's restructuring discussions with key stakeholders regarding the CCAA Proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Company overview

Just Energy is a retail energy provider specializing in electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options to customers. Operating in the United States ("U.S.") and Canada, Just Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Tara Energy and Terrapass.

Continuing operations overview

MASS MARKETS SEGMENT

The Mass Markets segment (formerly referred to as "Consumer Segment") includes customers acquired and served under the Just Energy, Tara Energy, Amigo Energy and Terrapass brands. Marketing of the energy products of this segment is primarily done through digital and retail sales channels. Mass Market customers make up 74% of Just Energy's Base Gross Margin (defined below in non-IFRS financial measures), which is currently focused on price-protected and flat-bill product offerings, as well as JustGreen products. To the extent that certain markets are better served by shorter-term or enhanced variable rate products, the Mass Markets segment's sales channels offer these products.

Just Energy also provides home water filtration systems with its line of consumer product and service offerings through Filter Group.

COMMERCIAL SEGMENT

The Commercial segment includes customers acquired and served under Hudson Energy, as well as brokerage services managed by Interactive Energy Group. Hudson Energy sales are made through three main channels: brokers, door-to-door commercial independent contractors and inside commercial sales representatives. Commercial customers make up 26% of Just Energy's Base Gross Margin. Products offered to Commercial customers range from standard fixed-price offerings to "one off" offerings, tailored to meet the customer's specific needs. These products can be fixed or floating rate or a blend of the two, and normally have a term of less than five years. Gross margin per RCE for this segment is lower than it is for the Mass Markets segment, but customer acquisition costs and ongoing customer care costs per RCE are lower as well. Commercial customers also have significantly lower attrition rates than Mass Markets customers.

ABOUT JUST ENERGY'S PRODUCTS

Just Energy offers products and services to address customers' essential needs, including electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options as well as water quality and filtration devices to customers.

Electricity

Just Energy services various states and territories in U.S. and Canada with electricity. A variety of electricity solutions are offered, including fixed-price, flat-bill and variable-price products on both short-term and longer-term contracts. Most of these products provide customers with price-protection programs for the majority of their electricity requirements. Just Energy uses historical usage data for enrolled customers to predict future customer consumption and to help with long-term supply procurement decisions. Flat-bill products offer customers the ability to pay a fixed amount per period regardless of usage.

Just Energy purchases electricity supply from market counterparties for Mass Markets and Commercial customers based on forecasted customer aggregation. Electricity supply is generally purchased concurrently with the execution of a contract for larger Commercial customers. Historical customer usage is obtained from LDCs (as defined in key terms), which, when normalized to average weather, provides Just Energy with expected normal customer consumption. Just Energy mitigates exposure to weather variations through active management of the electricity portfolio and the purchase of options, including weather derivatives. Just Energy's ability to successfully mitigate weather effects is limited by the degree to which weather conditions deviate from normal. To the extent that balancing electricity purchases are outside the acceptable forecast, Just Energy bears the financial responsibility for excess or short supply caused by fluctuations in customer usage. Any supply balancing not fully covered through customer pass-throughs, active management or the options employed may increase or decrease Just Energy's Base Gross Margin (as defined below) depending upon market conditions at the time of balancing.

Natural gas

Just Energy offers natural gas customers a variety of products ranging from five-year fixed-price contracts to month-to-month variable-price contracts. Gas supply is purchased from market counterparties based on forecasted consumption. For larger Commercial customers, gas supply is generally purchased concurrently with the execution of a contract. Variable rate products allow customers to maintain flexibility while retaining the ability to lock into a fixed price at their discretion. Flat-bill products offer customers the ability to pay a fixed amount per period regardless of usage or changes in the price of the commodity.

The LDCs provide historical customer usage which, when normalized to average weather, enables Just Energy to purchase the expected normal customer consumption. Just Energy mitigates exposure to weather variations through active management of the gas portfolio, which involves, but is not limited to, the purchase of options, including weather derivatives. Just Energy's ability to successfully mitigate weather effects is limited by the degree to which weather conditions deviate from normal. To the extent that balancing requirements are outside the forecasted purchase, Just Energy bears the financial responsibility for fluctuations in customer usage. To the extent that supply balancing is not fully covered through active management or the options employed, Just Energy's Base Gross Margin may increase or decrease depending upon market conditions at the time of balancing.

Territory	Gas delivery method
Manitoba, Ontario, Quebec and Michigan	The volumes delivered for a customer typically remain constant throughout the year. Sales are not recognized until the customer consumes the gas. During the winter months, gas is consumed at a rate that is greater than delivery, resulting in accrued gas receivables, and, in the summer months, deliveries to LDCs exceed customer consumption, resulting in gas delivered in excess of consumption. Just Energy receives cash from the LDCs as the gas is delivered.
Alberta, British Columbia, Saskatchewan, California, Illinois, Indiana, Maryland, New Jersey, New York, Ohio and Pennsylvania	The volume of gas delivered is based on the estimated consumption and storage requirements for each month. The amount of gas delivered in the months of October to March is higher than in the months of April to September. Cash flow received from most of these markets is greatest during the fall and winter quarters, as cash is normally received from the LDCs in the same period as customer consumption.

JustGreen

Many customers have the ability to choose an appropriate JustGreen program to supplement their electricity and natural gas, providing an effective method to offset their carbon footprint associated with the respective commodity consumption.

JustGreen's electricity products offer customers the option of having all or a portion of the volume of their electricity usage sourced from renewable green sources such as wind, solar, hydropower or biomass, via power purchase agreements and renewable energy certificates. JustGreen programs for gas customers involve the purchase of carbon offsets from carbon capture and reduction projects. Additional green products allow customers to offset their carbon footprint without buying energy commodity products and can be offered in all states and provinces without being dependent on energy deregulation.

Just Energy currently sells JustGreen electricity and gas in eligible markets across North America. Of all customers who contracted with Just Energy in the past year, 40% purchased JustGreen for some or all of their energy needs. On average, these customers elected to purchase 73% of their consumption as green supply. For comparison, as reported for the trailing 12 months ended September 30, 2020, 50% of Consumer customers who contracted with Just Energy chose to include JustGreen for an average of 93% of their consumption. As at September 30, 2021, JustGreen makes up 25% of the Mass Market electricity portfolio, compared to 22% in the year ago period. JustGreen makes up 17% of the Mass Market gas portfolio, compared to 17% in the year ago period.

Terrapass

Through Terrapass, customers can offset their environmental impact by purchasing high quality environmental products. Terrapass supports projects throughout North America and world-wide that destroy greenhouse gases, produce renewable energy and restore freshwater ecosystems. Each project is made possible through the purchase of carbon offsets, renewable energy credits and BEF Water Restoration Certificates®. Terrapass offers various purchase options for Mass Markets or Commercial customers, enabling businesses to incorporate seamless carbon offset options by providing marketing and product integration solutions.

Key terms

"6.5% convertible bonds" refers to the US$150 million in convertible bonds issued in January 2014, which were exchanged for Common Shares and a pro-rata portion of the Term loan as part of the September 2020 Recapitalization.

"6.75% $160M convertible debentures" refers to the $160 million in convertible debentures issued in October 2016, which were exchanged for Common Shares and its pro-rata allocation of the 7.0% $13M subordinated notes issued as part of the September 2020 Recapitalization.

"6.75% $100M convertible debentures" refers to the $100 million in convertible debentures issued in February 2018, which were exchanged for Common Shares and its pro-rata allocation of the 7.0% $13M subordinated notes issued as part of the September 2020 Recapitalization.

"8.75% loan" refers to the US$250 million non-revolving multi-draw senior unsecured term loan facility entered into on September 12, 2018. The 8.75% loan was exchanged for Common Shares and a pro-rata portion of the Term Loan as part of the September 2020 Recapitalization.

"Base Gross Margin per RCE" refers to the energy Base Gross Margin realized on Just Energy's RCE customer base, including gains (losses) from the sale of excess commodity supply excluding the impacts of the Weather Event or Reorganization Costs.

"Commodity RCE attrition" refers to the percentage of energy customers whose contracts were terminated prior to the end of the term either at the option of the customer or by Just Energy.

"Customer count" refers to the number of customers with a distinct address rather than RCEs (see key term below).

"Failed to renew" means customers who did not renew expiring contracts at the end of their term.

"Filter Group financing" refers to the outstanding loan balance between Home Trust Company ("HTC") and Filter Group. The loan bears an annual interest rate of 8.99%.

"LDC" means a local distribution company; the natural gas or electricity distributor for a regulatory or governmentally defined geographic area.

"Liquidity" means cash on hand.

"Maintenance capital expenditures" means the necessary property and equipment and intangible asset capital expenditures required to maintain existing operations at functional levels.

"Note Indenture" refers to the $15 million subordinated notes with a six-year maturity and bearing an annual interest rate of 7.0% (payable in kind semi-annually) issued in relation to the September 2020 Recapitalization, which have a maturity date of September 15, 2026. The principal amount was reduced through a tender offer for no consideration, on October 19, 2020 to $13.2 million.

"RCE" means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m^3 (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada.

"Reorganization Costs" — means the amounts incurred related to the filings under the CCAA Proceedings. These costs include professional and advisory costs, key employee retention plan, contract terminations and prepetition claims, and other costs.

"Selling commission expenses" means customer acquisition costs amortized under IFRS 15, *Revenue from contracts with customers*, or directly expensed within the current period and consist of commissions paid to independent sales contractors, brokers and sales agents and is reflected on the Interim Condensed Consolidated Statements of Income as part of selling and marketing expenses.

"Selling non-commission and marketing expenses" means the cost of selling overhead, including digital marketing cost not directly associated with the costs of direct customer acquisition costs within the current period and is reflected on the Interim Condensed Consolidated Statements of Income as part of selling and marketing expenses.

"September 2020 Recapitalization" refers to the recapitalization transaction that the Company completed in September 2020.

"Strategic Review" means the Company's formal review announced on June 6, 2019 to evaluate strategic alternatives available to the Company. The Company finalized the Strategic Review with the completed September 2020 Recapitalization.

"Term Loan" refers to the US$206 million senior unsecured 10.25% term loan facility entered into on September 28, 2020 pursuant to the September 2020 Recapitalization, which has a maturity date of March 31, 2024.

Non-IFRS financial measures

Just Energy's Interim Condensed Consolidated Financial Statements are prepared in accordance with IFRS. The financial measures that are defined below do not have a standardized meaning prescribed by IFRS and may not be comparable to similar measures presented by other companies. These financial measures should not be considered as an alternative to, or more meaningful than, net income (loss), cash flow from operating activities and other measures of financial performance as determined in accordance with IFRS; however, the Company believes that these measures are useful in providing relative operational profitability of the Company's business.

BASE GROSS MARGIN

"Base Gross Margin" represents gross margin adjusted to exclude the effect of applying IFRS Interpretation Committee Agenda Decision 11, *Physical Settlement of Contracts to Buy or Sell a Non-Financial Item*, for realized gains (losses) on derivative instruments, the one-time impact of the Weather Event, and the one-time non-recurring sales tax settlement. Base Gross Margin is a key measure used by management to assess performance and allocate resources. Management believes that these realized gains (losses) on derivative instruments reflect the long-term financial performance of Just Energy and thus have included them in the Base Gross Margin calculation.

EBITDA

"EBITDA" refers to earnings before finance costs, income taxes, depreciation and amortization with an adjustment for discontinued operations. EBITDA is a non-IFRS measure that reflects the operational profitability of the business.

BASE EBITDA

"Base EBITDA" refers to EBITDA adjusted to exclude the impact of unrealized mark to market gains (losses) arising from IFRS requirements for derivative financial instruments, Reorganization Costs, share-based compensation, impairment of inventory, Strategic Review costs, Restructuring costs, unrealized gain on investment, realized gains (losses) related to gas held in storage until gas is sold, and non-controlling interest. This measure reflects operational profitability as the impact of the non-cash gains (losses), impairment of inventory and Reorganization Costs are one-time non-recurring events. Non-cash share-based compensation expense is treated as an equity issuance for the purposes of this calculation as it will be settled in Common Shares; the unrealized mark to market gains (losses) are associated with supply already sold in the future at fixed prices; and, the unrealized mark to market gains (losses) of weather derivatives are not related to weather in the current period.

Just Energy ensures that customer margins are protected by entering into fixed-price supply contracts. Under IFRS, the customer contracts are not marked to market; however, there is a requirement to mark to market the future supply contracts. This creates unrealized and realized gains (losses) depending upon current supply pricing. Management believes that the unrealized mark to market gains (losses) do not impact the long-term financial performance of Just Energy and has excluded them from the Base EBITDA calculation.

Just Energy uses derivative financial instruments to hedge the gas held in storage for future delivery to customers. Under IFRS, the customer contracts are not marked to market: however, there is a requirement to report the realized gains (losses) in the current period instead of recognizing them as a cost of inventory until delivery to the customer. Just Energy excludes the realized gains (losses) to EBITDA during the injection season and includes them during the withdrawal season in accordance with the customers receiving the gas. Management believes that including the realized gains (losses) during the withdrawal season when the customers receive the gas is more reflective of the operations of the business.

Just Energy recognizes the incremental acquisition costs of obtaining a customer contract as an asset since these costs would not have been incurred if the contract was not obtained and are recovered through the consideration collected from the contract. Commissions and incentives paid for commodity contracts and value-added products contracts are capitalized and amortized over the term of the contract. Amortization of these costs with respect to customer contracts is included in the calculation of Base EBITDA (as selling commission expenses). Amortization of incremental acquisition costs on value-added product contracts is excluded from the Base EBITDA calculation as value-added products are considered to be a lease asset akin to a fixed asset whereby amortization or depreciation expenses are excluded from Base EBITDA.

FREE CASH FLOW AND UNLEVERED FREE CASH FLOW

Free cash flow represents cash flow from operations less Maintenance capital expenditures. Unlevered free cash flow represents free cash flows plus finance costs excluding the non-cash portion.

EMBEDDED GROSS MARGIN ("EGM")

EGM is a rolling five-year measure of management's estimate of future contracted energy and product gross margin. The commodity EGM is the difference between existing energy customer contract prices and the cost of supply for the remainder of the term, with appropriate assumptions for commodity RCE attrition and renewals. The product gross margin is the difference between existing value-added product customer contract prices and the cost of goods sold on a five-year undiscounted basis for such customer contracts, with appropriate assumptions for value-added product attrition and renewals. It is assumed that expiring contracts will be renewed at target margin renewal rates.

EGM indicates the gross margin expected to be realized over the next five years from existing customers. It is intended only as a directional measure for future gross margin. It is neither discounted to present value nor is it intended to consider administrative and other costs necessary to realize this margin.

Financial and operating highlights

For the three months ended September 30.
(thousands of dollars, except where indicated and per share amounts)

	Fiscal 2022	**% increase (decrease)**	Fiscal 2021
Sales	**$ 704,769**	**(5)%**	$ 737,994
Base Gross Margin[1]	**116,577**	**(16)%**	138,274
Administrative expenses[2]	**37,181**	**(15)%**	43,957
Selling commission expenses	**27,851**	**(20)%**	34,894
Selling non-commission and marketing expense	**16,936**	**30%**	13,017
Bad debt expense	**3,692**	**(68)%**	11,662
Reorganization Costs	**18,577**	**NMF[3]**	–
Finance costs	**11,895**	**(60)%**	29,744
Profit (loss) for the period	**326,049**	**NMF[3]**	(51,366)
Base EBITDA[1]	**30,897**	**(6)%**	32,774
RCE Mass Markets count	**1,149,000**	**(5)%**	1,206,000
RCE Mass Markets net adds	**9,000**	**NMF[3]**	(55,000)
RCE Commercial count	**1,661,000**	**(12)%**	1,880,000

1 See "Non-IFRS financial measures" on page 5.
2 Includes $0.3 million of Strategic Review costs for the second quarter of fiscal 2021.
3 Not a meaningful figure.

Sales decreased by 5% to $704.8 million for the three months ended September 30, 2021 compared to $738.0 million for the three months ended September 30, 2020. The decrease was primarily driven by the loss of customers in the prior year from regulatory restrictions in Ontario, New York and California, selling constraints posed by COVID-19 pandemic on certain direct in-person channels and by competitive pressures on pricing in the Commercial segment. The overall decrease is partially offset by growth in sales through increased investment in digital marketing in Mass Markets.

Base Gross Margin decreased by 16% to $116.6 million for the quarter ended September 30, 2021 compared to $138.3 million for the quarter ended September 30, 2020. The decrease was primarily driven by a decline in the customer base, unfavourable exchange rate fluctuations and resettlements related to prior periods.

Base EBITDA decreased by 6% to $30.9 million for the three months ended September 30, 2021 compared to $32.8 million for the three months ended September 30, 2020. The decrease was driven by lower Base Gross Margin and increased investment in digital marketing and sales agent costs, partially offset by lower administrative, selling commission and bad debt expenses.

Administrative expenses decreased by 15% to $37.2 million for the three months ended September 30, 2021 compared to $44.0 million for the three months ended September 30, 2020. The decrease was primarily driven by higher professional fees and legal fees in the prior year, including a provision related to the Hurt and Hill class-action litigation.

Selling commission expenses decreased by 20% to $27.9 million for the three months ended September 30, 2021 compared to $34.9 for the three months ended September 30, 2020. The decrease is primarily driven by lower amortization expense of upfront acquisition cost from lower sales from direct in-person channels driven by the impacts of the COVID-19 pandemic in prior periods, as well as lower commercial sales driven by competitive price pressures.

Selling non-commission and marketing expenses increased by 30% to $16.9 million for the three months ended September 30, 2021 compared to $13.0 million for the three months ended September 30, 2020. The increase was driven by the investment in digital marketing and sales agent costs.

Bad debt expense decreased by 68% to $3.7 million for the three months ended September 30, 2021 compared to $11.7 million for the three months ended September 30, 2020. The decrease in bad debt was driven by the release of reserves due to continued consistent payment trends along with recovery of previous write-offs in the Commercial segment.

Reorganization costs represent the amounts incurred related to the filings under the CCAA Proceedings. These costs include professional and advisory costs of $10.8 million, $2.7 million for the key employee retention plan and $5.1 million in prepetition claims, contract terminations and other costs.

Finance costs decreased by 60% to $11.9 million for the three months ended September 30, 2021 compared to $29.7 million for the three months ended September 30, 2020. The decrease is due to September 2020 Recapitalization together with no longer accruing finance costs on the unsecured debt due to the CCAA Proceedings as described in Note 8 of the Interim Condensed Consolidated Financial Statements.

Mass Markets RCE Net Adds for the three months ended September 30, 2021 was a gain of 9,000 compared to a loss of 55,000 for the three months ended September 30, 2020 driven by the increase investment in digital marketing and higher renewal rates.

Financial and operating highlights

For the six months ended September 30.
(thousands of dollars, except where indicated and per share amounts)

	Fiscal 2022	**% increase (decrease)**	Fiscal 2021
Sales	**$ 1,313,441**	**(8)%**	$ 1,423,958
Base Gross Margin[1]	**216,194**	**(21)%**	274,553
Administrative expenses[2]	**66,951**	**(18)%**	82,099
Selling commission expenses	**53,145**	**(25)%**	70,873
Selling non-commission and marketing expense	**31,314**	**30%**	23,998
Bad debt expense	**11,110**	**(53)%**	23,602
Reorganization Costs	**38,586**	**NMF[3]**	–
Finance costs	**24,808**	**(52)%**	51,597
Profit (loss) for the period	**601,348**	**NMF[3]**	27,784
Base EBITDA[1]	**53,919**	**(26)%**	73,253
Unlevered free cash flow[1]	**38,031**	**(28)%**	53,146
EGM Mass Market	**1,047,200**	**(7)%**	1,130,000
EGM Commercial	**336,400**	**(14)%**	390,800
RCE Mass Markets net adds	**3,000**	**NMF[3]**	(117,000)

1 See "Non-IFRS financial measures" on page 5.

2 Includes $2.1 million of Strategic Review costs for the second quarter of fiscal 2021.
3 Not a meaningful figure.

Sales decreased by 8% to $1,313.4 million for the six months ended September 30, 2021 compared to $1,424.0 million for the six months ended September 30, 2020. The decrease was primarily driven by the loss of customers in the prior year from regulatory restrictions in Ontario, New York and California, selling constraints posed by COVID-19 pandemic on certain direct in-person channels and by competitive pressures on pricing in the Commercial segment. The overall decrease is partially offset by growth in sales through increased investment in digital marketing in Mass Markets.

Base Gross Margin decreased by 21% to $216.2 million for the six months ended September 30, 2021 compared to $274.6 million for the six months ended September 30, 2020. The decrease was primarily driven by resettlements related to prior periods, unfavourable exchange rate fluctuations and a decline in the customer base.

Base EBITDA decreased by 26% to $53.9 million for the six months ended September 30, 2021 compared to $73.3 million for the six months ended September 30, 2020. The decrease was driven by lower Base Gross Margin and increased investment in digital marketing and sales agent costs, partially offset by lower administrative, selling commission and bad debt expenses.

Administrative expenses decreased by 18% to $67.0 million for the six months ended September 30, 2021 compared to $82.1 million for the six months ended September 30, 2020. The decrease was primarily driven by higher professional fees and legal fees in the prior year, including a provision related to the Hurt and Hill class-action litigation.

Selling commission expenses decreased by 25% to $53.2 million for the six months ended September 30, 2021 compared to $70.9 for the six months ended September 30, 2020. The decrease is primarily driven by lower amortization expense of upfront acquisition cost from lower sales from direct in-person channels driven by the impacts of the COVID-19 pandemic in prior periods and lower commercial sales driven by competitive price pressures.

Selling non-commission and marketing expenses increased by 30% to $31.3 million for the six months ended September 30, 2021 compared to $24.0 million for the six months ended September 30, 2020. The increase was driven by the increased investment in digital marketing and sales agent cost.

Bad debt expense decreased by 53% to $11.1 million for the six months ended September 30, 2021 compared to $23.6 million for the six months ended September 30, 2020. The decrease was driven by the release of reserves due to continued consistent payment trends along with recovery of previous write-offs in the Commercial segment.

Reorganization costs represent the amounts incurred related to the filings under the CCAA Proceedings. These costs include professional and advisory costs of $23.3 million, $5.2 million for the key employee retention plan and $10.0 million in prepetition claims, contract terminations and other costs.

Finance costs decreased by 52% to $24.8 million for the six months ended September 30, 2021 compared to $51.6 million for the six months ended September 30, 2020. The decrease is due to the September 2020 Recapitalization together with no longer accruing finance costs on the unsecured debt due to the CCAA Proceedings as described in Note 8 of the Interim Condensed Consolidated Financial Statements.

Unlevered free cash flow decreased by 28% to an inflow of $38.0 million for the six months ended September 30, 2021 compared to an inflow of $53.2 million for the six months ended September 30, 2020. The decrease is related to higher payments to ERCOT associated with the Weather Event, partially offset by the non-payment of trade and other payables subject to compromise under the CCAA Proceedings.

Mass Markets EGM decreased by 7% to $1,047.2 million as at September 30, 2021 compared to $1,130.0 million as at September 30, 2020. The decline resulted from the decline in the customer base and the unfavourable foreign exchange.

Commercial EGM decreased by 14% to $336.4 million as at September 30, 2021 compared to $390.8 million as at September 30, 2020. The decline resulted from the decline in the customer base and the unfavourable foreign exchange.

Base Gross Margin[1]

For the Three months ended September 30.
(thousands of dollars)

	Fiscal 2022			Fiscal 2021		
	Mass Market	**Commercial**	**Total**	Mass Market	Commercial	Total
Gas	**$ 6,394**	**$ 652**	**$ 7,046**	$ 14,839	$ 4,042	$ 18,881
Electricity	**80,217**	**29,314**	**109,531**	89,607	29,786	119,393
	$ 86,611	**$ 29,966**	**$ 116,577**	$ 104,446	$ 33,828	$ 138,274
Decrease	**(17)%**	**(11)%**	**(16)%**			

For the six months ended September 30.
(thousands of dollars)

	Fiscal 2022			Fiscal 2021		
	Mass Market	**Commercial**	**Total**	Mass Market	Commercial	Total
Gas	**$ 20,649**	**$ 2,470**	**$ 23,119**	$ 42,656	$ 10,471	$ 53,127
Electricity	**140,937**	**52,138**	**193,075**	172,816	48,610	221,426
	$ 161,586	**$ 54,608**	**$ 216,194**	$ 215,472	$ 59,081	$ 274,553
Decrease	**(25)%**	**(8)%**	**(21)%**			

1 See "Non-IFRS financial measures" on page 5.

MASS MARKETS SEGMENT

Mass Markets Base Gross Margin decreased by 17% to $86.6 million for the three months ended September 30, 2021 compared to $104.5 million for the three months ended September 30, 2020. The decrease was driven by a decline in margin from higher energy and ancillary costs, unfavourable exchange rate fluctuations, and a decline in the customer base.

Mass Markets Base Gross Margin decreased by 25% to $161.6 million for the six months ended September 30, 2021 compared to $215.5 million for the six months ended September 30, 2020. The decrease was primarily driven by unfavourable exchange rate fluctuations, a decline in the customer base and lower margin from higher energy and ancillary costs.

Gas

Mass Markets Gas Base Gross Margin decreased by 57% to $6.4 million for the three months ended September 30, 2021 compared to $14.8 million for the three months ended September 30, 2020, primarily driven by a decline in the customer base and lower margin from higher costs.

Mass Markets Gas Base Gross Margin decreased by 52% to $20.6 million for the six months ended September 30, 2021 compared to $42.7 million for the six months ended September 30, 2020. The decrease was primarily driven by a decline in the customer base, favourable impact from resettlements in the prior year and lower margin from higher costs.

Electricity

Mass Markets Electricity Base Gross Margin decreased by 10% to $80.2 million for the three months ended September 30, 2021 compared to $89.6 million for the three months ended September 30, 2020. The decrease is primarily driven by lower margin from higher energy and ancillary costs, unfavourable exchange rate fluctuations and a decline in the customer base.

Mass Markets Electricity Base Gross Margin decreased by 18% to $140.9 million for the six months ended September 30, 2021 compared to $172.8 million for the six months ended September 30, 2020. The decrease is primarily driven by unfavourable exchange rate fluctuations, a decline in the customer base, lower fee revenue due to restrictions imposed on disconnections in Texas in the first quarter of Fiscal 2022 and lower margin from higher energy and ancillary costs.

COMMERCIAL SEGMENT

Commercial Base Gross Margin decreased by 11% to $30.0 million for the three months ended September 30, 2021 compared to $33.8 million six months ended September 30, 2020. The decrease was driven by resettlements related to prior periods and a decline in the customer base, partially offset by higher margin realized across several markets.

Commercial Base Gross Margin decreased by 8% to $54.6 million for the six months ended September 30, 2021 compared to $59.1 million for the six months ended September 30, 2020. The decrease was primarily due to resettlements related to prior periods, a decline in the customer base and unfavourable exchange rate fluctuations, partially offset by higher margin realized across several markets.

Gas

Commercial Gas Base Gross Margin decreased by 84% to $0.7 million for the three months ended September 30, 2021 compared to $4.0 million for the three months ended September 30, 2020. The decrease was primarily due to lower margin realized in the current year and resettlements related to prior periods.

Commercial Gas Base Gross Margin decreased by 76% to $2.5 million for the six months ended September 30, 2021 compared to $10.5 million for the six months ended September 30, 2020. The decrease was primarily due to favourable impact from resettlements in the prior year and lower margin realized in the current year.

Electricity

Commercial Electricity Base Gross Margin decreased by 2% to $29.3 million for the three months ended September 30, 2021 compared to $29.8 million for the three months ended September 30, 2020. The decrease was primarily due to favourable impact from resettlements in the prior year, a decline in customer base and unfavourable exchange rate fluctuations, partially offset by higher margin across several markets.

Commercial Electricity Base Gross Margin increased by 7% to $52.1 million for the six months ended September 30, 2021 compared to $48.6 million for the six months ended September 30, 2020. The increase is primarily driven by higher margin realized across several markets, partially offset by favourable impact from resettlements in the prior comparable period, a decline in customer base and unfavourable exchange rate fluctuations.

Mass Markets average realized Base Gross Margin

For the trailing 12 months ended September 30.

	Fiscal 2022 GM/RCE	**% Change**	Fiscal 2021 GM/RCE
Gas	**$ 353**	**(12)%**	$ 399
Electricity	**309**	**(13)%**	355
Total	**$ 319**	**(13)%**	$ 367

Mass Markets average realized Base Gross Margin for the Mass Markets segment for the trailing 12 months ended September 30, 2021 decreased 13% to $319 compared to $367 for the trailing 12 months ended September 30, 2020. The decrease is primarily attributable to an increase in market costs, as well as competitive market pricing and changes to the sales channel mix.

Commercial average realized Base Gross Margin

For the trailing 12 months ended September 30.

	Fiscal 2022 GM/RCE	**% Change**	Fiscal 2021 GM/RCE
Gas	**$ 76**	**(30)%**	$ 109
Electricity	**100**	**10%**	91
Total	**$ 95**		$ 95

Commercial Average realized Base Gross Margin for the trailing 12 months ended September 30, 2021 was $95, in line with the trailing 12 months ended September 30, 2020.

Base EBITDA

For the three months ended September 30.
(thousands of dollars)

	Fiscal 2022	Fiscal 2021
Reconciliation to Interim Condensed Consolidated Statements of Income		
Profit (Loss) for the period	**$ 326,049**	$ (51,366)
Add:		
Finance costs	**11,895**	29,744
Provision (recovery) for income taxes	**(245)**	673
Loss from discontinued operations	**–**	1,210
Amortization and depreciation	**4,750**	5,719
EBITDA	**$ 342,449**	$ (14,020)
Add (subtract):		
Unrealized (gain) loss of derivative instruments and other	**(287,515)**	84,968
Gain on September 2020 Recapitalization transaction, net	**–**	(52,152)
Weather Event	**(3,051)**	–
Reorganization Costs	**18,577**	–
Unrealized gain on investment	**(29,000)**	–
Non-cash adjustment to green obligations	**(4,578)**	–
Restructuring Costs	**–**	7,118
Share-based compensation	**417**	3,430
Strategic Review costs	**–**	295
Realized (gain) loss included in cost of goods sold	**(6,399)**	3,019
Loss attributable to non-controlling interest	**(3)**	116
Base EBITDA	**$ 30,897**	$ 32,774
Gross margin	**$ 81,471**	$ 220,711
Realized gain (loss) of derivative instruments and other	**42,735**	(82,438)
Non-cash adjustment to green obligations	**(4,578)**	–
Weather Event	**(3,051)**	–
Base Gross Margin	**116,577**	138,273
Add (subtract):		
Administrative expenses	**(37,181)**	(43,957)
Selling commission expenses	**(27,851)**	(34,894)
Selling non-commission and marketing expense	**(16,936)**	(13,017)
Bad debt expense	**(3,692)**	(11,662)
Strategic Review costs	**–**	295
Amortization included in cost of sales	**40**	45
Loss attributable to non-controlling interest	**(3)**	116
Other income (expense)	**(57)**	(2,425)
Base EBITDA	**$ 30,897**	$ 32,774

Base EBITDA

For the six months ended September 30.
(thousands of dollars)

	Fiscal 2022	Fiscal 2021
Reconciliation to Interim Condensed Consolidated Statements of Income		
Profit for the period	**$ 601,348**	$ 27,784
Add:		
Finance costs	**24,808**	51,597
Provision (recovery) for income taxes	**(1,212)**	1,307
Loss from discontinued operations	**–**	4,158
Amortization and depreciation	**9,239**	13,071
EBITDA	**$ 634,183**	$ 97,917
Add (subtract):		
Unrealized (gain) loss of derivative instruments and other	**(579,652)**	7,619
Gain on September 2020 Recapitalization transaction, net	**–**	(50,341)
Weather Event	**615**	–
Reorganization Costs	**38,586**	–
Unrealized gain on investment	**(29,000)**	–
Restructuring Costs	**–**	7,118
Non-cash adjustment to green obligations	**(4,578)**	–
Share-based compensation	**1,027**	4,122
Impairment of inventory	**648**	–
Strategic Review costs	**–**	2,098
Realized (gain) loss included in cost of goods sold	**(7,970)**	4,607
Loss attributable to non-controlling interest	**60**	113
Base EBITDA	**$ 53,919**	$ 73,253
Gross margin	**$ 161,781**	$ 489,848
Realized gain (loss) of derivative instruments and other	**58,376**	(215,296)
Non-cash adjustment to green obligations	**(4,578)**	–
Weather Event	**615**	–
Base Gross Margin	**216,194**	274,552
Add (subtract):		
Administrative expenses	**(66,951)**	(82,099)
Selling commission expenses	**(53,145)**	(70,873)
Selling non-commission and marketing expense	**(31,314)**	(23,998)
Bad debt expense	**(11,110)**	(23,602)
Strategic Review costs	**–**	2,098
Amortization included in cost of sales	**82**	119
Loss attributable to non-controlling interest	**60**	113
Other income (expense)	**103**	(3,057)
Base EBITDA	**$ 53,919**	$ 73,253

Summary of quarterly results for continuing operations

(thousands of dollars, except per share amounts)

	Q2 Fiscal 2022	Q1 Fiscal 2022	Q4 Fiscal 2021	Q3 Fiscal 2021
Sales[1]	**$ 704,769**	$ 608,672	$ 689,064	$ 627,015
Cost of goods sold[1]	**623,298**	528,363	3,131,485	446,571
Gross margin	**81,471**	80,309	(2,442,421)	180,445
Realized gain (loss) of derivative instruments and other	**42,735**	15,642	2,152,866	(56,778)
Weather Event	**(3,051)**	3,666	418,369	–
Sales Tax settlement	**–**	–	1,885	7,941
Non-cash adjustment to green obligations	**(4,578)**	–	–	–
Base Gross Margin	**116,577**	99,617	130,699	131,608
Administrative expenses	**37,181**	29,770	29,884	30,408
Selling commission expenses	**27,851**	25,294	28,295	30,485
Selling non-commission and marketing expenses	**16,936**	14,378	14,086	11,784
Bad debt expense	**3,692**	7,418	7,301	3,358
Finance costs	**11,895**	12,913	17,346	17,677
Profit (loss) for the period from continuing operations	**326,049**	275,299	(382,371)	(52,327)
Profit (loss) for the period from discontinued operations, net	**–**	–	(162)	4,788
Profit (loss) for the period	**326,049**	275,299	(382,533)	(47,539)
Base EBITDA from continuing operations	**30,897**	23,021	53,794	55,785

	Q2 Fiscal 2021	Q1 Fiscal 2021	Q4 Fiscal 2020	Q3 Fiscal 2020
Sales[1]	$ 737,994	$ 685,964	$ 776,921	$ 750,615
Cost of goods sold[1]	517,283	416,827	489,411	538,646
Gross margin	220,711	269,137	287,510	211,969
Realized gain (loss) of derivative instruments and other	(82,438)	(132,858)	(107,089)	(69,485)
Base Gross Margin	138,273	136,279	180,421	142,484
Administrative expenses	43,957	38,142	46,051	39,616
Selling commission expenses	34,895	35,979	36,983	36,698
Selling non-commission and marketing expenses	13,017	10,981	16,584	14,572
Bad debt expense	11,662	11,940	13,197	19,996
Finance costs	29,744	21,853	26,770	28,178
Profit (loss) for the period from continuing operations	(50,156)	82,098	(138,210)	20,601
Profit (loss) for the period from discontinued operations, net	(1,210)	(2,948)	(2,721)	6,293
Profit (loss) for the period	(51,366)	79,150	(140,931)	26,894
Base EBITDA from continuing operations	32,774	40,479	74,632	37,950

1 Sales amounts have been corrected from the statements previously presented to conform to the presentation of the current Interim Condensed Consolidated Financial Statements.

Just Energy's results reflect seasonality, as electricity consumption is slightly greater in the first and second quarters (summer quarters) and gas consumption is significantly greater during the third and fourth quarters (winter quarters). Electricity and gas customers (RCEs) currently represent 77% and 23% of the commodity customer base, respectively. Since consumption for each commodity is influenced by weather, Just Energy believes the annual quarter over quarter comparisons are more relevant than sequential quarter comparisons.

Segmented Base EBITDA[1]

For the three months ended September 30.
(thousands of dollars)

				Fiscal 2022
	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	**$ 401,491**	**$ 303,278**	**$ –**	**$ 704,769**
Cost of goods sold	**(339,323)**	**(283,975)**	**–**	**(623,298)**
Gross margin	**62,168**	**19,303**	**–**	**81,471**
Non-cash adjustment to green obligations	**(4,332)**	**(246)**	**–**	**(4,578)**
Weather Event	**(3,051)**	**–**	**–**	**(3,051)**
Realized gain of derivative instruments and other	**31,826**	**10,909**	**–**	**42,735**
Base Gross Margin	**86,611**	**29,966**	**–**	**116,577**
Add (subtract):				
Administrative expenses	**(10,348)**	**(3,761)**	**(23,072)**	**(37,181)**
Selling commission expenses	**(13,646)**	**(14,205)**	**–**	**(27,851)**
Selling non-commission and marketing expense	**(15,520)**	**(1,416)**	**–**	**(16,936)**
Bad debt expense	**(3,585)**	**(107)**	**–**	**(3,692)**
Amortization included in cost of goods sold	**40**	**–**	**–**	**40**
Other income	**(43)**	**(14)**	**–**	**(57)**
Loss attributable to non-controlling interest	**(3)**	**–**	**–**	**(3)**
Base EBITDA from continuing operations	**$ 43,506**	**$ 10,463**	**$ (23,072)**	**$ 30,897**

				Fiscal 2021
	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales[1]	$ 419,340	$ 318,654	$ –	$ 737,994
Cost of goods sold[1]	(265,848)	(251,435)	–	(517,283)
Gross margin	153,492	67,219	–	220,711
Realized loss of derivative instruments and other	(49,046)	(33,392)	–	(82,438)
Base Gross Margin	104,446	33,827	–	138,273
Add (subtract):				
Administrative expenses	(9,892)	(4,153)	(29,912)	(43,957)
Selling commission expenses	(18,139)	(16,755)	–	(34,894)
Selling non-commission and marketing expense	(11,526)	(1,491)	–	(13,017)
Bad debt expense	(8,639)	(3,023)	–	(11,662)
Amortization included in cost of goods sold	45	–	–	45
Strategic Review costs	–	–	295	295
Other expense	(2,534)	109	–	(2,425)
Loss attributable to non-controlling interest	116	–	–	116
Base EBITDA from continuing operations	$ 53,877	$ 8,514	$ (29,617)	$ 32,774

Mass Markets segment Base EBITDA decreased by 19% to $43.5 million for the three months ended September 30, 2021 compared to $53.9 million for the three months ended September 30, 2020. The decrease was driven by lower Base Gross Margin primarily due to a decline in margin from higher energy and ancillary costs and increased investment in digital marketing partially and sales agent costs, partially offset by a lower selling commission and bad debt expenses.

Commercial segment Base EBITDA increased by 24% to $10.5 million for the three months ended September 30, 2021 compared to $8.5 million for the three months ended September 30, 2020. The increase was driven by lower selling commission and bad debt expenses, partially offset by a decline in Base Gross Margin.

Corporate and shared services costs relate to management oversight of the business units, public reporting and filings, corporate governance and other shared services functions. The corporate expenses were $23.1 million for the three months ended September 30, 2021 compared to $29.6 million for the three months ended September 30, 2020. The decrease was primarily driven by higher professional fees and legal fees in the prior year, including a provision related to the Hurt and Hill class-action litigation.

Segmented Base EBITDA[1]

For the six months ended September 30.
(thousands of dollars)

				Fiscal 2022
	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 716,477	$ 596,964	$ –	$ 1,313,441
Cost of goods sold	(594,820)	(556,840)	–	(1,151,660)
Gross margin	121,657	40,124	–	161,781
Non-cash adjustment to green obligations	(4,332)	(246)	–	(4,578)
Weather Event	615	–	–	615
Realized gain of derivative instruments and other	43,646	14,730	–	58,376
Base Gross Margin	161,586	54,608	–	216,194
Add (subtract):				
Administrative expenses	(19,501)	(7,100)	(40,350)	(66,951)
Selling commission expenses	(25,503)	(27,642)	–	(53,145)
Selling non-commission and marketing expense	(28,796)	(2,518)	–	(31,314)
Bad debt expense	(9,525)	(1,585)	–	(11,110)
Amortization included in cost of goods sold	82	–	–	82
Other income	82	21	–	103
Loss attributable to non-controlling interest	60	–	–	60
Base EBITDA from continuing operations	$ 78,485	$ 15,784	$ (40,350)	$ 53,919

				Fiscal 2021
	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales[1]	$ 810,004	$ 613,954	$ –	$ 1,423,958
Cost of goods sold[1]	(470,157)	(463,953)	–	(934,110)
Gross margin	339,847	150,001	–	489,848
Realized loss of derivative instruments and other	(124,375)	(90,921)	–	(215,296)
Base Gross Margin	215,472	59,080	–	274,552
Add (subtract):				
Administrative expenses	(18,187)	(9,436)	(54,476)	(82,099)
Selling commission expenses	(36,589)	(34,284)	–	(70,873)
Selling non-commission and marketing expense	(20,633)	(3,365)	–	(23,998)
Bad debt expense	(17,087)	(6,515)	–	(23,602)
Amortization included in cost of goods sold	119	–	–	119
Strategic Review costs	–	–	2,098	2,098
Other expense	(3,166)	109	–	(3,057)
Loss attributable to non-controlling interest	113	–	–	113
Base EBITDA from continuing operations	$ 120,042	$ 5,589	$ (52,378)	$ 73,253

1 Sales amounts have been corrected from the statements previously presented to conform to the presentation of the current Interim Condensed Consolidated Financial Statements.

2 The segment definitions are provided on page 3.

Consolidated Base EBITDA decreased by 26% to $53.9 million for the six months ended September 30, 2021 compared to $73.3 million for the six months ended September 30, 2020. The decrease was driven by lower Base Gross Margin and increased investment in digital marketing and sales agent costs, partially offset by lower selling commission, administrative and bad debt expenses.

Mass Markets segment Base EBITDA decreased by 35% to $78.5 million for the six months ended September 30, 2021 compared from $120.0 million for the six months ended September 30, 2020. The decrease was driven by a lower Base Gross Margin and increased investment in digital marketing and sales agent costs, partially offset by lower bad debt and selling commission expenses.

Commercial segment Base EBITDA increased by 182% to $15.8 million for the six months ended September 30, 2021 compared to $5.6 million for the six months ended September 30, 2020. The increase was driven by selling commission expenses and bad debt expenses, partially offset by lower Base Gross Margin from favourable resettlements in the prior year and a decline in the customer base.

Corporate and shared services costs relate to management oversight of the business units, public reporting and filings, corporate governance and other shared services functions. The corporate expenses were $40.4 million for the six months ended September 30, 2021 compared to $52.4 million for the six months ended September 30, 2020. The decrease was primarily driven by higher professional and legal fees in the prior year, including a provision related to the Hurt and Hill class-action litigation. The Corporate expenses exclude Strategic Review costs in the six months ended September 30, 2020, because the costs are non-recurring and therefore excluded from Base EBITDA.

Acquisition Costs

The acquisition costs per customer for the trailing twelve months for Mass Market customers signed by sales agents including sales through digital channel and the Commercial customers signed by brokers were as follows:

	Fiscal 2022	Fiscal 2021
Mass Markets	**$ 235/RCE**	$ 241/RCE
Commercial	**$ 44/RCE**	$ 42/RCE

The Mass Markets average acquisition cost decreased by 2% to $235/RCE for the twelve months ended September 30, 2021 compared to $241/RCE reported for the twelve months ended September 30, 2020, primarily from lower exchange rate and a change in channel mix towards lower cost channels.

The Commercial average customer acquisition cost increased by 5% to $44/RCE for the twelve months ended September 30, 2021 compared to $42/RCE for the twelve months ended September 30, 2020.

Customer summary

CUSTOMER COUNT

	As at September 30, 2021	As at September 30, 2020	% decrease
Mass Markets	**840,000**	906,000	(7)%
Commercial	**96,000**	108,000	(11)%
Total customer count	**936,000**	1,014,000	(8)%

The Mass Markets customer count decreased 7% to 840,000 compared to September 30, 2020. The decline in Mass Markets customers is due to regulatory restrictions in Ontario, New York and California; and selling constraints in direct in-person channels previously posed by the COVID-19 pandemic in prior periods.

The Commercial customer count decreased 11% to 96,000 compared to September 30, 2020. The decline in Commercial customers is due to competitive price pressures in the United States together with impacts related to the COVID-19 pandemic in prior periods and exiting the California electricity market.

COMMODITY RCE SUMMARY

	July 1, 2021	Additions	Attrition	Failed to renew	**September 30, 2021**	% increase (decrease)
Mass Markets						
Gas	239,000	7,000	(6,000)	(2,000)	**238,000**	(0)%
Electricity	901,000	79,000	(44,000)	(25,000)	**911,000**	1%
Total Mass Markets RCEs	**1,140,000**	**86,000**	**(50,000)**	**(27,000)**	**1,149,000**	**1%**
Commercial						
Gas	403,000	15,000	(6,000)	(4,000)	**408,000**	1%
Electricity	1,293,000	26,000	(27,000)	(39,000)	**1,253,000**	(3)%
Total Commercial RCEs	**1,696,000**	**41,000**	**(33,000)**	**(43,000)**	**1,661,000**	**(2)%**
Total RCEs	**2,836,000**	**127,000**	**(83,000)**	**(70,000)**	**2,810,000**	**(1)%**

MASS MARKETS

Mass Markets RCE additions increased by 139% to 86,000 for the three months ended September 30, 2021 compared to 36,000 for the three months ended September 30, 2020. The increase is driven by investment in digital marketing and sales agent headcount, as well as continued improvement in direct face-to-face channels. The COVID-19 pandemic had substantial impacts in the three months ended September 30, 2020.

Mass Markets RCE attrition decreased by 7% to 50,000 for the three months ended September 30, 2021 compared to 54,000 for the three months ended September 30, 2020. The decrease in attrition is driven by lower customer base.

Mass Markets failed to renew RCEs decreased by 27% to 27,000 for the three months ended September 30, 2021 compared to 37,000 for the three months ended September 30, 2020, driven by improved renewal rates through improved retention offerings.

Mass Markets RCE Net Adds for the three months ended September 30, 2021 was a gain of 9,000 compared to a loss of 55,000 for the three months ended September 30, 2020. Excluding the one-time 29,000 loss related to the regulatory changes in New York coming into effect in April 2021, Mass Markets RCE Net Adds for the six months ended September 30, 2021 was a positive 32,000.

As at September 30, 2021, the U.S. and Canadian operations accounted for 86% and 14% of the Mass Markets RCE base, respectively.

COMMERCIAL

Commercial RCE additions decreased by 20% to 41,000 for the three months ended September 30, 2021 compared to 51,000 for the three months ended September 30, 2020. The decrease was driven by a very large customer added during the prior year. Excluding large customer additions, Commercial gross additions increased by 28% for the three months ended September 30, 2021 compared to the prior year.

Commercial RCE attrition decreased by 42% to 33,000 for the three months ended September 30, 2021 compared to 57,000 for the three months ended September 30, 2020. The company continues to see improved attrition on the Commercial segment in line with the general recovery in economic activity.

Commercial failed to renew RCEs increased by 19% to 43,000 RCEs for the six months ended September 30, 2021 compared to 36,000 RCEs for the six months ended September 30, 2020.

As at September 30, 2021, the U.S. and Canadian operations accounted for 65% and 35% of the Commercial RCE base, respectively.

TOTAL

Overall, as at September 30, 2021, the U.S. and Canadian operations accounted for 73% and 27% of the RCE base, respectively, compared to 75% and 25%, respectively, as at September 30, 2020.

COMMODITY RCE ATTRITION

	Trailing 12 months ended September 30, 2021	Trailing 12 months ended September 30, 2020
Mass Markets	**18%**	18%
Commercial	**8%**	13%

The Mass Markets attrition rate for the trailing 12 months ended September 30, 2021 remained consistent at 18% reflecting the benefits of focus sales to higher quality customers and increased focus on the customer experience.

The Commercial attrition rate for the trailing 12 months ended September 30, 2021 decreased five percentage points to 8%.

	Three months ended September 30, 2021	Three months ended September 30, 2020
Mass Markets	**4%**	4%
Commercial	**2%**	3%

The Mass Markets attrition rate for the three months ended September 30, 2021 remained consistent at 4%.

The Commercial attrition rate for the three months ended September 30, 2021 decreased by one percentage point to 2% from 3% compared to the three months ended September 30, 2020 reflecting improvement in customer retention following the reduction of restrictions due to the COVID-19 pandemic.

COMMODITY RCE RENEWALS

	Trailing 12 months ended September 30, 2021	Trailing 12 months ended September 30, 2020
Mass Markets	**77%**	73%
Commercial	**49%**	52%

The Mass Markets renewal rate increased four percentage points to 77% for the trailing 12 months ended September 30, 2021. The increase in the Mass Markets renewal rate was driven by improved retention offerings and continued focus on the customer experience.

The Commercial renewal rate decreased by three percentage points to 49% as compared to the same period of fiscal 2021.

	Three months ended September 30, 2021	Three months ended September 30, 2020
Mass Markets	**79%**	75%
Commercial	**48%**	52%

The Mass Markets renewal rate for the three months ended September 30, 2021, increased to 79% from 75% for the three months ended September 30, 2020 driven by improved retention offerings and continued focus on the customer experience.

The Commercial renewal rate for the three months ended September 30, 2021 decreased to 48% from 52% for the three months ended September 30, 2020. The decline in the Commercial renewal rate reflects a competitive market for Commercial renewals.

AVERAGE GROSS MARGIN PER RCE

The table below depicts the annual design margins on new and renewed contracts signed during the three months ended September 30, 2021 compared to three months ended September 30, 2020 for standard commodities, which does not include non-recurring non-commodity fees.

		Q2 Fiscal 2022	Number of RCEs		Q2 Fiscal 2021	Number of RCEs
Mass Markets added or renewed	$	266	178,000	$	309	118,000
Commercial added or renewed[1]		88	86,000		88	73,000

1 Annual gross margin per RCE excludes margins from Interactive Energy Group and large Commercial and Industrial customers.

For the three months ended September 30, 2021, the average gross margin per RCE for the customers added or renewed by the Mass Markets segment was $266, a decrease of 14% from $309 for the three months ended September 30, 2020 due to change in channel mix including lower cost of acquisition channels and overall margin pressure related to increasing commodity prices.

For the Commercial segment there was no change in average gross margin per RCE for the three months ended September 30, 2021 compared to the three months ended September 30, 2020.

Liquidity and capital resources from continuing operations

SUMMARY OF CASH FLOWS

For the six months ended September 30.
(thousands of dollars)

		Fiscal 2022		Fiscal 2021
Operating activities from continuing operations	$	22,376	$	22,798
Investing activities from continuing operations		(4,837)		(4,673)
Financing activities from continuing operations		(34,782)		37,426
Effect of foreign currency translation		1,206		(3,679)
Increase (decrease) in cash		(16,037)		51,872
Cash and cash equivalents – beginning of period		215,989		26,093
Cash and cash equivalents – end of period	$	199,952	$	77,965

OPERATING ACTIVITIES

Cash flow from operating activities was an inflow of $22.4 million for the six months ended September 30, 2021 compared to an inflow of $22.8 million for the six months ended September 30, 2020. September 30, 2021 cash flow from operating activities benefited from lower cash financing costs due to the September 2020 Recapitalization offset by higher payments to ERCOT associated with the Weather Event, partially offset by the non-payment of trade and other payables subject to compromise.

INVESTING ACTIVITIES

Cash flow from investing activities was an outflow of $4.8 million for the six months ended September 30, 2021 compared to an outflow of $4.7 million for the six months ended September 30, 2020.

FINANCING ACTIVITIES

Cash flow from financing activities was an outflow of $34.8 million for the six months ended September 30, 2021 compared to an inflow of $37.4 million for the six months ended September 30, 2020. The outflow is primarily driven by payments of $63.3 million under the Credit Facility to allow the issuance of Letters of Credit partially offset by proceeds from DIP Facility.

Free cash flow and unlevered free cash flow[1]

For the six months ended September 30.
(thousands of dollars)

		Fiscal 2022		Fiscal 2021
Cash flows from operating activities	$	22,376	$	22,798
Subtract: Maintenance capital expenditures		(4,837)		(4,673)
Free cash flow		17,539		18,125
Finance costs, cash portion		20,492		35,021
Unlevered free cash flow	$	38,031	$	53,146

1 See "Non-IFRS financial measures" on page 5.

Unlevered free cash flow decreased by 28% to an inflow of $38.0 million for the quarter ended September 30, 2021 compared to an inflow of $53.2 million for the quarter ended September 30, 2020. The decrease is related to higher payments to ERCOT associated with the Weather Event, partially offset by the non-payment of trade and other payables.

Selected Balance sheet data as at September 30, 2021, compared to March 31, 2021

The following table shows selected data from the Interim Condensed Consolidated Financial Statements as at the following periods:

	As at September 30, 2021	As at March 31, 2021
Assets:		
Cash and cash equivalents	**$ 199,952**	$ 215,989
Trade and other receivables, net	**401,633**	340,201
Total fair value of derivative financial assets	**577,505**	35,626
Other current assets	**155,855**	163,405
Total assets	**1,733,538**	1,091,806
Liabilities:		
Trade and other payables	**$ 1,024,383**	$ 921,595
Total fair value of derivative financial liabilities	**30,957**	75,146
Total debt	**630,849**	655,740
Total liabilities	**1,720,962**	1,686,628

Total cash and cash equivalents decreased to $200.0 million as at September 30, 2021 from $216.0 million as at March 31, 2021. The decrease in cash is primarily attributable to cash outflows from financing operations.

Trade and other receivables, net, increased to $401.6 million as at September 30, 2021 from $340.2 million as at March 31, 2021. The changes are primarily due to increase in receivables from customers receivables in the normal seasonal course of business.

Other current assets decreased to $155.9 million as at September 30, 2021 from $163.4 million as at March 31, 2021 due to the retirement of green certificates.

Trade and other payables increased to $1,024.4 million as at September 30, 2021 from $921.6 million as at March 31, 2021 driven by the normal seasonal increase in commodity and supplier payables.

Fair value of derivative financial assets and fair value of financial liabilities relate entirely to the financial derivatives. The unrealized mark to market gains and losses can result in significant changes in profit and, accordingly, shareholders' deficit from year to year due to commodity price volatility. As Just Energy has purchased this supply to cover future customer usage at fixed prices, management believes that these unrealized changes do not impact the long-term financial performance of Just Energy.

Total debt was $630.9 million as at September 30, 2021, down from $655.7 million as at March 31, 2021. The reduction in total debt is a result of the payments made under the Credit Facility to allow the issuance of Letters of Credit. As at September 30, 2021, $471.5 million of the debt is subject to compromise under the CCAA Proceedings.

Embedded gross margin[1]

Management's estimate of EGM is as follows:
(millions of dollars)

	As at September 30, 2021	As at September 30, 2020	% decrease
Mass Markets embedded gross margin	**1,047.2**	1,130.0	(7)%
Commercial embedded gross margin	**336.4**	390.8	(14)%
Total embedded gross margin	**$ 1,383.6**	$1,520.8	(9)%

1 See "Non-IFRS financial measures" on page 5

Management's estimate of the Mass Markets EGM decreased by 7% to $1,047 million as at September 30, 2021 compared to $1,130 million as at September 30, 2020. The decline resulted from the lower customer base and the unfavourable foreign exchange.

Management's estimate of the Commercial EGM decreased by 14% to $336 million as at September 30, 2021 compared to $391 million as at September 30, 2020. The decline resulted from the decline in the customer base and the unfavourable foreign exchange.

Provision for (Recovery of) income and deferred tax

(thousands of dollars)

	For the three months ended September 30,		For the six months ended September 30,	
	2021	2020	**2021**	2020
Current income tax expense (recovery)	**$ (245)**	$ 493	**$ (1,357)**	$ 1,366
Deferred income tax expense (recovery)	**–**	180	**145**	(59)
Provision for (recovery of) income tax	**$ (245)**	$ 673	**$ (1,212)**	$ 1,307

Just Energy recorded a current income tax recovery of $0.2 million for the three months ended September 30, 2021, compared to $0.5 million expense in the three months ended September 30, 2020. A current income tax recovery of $1.4 million for the six months ended September 30, 2021, compared to $1.4 million expense in the six months ended September 30, 2020. Just Energy continues to have a current tax expense from profitability in taxable jurisdictions however during the second quarter of fiscal 2022 a recovery was recognized due to the benefit of a current year loss carried back.

During the three months ended September 30, 2021, a deferred tax expense of nil was recorded as compared to a deferred tax expense of $0.2 million during the three months ended September 30, 2020.

OTHER OBLIGATIONS

In the opinion of management, Just Energy has no material pending actions, claims or proceedings that have not been included either in its accrued liabilities or in the Interim Condensed Consolidated Financial Statements. In the normal course of business, Just Energy could be subject to certain contingent obligations that become payable only if certain events were to occur. The inherent uncertainty surrounding the timing and financial impact of any events prevents any meaningful measurement, which is necessary to assess any material impact on future liquidity. Such obligations include potential judgments, settlements, fines and other penalties resulting from actions, claims or proceedings.

Transactions with related parties

Parties are considered to be related if one party has the ability to control the other party or exercise influence over the other party in making financial or operating decisions. The definition includes subsidiaries and other persons.

PIMCO through certain affiliates became a 28.9% shareholder of the Company as part of the September 2020 Recapitalization. On March 9, 2021, certain PIMCO affiliates entered into the DIP Facility with the Company as discussed in the Interim Condensed Consolidated Financial Statements.

Off balance sheet items

The Company has issued letters of credit in accordance with its credit facility totaling $160.5 million as at September 30, 2021 to various counterparties, primarily utilities in the markets it operates in, as well as suppliers.

Pursuant to separate arrangements with multiple insurance and surety bond providers. Just Energy has issued surety bonds to various counterparties including States, regulatory bodies, utilities and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required in order to operate in certain states or markets. Total surety bonds issued as at September 30, 2021 was $46.3 million and are backed by letters of credit or cash collateral.

Critical accounting estimates and judgments

The Interim Condensed Consolidated Financial Statements of Just Energy have been prepared in accordance with IFRS. Certain accounting policies require management to make estimates and judgments that affect the reported amounts of assets, liabilities, sales, cost of goods sold, administrative expenses, selling and marketing expenses, and other operating expenses. Estimates are based on historical experience, current information and various other assumptions that are believed to be reasonable under the circumstances. The emergence of new information and changed circumstances may result in actual results or changes to estimated amounts that differ materially from current estimates.

The following assessment of critical accounting estimates is not meant to be exhaustive. Just Energy might realize different results from the application of new accounting standards promulgated, from time to time, by various rule-making bodies.

COVID-19 IMPACT

As a result of the continued coronavirus disease ("COVID-19") pandemic, we have reviewed the estimates, judgments and assumptions used in the preparation of the Interim Condensed Consolidated Financial Statements and determined that no significant revisions to such estimates, judgments or assumptions were required for the three months ended September 30, 2021.

FAIR VALUE OF FINANCIAL INSTRUMENTS AND RISK MANAGEMENT

Just Energy has entered into a variety of derivative financial instruments as part of the business of purchasing and selling gas, electricity and JustGreen supply and as part of the risk management practice. In addition, Just Energy uses derivative financial instruments to manage foreign exchange, interest rate and other risks.

Just Energy enters into contracts with customers to provide electricity and gas at fixed prices and provide comfort to certain customers that a specified amount of energy will be derived from green generation or carbon destruction. These customer contracts expose Just Energy to changes in market prices to supply these commodities. To reduce its exposure to commodity market price changes, Just Energy uses derivative financial and physical contracts to secure fixed-price commodity supply to cover its estimated fixed-price delivery or green commitment. Certain derivative contracts were purchased to manage ERCOT collateral requirements.

Just Energy's objective is to minimize commodity risk, other than consumption changes, usually attributable to weather. Accordingly, it is Just Energy's policy to hedge the estimated fixed-price requirements of its customers with offsetting hedges of natural gas and electricity at fixed prices for terms equal to those of the customer contracts. The cash flow from these supply contracts is expected to be effective in offsetting Just Energy's price exposure and serves to fix acquisition costs of gas and electricity to be delivered under the fixed-price or price-protected customer contracts; however, hedge accounting under IFRS 9 is not applied. Just Energy's policy is not to use derivative instruments for speculative purposes.

Just Energy's U.S. operations introduce foreign exchange-related risks. Just Energy enters into foreign exchange forwards in order to hedge its exposure to fluctuations in cross border cash flows, however, hedge accounting under IFRS 9 is not applied.

The Interim Financial Statements are in compliance with IAS 32, "*Financial Instruments: Presentation*"; IFRS 9; and IFRS 7, "*Financial Instruments: Disclosure*". Due to commodity volatility and to the size of Just Energy, the swings in mark to market on these positions will increase the volatility in Just Energy's earnings.

The Company's financial instruments are valued based on the following fair value hierarchy:

Level 1 – Unadjusted quoted prices in active markets for identical assets or liabilities;

Level 2 – Inputs other than quoted prices that are observable for the asset or liability either directly or indirectly; and

Level 3 – Inputs that are not based on observable market data.

The main cause of changes in the fair value of derivative instruments is changes in the forward curve prices used for the fair value calculations. For a sensitivity analysis of these forward curves, see Note 6 of the Interim Condensed Consolidated Financial Statements. Other inputs, including volatility and correlations, are driven off historical settlements.

RECEIVABLES AND LIFETIME EXPECTED CREDIT LOSSES

The lifetime expected credit loss reflects Just Energy's best estimate of losses on the accounts receivable and unbilled revenue balances. Just Energy determines the lifetime expected credit loss by using historical loss rates and forward-looking factors if applicable. Just Energy is exposed to customer credit risk on its continuing operations in Alberta, Texas, Illinois (gas), California (gas) and Ohio (electricity) and for certain Commercial customers in dual-billing markets including Illinois (power), Pennsylvania (power), Massachusetts (power), New York and New Jersey. Credit review processes have been implemented to perform credit evaluations of customers and manage customer default. In addition, the Company may from time to time change the criteria that it uses to determine the creditworthiness of its customers, including RCEs, and such changes could result in decreased creditworthiness of its customers and/or result in increased customer defaults. If a significant number of customers were to default on their payments, including as a result of any changes to the Company's credit criteria, it could have a material adverse effect on the operations and cash flows of Just Energy. Management factors default from credit risk in its margin expectations for all of the above markets, See Note 4 of the Interim Condensed Consolidated Financial Statements.

Revenues related to the sale of energy are recorded when energy is delivered to customers. The determination of energy sales to individual customers is based on systematic readings of customer meters generally on a monthly basis. At the end of each month, amounts of energy delivered to customers since the date of the last meter reading are estimated, and corresponding unbilled revenue is recorded. The measurement of unbilled revenue is affected by the following factors: daily customer usage, losses of energy during delivery to customers and applicable customer rates.

Increases in volumes delivered to the utilities' customers and favourable rate mix due to changes in usage patterns in the period could be significant to the calculation of unbilled revenue. Changes in the timing of meter reading schedules and the number and type of customers scheduled for each meter reading date would also have an effect on the measurement of unbilled revenue; however, total operating revenues would remain materially unchanged.

The measurement of the expected credit loss allowance for accounts receivable requires the use of management judgment in estimation techniques, building models, selecting key inputs and making significant assumptions about future economic conditions and credit behaviour of the customers, including the likelihood of customers defaulting and the resulting losses. The Company's current significant estimates include the historical collection rates as a percentage of revenue and the use of the Company's historical rates of recovery across aging buckets. Both of these inputs are sensitive to the number of months or years of history included in the analysis, which is a key input and judgment made by management.

Just Energy common shares

Just Energy is authorized to issue an unlimited number of common shares with no par value and up to 50,000,000 preferred shares. Shares outstanding have no preferences, rights or restrictions attached to them.

As at September 30, 2021, there were 48,078,637 Common Shares and no preferred shares of Just Energy outstanding.

Legal proceedings

Just Energy's subsidiaries are party to a number of legal proceedings. Other than as set out below, Just Energy believes that each proceeding constitutes legal matters that are incidental to the business conducted by Just Energy and that the ultimate disposition of the proceedings will not have a material adverse effect on its consolidated earnings, cash flows or financial position.

On March 9, 2021, Just Energy filed for and received creditor protection pursuant to the Court Order under the CCAA and similar protection under Chapter 15 of the Bankruptcy Code in the United States in connection with the Weather Event. On September 15, 2021, the Ontario Court approved the Company's request to establish a claims process to identify and determine claims against the Company and its subsidiaries that are subject to the ongoing CCAA Proceedings. As a result of the establishment of the claims process, additional claims may be made against the Company and ultimately determined that are not currently reflected in the Interim Condensed Financial Statements.

In May 2015, Kia Kordestani, a former door-to-door independent contractor sales representative for Just Energy Corp., filed a lawsuit against Just Energy Corp., Just Energy Ontario L.P. and the Company (collectively referred to as "Just Energy") in the Superior Court of Justice, Ontario, claiming status as an employee and seeking benefits and protections of the Employment Standards Act, 2000, such as minimum wage, overtime pay, and vacation and public holiday pay on his own behalf and similarly situated door-to-door sales representatives who sold in Ontario. On Just Energy's request, Mr. Kordestani was removed as a plaintiff but replaced with Haidar Omarali, also a former door-to-door sales representative. On July 27, 2016, the Court granted Omarali's request for certification, but refused to certify Omarali's request for damages on an aggregate basis and refused to certify Omarali's request for punitive damages. Omarali's motion for summary judgment was dismissed in its entirety on June 21, 2019. The matter was set for trial in November 2021. However, pursuant to the CCAA Proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims, if they proceed.

On July 23, 2019, Just Energy announced that, as part of its Strategic Review process, management identified customer enrolment and non-payment issues, primarily in Texas. In response to this announcement, and in some cases in response to this and other subsequent related announcements, putative class action lawsuits were filed in the United States District Court for the Southern District of New York, in the United States District Court for the Southern District of Texas and in the Ontario Court, on behalf of investors that purchased Just Energy Group Inc. securities during various periods, ranging from November 9, 2017 through August 19, 2019. The U.S. lawsuits have been consolidated in the United States District Court for the Southern District of Texas with one lead plaintiff and the Ontario lawsuits have been consolidated with one lead plaintiff. The U.S. lawsuit seeks damages allegedly arising from violations of the United States Securities Exchange Act. The Ontario lawsuit seeks damages allegedly arising from violations of Canadian securities legislation and of common law. The Ontario lawsuit was subsequently amended to, among other things, extend the period to July 7, 2020. On September 2, 2020, pursuant to Just Energy's plan of arrangement, the Superior Court of Justice (Ontario) ordered that all existing equity class action claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the insurance policies payable on behalf of Just Energy or its directors and officers in respect of any such existing equity class action claims, and such existing equity class action claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the released parties or any of their respective current or former officers and directors in respect of any existing equity class action claims, other than enforcing their rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. Pursuant to the CCAA Proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims if they proceed.

Controls and procedures

DISCLOSURE CONTROLS AND PROCEDURES

Both the chief executive officer ("CEO") and chief financial officer ("CFO") have designed, or caused to be designed under their supervision, the Company's disclosure controls and procedures which provide reasonable assurance that: (i) material information relating to the Company is made known to management by others, particularly during the period in which the annual and interim filings are being prepared; and (ii) information required to be disclosed by the Company in its annual and interim filings or other reports filed or submitted under securities legislation is recorded, processed, summarized and reported within the time period specified in securities legislation. The CEO and CFO are assisted in this responsibility by a Disclosure Committee composed of senior management. The Disclosure Committee has established procedures so that it becomes aware of any material information affecting Just Energy to evaluate and communicate this information to management, including the CEO and CFO as appropriate, and determine the appropriateness and timing of any required disclosure. Based on the foregoing evaluation, conducted by or under the supervision of the CEO and CFO of the Company's Internal Control over Financial Reporting ("ICFR") in connection with the Company's financial year-end, it was concluded that because of the material weakness described below, the Company's disclosure controls and procedures were not effective.

INTERNAL CONTROL OVER FINANCIAL REPORTING

Management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated Framework (2013) to evaluate the effectiveness of its ICFR as at March 31, 2021. The COSO framework summarizes each of the components of a company's internal control system, including the: (i) control environment; (ii) control activities (process-level controls); (iii) risk assessment; (iv) information and communication; and (v) monitoring activities. The COSO framework defines a material weakness as a deficiency, or combination of deficiencies, that results in a reasonable possibility that a material misstatement of the annual or Interim Condensed Consolidated Financial Statements will not be prevented or detected on a timely basis.

Identification and ongoing remediation of material weakness within financial statement close process

Management's evaluation of ICFR identified an ongoing material weakness resulting from the failure to operate several controls within the financial statement close process that allowed errors to manifest, and, the failure to detect them for an extended period of time, as follows:

Previous Identification of control activities material weakness within financial statement close process

The Company did not design or maintain effective control activities to prevent or detect misstatements during the operation of the financial statement close process, including from finalization of the trial balance to the preparation of financial statements.

Ongoing remediation of previously identified control activities material weakness associated with financial statement close process

Management remains committed to the planning and implementation of remediation efforts to address the material weaknesses, as well as to foster improvement in the Company's internal controls. These remediation efforts continue and are intended to address this identified material weakness and enhance the overall financial control environment. During the year ended March 31, 2021, management further increased the amount of personnel to perform the financial statement close process, including the hiring of a CFO and a controller, both with significant financial reporting and retail energy industry experience, promoting individuals within the team and training those individuals to perform their enhanced roles, and strengthening the managerial review process of the financial statement preparation. Management will continue to enhance the control environment and assess if the Company requires additional control and accounting individuals to operate the controls as designed, and provide additional training as required. These enhancements remain ongoing, and management continues strengthening the design and operational effectiveness of the financial statement preparation process; however, not enough time has elapsed to complete remediation efforts of this material weakness.

No assurance can be provided at this time that the actions and remediation efforts the Company has taken or will implement will effectively remediate the material weaknesses described above or prevent the incidence of other significant deficiencies or material weaknesses in the Company's internal controls over financial reporting in the future. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving the stated goals under all potential future conditions.

Other changes in internal control over financial reporting

Other than as described above, there were no changes in ICFR during the last fiscal quarter that materially affected, or are reasonably likely to materially affect, ICFR.

INHERENT LIMITATIONS

A control system, no matter how well conceived and operated, can only provide reasonable, not absolute, assurance that its objectives are met. Due to these inherent limitations in such systems, no evaluation of controls can provide absolute assurance that all control issues within any company have been detected. Accordingly, Just Energy's disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the Company's disclosure control and procedure objectives are met.

Corporate governance

Just Energy is committed to maintaining transparency in its operations and ensuring its approach to governance meets all recommended standards. Full disclosure of Just Energy's compliance with existing corporate governance rules is available at investors.justenergy.com https://investors.justenergy.com/and is included in Just Energy's Management Proxy Circular. Just Energy actively monitors the corporate governance and disclosure environment to ensure timely compliance with current and future requirements.

Interim condensed consolidated statements of financial position

(unaudited in thousands of Canadian dollars)

	Notes	As at September 30, 2021 (Unaudited)	As at March 31, 2021 (Audited)
ASSETS			
Current assets			
Cash and cash equivalents		**$ 199,952**	$ 215,989
Restricted cash		**3,265**	1,139
Trade and other receivables, net	4(a)	**401,633**	340,201
Gas in storage		**26,005**	2,993
Fair value of derivative financial assets	6	**461,899**	25,026
Income taxes recoverable		**10,626**	8,238
Other current assets	5(a)	**155,855**	163,405
		1,259,235	756,991
Non-current assets			
Investments	16(a)	**61,889**	32,889
Property and equipment, net		**15,732**	17,827
Intangible assets, net		**68,026**	70,723
Goodwill		**163,945**	163,770
Fair value of derivative financial assets	6	**115,606**	10,600
Deferred income tax assets		**7,599**	3,744
Other non-current assets	5(b)	**41,506**	35,262
		474,303	334,815
TOTAL ASSETS		**$ 1,733,538**	$ 1,091,806
LIABILITIES			
Current liabilities			
Trade and other payables	7	**$ 1,024,383**	$ 921,595
Deferred revenue		**9,373**	1,408
Income taxes payable		**3,637**	4,126
Fair value of derivative financial liabilities	6	**17,695**	13,977
Provisions		**835**	6,786
Current portion of long-term debt	8	**630,491**	654,180
		1,686,414	1,602,072
Non-current liabilities			
Long-term debt	8	**358**	1,560
Fair value of derivative financial liabilities	6	**13,262**	61,169
Deferred income tax liabilities		**6,773**	2,749
Other non-current liabilities		**14,155**	19,078
		34,548	84,556
TOTAL LIABILITIES		**$ 1,720,962**	$ 1,686,628
SHAREHOLDERS' EQUITY (DEFICIT)			
Shareholders' capital	11	**$ 1,537,863**	$ 1,537,863
Contributed deficit		**(10,607)**	(11,634)
Accumulated deficit		**(1,610,320)**	(2,211,728)
Accumulated other comprehensive income		**96,030**	91,069
Non-controlling interest		**(390)**	(392)
TOTAL SHAREHOLDERS' EQUITY (DEFICIT)		**12,576**	(594,822)
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)		**$ 1,733,538**	$ 1,091,806

Basis of presentation (Note 3)

Commitments and contingencies (Note 15)

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Scott Gahn
Chief Executive Officer and President

Stephen Schaefer
Corporate Director

Interim condensed consolidated statements of income (loss)

(unaudited in thousands of Canadian dollars, except where indicated and per share amounts)

	Notes	Three months ended September 30, 2021	Three months ended September 30, 2020	Six months ended September 30, 2021	Six months ended September 30, 2020
CONTINUING OPERATIONS					
Sales	9	**$ 704,769**	$ 737,994	**$ 1,313,441**	$ 1,423,958
Cost of goods sold		**623,298**	517,283	**1,151,660**	934,110
GROSS MARGIN		**81,471**	220,711	**161,781**	489,848
INCOMES (EXPENSES)					
Administrative		**(37,181)**	(43,957)	**(66,951)**	(82,099)
Selling and marketing		**(44,787)**	(47,912)	**(84,459)**	(94,871)
Other operating expenses	12(a)	**(8,819)**	(20,765)	**(21,293)**	(40,676)
Finance costs	8	**(11,895)**	(29,744)	**(24,808)**	(51,597)
Reorganization Costs	13	**(18,577)**	–	**(38,586)**	–
Restructuring Costs		**–**	(7,118)	**–**	(7,118)
Gain on September 2020 Recapitalization transaction, net		**–**	52,152	**–**	50,341
Unrealized gain (loss) of derivative instruments and other	6	**287,515**	(84,968)	**579,652**	(7,619)
Realized gain (loss) of derivative instruments		**49,134**	(85,457)	**66,346**	(219,903)
Unrealized gain on investment	16(a)	**29,000**	–	**29,000**	–
Other expenses, net		**(57)**	(2,425)	**(546)**	(3,057)
Profit (loss) from continuing operations before income taxes		**325,804**	(49,483)	**600,136**	33,249
Provision (recovery) for income taxes	10	**(245)**	673	**(1,212)**	1,307
PROFIT (LOSS) FROM CONTINUING OPERATIONS		**$ 326,049**	$ (50,156)	**$ 601,348**	$ 31,942
DISCONTINUED OPERATIONS					
Loss after tax from discontinued operations		**–**	(1,210)	**–**	(4,158)
PROFIT (LOSS) FOR THE PERIOD		**$ 326,049**	$ (51,366)	**$ 601,348**	$ 27,784
Attributable to:					
Shareholders of Just Energy		**$ 326,046**	$ (51,250)	**$ 601,408**	$ 27,897
Non-controlling interest		**3**	(116)	**(60)**	(113)
PROFIT (LOSS) FOR THE PERIOD		**$ 326,049**	$ (51,366)	**$ 601,348**	$ 27,784
Earnings per share from continuing operations	14				
Basic		**$ 6.78**	$ (4.37)	**$ 12.51**	$ 2.99
Diluted		**$ 6.66**	$ (4.37)	**$ 12.29**	$ 2.97
Loss per share from discontinued operations					
Basic		**$ –**	$ (0.10)	**$ –**	$ (0.39)
Diluted		**$ –**	$ (0.10)	**$ –**	$ (0.39)
Earnings per share available to shareholders	14				
Basic		**$ 6.78**	$ (4.47)	**$ 12.51**	$ 2.60
Diluted		**$ 6.66**	$ (4.47)	**$ 12.29**	$ 2.58

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Interim condensed consolidated statements of comprehensive income (loss)

(unaudited in thousands of Canadian dollars)

	Three months ended September 30,		Six months ended September 30,	
	2021	2020	**2021**	2020
PROFIT (LOSS) FOR THE PERIOD	**$ 326,049**	$ (51,366)	**$ 601,348**	$ 27,784
Other comprehensive profit (loss) to be reclassified to profit or loss in subsequent periods:				
Unrealized gain (loss) on translation of foreign operations	**(2,351)**	(349)	**4,961**	794
Unrealized gain on translation of foreign operations from discontinued operations	**–**	363	**–**	789
Gain on translation of foreign operations disposed and reclassified to Interim Condensed Consolidated Statements of Income (Loss)	**–**	–	**–**	833
	(2,351)	14	**4,961**	2,416
TOTAL COMPREHENSIVE INCOME (LOSS) FOR THE PERIOD, NET OF TAX	**$ 323,698**	$ (51,352)	**$ 606,309**	$ 30,200
Total comprehensive income (loss) attributable to:				
Shareholders of Just Energy	**$ 323,695**	$ (51,236)	**$ 606,369**	$ 30,313
Non-controlling interest	**3**	(116)	**(60)**	(113)
TOTAL COMPREHENSIVE INCOME (LOSS) FOR THE PERIOD, NET OF TAX	**$ 323,698**	$ (51,352)	**$ 606,309**	$ 30,200

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Interim condensed consolidated statements of changes in shareholders' deficit

(unaudited in thousands of Canadian dollars)

		Six months ended September 30, 2021	2020
ATTRIBUTABLE TO THE SHAREHOLDERS			
Accumulated earnings			
Accumulated earnings (loss), beginning of period		**$ (261,702)**	$ 140,446
Profit for the period as reported, attributable to shareholders		**601,408**	27,897
Accumulated earnings, end of period		**$ 339,706**	$ 168,343
DIVIDENDS AND DISTRIBUTIONS			
Dividends and distributions, beginning of period		**(1,950,026)**	(1,950,003)
Dividends and distributions declared and paid		**–**	(23)
Dividends and distributions, end of period		**$(1,950,026)**	$(1,950,026)
ACCUMULATED DEFICIT		**$(1,610,320)**	$(1,781,683)
ACCUMULATED OTHER COMPREHENSIVE INCOME			
Accumulated other comprehensive income, beginning of period		**$ 91,069**	$ 84,651
Other comprehensive income		**4,961**	2,416
Accumulated other comprehensive income, end of period		**$ 96,030**	$ 87,067
SHAREHOLDERS' CAPITAL			
Common shares			
Common shares, beginning of period	11	**$ 1,537,863**	$ 1,099,864
Issuance of shares-September 2020 Recapitalization		**–**	438,642
Issuance cost associated with September 2020 Recapitalization		**–**	(1,572)
Share-based units exercised		**–**	176
Common shares, end of period		**$ 1,537,863**	$ 1,537,110
Preferred shares			
Preferred shares, beginning of period	11	**$ –**	$ 146,965
Settled with common shares		**–**	(146,965)
Preferred shares, end of period		**$ –**	$ –
SHAREHOLDERS' CAPITAL		**$ 1,537,863**	$ 1,537,110
EQUITY COMPONENT OF CONVERTIBLE DEBENTURES			
Balance, beginning of period		**$ –**	$ 13,029
Settled with common share		**–**	(13,029)
Balance, end of period		**$ –**	$ –
CONTRIBUTED DEFICIT			
Balance, beginning of period		**$ (11,634)**	$ (29,826)
Add: Share-based compensation expense	12(a)	**1,027**	4,122
Transferred from equity component		**–**	13,029
Less: Share-based units exercised		**–**	(176)
Non-cash deferred share grants		**–**	23
Balance, end of period		**$ (10,607)**	$ (12,828)
NON-CONTROLLING INTEREST			
Balance, beginning of period		**$ (392)**	$ (414)
Foreign exchange impact on non-controlling interest		**62**	112
Loss attributable to non-controlling interest		**(60)**	(113)
Balance, end of period		**$ (390)**	$ (415)
TOTAL SHAREHOLDERS' EQUITY (DEFICIT)		**$ 12,576**	$ (170,749)

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Interim condensed consolidated statements of cash flows

(unaudited in thousands of Canadian dollars)

	Notes	Six months ended September 30, 2021	2020
Net inflow (outflow) of cash related to the following activities			
OPERATING			
Profit from continuing operations before income taxes		**$ 600,136**	$ 33,249
Loss from discontinued operations before income taxes		**–**	(4,158)
Profit before income taxes		**600,136**	29,091
Items not affecting cash			
Amortization and depreciation	12(a)	**9,239**	13,071
Share-based compensation expense	12(a)	**1,027**	4,122
Financing charges, non-cash portion		**4,316**	16,576
Unrealized (gain) loss in fair value of derivative instruments and other	6	**(579,652)**	7,619
Gain from September 2020 Recapitalization transaction		**–**	(76,972)
Unrealized gain on investment	16(a)	**(29,000)**	–
Net change in working capital balances		**9,466**	36,123
Liabilities subject to compromise		**9,020**	–
Adjustment for discontinued operations, net		**–**	931
Income taxes paid		**(2,176)**	(7,763)
Cash inflow from operating activities		**22,376**	22,798
INVESTING			
Purchase of property and equipment		**(383)**	(44)
Purchase of intangible assets		**(4,454)**	(4,629)
Cash outflow from investing activities		**(4,837)**	(4,673)
FINANCING			
Proceeds from DIP Facility	8	**31,425**	–
Repayment of long-term debt	8	**(1,585)**	(3,252)
Leased asset payments		**(1,361)**	(2,085)
Debt issuance costs		**–**	(6,625)
Share swap payout		**–**	(21,488)
Credit facilities payments	8	**(63,261)**	(30,093)
Proceeds from issuance of common stock, net		**–**	100,969
Cash inflow (outflow) from financing activities		**(34,782)**	37,426
Effect of foreign currency translation on cash balances		**1,206**	(3,679)
Net cash inflow (outflow)		**(16,037)**	51,872
Cash and cash equivalents, beginning of period		**215,989**	26,093
Cash and cash equivalents, end of period		**$ 199,952**	$ 77,965
Supplemental cash flow information:			
Interest paid		**$ 20,492**	$ 43,880

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Notes to the interim condensed consolidated financial statements

(unaudited in thousands of Canadian dollars, except where indicated and per share amounts)

1. ORGANIZATION

Just Energy Group Inc. ("Just Energy" or the "Company") is a corporation established under the laws of Canada to hold securities of its directly or indirectly owned operating subsidiaries and affiliates. The registered office of Just Energy is First Canadian Place, 100 King Street West, Toronto, Ontario, Canada. The Interim Condensed Consolidated Financial Statements consist of Just Energy and its subsidiaries and affiliates. The Interim Condensed Consolidated Financial Statements were approved by the Board of Directors on November 9, 2021.

In February 2021, the State of Texas experienced extremely cold weather (the "Weather Event"). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. ("ERCOT") when due, and accordingly, on March 9, 2021, Just Energy applied for and received creditor protection under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") and under Chapter 15 ("Chapter 15") of the Bankruptcy Code in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division (the "Court Orders" or "CCAA Proceedings"). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD $125 million Debtor-In-Possession ("DIP Facility") financing with certain affiliates of Pacific Investment Management Company ("PIMCO"). The Company entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The Company entered a Lender Support Agreement with the lenders under its Credit Facility (refer to Note 8(c)). The filings and associated USD $125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the United States ("U.S.") and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On September 15, 2021, the stay period under the CCAA Proceedings was extended by the Ontario Court to December 17, 2021.

In connection with the CCAA Proceedings, the Company identified the following obligations that are subject to compromise:

	Amounts in 000's
Trade and other payables	**$ 551,076**
Other non-current liabilities	**9,815**
Current portion of long-term debt	**471,542**
Total liabilities subject to compromise	**$ 1,032,433**

On September 15, 2021, the Ontario Court approved the Company's request to establish a claims process to identify and determine claims against the Company and its subsidiaries that are subject to the ongoing CCAA Proceedings. As a result of the establishment of the claims process, additional claims may be made against the Company and ultimately determined that are not currently reflected in the Interim Condensed Financial Statements.

The common shares of the Company are listed on the TSX Venture Exchange, under the symbol "JE" and on the OTC Pink Market under the symbol "JENGQ".

On June 16, 2021, Texas House Bill 4492 ("HB 4492") became law in Texas. HB 4492 provides a mechanism for recovery of (i) ancillary service charges above USD $9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by the ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently "short-paid" to market participants, including Just Energy, (collectively, the "Costs"), incurred by various parties, including the Company, during the Weather Event, through certain securitization structures.

On July 16, 2021, ERCOT filed the request with the Public Utility Commission of Texas (the "Commission") and on October 13, 2021, the Commission issued its final order (the "PUCT Order"). The ultimate amount of proceeds that Just Energy will receive has not been fully determined, as entities eligible to opt-out have until November 29, 2021 to decide pursuant to the PUCT Order. However, Just Energy anticipates that it will recover at least USD $100 million of Costs with such proceeds expected to be received in the fourth quarter of fiscal year 2022. The total amount that the Company may recover through the PUCT Order may change materially based on a number of factors, including the entities that decide to opt-out, the outcome of the dispute resolution process initiated by the Company with ERCOT, and any potential challenges to the PUCT Order. There is no assurance that the Company will be able to recover all of the Costs.

2. OPERATIONS

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Operating in the U.S. and Canada, Just Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Tara Energy and Terrapass.

Just Energy's current commodity product offerings include fixed, variable, index and flat rate options. By fixing the price of electricity or natural gas under its fixed-price or price-protected program contracts for a period of up to five years, Just Energy's customers offset their exposure to changes in the price of these essential commodities. Variable rate products allow customers to maintain flexibility while retaining the ability to lock into a fixed price at their discretion. Flat-bill products allow customers to pay a flat rate each month regardless of usage. Just Energy derives its gross margin from the difference between the price at which it is able to sell the commodities to its customers and the related price at which it purchases the associated volumes from its suppliers.

Just Energy offers green products through Terrapass and its JustGreen program. Green products offered through Terrapass allow customers to offset their carbon footprint without buying energy commodity products and can be offered in all states and provinces without being dependent on energy deregulation. The JustGreen electricity product offers customers the option of having all or a portion of their electricity sourced from renewable green sources such as wind, solar, hydropower or biomass, via power purchase agreements and renewable energy certificates. The JustGreen gas product offers carbon offset credits that allow customers to reduce or eliminate the carbon footprint of their homes or businesses. Through the Filter Group, Just Energy provides subscription-based home water filtration systems to residential customers, including under-counter and whole-home water filtration solutions. Just Energy markets its product offerings through multiple sales channels including digital, retail, door-to-door, brokers and affinity relationships.

3. FINANCIAL STATEMENT PRESENTATION

(a) Compliance with IFRS

These Interim Condensed Consolidated Financial Statements have been prepared in accordance with International Accounting Standard ("IAS") 34, *Interim Financial Reporting*, as issued by the International Accounting Standards Board ("IASB"), utilizing the accounting policies Just Energy outlined in its March 31, 2021 annual audited consolidated financial statements, except the adoption of new International Financial Reporting Standards ("IFRS"). Accordingly, certain information and footnote disclosures normally included in the March 31, 2021 annual audited consolidated financial statements prepared in accordance with IFRS, as issued by the IASB, have been omitted or condensed.

(b) Basis of presentation and interim reporting

These Interim Condensed Consolidated Financial Statements should be read in conjunction with and follow the same accounting policies and methods of application as those used in the March 31, 2021 annual audited consolidated financial statements.

The comparative Interim Condensed Consolidated Financial Statements have been corrected from the interim statements previously presented to conform to the presentation of the current Interim Condensed Consolidated Financial Statements.

The Interim Condensed Consolidated Financial Statements are presented in Canadian dollars, the functional currency of Just Energy, and all values are rounded to the nearest thousands, except where otherwise indicated. The Interim Condensed Consolidated Financial Statements are prepared on a going concern basis under the historical cost convention, except for certain financial assets and liabilities that are stated at fair value.

The interim operating results are not necessarily indicative of the results that may be expected for the full fiscal year ending March 31, 2022, due to seasonal variations resulting in fluctuations in quarterly results. Gas consumption by customers is typically highest in October through March and lowest in April through September. Electricity consumption is typically highest in January through March and July through September and lowest in October through December and April through June.

Principles of consolidation

The Interim Condensed Consolidated Financial Statements include the accounts of Just Energy and its directly or indirectly owned subsidiaries and affiliates as at September 30, 2021. Subsidiaries and affiliates are consolidated from the date of acquisition and control and continue to be consolidated until the date that such control ceases. The financial statements of the subsidiaries and affiliates are prepared for the same reporting period as Just Energy using consistent accounting policies. All intercompany balances, sales, expenses and unrealized gains and losses resulting from intercompany transactions are eliminated on consolidation.

Going Concern

Due to the Weather Event and associated CCAA filing, the Company's ability to continue as a going concern for the next 12 months is dependent on the Company emerging from CCAA protection, maintain liquidity, complying with DIP Facility covenants and extending the DIP Facility maturity. The material uncertainties arising from the CCAA filings cast substantial doubt upon the Company's ability to continue as a going concern and, accordingly the ultimate appropriateness of the use of accounting principles applicable to a going concern. These Interim Condensed Consolidated Financial Statements do not reflect the adjustments to carrying values of assets and liabilities and the reported expenses and Interim Condensed Consolidated Statements of Financial Position classifications that would be necessary if the going concern assumption was deemed inappropriate. These adjustments could be material. There can be no assurance that the Company will be successful in emerging from CCAA as a going concern.

(c) Significant accounting judgments, estimates, and assumptions

The preparation of the Interim Condensed Consolidated Financial Statements requires the use of estimates and assumptions to be made in applying the accounting policies that affect the reported amount of assets, liabilities, income and expenses. The estimates and related assumptions based on previous experience and other factors are considered reasonable under the circumstances, the results of which form the basis for making the assumptions about carrying values of assets and liabilities that are not readily apparent from other sources. There have been no material changes from the disclosures from the March 31, 2021 annual audited consolidated financial statements and notes to the March 31, 2021 annual audited consolidated financial statements with respect to significant accounting judgments, estimates and assumptions.

4. TRADE AND OTHER RECEIVABLES, NET

(a) Trade and other receivables, net

	As at September 30, 2021	As at March 31, 2021
Trade account receivables, net	**$ 192,502**	$ 189,250
Unbilled revenue, net	**108,499**	103,986
Accrued gas receivable	**–**	833
Other	**100,632**	46,132
	$ 401,633	$ 340,201

(b) Aging of accounts receivable

Customer credit risk

The lifetime expected credit loss ("ECL") reflects Just Energy's best estimate of losses on the accounts receivable and unbilled revenue balances. Just Energy determines the ECL by using historical loss rates and forward-looking factors, if applicable. Just Energy is exposed to customer credit risk on its continuing operations in Alberta, Texas, Illinois (gas), California (gas) and Ohio (electricity) and for certain Commercial customers in dual-billing markets including Illinois (power), Pennsylvania (power), Massachusetts (power), New York and New Jersey. Credit review processes have been implemented to perform credit evaluations of customers and manage customer default. If a significant number of customers were to default on their payments, it could have a material adverse effect on the operations and cash flows of Just Energy. Management factors default from credit risk in its margin expectations for all of the above markets.

In the remaining markets, the LDCs provide collection services and assume the risk of any bad debts owing from Just Energy's customers for a fee that is recorded in cost of goods sold. Although there is no assurance that the LDCs providing these services will continue to do so in the future, management believes that the risk of the LDCs failing to deliver payment to Just Energy is minimal.

The aging of the trade accounts receivable from the markets where the Company bears customer credit risk was as follows:

	As at September 30, 2021	As at March 31, 2021
Current	$ 95,831	$ 58,737
1-30 days	16,023	19,415
31-60 days	5,218	3,794
61-90 days	3,539	2,144
Over 90 days	9,300	10,446
	$ 129,911	$ 94,536

The unbilled revenue subject to customer credit risk is $96.6 million as at September 30, 2021 (March 31, 2021-$87.1 million).

(c) Allowance for doubtful accounts

Changes in the allowance for doubtful accounts related to the balances in the table above were as follows:

	As at September 30, 2021	As at March 31, 2021
Balance, beginning of period	$ 23,363	$ 45,832
Provision for doubtful accounts	11,110	34,260
Bad debts written off	(19,110)	(62,529)
Foreign exchange	5,007	5,800
Balance, end of period	$ 20,370	$ 23,363

5. OTHER CURRENT AND NON-CURRENT ASSETS

(a) Other current assets

	As at September 30, 2021	As at March 31, 2021
Prepaid expenses and deposits	$ 55,905	$ 52,216
Customer acquisition costs	42,120	45,681
Green certificates assets	48,126	61,467
Gas delivered in excess of consumption	8,001	650
Inventory	1,703	3,391
	$ 155,855	$ 163,405

(b) Other non-current assets

	As at September 30, 2021	As at March 31, 2021
Customer acquisition costs	$ 31,283	$ 27,318
Other long-term assets	10,223	7,944
	$ 41,506	$ 35,262

6. FINANCIAL INSTRUMENTS

(a) Fair value of derivative financial instruments and other

The fair value of financial instruments is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (i.e., an exit price). Management has estimated the value of financial swaps, physical forwards and option contracts for electricity, natural gas, carbon offsets and renewable energy certificates ("RECs"), and generation and transmission capacity contracts using a discounted cash flow method, which employs market forward curves that are either directly sourced from third parties or developed internally based on third-party market data. These curves can be volatile, thus leading to volatility in the mark to market with no immediate impact to cash flows. Gas options and green power options have been valued using the Black option pricing model using the applicable market forward curves and the implied volatility from other market traded options. Management periodically uses non-exchange-traded swap agreements based on cooling degree days ("CDDs") and heating degree days ("HDDs") measured in its utility service territories to reduce the impact of weather volatility on Just Energy's electricity and natural gas volumes, commonly referred to as "weather derivatives". The fair value of these swaps on a given measurement station indicated in the derivative contract is determined by calculating the difference between the agreed strike and expected variable observed at the same station.

The following table illustrates unrealized gains (losses) related to Just Energy's derivative financial instruments classified as fair value through profit or loss and recorded on the Interim Condensed Consolidated Statements of Financial Position as fair value of derivative financial assets and fair value of derivative financial liabilities, with their offsetting values recorded in unrealized gain (loss) in fair value of derivative instruments and other on the Interim Condensed Consolidated Statements of Income.

	Three months ended September 30,		Six months ended September 30,	
	2021	2020	**2021**	2020
Physical forward contracts and options (i)	**$ 133,822**	$ (115,147)	**$ 359,128**	$ (66,767)
Financial swap contracts and options (ii)	**155,093**	42,544	**221,487**	70,665
Foreign exchange forward contracts	**597**	(3,028)	**1,702**	(9,079)
Unrealized foreign exchange on Term Loan	**(6,393)**	–	**(2,245)**	–
Unrealized foreign exchange on the 6.5% convertible bond and 8.75% loan transferred to realized foreign exchange resulting from the September 2020 Recapitalization	**–**	(12,218)	**–**	–
Weather derivatives (iii)	**(192)**	1,769	**(1,896)**	(612)
Other derivative options	**4,588**	1,112	**1,476**	(1,826)
Unrealized gain of derivative instruments and other	**$ 287,515**	$ (84,968)	**$ 579,652**	$ (7,619)

The following table summarizes certain aspects of the fair value of derivative financial assets and liabilities recorded in the Interim Condensed Consolidated Statements of Financial Position as at September 30, 2021:

	Financial assets (current)	**Financial assets (non-current)**	**Financial liabilities (current)**	**Financial liabilities (non-current)**
Physical forward contracts and options (i)	**$ 291,433**	**$ 56,555**	**$ 16,403**	**$ 11,861**
Financial swap contracts and options (ii)	**166,201**	**58,940**	**1,292**	**1,397**
Foreign exchange forward contracts	**1,414**	**16**	**–**	**–**
Other derivative options	**2,851**	**95**	**–**	**4**
As at September 30, 2021	**$ 461,899**	**$ 115,606**	**$ 17,695**	**$ 13,262**

The following table summarizes certain aspects of the fair value of derivative financial assets and liabilities recorded in the consolidated statements of financial position as at March 31, 2021:

	Financial assets (current)	Financial assets (non-current)	Financial liabilities (current)	Financial liabilities (non-current)
Physical forward contracts and options (i)	$ 12,513	$ 6,713	$ 10,157	$ 56,122
Financial swap contracts and options (ii)	6,942	2,634	3,548	5,047
Foreign exchange forward contracts	–	–	272	–
Weather derivatives (iii)	1,911	–	–	–
Other derivative options	3,660	1,253	–	–
As at March 31, 2021	$ 25,026	$ 10,600	$ 13,977	$ 61,169

Individual derivative asset and liability transactions are offset, and the net amount reported in the Interim Condensed Consolidated Statements of Financial Position if, and only if, there is currently an enforceable legal right to offset the recognized amounts and there is an intention to settle on a net basis, or to realize the assets and settle the liabilities simultaneously. Individual derivative transactions are typically offset at the legal entity and counterparty level.

Below is a summary of the financial instruments classified through profit or loss as at September 30, 2021, to which Just Energy has committed:

(i) Physical forward contracts and options consist of:

- Electricity contracts with a total remaining volume of 26,257,873 MWh, a weighted average price of $46.62/MWh and expiry dates up to December 31, 2029.
- Natural gas contracts with a total remaining volume of 131,972,414 GJs, a weighted average price of $5.13/GJ and expiry dates up to October 31, 2025.
- RECs with a total remaining volume of 5,984,811 MWh, a weighted average price of $17.67/REC and expiry dates up to December 31, 2029.
- Green gas certificates with a total remaining volume of 1,220,000 tonnes, a weighted average price of $4.32/tonne and expiry dates up to July 28, 2022.
- Electricity generation capacity contracts with a total remaining volume of 2,098 MWCap, a weighted average price of $4,767.58/MWCap and expiry dates up to December 31, 2023.
- Ancillary contracts with a total remaining volume of 439,900 MWh, a weighted average price of $15.58/MWh and expiry dates up to December 31, 2022.

(ii) Financial swap contracts and options consist of:

- Electricity contracts with a total remaining volume of 16,462,999 MWh, a weighted average price of $56.94/MWh and expiry dates up to December 31, 2025.
- Natural gas contracts with a total remaining volume of 103,138,160 GJs, a weighted average price of $3.03/GJ and expiry dates up to December 31, 2026.

(iii) Weather derivatives consist of:

- HDD natural gas swaps with price strikes to be set on futures index and temperature strikes from 1,813F to 4,985F HDD and an expiry date of March 31, 2022.
- HDD natural gas swaps with price strikes to be set on futures index and temperature strikes from 1,652F to 4,871F HDD and an expiry date of March 31, 2023.
- HDD natural gas swaps with price strikes to be set on futures index and temperature strikes from 3,408C to 4,985F HDD and an expiry date of March 31, 2024.
- CDD Puts with temperature strikes from 2,612F to 3,399F CDD and an expiry date of October 31, 2021.
- Temperature Contingent Power Call Options with price strikes at various temperature strikes and an expiry date of October 31, 2021.

These derivative financial instruments create a credit risk for Just Energy since they have been transacted with a limited number of counterparties. Should any counterparty be unable to fulfill its obligations under the contracts, Just Energy may not be able to realize the financial assets' balance recognized in the Interim Condensed Consolidated Financial Statements.

Fair value ("FV") hierarchy of derivatives

Level 1

The fair value measurements are classified as Level 1 in the FV hierarchy if the fair value is determined using quoted unadjusted market prices. Currently there are no derivatives carried in this level.

Level 2

Fair value measurements that require observable inputs other than quoted prices in Level 1, either directly or indirectly, are classified as Level 2 in the FV hierarchy. This could include the use of statistical techniques to derive the FV curve from observable market prices. However, in order to be classified under Level 2, significant inputs must be directly or indirectly observable in the market. Just Energy values its New York Mercantile Exchange ("NYMEX") financial gas fixed-for-floating swaps under Level 2.

Level 3

Fair value measurements that require unobservable market data or use statistical techniques to derive forward curves from observable market data and unobservable inputs are classified as Level 3 in the FV hierarchy. For the electricity supply contracts, Just Energy uses quoted market prices as per available market forward data and applies a price-shaping profile to calculate the monthly prices from annual strips and hourly prices from block strips for the purposes of mark to market calculations. The profile is based on historical settlements with counterparties or with the system operator and is considered an unobservable input for the purposes of establishing the level in the FV hierarchy.

For the natural gas supply contracts, Just Energy uses three different market observable curves: (i) commodity (predominately NYMEX), (ii) basis and (iii) foreign exchange. NYMEX curves extend for over five years (thereby covering the length of Just Energy's contracts); however, most basis curves extend only 12 to 15 months into the future. In order to calculate basis curves for the remaining years, Just Energy uses extrapolation, which leads natural gas supply contracts to be classified under Level 3.

Weather derivatives are non-exchange-traded financial instruments used as part of a risk management strategy to mitigate the impact adverse weather conditions have on gross margin. The fair values of the derivatives are determined using an internally developed model that relies upon both observable inputs and significant unobservable inputs. Accordingly, the fair values of these derivatives are classified as Level 3. Market and contractual inputs to these models vary by contract type and would typically include notional amounts, reference weather stations, strike prices, temperature strike values, terms to expiration, historical weather data and historical commodity prices. The historical weather data and commodity prices were utilized to value the expected payouts with respect to weather derivatives and, as a result, are the most significant assumptions contributing to the determination of fair value estimates, and changes in these inputs can result in a significantly higher or lower fair value measurement.

Just Energy's accounting policy is to recognize transfers between levels of the fair value hierarchy on the date of the event or change in circumstances that caused the transfer.

Fair value measurement input sensitivity

The main cause of changes in the fair value of derivative instruments is changes in the forward curve prices used for the fair value calculations. Just Energy provides a sensitivity analysis of these forward curves under the "Market risk" section of this note. Other inputs, including volatility and correlations, are driven off historical settlements.

The following table illustrates the classification of derivative financial assets (liabilities) in the FV hierarchy as at September 30, 2021:

	Level 1	**Level 2**	**Level 3**	**Total**
Derivative financial assets	**$ –**	**$ 124,859**	**$ 452,646**	**$ 577,505**
Derivative financial liabilities	**–**	**–**	**(30,957)**	**(30,957)**
Total net derivative financial assets	**$ –**	**$ 124,859**	**$ 421,689**	**$ 546,548**

The following table illustrates the classification of derivative financial assets (liabilities) in the FV hierarchy as at March 31, 2021:

	Level 1	Level 2	Level 3	Total
Derivative financial assets	$ –	$ 682	$ 34,944	$ 35,626
Derivative financial liabilities	–	–	(75,146)	(75,146)
Total net derivative financial liabilities	$ –	$ 682	$ (40,202)	$ (39,520)

Commodity price sensitivity – Level 3 derivative financial instruments
If the energy prices associated with only Level 3 derivative financial instruments including natural gas, electricity, and RECs had risen (fallen) by 10%, assuming that all of the other variables had remained constant, profit from continuing operations before income taxes for the quarter ended September 30, 2021 would have increased (decreased) by $309.8 million ($302.6 million), primarily as a result of the change in fair value of Just Energy's derivative financial instruments.

Key assumptions used when determining the significant unobservable inputs for all commodity supply contracts included in Level 3 of the FV hierarchy consist of up to 5% price extrapolation to calculate monthly prices that extend beyond the market observable 12- to 15-month forward curve.

The following table illustrates the changes in net fair value of financial assets (liabilities) classified as Level 3 in the FV hierarchy for the following periods:

	Six months ended September 30, 2021	Year ended March 31, 2021
Balance, beginning of period	**$ (40,202)**	$ (85,885)
Total gains (losses)	**418,487**	(2,900)
Purchases	**60,844**	(4,059)
Sales	**(9,290)**	(1,670)
Settlements	**(8,150)**	54,312
Balance, end of period	**$ 421,689**	$ (40,202)

(b) Classification of non-derivative financial assets and liabilities
As at September 30, 2021 and March 31, 2021, the carrying value of cash and cash equivalents, restricted cash, trade and other receivables, and trade and other payables approximates their fair value due to their short-term nature.

The risks associated with Just Energy's financial instruments are as follows:

(i) Market risk
Market risk is the potential loss that may be incurred as a result of changes in the market or fair value of a particular instrument or commodity. Components of market risk to which Just Energy is exposed are discussed below.

Foreign currency risk
Foreign currency risk is created by fluctuations in the fair value or cash flows of financial instruments due to changes in foreign exchange rates and exposure as a result of investments in U.S. operations.

The performance of the Canadian dollar relative to the U.S. dollars could positively or negatively affect Just Energy's Interim Condensed Consolidated Statements of Income, as a significant portion of Just Energy's profit or loss is generated in U.S. dollars and is subject to currency fluctuations upon translation to Canadian dollars. Due to its growing operations in the U.S., Just Energy expects to have a greater exposure to foreign currency fluctuations in the future than in prior years. Just Energy has a policy to economically hedge between 50% and 100% of forecasted cross-border cash flows that are expected to occur within the next 12 months and between 0% and 50% of certain forecasted cross border cash flows that are expected to occur within the following 13 to 24 months. The level of economic hedging is dependent on the source of the cash flows and the time remaining until the cash repatriation occurs.

Just Energy may, from time to time, experience losses resulting from fluctuations in the values of its foreign currency transactions, which could adversely affect its operating results. Translation risk is not hedged.

With respect to translation exposure, if the Canadian dollar had been 5% stronger or weaker against the U.S. dollar for the period ended September 30, 2021, assuming that all the other variables had remained constant, the net profit for the six months ended September 30, 2021 would have been $34.0 million lower/higher and other comprehensive loss would have been $36.6 million lower/higher.

Interest rate risk

Just Energy is only exposed to interest rate fluctuations associated with its floating rate Credit Facility. Just Energy's current exposure to interest rates does not economically warrant the use of derivative instruments. Just Energy's exposure to interest rate risk is relatively immaterial and temporary in nature. Just Energy does not currently believe that its debt exposes the Company to material interest rate risks but has set out parameters to actively manage this risk within its risk management policy.

A 1% increase (decrease) in interest rates would have resulted in an (decrease) increase of approximately ($0.3) million in profit from continuing operations before income taxes in the Interim Condensed Consolidated Statements of Income for the three months ended September 30, 2021 (September 30, 2020 – ($0.5) million).

Commodity price risk

Just Energy is exposed to market risks associated with commodity prices and market volatility where estimated customer requirements do not match actual customer requirements. Management actively monitors these positions on a daily basis in accordance with its risk management policy. This policy sets out a variety of limits, most importantly thresholds for open positions in the gas and electricity portfolios, which also feed a value at risk limit. Should any of the limits be exceeded, they are closed expeditiously or express approval to continue to hold is obtained. Just Energy's exposure to market risk is affected by a number of factors, including accuracy of estimation of customer commodity requirements, commodity prices, volatility and liquidity of markets. Just Energy enters into derivative instruments in order to manage exposures to changes in commodity prices. The derivative instruments that are used are designed to fix the price of supply for estimated customer commodity demand and thereby fix gross margins. Derivative instruments are generally transacted over the counter. The inability or failure of Just Energy to manage and monitor the above market risks could have a material adverse effect on the operations and cash flows of Just Energy. Just Energy mitigates the exposure to variances in customer requirements that are driven by changes in expected weather conditions through active management of the underlying portfolio, which involves, but is not limited to, the purchase of options including weather derivatives. Just Energy's ability to mitigate weather effects is limited by the degree to which weather conditions deviate from normal.

Commodity price sensitivity – all derivative financial instruments

If all the energy prices associated with derivative financial instruments including natural gas, electricity and RECs had risen (fallen) by 10%, assuming that all of the other variables had remained constant, profit from continuing operations before income taxes for the three months ended September 30, 2021 would have increased (decreased) by $354.7 million ($343.1 million), primarily as a result of the change in fair value of Just Energy's derivative financial instruments.

(ii) Physical supplier risk

Just Energy purchases the majority of the gas and electricity delivered to its customers through long-term contracts entered into with various suppliers. Just Energy has an exposure to supplier risk as the ability to continue to deliver gas and electricity to its customers is reliant upon the ongoing operations of these suppliers and their ability to fulfill their contractual obligations.

(iii) Counterparty credit risk

Counterparty credit risk represents the loss that Just Energy would incur if a counterparty fails to perform under its contractual obligations. This risk would manifest itself in Just Energy replacing contracted supply at prevailing market rates, thus impacting the related customer margin. Counterparty limits are established within the risk management policy. Any exceptions to these limits require approval from the Risk Committee of the Board of Directors of Just Energy. The risk department and Risk Committee of the Board of Directors monitor current and potential credit exposure to individual counterparties and also monitor overall aggregate counterparty exposure. However, the failure of a counterparty to meet its contractual obligations could have a material adverse effect on the operations and cash flows of Just Energy.

As at September 30, 2021, Just Energy has applied an adjustment factor to determine the fair value of its financial instruments in the amount of $11.9 million (March 31, 2021 – $1.1 million) to accommodate for its counterparties' risk of default.

As at September 30, 2021, the estimated net counterparty credit risk exposure amounted to $392.2 million (March 31, 2021 – $35.6 million), representing the risk relating to Just Energy's exposure to derivatives that are in an asset position.

7. TRADE AND OTHER PAYABLES

	As at September 30, 2021	As at March 31, 2021
Commodity suppliers' accruals and payables (a)	**$ 813,209**	$ 712,144
Green provisions and repurchase obligations	**59,165**	77,882
Sales tax payable	**29,649**	27,684
Non-commodity trade accruals and accounts payable (b)	**72,283**	80,573
Current portion of payable to former joint venture partner (c)	**15,933**	11,467
Accrued gas payable	**–**	544
Other payables	**34,144**	11,301
	$ 1,024,383	$ 921,595

(a) Includes $523.3 million (March 31, 2021 – $514.7 million) that is subject to compromise depending on the outcome of the CCAA Proceedings.

(b) Includes $11.9 million (March 31, 2021 – $12.9 million) that is subject to compromise depending on the outcome of the CCAA Proceedings.

(c) The amount due to the former joint venture partner is subject to compromise depending on the outcome of the CCAA Proceedings.

8. LONG-TERM DEBT AND FINANCING

	As at September 30, 2021	As at March 31, 2021
DIP Facility (a)	**$ 158,413**	$ 126,735
Less: Debt issue costs (a)	**(2,139)**	(6,312)
Filter Group financing (b)	**3,033**	4,617
Credit Facility – subject to compromise (c)	**167,610**	227,189
Term Loan – subject to compromise (d)	**290,379**	289,904
Note Indenture – subject to compromise (e)	**13,553**	13,607
	630,849	655,740
Less: Current portion	**(630,491)**	(654,180)
	$ 358	$ 1,560

Future annual minimum principal repayments are as follows:

	Less than 1 year	1-3 years	4-5 years	More than 5 years	Total
DIP Facility (a)	$ 158,413	$ –	$ –	$ –	$ 158,413
Less: Debt issue costs (a)	(2,139)	–	–	–	(2,139)
Filter Group financing (b)	2,675	358	–	–	3,033
Credit Facility – subject to compromise (c)	167,610	–	–	–	167,610
Term Loan – subject to compromise (d)	290,379	–	–	–	290,379
Note Indenture – subject to compromise (e)	13,553	–	–	–	13,553
	$ 630,491	$ 358	$ –	$ –	$ 630,849

The following table details the finance costs for the period ended September 30. Interest is expensed based on the effective interest rate.

	Three months ended September 30,		Six months ended September 30,	
	2021	2020	**2021**	2020
DIP Facility (a)	**$ 7,298**	$ –	**$ 14,398**	$ –
Filter Group financing (b)	**80**	169	**176**	375
Credit Facility (c)	**4,517**	5,382	**10,234**	10,517
8.75% term loan (f)	**–**	8,791	**–**	18,055
6.75% $100M convertible debentures (g)	**–**	2,354	**–**	4,762
6.75% $160M convertible debentures (h)	**–**	3,452	**–**	6,948
6.5% convertible bonds (i)	**–**	261	**–**	536
Supplier finance and others	**–**	9,335	**–**	10,404
	$ 11,895	$ 29,744	**$ 24,808**	$ 51,597

(a) As discussed in Note 1, Just Energy filed and received the Court Order under the CCAA on March 9, 2021. In conjunction with the CCAA filing, the Company entered into the DIP Facility for USD $125 million. Just Energy Ontario L.P., Just Energy Group Inc. and Just Energy (U.S.) Corp. are the borrowers under the DIP Facility and are supported by guarantees of certain subsidiaries and affiliates and secured by a super-priority charge against and attaching to the property that secures the obligations arising under the Credit Facility, created by the Court Order. The DIP Facility has an interest rate of 13%, paid quarterly in arrears. The DIP Facility terminates at the earlier of: (a) December 31, 2021 (further described in note 16), (b) the implementation date of the CCAA plan, (c) the lifting of the stay in the CCAA proceedings or (d) the termination of the CCAA proceedings. For consideration for making the DIP Facility available, Just Energy paid a 1% origination fee and a 1% commitment fee.

(b) Filter Group has a $3.0 million outstanding loan payable to Home Trust Company ("HTC"). The loan is a result of factoring receivables to finance the cost of rental equipment that matures no later than October 2023 with HTC and bears interest at 8.99% per annum. Principal and interest are payable monthly. Filter Group did not file under the CCAA and accordingly, the stay does not apply to Filter Group and any amounts outstanding under the loan payable to Home Trust Company.

(c) On March 18, 2021, Just Energy Ontario L.P, Just Energy (U.S.) Corp. and Just Energy Group Inc. entered into an Accommodation and Support Agreement (the "Lender Support Agreement") with the lenders under the Credit Facility. Under the Lender Support Agreement, the lenders agreed to allow issuance or renewals of Letters of Credit under the Credit Facility during the pendency of the CCAA proceedings within certain restrictions. In return, the Company has agreed to continue paying interest and fees at the non-default rate on the outstanding advances and Letters of Credit under the Credit Facility. The amount of Letters of Credit that may be issued is limited to the lesser of $46.1 million (excluding the Letters of Credit guaranteed by Export Development Canada under its Account Performance Security Guarantee Program), plus any amount the Company has repaid and $125 million. As at September 30, 2021, the Company had repaid $64.6 million and had a total of $107.8 million of Letters of Credit outstanding.

Certain amounts outstanding under the Letter of Credit Facility ("LC Facility") are guaranteed by Export Development Canada under its Account Performance Security Guarantee Program. As at September 30, 2021, the Company had $52.7 million of Letters of Credit outstanding and Letter of Credit capacity of $6.2 million available under the LC Facility. Just Energy's obligations under the Credit Facility are supported by guarantees of certain subsidiaries and affiliates and secured by a general security agreement and a pledge of the assets and securities of Just Energy and the majority of its operating subsidiaries and affiliates excluding, primarily the Filter Group. Just Energy has also entered into an inter-creditor agreement in which certain commodity and hedge providers are also secured by the same collateral. As a result of the CCAA filing, the borrowers are in default under the Credit Facility. However, any potential actions by the lenders have been stayed pursuant to the Court Order.

The outstanding Advances are all Prime rate advances at a rate of bank prime (Canadian bank prime rate or U.S. prime rate) plus 4.25% and letters of credit are at a rate of 5.25%.

As at September 30, 2021, the Canadian prime rate was 2.45% and the U.S. prime rate was 3.25%.

As a result of the CCAA filing, the Credit Facility has been reclassified to short-term reflecting the potential acceleration of the debt allowed under the Credit Facility.

(d) As part of the recapitalization transaction that the Company completed in September 2020 ("September 2020 Recapitalization"), Just Energy issued a USD $205.9 million principal note (the "Term Loan") maturing on March 31, 2024. The note bears interest at 10.25%. The balance at September 30, 2021 includes an accrual of $13.4 million for interest payable on the notes. As a result of the CCAA filing, the Company is in default under the Term Loan. However, any potential actions by the lenders under the Term Loan have been stayed pursuant to the Court Order, and the Company is not issuing additional notes equal to the capitalized interest. Given this acceleration option, the Term Loan has been classified as current.

(e) As part of the September 2020 Recapitalization, Just Energy issued $15 million principal amount of 7.0% subordinated notes ("Note Indenture") to holders of the subordinated convertible debentures, which has a six-year maturity. The principal amount was reduced through a tender offer for no consideration on October 19, 2020 to $13.2 million. The Note Indenture bears an annual interest rate of 7.0% payable in kind. The balance at September 30, 2021 includes an accrual of $0.4 million for interest payable on the notes. As a result of the CCAA filing, the Company is in default under the Note Indenture's Trust Indenture agreement. However, any potential actions by the lenders under the Note Indenture have been stayed pursuant to the Court Order and the Company is not issuing additional notes equal to the capitalized interest. Given this acceleration option, the Note Indenture has been classified as current.

(f) As part of the September 2020 Recapitalization, the 8.75% loan was exchanged for its pro-rata share of the Term Loan and 786,982 common shares. At the time of the September 2020 Recapitalization, the 8.75% loan had USD $207.0 million outstanding plus accrued interest.

(g) As part of the September 2020 Recapitalization, the 6.75% $100M convertible debentures were exchanged for 3,592,069 common shares along with its pro-rata share of the Note Indenture and the payment of accrued interest.

(h) As part of the September 2020 Recapitalization, the 6.75% $160M convertible debentures were exchanged for 5,747,310 common shares along with its pro-rata share of the Note Indenture and the payment of accrued interest.

(i) As part of the September 2020 Recapitalization, the 6.5% convertible bonds were exchanged for its pro-rata share of the Term Loan and 35,737 common shares. At the time of the September 2020 Recapitalization, $9.2 million of the 6.5% convertible bonds were outstanding plus accrued interest.

9. REPORTABLE BUSINESS SEGMENTS

Just Energy's reportable segments are the Mass Market (formerly called Consumer) and the Commercial segments.

The chief operating decision maker monitors the operational results of the Mass Market and Commercial segments for the purpose of making decisions about resource allocation and performance assessment. Segment performance is evaluated based on certain non-IFRS measures such as Base EBITDA, Base Gross Margin and Embedded Gross Margin as defined in the Company's Management Discussion and Analysis.

Transactions between segments are in the normal course of operations and are recorded at the exchange amount.

Corporate and shared services report the costs related to management oversight of the business units, public reporting and filings, corporate governance and other shared services functions such as Human Resources, Finance and Information Technology.

For the three months ended September 30, 2021:

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 401,491	$ 303,278	$ –	$ 704,769
Cost of goods sold	339,323	283,975	–	623,298
Gross margin	62,168	19,303	–	81,471
Depreciation and amortization	3,882	828	–	4,710
Administrative expenses	10,348	3,761	23,072	37,181
Selling and marketing expenses	29,167	15,620	–	44,787
Other operating expenses	3,995	114	–	4,109
Segment profit (loss)	$ 14,776	$ (1,020)	$ (23,072)	$ (9,316)
Finance costs				(11,895)
Unrealized gain of derivative instruments and other				287,515
Realized gain of derivative instruments				49,134
Other expense, net				(57)
Unrealized gain on investment				29,000
Reorganization Costs				(18,577)
Provision for income taxes				245
Profit for the period				$ 326,049
Capital expenditures	$ 2,567	$ 461	$ –	$ 3,028
As at September 30, 2021				
Total goodwill	$ 163,945	$ –	$ –	$ 163,945

For the three months ended September 30, 2020:

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 419,340	$ 318,654	$ –	$ 737,994
Cost of goods sold	265,848	251,435	–	517,283
Gross margin	153,492	67,219	–	220,711
Depreciation and amortization	4,773	900	–	5,673
Administrative expenses	9,892	4,153	29,912	43,957
Selling and marketing expenses	29,666	18,246	–	47,912
Other operating expenses	11,954	3,138	–	15,092
Segment profit (loss)	$ 97,207	$ 40,782	$ (29,912)	$ 108,077
Finance costs				(29,744)
Restructuring Costs				(7,118)
Gain on September 2020 Recapitalization transaction, net				52,152
Unrealized loss of derivative instruments and other				(84,968)
Realized loss of derivative instruments				(85,457)
Other expense, net				(2,425)
Provision for income taxes				(673)
Loss from continuing operations				$ (50,156)
Loss from discontinued operations				(1,210)
Loss for the period				(51,366)
Capital expenditures	$ 2,695	$ 292	$ –	$ 2,987

For the six months ended September 30, 2021:

	Mass Market	**Commercial**	**Corporate and shared services**	**Consolidated**
Sales	**$ 716,477**	**$ 596,964**	**$ –**	**$ 1,313,441**
Cost of goods sold	**594,820**	**556,840**	**–**	**1,151,660**
Gross margin	**121,657**	**40,124**	**–**	**161,781**
Depreciation and amortization	**7,521**	**1,635**	**–**	**9,156**
Administrative expenses	**19,501**	**7,100**	**40,350**	**66,951**
Selling and marketing expenses	**54,299**	**30,160**	**–**	**84,459**
Other operating expenses	**11,033**	**1,104**	**–**	**12,137**
Segment profit for the period	**$ 29,303**	**$ 125**	**$ (40,350)**	**$ (10,922)**
Finance costs				**(24,808)**
Unrealized gain of derivative instruments and other				**579,652**
Realized gain of derivative instruments				**66,346**
Other expense, net				**(546)**
Unrealized gain on investment				**29,000**
Reorganization Costs				**(38,586)**
Provision for income taxes				**1,212**
Profit for the period				**$ 601,348**
Capital expenditures	**$ 4,341**	**$ 496**	**$ –**	**$ 4,837**
As at September 30, 2021				
Total goodwill	**$ 163,945**	**$ –**	**$ –**	**$ 163,945**

For the six months ended September 30, 2020:

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 810,004	$ 613,954	$ –	$ 1,423,958
Cost of goods sold	470,157	463,953	–	934,110
Gross margin	339,847	150,001	–	489,848
Depreciation and amortization	11,138	1,814	–	12,952
Administrative expenses	18,187	9,436	54,476	82,099
Selling and marketing expenses	57,222	37,649	–	94,871
Other operating expenses	21,069	6,655	–	27,724
Segment profit (loss)	$ 232,231	$ 94,447	$ (54,476)	$ 272,202
Finance costs				(51,597)
Restructuring Costs				(7,118)
Gain on September 2020 Recapitalization transaction, net				50,341
Unrealized loss of derivative instruments and other				(7,619)
Realized loss of derivative instruments				(219,903)
Other expense, net				(3,057)
Provision for income taxes				(1,307)
Profit from continuing operations				$ 31,942
Loss from discontinued operations				(4,158)
Profit for the period				27,784
Capital expenditures	$ 4,216	$ 457	$ –	$ 4,673
As at September 30, 2020				
Total goodwill	$ 171,352	$ 96,654	$ –	$ 268,006

Sales from external customers

Sales based on the location of the customer.

	Three months ended September 30,		**Six months ended September 30,**	
	2021	2020	**2021**	2020
Canada	**$ 128,088**	$ 106,873	**$ 268,566**	$ 211,328
United States	**576,681**	631,121	**1,044,875**	1,212,630
Total	**$ 704,769**	$ 737,994	**$ 1,313,441**	$ 1,423,958

Non-current assets

Non-current assets by geographic segment consist of goodwill, property and equipment and intangible assets and are summarized as follows:

	As at September 30, 2021	As at March 31, 2021
Canada	**$ 177,690**	$ 178,802
United States	**70,013**	73,518
Total	**$ 247,703**	$ 252,320

10. INCOME TAXES

	Three months ended September 30,		Six months ended September 30,	
	2021	2020	**2021**	2020
Current income tax expense	**$ (245)**	$ 493	**$ (1,357)**	$ 1,366
Deferred income tax recovery	**–**	180	**145**	(59)
Provision for (recovery of) income taxes	**$ (245)**	**$** 673	**$ (1,212)**	$ 1,307

11. SHAREHOLDERS' CAPITAL

Just Energy is authorized to issue an unlimited number of common shares with no par value and up to 50,000,000 preferred shares. The common shares outstanding have no preferences, rights or restrictions attached to them and there are no preferred shares outstanding.

Details of issued and outstanding shareholders' capital are as follows:

	Six months ended September 30, 2021		Year ended March 31, 2021	
	Shares	**Amount**	**Shares**	**Amount**
Common shares:				
Issued and outstanding				
Balance, beginning of period	**48,078,637**	**$ 1,537,863**	4,594,371	$ 1,099,864
Share-based awards exercised	**–**	**–**	91,854	929
Issuance of shares due to September 2020 Recapitalization	**–**	**–**	43,392,412	438,642
Issuance cost	**–**	**–**	–	(1,572)
Balance, end of period	**48,078,637**	**$ 1,537,863**	48,078,637	$ 1,537,863
Preferred shares:				
Issued and outstanding				
Balance, beginning of period	**–**	**$ –**	4,662,165	$ 146,965
Exchanged to common shares	**–**	**–**	(4,662,165)	(146,965)
Shareholders' capital	**48,078,637**	**$ 1,537,863**	48,078,637	$ 1,537,863

The above table reflects the impacts of the September 2020 Recapitalization including the extinguished convertible debentures, the settlement of the preferred shares and the issuance of new common shares. The common shares have been adjusted retrospectively to reflect the 33:1 share consolidation as part of the September 2020 Recapitalization.

12. OTHER EXPENSES

(a) Other operating expenses

	Three months ended September 30,		Six months ended September 30,	
	2021	2020	**2021**	2020
Amortization of intangible assets	**$ 3,730**	$ 4,026	**$ 7,374**	$ 8,618
Depreciation of property and equipment	**980**	1,647	**1,782**	4,334
Bad debt expense	**3,692**	11,662	**11,110**	23,602
Share-based compensation	**417**	3,430	**1,027**	4,122
	$ 8,819	$ 20,765	**$ 21,293**	$ 40,676

(b) Employee expenses

	Three months ended September 30,		Six months ended September 30,	
	2021	2020	**2021**	2020
Wages, salaries and commissions	**$ 47,207**	$ 50,086	**$ 86,748**	$ 99,830
Benefits	**4,352**	6,895	**9,995**	14,018
	$ 51,559	$ 56,981	**$ 96,743**	$ 113,848

Employee expenses of $17.0 million and $34.6 million are included in administrative expense and selling and marketing expenses, respectively, for the three months ended September 30, 2021. Compared to $17.2 million and $39.8 million, respectively, for the three months ended September 30, 2020. Employee expenses of $30.6 million and $66.1 million are included in administrative expense and selling and marketing expenses, respectively, for the six months ended September 30, 2021. Compared to $32.5 million and $81.3 million, respectively, for the six months ended September 30, 2020.

13. REORGANIZATION COSTS

Reorganization costs represent the amounts incurred related to the filings under the CCAA Proceedings and consist of:

	Three months ended September 30, 2021	Six months ended September 30, 2021
Professional and advisory costs	**$ 10,796**	**$ 23,342**
Key employee retention plan	**2,701**	**5,237**
Prepetition claims and other costs	**5,080**	**10,007**
	$ 18,577	**$ 38,586**

14. EARNINGS PER SHARE

	Three months ended September 30,		Six months ended September 30,	
	2021	2020	**2021**	2020
BASIC EARNINGS PER SHARE				
Profit from continuing operations available to shareholders	**$ 326,049**	$ (50,156)	**$ 601,348**	$ 31,942
Profit for the period available to shareholders	**$ 326,049**	$ (51,366)	**$ 601,348**	$ 27,784
Basic weighted average shares outstanding[1]	**48,078,637**	11,479,960	**48,078,637**	10,684,039
Basic earnings per share from continuing operations available to shareholders	**$ 6.78**	$ (4.37)	**$ 12.51**	$ 2.99
Basic earnings per share available to shareholders	**$ 6.78**	$ (4.47)	**$ 12.51**	$ 2.60
DILUTED EARNINGS PER SHARE				
Profit from continuing operations available to shareholders	**$ 326,049**	$ (50,156)	**$ 601,348**	$ 31,942
Adjusted profit for the period available to shareholders	**$ 326,049**	$ (51,366)	**$ 601,348**	$ 27,784
Basic weighted average shares outstanding	**48,078,637**	11,479,960	**48,078,637**	10,684,039
Dilutive effect of:				
Restricted share grants	**–**	63,364	**–**	65,403
Deferred share grants	**–**	77	**–**	12,609
Deferred share units	**190,983**	–	**190,983**	–
Options	**650,000**	–	**650,000**	–
Shares outstanding on a diluted basis	**48,919,620**	11,543,401[1]	**48,919,620**	10,762,051[1]
Diluted earnings from continuing operations per share available to shareholders	**$ 6.66**	$ (4.37)	**$ 12.29**	$ 2.97
Diluted earnings per share available to shareholders	**$ 6.66**	$ (4.47)	**$ 12.29**	$ 2.58

1 The shares have been adjusted to reflect the share consolidation due to the September 2020 Recapitalization.

15. COMMITMENTS AND CONTINGENCIES

Commitments for each of the next five years and thereafter are as follows:

As at September 30, 2021

	Less than 1 year	1-3 years	4-5 years	More than 5 years	Total
Gas, electricity and non-commodity contracts	$ 1,192,656	$ 1,745,209	$ 283,154	$ 66,891	$ 3,287,910

(a) Surety bonds and letters of credit

Pursuant to separate arrangements with several bond agencies, Just Energy has issued surety bonds to various counterparties including states, regulatory bodies, utilities and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required in order to operate in certain states or markets. Total surety bonds issued as at September 30, 2021 amounted to $46.3 million (March 31, 2021 – $46.3 million) and are backed by letters of credit or cash collateral.

As at September 30, 2021, Just Energy had total letters of credit outstanding in the amount of $160.5 million (March 31, 2021 – $99.4 million) (Note 8(c)).

(b) Legal proceedings

Just Energy's subsidiaries are party to a number of legal proceedings. Other than as set out below, Just Energy believes that each proceeding constitutes legal matters that are incidental to the business conducted by Just Energy and that the ultimate disposition of the proceedings will not have a material adverse effect on its consolidated earnings, cash flows or financial position.

On March 9, 2021, Just Energy filed for and received creditor protection pursuant to the Court Order under the CCAA and similar protection under Chapter 15 of the Bankruptcy Code in the United States in connection with the Weather Event. On September 15, 2021, the Ontario Court approved the Company's request to establish a claims process to identify and determine claims against the Company and its subsidiaries that are subject to the ongoing CCAA Proceedings. As a result of the establishment of the claims process, additional claims may be made against the Company and ultimately determined that are not currently reflected in the Interim Condensed Financial Statements.

In May 2015, Kia Kordestani, a former door-to-door independent contractor sales representative for Just Energy Corp., filed a lawsuit against Just Energy Corp., Just Energy Ontario L.P. and the Company (collectively referred to as "Just Energy") in the Superior Court of Justice, Ontario, claiming status as an employee and seeking benefits and protections of the Employment Standards Act, 2000, such as minimum wage, overtime pay, and vacation and public holiday pay on his own behalf and similarly situated door-to-door sales representatives who sold in Ontario. On Just Energy's request, Mr. Kordestani was removed as a plaintiff but replaced with Haidar Omarali, also a former door-to-door sales representative. On July 27, 2016, the Court granted Omarali's request for certification, but refused to certify Omarali's request for damages on an aggregate basis and refused to certify Omarali's request for punitive damages. Omarali's motion for summary judgment was dismissed in its entirety on June 21, 2019. The matter was set for trial in November 2021. However, pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims, if they proceed.

On July 23, 2019, Just Energy announced that, as part of its Strategic Review process, management identified customer enrolment and non-payment issues, primarily in Texas. In response to this announcement, and in some cases in response to this and other subsequent related announcements, putative class action lawsuits were filed in the United States District Court for the Southern District of New York, in the United States District Court for the Southern District of Texas and in the Ontario Court, on behalf of investors that purchased Just Energy Group Inc. securities during various periods, ranging from November 9, 2017 through August 19, 2019. The U.S. lawsuits have been consolidated in the United States District Court for the Southern District of Texas with one lead plaintiff and the Ontario lawsuits have been consolidated with one lead plaintiff. The U.S. lawsuit seeks damages allegedly arising from violations of the United States Securities Exchange Act. The Ontario lawsuit seeks damages allegedly arising from violations of Canadian securities legislation and of common law. The Ontario lawsuit was subsequently amended to, among other things, extend the period to July 7, 2020. On September 2, 2020, pursuant to Just Energy's plan of arrangement, the Superior Court of Justice (Ontario) ordered that all existing equity class action claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the insurance policies payable on behalf of Just Energy or its directors and officers in respect of any such existing equity class action claims, and such existing equity class action claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the released parties or any of their respective current or former officers and directors in respect of any existing equity class action claims, other than enforcing their rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. Pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims if they proceed.

16. SUBSEQUENT EVENTS

(a) On November 1, 2021, Generac Holdings Inc. ("Generac") announced the signing of an agreement to acquire all of the issued and outstanding shares of ecobee Inc. ("ecobee"), including all of the ecobee shares held by the Company. The Company holds approximately 8% of the ecobee and at closing anticipates receiving approximately $61 million, comprised of approximately $18 million cash and $43 million of Generac stock. The Company can receive up to an additional approximate CAD $10 million in Generac stock over calendar 2022 and 2023, provided that certain performance targets are achieved by ecobee. Generac stock trades on the New York Stock Exchange under the symbol GNRC.

The Company has designated these investments at fair value through profit and loss under the IFRS 9, *"Financial Instruments"*. As a result of the above-mentioned transaction, a fair value gain of $29 million has been recorded in the Interim Condensed Consolidated Statement of Income in the three months ended September 30, 2021.

(b) On November 3, the Company filed an application with the Ontario Court seeking an extension of the maturity date of the DIP Facility until September 30, 2022. The Company also requested that the stay period under the CCAA Proceedings be extended to February 17, 2022. The Ontario Court scheduled a hearing on November 10, 2021 to consider these matters.

Corporate Information

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Shares Listed
TSX Venture Exchange
Trading symbol: JE

OTC Pink Market
Trading symbol: JENGQ

just
energy

THIS IS **EXHIBIT "J"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,
SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

2021
Annual Report

Management's discussion and analysis – June 25, 2021

The following management's discussion and analysis ("MD&A") is a review of the financial condition and operating results of Just Energy Group Inc. ("Just Energy" or the "Company") for the year ended March 31, 2021. This MD&A has been prepared with all information available up to and including June 25, 2021. This MD&A should be read in conjunction with Just Energy's audited Consolidated Financial Statements (the "Consolidated Financial Statements") for the year ended March 31, 2021. The financial information contained herein has been prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"). All dollar amounts are expressed in Canadian dollars unless otherwise noted. Quarterly reports, the annual report and supplementary information can be found on Just Energy's corporate website at www.investors.justenergy.com. Additional information can be found on SEDAR at www.sedar.com or on the U.S. Securities and Exchange Commission's ("SEC") website at www.sec.gov.

WEATHER EVENT AND CREDITOR PROTECTION FILINGS

In February 2021, the State of Texas experienced extremely cold weather (the "Weather Event"). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. ("ERCOT") when due, and accordingly, on March 9, 2021, Just Energy applied for and received creditor protection under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") and under Chapter 15 ("Chapter 15") in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division (the "Court Orders"). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD$125 million Debtor-In-Possession ("DIP Facility") financing with certain affiliates of Pacific Investment Management Company ("PIMCO") (refer to Note 27 of the Consolidated Financial Statements). The Company also entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The filings and associated USD$125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the U.S. and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On March 9, 2021, the Company announced that it had sought and received creditor protection via an order (the "Initial Order") from the Ontario Court and the Chapter 15 Order from the Bankruptcy Court. On May 26, 2021, the stay period was extended by the Ontario Court to September 30, 2021.

The Common Shares, no par value, of the Company (the "Common Shares") were halted from trading on the Toronto Stock Exchange ("TSX") on March 9, 2021 and the Company was delisted from the TSX on June 3, 2021. The Company has listed its Common Shares on the TSX Venture Exchange ("TSX-V") as of June 4, 2021 under the symbol "JE". In addition, the Company was delisted from the New York Stock Exchange ("NYSE") on March 22, 2021 and was listed on the OTC Pink Market ("OTC") under the symbol "JENGQ" on March 23, 2021.

SECURITIZATION UNDER HOUSE BILL 4492

On June 16, 2021 Texas House Bill 4492 ("HB 4492"), which provides a mechanism for recovery of certain costs incurred by various parties, including the Company, during the Weather Event through certain securitization structures, became law in Texas. HB 4492 addresses securitization of (i) ancillary service charges above USD$9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by the ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently "short-paid" to market participants, including Just Energy, (collectively, the "Costs").

HB 4492 provides that ERCOT request that the Public Utility Commission of Texas (the "Commission") establish financing mechanisms for the payment of the Costs incurred by load-serving entities, including Just Energy. The timing of any such request by ERCOT, the details of the financing mechanism and the process to apply for recovery of the Costs are undetermined at this the time of this filing. The Company continues to evaluate HB 4492. Based on current information, if the Commission approves the financing provided for in HB 4492, Just Energy anticipates that it will recover approximately USD$100 million of Costs. The total amount that the Company may recover through the mechanisms authorized in HB 4492 may change materially based on a number of factors, including the details of an established financing order issued by the Commission, additional ERCOT resettlements, the aggregate amount of funds applied for under HB 4492 by participants, the outcome of the dispute resolution process initiated by the Company with ERCOT, and any potential challenges to the Commission's order or orders. There is no assurance that the Company will be able to recover all of the Costs.

COVID-19 CONSIDERATIONS

The rapid outbreak of the novel strain of the coronavirus, specifically identified as the COVID-19 pandemic, caused governments worldwide to enact emergency measures and restrictions to combat the spread of the virus during Fiscal 2020 and continuing through Fiscal 2021. These measures and restrictions, which include the implementation of travel bans, mandated and voluntary business

closures, self-imposed and mandatory quarantine periods, isolation orders and social distancing, caused material disruption to businesses globally, resulting in economic slowdown. Governments and central banks reacted with significant monetary and fiscal interventions designed to stabilize economic conditions. While restrictions have been reduced or eliminated in a number of jurisdictions, they still remain in many and may be re-introduced if new variants of the virus increase significantly. The future impact of the COVID-19 pandemic on liquidity, volatility, credit availability, and market and financial conditions generally could change at any time. Any future impacts of the COVID-19 pandemic on the economy are unknown at this time and, as a result, it is difficult to estimate any longer-term impact on our operations and the markets for our products.

SEPTEMBER RECAPITALIZATION

On September 28, 2020, the Company completed a recapitalization (the "September Recapitalization") through a plan of arrangement under the Canada Business Corporations Act as described in Note 18(c) within the Consolidated Financial Statements.

Forward-looking information

This MD&A may contain forward-looking statements. These forward-looking statements are identified as any statement that does not relate strictly to historical or current facts. Statements using words such as "anticipate," "project," "expect," "plan," "goal," "forecast," "estimate," "intend," "continue," "could," "believe," "may," "will," or similar expressions help identify forward-looking statements. Certain forward-looking statements in this MD&A include statements with respect to the implementation of HB 4492 by the Commission, the establishment of financing mechanisms for the payment of the (i) ancillary service charges above US $9,000/MWh during the extreme weather event in Texas in February 2021 (the "Weather Event"); (ii) reliability deployment price adders charged by the Electric Reliability Council of Texas, Inc. ("ERCOT") during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently "short-paid" to market participants, including Just Energy, (collectively, the "Costs") incurred by load-serving entities, and whether the Company may ultimately recover any amount of Costs. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but are not limited to, risks with respect to: the Commission deciding against establishing financing mechanisms to recover the Costs, Just Energy failing to meet the requirements under any rules established by the Commission with respect to financing mechanisms to recover the Costs, and any litigation with respect to the financing mechanism established by the Commission; the ability of the Company to continue as a going concern; the outcome of proceedings under CCAA proceedings with respect to the Company and similar legislation in the United States; the impact of any recovery of the Costs on the Company and/or its proceedings under CCAA and similar United States legislation; the outcome of any legislative or regulatory actions; the outcome of any invoice dispute with ERCOT; the outcome of potential litigation in connection with the Weather Event; the quantum of the financial loss to the Company from the Weather Event and its impact on the Company's liquidity; the Company's discussions with key stakeholders regarding the Weather Event and the CCAA proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Company overview

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions and sustainable energy options to customers. Operating in the United States ("U.S.") and Canada, Just Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Tara Energy and terrapass.

Continuing operations overview

MASS MARKETS SEGMENT

The Mass Markets segment (formerly referred to as "Consumer Segment") includes customers acquired and served under the Just Energy, Tara Energy, Amigo Energy and terrapass brands. Marketing of the energy products of this segment is primarily done through digital and retail sales channels. Mass Market customers make up 40% of Just Energy's RCE base, which is currently focused on longer-term price-protected and flat-bill product offerings, as well as JustGreen products. To the extent that certain markets are better served by shorter-term or enhanced variable rate products, the Mass Markets segment's sales channels offer these products.

Just Energy also provides home water filtration systems with its line of consumer product and service offerings through Filter Group.

COMMERCIAL SEGMENT

The Commercial Segment includes customers acquired and served under the Hudson Energy, as well as brokerage services managed by the Interactive Energy Group. Hudson sales are made through three main channels: brokers, door-to-door commercial independent contractors and inside commercial sales representatives. Commercial customers make up 60% of Just Energy's RCE base. Products offered to Commercial customers range from standard fixed-price offerings to "one off" offerings, tailored to meet the customer's specific needs. These products can be fixed or floating rate or a blend of the two, and normally have a term of less than five years. Gross margin per RCE for this segment is lower than it is for the Mass Markets segment, but customer acquisition costs and ongoing customer care costs per RCE are lower as well. Commercial customers also have significantly lower attrition rates than Mass Markets customers.

ABOUT JUST ENERGY'S PRODUCTS

Just Energy offers products and services to address customers' essential needs, including electricity and natural gas commodities, health and well-being products such as water quality and filtration devices, and utility conservation products which bring energy efficient solutions and renewable energy options to customers.

Electricity

Just Energy services various territories in U.S. and Canada with electricity. A variety of electricity solutions are offered, including fixed-price, flat-bill and variable-price products on both short-term and longer-term contracts. Some of these products provide customers with price-protection programs for the majority of their electricity requirements. Just Energy uses historical usage data for all enrolled customers to predict future customer consumption and to help with long-term supply procurement decisions. Flat-bill products offer a consistent price regardless of usage.

Just Energy purchases electricity supply from market counterparties for Mass Markets and Commercial customers based on forecasted customer aggregation. Electricity supply is generally purchased concurrently with the execution of a contract for larger Commercial customers. Historical customer usage is obtained from LDCs (as defined in key terms), which, when normalized to average weather, provides Just Energy with expected normal customer consumption. Just Energy mitigates exposure to weather variations through active management of the electricity portfolio and the purchase of options, including weather derivatives. Just Energy's ability to successfully mitigate weather effects is limited by the degree to which weather conditions deviate from normal. To the extent that balancing electricity purchases are outside the acceptable forecast, Just Energy bears the financial responsibility for excess or short supply caused by fluctuations in customer usage. Any supply balancing not fully covered through customer pass-throughs, active management or the options employed may increase or decrease Just Energy's Base gross margin depending upon market conditions at the time of balancing.

The Company completed its portfolio optimization process. As a result, the Company sold its California electricity portfolio for a nominal amount subject to certain customary adjustments. The transaction closed in December 2020.

Natural gas

Just Energy offers natural gas customers a variety of products ranging from month-to-month variable-price contracts to five-year fixed-price contracts. Gas supply is purchased from market counterparties based on forecasted consumption. For larger Commercial customers, gas supply is generally purchased concurrently with the execution of a contract. Variable rate products allow customers to maintain competitive rates while retaining the ability to lock into a fixed price at their discretion. Flat-bill products offer customers the ability to pay a fixed amount per period regardless of usage or changes in the price of the commodity.

The LDCs provide historical customer usage which, when normalized to average weather, enables Just Energy to purchase the expected normal customer load. Just Energy mitigates exposure to weather variations through active management of the gas portfolio, which involves, but is not limited to, the purchase of options, including weather derivatives. Just Energy's ability to successfully mitigate weather effects is limited by the degree to which weather conditions deviate from normal. To the extent that balancing requirements are outside the forecasted purchase, Just Energy bears the financial responsibility for fluctuations in customer usage. To the extent that supply balancing is not fully covered through active management or the options employed, Just Energy's Base gross margin (as defined in Non-IFRS financial measures) may increase or decrease depending upon market conditions at the time of balancing.

Territory	Gas delivery method
Manitoba, Ontario, Quebec and Michigan	The volumes delivered for a customer typically remain constant throughout the year. Sales are not recognized until the customer consumes the gas. During the winter months, gas is consumed at a rate that is greater than delivery, resulting in accrued gas receivables, and, in the summer months, deliveries to LDCs exceed customer consumption, resulting in gas delivered in excess of consumption. Just Energy receives cash from the LDCs as the gas is delivered.
Alberta, British Columbia, Saskatchewan, California, Illinois, Indiana, Maryland, New Jersey, New York, Ohio and Pennsylvania	The volume of gas delivered is based on the estimated consumption and storage requirements for each month. The amount of gas delivered in the months of October to March is higher than in the months of April to September. Cash flow received from most of these markets is greatest during the fall and winter quarters, as cash is normally received from the LDCs in the same period as customer consumption.

JustGreen

Many customers have the ability to choose an appropriate JustGreen program to supplement their electricity and natural gas, providing an effective method to offset their carbon footprint associated with the respective commodity consumption.

JustGreen's electricity products offer customers the option of having all or a portion of the volume of their electricity usage sourced from renewable green sources such as wind, solar, hydropower or biomass, via power purchase agreements and renewable energy certificates. JustGreen programs for gas customers involve the purchase of carbon offsets from carbon capture and reduction projects. Additional green products allow customers to offset their carbon footprint without buying energy commodity products and can be offered in all states and provinces without being dependent on energy deregulation.

Just Energy currently sells JustGreen electricity and gas in eligible markets across North America. Of all customers who contracted with Just Energy in the past year, 37% purchased JustGreen for some or all of their energy needs. On average, these customers elected to purchase 98% of their consumption as green supply. For comparison, as reported for the trailing 12 months ended March 31, 2020, 58% of Consumer customers who contracted with Just Energy chose to include JustGreen for an average of 88% of their consumption. As at March 31, 2021, JustGreen makes up 25% of the Mass Market electricity portfolio, compared to 20% in the year ago period. JustGreen makes up 17% of the Mass Market gas portfolio, compared to 15% in the year ago period.

Terrapass

Through terrapass, customers can offset their environmental impact by purchasing high quality environmental products. Terrapass supports projects throughout North America and are exploring other projects world-wide that destroy greenhouse gases, produce renewable energy and restore freshwater ecosystems. Each project is made possible through the purchase of renewable energy credits and carbon offsets. Terrapass offers various purchase options for residential or commercial customers as well as non-commodity customers, depending on the impact the customer wishes to make.

Key terms

"6.5% convertible bonds" refers to the US$150 million in convertible bonds issued in January 2014, which were exchanged for Common Shares and a pro-rata portion of the Term Loan as part of the September Recapitalization.

"6.75% $160M convertible debentures" refers to the $160 million in convertible debentures issued in October 2016, which were exchanged for Common Shares and its pro-rata allocation of the 7.0% $13M subordinated notes issued as part of the September Recapitalization.

"6.75% $100M convertible debentures" refers to the $100 million in convertible debentures issued in February 2018, which were exchanged for Common Shares and its pro-rata allocation of the 7.0% $13M subordinated notes issued as part of the September Recapitalization.

"8.75% loan" refers to the US$250 million non-revolving multi-draw senior unsecured term loan facility entered into on September 12, 2018. The 8.75% loan was exchanged for Common Shares and a pro-rata portion of the Term Loan as part of the September Recapitalization.

"Base gross margin per RCE" refers to the energy Base gross margin realized on Just Energy's RCE customer base, including gains (losses) from the sale of excess commodity supply excluding the impacts of the Weather Event or reorganization costs.

"Commodity RCE attrition" refers to the percentage of energy customers whose contracts were terminated prior to the end of the term either at the option of the customer or by Just Energy.

"Customer count" refers to the number of customers with a distinct address rather than RCEs (see key term below).

"Failed to renew" means customers who did not renew expiring contracts at the end of their term.

"Filter Group financing" refers to the outstanding loan balance between Home Trust Company ("HTC") and Filter Group. The loan bears an annual interest rate of 8.99%.

"Initial Order" means the initial order granted by the Court on March 9, 2021, as amended and restated from time to time.

"LDC" means a local distribution company; the natural gas or electricity distributor for a regulatory or governmentally defined geographic area.

"Liquidity" means cash on hand plus available capacity under the DIP Facility.

"Maintenance capital expenditures" means the necessary property and equipment and intangible asset capital expenditures required to maintain existing operations at functional levels.

"Note Indenture" refers to the $15 million subordinated notes with a six-year maturity and bearing an annual interest rate of 7.0% (payable in kind semi-annually) issued in relation to the September Recapitalization, which have a maturity date of September 15, 2026. The principal amount was reduced through a tender offer for no consideration, on October 19, 2020 to $13.2 million.

"RCE" means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m^3 (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada.

"Selling commission expenses" means customer acquisition costs amortized under IFRS 15, *Revenue from contracts with customers*, or directly expensed within the current period and consist of commissions paid to independent sales contractors, brokers and sales agents and is reflected on the Consolidated Statements of Loss as part of selling and marketing expenses.

"Selling non-commission and marketing expenses" means the cost of selling overhead, including digital marketing cost not directly associated with the costs of direct customer acquisition costs within the current period and is reflected on the Consolidated Statements of Loss as part of selling and marketing expenses.

"Strategic Review" means the Company's formal review announced on June 6, 2019 to evaluate strategic alternatives available to the Company. The Company finalized the Strategic Review with the completed September Recapitalization.

"Term Loan" refers to the US$206 million senior unsecured 10.25% term loan facility entered into on September 28, 2020 pursuant to the September Recapitalization, which has a maturity date of March 31, 2024.

Non-IFRS financial measures

Just Energy's audited annual Consolidated Financial Statements are prepared in accordance with IFRS. The financial measures that are defined below do not have a standardized meaning prescribed by IFRS and may not be comparable to similar measures presented by other companies. These financial measures should not be considered as an alternative to, or more meaningful than, net income (loss), cash flow from operating activities and other measures of financial performance as determined in accordance with IFRS; however, the Company believes that these measures are useful in providing relative operational profitability of the Company's business.

BASE GROSS MARGIN

"Base gross margin" represents gross margin adjusted to exclude the effect of applying IFRS Interpretation Committee Agenda Decision 11, "Physical Settlement of Contracts to Buy or Sell a Non-Financial Item, for realized gains (losses) on derivative instruments, the one-time impact of the Weather Event, and the one-time non-recurring sales tax settlement and the impact of the Weather Event. Base gross margin is a key measure used by management to assess performance and allocate resources. Management believes that these realized gains (losses) on derivative instruments reflect the long-term financial performance of Just Energy and thus have included them in the Base gross margin calculation.

EBITDA

"EBITDA" refers to earnings before finance costs, income taxes, depreciation and amortization with an adjustment for discontinued operations. EBITDA is a non-IFRS measure that reflects the operational profitability of the business.

BASE EBITDA

"Base EBITDA" refers to EBITDA adjusted to exclude the impact of the Weather Event, the impairment of goodwill and intangible assets, the impact of unrealized mark to market gains (losses) arising from IFRS requirements for derivative financial instruments, non-cash gains (losses) and costs related to the September Recapitalization, Reorganization costs, the sales tax settlement, share-based compensation, Strategic Review costs, realized gains (losses) related to gas held in storage until gas is sold, discontinued operations, non-controlling interest, contingent consideration and the impact of the Texas residential enrolment and collections impairment. This measure reflects operational profitability as the impact of the Weather Event, the impairment of goodwill and intangibles, non-cash gains (losses) and costs related to the September Recapitalization, Reorganization costs, the sales tax settlement, Strategic Review costs, discontinued operations and the impact of the Texas residential enrolment and collections impairment are one-time non-recurring events. Non-cash share-based compensation expense is treated as an equity issuance for the purposes of this calculation, as it will be settled in Common Shares; the unrealized mark to market gains (losses) are associated with supply already sold in the future at fixed prices; and, the mark to market gains (losses) of weather derivatives are not related to weather in the current period. Management has isolated the impact of the incremental Texas residential enrolment and collections recorded as at June 30, 2019, as presented in Base EBITDA. All other bad debt charges, including any residual bad debt from the Texas enrolment and collection issues, are included in Base EBITDA from July 1, 2019 onward.

Just Energy ensures that customer margins are protected by entering into fixed-price supply contracts. Under IFRS, the customer contracts are not marked to market; however, there is a requirement to mark to market the future supply contracts. This creates unrealized and realized gains (losses) depending upon current supply pricing. Management believes that the unrealized mark to market gains (losses) do not impact the long-term financial performance of Just Energy and has excluded them from the Base EBITDA calculation.

Just Energy uses derivative financial instruments to hedge the gas held in storage for future delivery to customers. Under IFRS, the customer contracts are not marked to market: however, there is a requirement to report the realized gains (losses) in the current period instead of recognizing them as a cost of inventory until delivery to the customer. Just Energy excludes the realized gains (losses) to EBITDA during the injection season and includes them during the withdrawal season in accordance with the customers receiving the gas. Management believes that including the realized gains (losses) during the withdrawal season when the customers receive the gas is more reflective of the operations of the business.

Just Energy recognizes the incremental acquisition costs of obtaining a customer contract as an asset since these costs would not have been incurred if the contract was not obtained and are recovered through the consideration collected from the contract. Commissions and incentives paid for commodity contracts and value-added products contracts are capitalized and amortized over the term of the contract. Amortization of these costs with respect to commodity contracts is included in the calculation of Base EBITDA (as selling commission expenses). Amortization of incremental acquisition costs on value-added product contracts is excluded from the Base EBITDA calculation as value-added products are considered to be a lease asset akin to a fixed asset whereby amortization or depreciation expenses are excluded from Base EBITDA.

FREE CASH FLOW AND UNLEVERED FREE CASH FLOW

Free cash flow represents cash flow from operations less maintenance capital expenditures. Unlevered free cash flow represents free cash flows plus finance costs excluding the non-cash portion.

EMBEDDED GROSS MARGIN ("EGM")

EGM is a rolling five-year measure of management's estimate of future contracted energy and product gross margin. The commodity EGM is the difference between existing energy customer contract prices and the cost of supply for the remainder of the term, with appropriate assumptions for commodity RCE attrition and renewals. The product gross margin is the difference between existing value-added product customer contract prices and the cost of goods sold on a five-year or ten-year undiscounted basis for such customer contracts, with appropriate assumptions for value-added product attrition and renewals. It is assumed that expiring contracts will be renewed at target margin renewal rates.

EGM indicates the gross margin expected to be realized over the next five years from existing customers. It is intended only as a directional measure for future gross margin. It is neither discounted to present value nor is it intended to consider administrative and other costs necessary to realize this margin.

Financial and operating highlights

For the years ended March 31
(thousands of dollars, except where indicated and per share amounts)

	Fiscal 2021	**% increase (decrease)**	Fiscal 2020
Sales[1]	**$ 2,740,037**	**(13)%**	$ 3,153,652
Base gross margin[2]	**536,858**	**(12)%**	610,580
Administrative expenses[4]	**142,391**	**(15)%**	167,936
Selling commission expenses	**129,653**	**(9)%**	142,682
Selling non-commission and marketing expenses	**49,868**	**(36)%**	78,138
Bad debt expense	**34,260**	**(57)%**	80,050
Reorganization costs	**43,245**	**NMF[3]**	–
Finance costs	**86,620**	**(19)%**	106,945
Impairment of goodwill, intangible assets and other	**114,990**	**NMF[3]**	92,401
Loss from continuing operations	**(402,756)**	**35%**	(298,233)
Base EBITDA from continuing operations[2]	**182,831**	**(2)%**	185,836
Unlevered free cash flow[2]	**90,822**	**(12)%**	103,345
EGM Mass Market[2]	**1,026,200**	**(26)%**	1,380,026
EGM Commercial[2]	**366,200**	**(14)%**	427,806
RCE Mass Markets count	**1,187,000**	**(10)%**	1,323,000
RCE Commercial count	**1,757,000**	**(15)%**	2,065,000

1 Sales amounts have been corrected to reflect sales on a gross basis for Transmission and Distribution Service Provider ("TDSP") whereby TDSP charges to the customer and payments to the service provider are presented in sales and cost of goods sold, respectively. There is no net impact to Base gross margin or base gross margin. Please refer to note 5 in the Consolidated Financial Statements.
2 See "Non-IFRS financial measures" on page 5.
3 Not a meaningful figure.
4 Includes $3.7 million and $13.9 million of Strategic Review costs for fiscal 2021 and fiscal 2020, respectively.

Sales decreased by 13% to $2.7 billion for the year ended March 31, 2021 compared to $3.2 billion for the year March 31, 2020. The decline is primarily driven by a decrease in the customer base resulting from the continuing shift in focus to the Company's strategy to onboard high quality customers; a reduction in the Company's customer base due to regulatory restrictions in Ontario, New York and California; selling constraints posed by the COVID-19 pandemic, prior competitive pressures on pricing in the United States.

Base gross margin, which excludes the financial impact to the Company of the Weather Event, decreased by 12% to $536.9 million for the year ended March 31, 2021 compared to $610.6 million for the year ended March 31, 2020. The decline was primarily driven by a decline in the customer base described above, partially offset by favourable impact from resettlements.

Base EBITDA, which excludes the financial impact to the Company of the Weather Event, decreased by 2% to $182.8 million for the year ended March 31, 2021 compared to $185.8 million for the year ended March 31, 2020. The decline in Base EBITDA was driven by lower Base gross margin and prior year other income one-time gain of $22 million related to the reduction of the Filter Group contingent consideration, partially offset by a current year reduction in bad debt expense, as well as lower administrative, selling commission and selling non-commission and marketing expenses.

Administrative expenses decreased by 15% to $142.4 million for the year ended March 31, 2021 compared to $167.9 million for the year ended March 31, 2020. Excluding the impact of the Strategic Review costs. Administrative expenses decreased 10% due to savings from the Canadian emergency wage subsidy and lower professional fees partially offset by the one-time $5.7 million legal provision.

Selling commission expenses decreased by 9% to $129.7 million for the year ended March 31, 2021 compared to $142.7 million for the year ended March 31, 2020. The decline is driven by lower sales primarily from direct in-person channels due to the COVID-19 pandemic and commercial sales due to competitive price pressures and the COVID-19 pandemic.

Selling non-commission and marketing expenses decreased by 36% to $49.9 million for the year ended March 31, 2021 compared to $78.1 million for the year ended March 31, 2020. The decrease was due to the shut down of the internal door-to-door sales channel and continued focus on managing costs, partially offset by increased investment in digital marketing.

Bad debt expense decreased by 57% to $34.3 million for the year ended March 31, 2021 compared to $80.1 million for the year ended March 31, 2020. The significant decrease in bad debt was a result of operating enhanced operational controls and processes implemented during Fiscal 2020.

Reorganization costs represent the costs related to CCAA and Chapter 15 proceedings. These costs include legal and professional charges of $9.3 million incurred to obtain services for the proceedings. In addition, $33.9 million in the charges associated with early termination of certain agreements allowed by the CCAA filing and the acceleration of deferred financing costs and other fees for the long term debt subject to compromise and certain other related costs.

Finance costs decreased by 19% to $86.6 million for the year ended March 31, 2021 compared to $106.9 million for the year ended March 31, 2020. The decrease was a result of the September Recapitalization as described in Note 18 of the Consolidated Financial Statements.

Unlevered free cash flow decreased by 12% to an inflow of $90.8 million for the year ended March 31, 2021 compared to an inflow of $103.3 million for the year ended March 31, 2020. The decrease is related to higher payments associated with the Weather Event, partially offset by the stay of trade and other payables subject to compromise under the CCAA.

Mass Markets EGM decreased by 26% to $1,026.2 million as at March 31, 2021 compared to $1,380.0 million as at March 31, 2020. The decline resulted from the decline in the customer base and the unfavorable foreign exchange.

Commercial EGM decreased by 14% to $366.2 million as at March 31, 2021 compared to $427.8 million as at March 31, 2020. The decline resulted from the decline in the customer base and the unfavourable foreign exchange.

Discontinued operations

On April 10, 2020, the Company announced that it has sold all of the shares of Just Energy Japan KK to Astmax Trading, Inc. The purchase price was nominal, as the business was still in its start-up phase with more liabilities than assets and had fewer than 1,000 customers.

On November 30, 2020, the Company sold EdgePower Inc. for $0.9 million. A gain on the sale of EdgePower of $1.5 million was recorded in Profit (loss) from discontinued operations within the Consolidated Statements of Loss.

For a detailed breakdown of the discontinued operations, refer to Note 25 of the Consolidated Financial Statements for the year ended March 31, 2021.

On December 18, 2020, the Company announced that it has sold all of its electricity customer contracts in the State of California to Pilot Power Group Inc. for $1.0 million. A gain on the sale of the California electricity customer contracts of $0.2 million was recorded in other income, net, within the Consolidated Statements of Loss.

Base gross margin[1]

For the year ended March 31.
(thousands of dollars)

	Fiscal 2021			Fiscal 2020		
	Mass Markets	**Commercial**	**Total**	Mass Markets	Commercial	Total
Gas	**$ 112,586**	**$ 27,866**	**$ 140,452**	$ 120,627	$ 22,213	$ 142,840
Electricity	**298,754**	**97,652**	**396,406**	346,486	121,254	467,740
	$ 411,340	**$ 125,518**	**$ 536,858**	$ 467,113	$ 143,467	$ 610,580
Decrease	**(12)%**	**(13)%**	**(12)%**			

1 See "Non-IFRS financial measures" on page 5.

MASS MARKETS

Mass Markets Base gross margin decreased by 12% to $411.3 million for the year ended March 31, 2021 compared to $467.1 million for the year ended March 31, 2020. The decline in Base gross margin was primarily driven by a decline in the customer base, partially offset by the favorable impact from resettlements relative to prior year.

Gas

Mass Market gas Base gross margin decreased by 7% to $112.6 million for the year ended March 31, 2021 compared to $120.6 million for the year ended March 31, 2020. The decline in gas Base gross margin was driven by a decline in customer base partially offset by favorable impact from resettlements relative to the prior year and supply management activities driving lower costs.

Electricity

Mass Market electricity Base gross margin decreased by 14% to $298.8 million for the year ended March 31, 2021 compared to $346.5 million for the year ended March 31, 2020. The decrease in electricity Base gross margin is due to a decline in the customer base.

COMMERCIAL

Commercial Base gross margin decreased by 13% to $125.5 million for the year ended March 31, 2021 compared to $143.5 million for the year ended March 31, 2020. The decrease in Commercial Base gross margin was driven by a decline in the customer base.

Gas

Commercial gas Base gross margin increased by 25% to $27.9 million for the year ended March 31, 2021 compared to $22.2 million for the year ended March 31, 2020. The Commercial gas Base gross margin increase was primarily driven by favourable impact from resettlements.

Electricity

Commercial electricity Base gross margin decreased by 19% to $97.7 million for the year ended March 31, 2021 compared to $121.3 million for the year ended March 31, 2020. Commercial electricity Base gross margin decrease is primarily driven by a contraction in the customer base, coupled with lower consumption amid the COVID-19 pandemic.

Mass Markets average realized Base gross margin

For the year ended March 31.
(thousands of dollars)

	Fiscal 2021 GM/RCE	**% Change**	Fiscal 2020 GM/RCE
Gas	**$ 401**	**18%**	$ 339
Electricity	**339**	**(3)%**	350
Total	**$ 354**	**2%**	$ 347

Mass Market average realized Base gross margin for the year ended March 31, 2021 increased 2% to $354/RCE compared to $347/RCE for the year ended March 31, 2020. The increase is primarily attributable to improved margin from supply management activities driving lower costs, an increase in customer profitability and favorable impact from resettlements relative to prior year.

Commercial average realized Base gross margin

For the year ended March 31.
(thousands of dollars)

	Fiscal 2021 GM/RCE	% Change	Fiscal 2020 GM/RCE
Gas	$ 108	37%	$ 79
Electricity	92	(4)%	96
Total	$ 95	2%	$ 93

Commercial Average realized Base gross margin for the year ended March 31, 2021 increased by 2% to $95/RCE compared to $93/RCE for the year ended March 31, 2020.

Base EBITDA from continuing operations

For the years ended March 31
(thousands of dollars)

	Fiscal 2021	Fiscal 2020
Reconciliation to Consolidated Financial Statements		
Loss for the year	**$ (402,288)**	$ (309,659)
Add:		
Finance costs	**86,620**	106,945
Provision for income taxes	**2,308**	7,393
Amortization and depreciation	**24,135**	41,242
EBITDA	**$ (289,225)**	$ (154,079)
Add (subtract):		
Weather Event	**418,369**	–
Impairment of goodwill, intangible assets and other	**114,990**	92,401
Unrealized (gain) loss of derivative instruments and other	**(83,499)**	213,417
Gain on September Recapitalization transaction, net	**(51,360)**	–
Reorganization costs	**43,245**	–
Restructuring costs	**7,118**	–
Sales tax settlement	**9,826**	–
Share-based compensation	**6,492**	12,250
Strategic Review costs	**3,750**	13,926
Realized (gain) loss included in cost of goods sold	**3,453**	(1,387)
(Gain) loss from discontinued operations	**(468)**	11,426
Loss attributable to non-controlling interest	**140**	73
Contingent consideration revaluation	–	(7,091)
Texas residential enrollment and collections impairment	–	4,900
Base EBITDA from continuing operations	**$ 182,831**	$ 185,836
Gross margin	**$ (1,772,129)**	$ 636,353
Realized loss (gain) of derivative instruments and other	**1,880,792**	(25,773)
Weather Event	**418,369**	–
Sales tax settlement	**9,826**	–
Base gross margin	**536,858**	610,580
Add (subtract):		
Administrative expenses	**(142,391)**	(167,936)
Selling commission expenses	**(129,653)**	(142,682)
Selling non-commission and marketing expenses	**(49,868)**	(78,138)
Bad debt expense	**(34,260)**	(80,050)
Strategic Review costs	**3,750**	13,926
Amortization included in cost of goods sold	**206**	(406)
Loss attributable to non-controlling interest	**140**	73
Texas residential enrollment and collections impairment	–	4,900
Other income (expense)	**(1,951)**	25,569
Base EBITDA from continuing operations	**$ 182,831**	$ 185,836

Base EBITDA, which excludes the financial impact to the Company of the Weather Event, decreased by 2% to $182.8 million for the year ended March 31, 2021 compared to $185.8 million for the year ended March 31, 2020. The decline in Base EBITDA was driven by lower Base gross margin and prior year other income one-time gain of $22.0 million related to the reduction of the Filter Group contingent consideration, partially offset by a current year reduction in bad debt expense, as well as lower administrative, selling commission and selling non-commission marketing expenses.

Base EBITDA, excludes the Weather Event which led to a one-time negative net impact of $418.4 million for year ended March 31, 2021, which does not include any recovery under HB 4492, primarily related to the higher energy prices in excess to supply excess consumption and ancillary services costs allocated from ERCOT and a $24.1 million accrued liability related to potential ERCOT default uplift charges for other counterparties defaulting to ERCOT.

Base gross margin, which excludes the financial impact to the Company of the Weather Event, decreased by 12% to $536.9 million for the year ended March 31, 2021 compared to $610.6 million for the year ended March 31, 2020. The decrease in Base gross margin was primarily driven by a decline in the customer base, partially offset by favourable impact from resettlements. The decline in the Company's customer base is primarily a result of a shift in focus to the Company's strategy to onboard higher quality customers, a reduction in the Company's customer base due to regulatory restrictions in New York, California and Ontario, as well as competitive pressures on pricing in the U.S. market, and lower sales due to COVID-19 pandemic.

Base EBITDA also excludes the impact of the impairment of goodwill, intangible assets and other of $115.0 million, the impact of gain on September Recapitalization of $51.4 million, reorganization costs of $43.2 million, restructuring costs of $7.1 million, sales tax settlement of $9.8 million, and non-recurring charges for Strategic Review costs amounting to $3.8 million. Similarly, fiscal 2020 Base EBITDA excludes impairment of goodwill, intangible assets and other of $92.4 million, $13.9 million for Strategic Review costs, the loss from the discontinued operations of $11.4 million, Texas residential enrollment and collection impairment of $4.9 million and the contingent consideration of Filter Group of $7.1 million.

Impairment of goodwill and intangible assets during the fiscal year ended March 31, 2021 amounted to $100.0 million for goodwill and $13.9 million for brands related to Commercial. The impairment of intangible assets and goodwill was driven primarily by the normalization of working capital associated with the CCAA process and the impact of the competitive pricing environment over the last year. For more information, please refer to note 11 of the Consolidated Financial Statements.

For more information on the changes in the results from operations by segment, refer to pages 16 through 19 below.

Fourth quarter financial and operating highlights

For the three months ended March 31.
(thousands of dollars, except where indicated and per share amounts)

	Fiscal 2021	**% increase (decrease)**	Fiscal 2020
Sales[1]	**$ 689,064**	**(11)%**	$ 776,921
Base gross margin[2]	**130,699**	**(28)%**	180,420
Administrative expenses[4]	**29,884**	**(35)%**	46,051
Selling commission expenses	**28,295**	**(23)%**	36,983
Selling non-commission and marketing expenses	**14,086**	**(15)%**	16,584
Bad debt expense	**7,301**	**(45)%**	13,197
Reorganization costs	**43,245**	**100%**	–
Finance costs	**17,346**	**(35)%**	26,770
Impairment of goodwill, intangible assets and other	**114,990**	**NMF[3]**	92,401
Loss from continuing operations	**(382,371)**	**NMF[3]**	(138,210)
Base EBITDA from continuing operations[2]	**53,794**	**(28)%**	74,632
Total gross Mass Markets (RCE) additions	**66,000**	**38%**	48,000
Total gross Commercial (RCE) additions	**79,000**	**(7)%**	85,000
Total net Mass Markets (RCE) additions	**–**	**NMF[3]**	(46,000)
Total net Commercial (RCE) additions	**(19,000)**	**75%**	(75,000)

1 Sales amounts have been corrected to reflect sales on a gross basis for TDSP whereby TDSP charges to the customer and payments to the service provider are presented in sales and cost of goods sold, respectively. There is no net impact to gross margin or base gross margin. Please refer to note 5 in the Consolidated Financial Statements.
2 See "Non-IFRS financial measures" on page 5.
3 Not a meaningful figure.
4 Includes $0.07 million and $6.1 million of Strategic Review costs for the fourth quarter of fiscal 2021 and 2020, respectively.

Sales decreased by 11% to $689.1 million for the three months ended March 31, 2021 compared to $776.9 million for the three months ended March 31, 2020. The decline is primarily driven by a decrease in the customer base from the prior comparable quarter resulting from the shift in focus to the Company's strategy to increase the onboarding of high quality customers; a reduction in the Company's customer base due to regulatory restrictions in Ontario, New York and California; selling constraints posed by the COVID-19 pandemic; competitive pressures on pricing in the United States.

Base gross margin, which excludes the financial impact to the Company of the Weather Event, decreased by 28% to $130.7 million for the three months ended March 31, 2021 compared to $180.4 million for the three months ended March 31, 2020. The decrease was primarily driven by a decline in the customer base and unfavourable foreign exchange fluctuations.

Base EBITDA, which excludes the financial impact to the Company of the Weather Event, decreased by 28% to $53.8 million for the three months ended March 31, 2021 compared to $74.6 million for the three months ended March 31, 2020. The decrease in Base EBITDA was driven by lower Base gross margin, partially offset by a current year reduction in bad debt expense, as well as lower administrative and, selling commission expenses.

Administrative expenses decreased by 35% to $29.9 million for the three months ended March 31, 2021 compared to $46.1 million for the three months ended March 31, 2020. Excluding expenses related to the Strategic Review, Administrative expenses decreased by 25% to $29.8 million for the three months ended March 31, 2021 compared to $39.9 million for the three months ended March 31, 2020 due to lower employee related costs and lower professional fees.

Selling commission expenses decreased by 23% to $28.3 million for the three months ended March 31, 2021 compared to $37.0 million for the three months ended March 31, 2020. The decrease was driven by lower commission expenses from lower sales from direct in-person channels driven by impacts by the COVID-19 pandemic and lower commercial sales driven competitive price pressures and the COVID-19 pandemic.

Selling non-commission and marketing expenses decreased by 15% to $14.1 million for the three months ended March 31, 2021 compared to $16.6 million for the three months ended March 31, 2020 as a result of cost reductions from the shut down of the internal door-to-door sales channel and continued focus on cost containment, partially offset by increased investment in digital marketing.

Bad debt expense decreased by 45% to $7.3 million for the three months ended March 31, 2021 compared to $13.2 million for the three months ended March 31, 2020. The significant decrease in bad debt was a result of enhanced operating controls and processes implemented in fiscal 2020 and release of previous credit reserves as the Company continues to see consistent payment trends and minimal impact from the COVID-19 pandemic.

Finance costs decreased by 35% to $17.3 million for the three months ended March 31, 2021 compared to $26.8 million for the three months ended March 31, 2020. The decrease was a result of the September Recapitalization as described in Note 18(c) of the Consolidated Financial Statements.

Total Mass Markets RCE count was maintained at 1,187,000 during the fourth quarter of fiscal year 2021, which is the first time the count has remained flat since the first quarter of fiscal year 2019.

Base EBITDA from Continuing Operations

For the three months ended March 31.
(thousands of dollars)

	Fiscal 2021	Fiscal 2020
Reconciliation to Consolidated Statements of Loss		
Profit (loss) for the period	**$ (382,533)**	$ (140,931)
Add (subtract):		
Finance costs	**17,346**	26,770
Provision for income taxes	**(2,310)**	3,789
Amortization and depreciation	**5,674**	12,422
EBITDA	**$ (361,823)**	$ (97,950)
Add (subtract):		
Weather Event	**418,369**	–
Impairment of goodwill, intangible assets and other	**114,990**	92,401
Unrealized loss (gain) of derivative instruments and other	**(162,676)**	73,870
September Recapitalization costs	**7**	–
Reorganization costs	**43,245**	–
Sales tax settlement	**1,885**	–
Share-based compensation	**835**	1,783
Strategic Review costs	**66**	6,135
Realized loss included in cost of good sold	**(1,281)**	(4,354)
Loss from discontinued operations	**162**	2,721
Loss attributable to non-controlling interest	**15**	26
Base EBITDA	**$ 53,794**	$ 74,632
Gross margin	**$ (2,442,421)**	$ 287,509
Realized gain (loss) of derivative instruments and other	**2,152,866**	(107,089)
Weather Event	**418,369**	–
Sales tax settlement	**1,885**	–
Base gross margin	**130,699**	180,420
Add (subtract):		
Administrative expenses	**(29,884)**	(46,051)
Selling commission expenses	**(28,295)**	(36,983)
Selling non-commission and marketing expenses	**(14,086)**	(16,584)
Bad debt expense	**(7,301)**	(13,197)
Strategic Review costs	**66**	6,135
Amortization included in cost of goods sold	**44**	(2,060)
Loss attributable to non-controlling interest	**15**	26
Other income	**2,536**	2,926
Base EBITDA	**$ 53,794**	$ 74,632

Analysis of the fourth quarter

Base EBITDA, which excludes the financial impact to the Company of the Weather Event, decreased by 28% to $53.8 million for the three months ended March 31, 2021 compared to $74.6 million for the three months ended March 31, 2020. The decline in Base EBITDA was driven by lower Base gross margin partially offset by a reduction in bad debt expense, as well as lower administrative and selling expenses during the three months ended March 31, 2021.

The decline in the Company's customer base is primarily a result of a shift in focus to the Company's strategy to onboard high quality customers, lower sales due to COVID-19 pandemic, a reduction in the Company's customer base due to regulatory restrictions in New York, California and Ontario, competitive pressures on pricing in the U.S. market, and exiting the California electricity market.

Base EBITDA, excludes the Weather Event which led to a one-time negative net impact of $418.4 million for quarter ended March 31, 2021, which does not include any recovery under HB 4492, primarily related to the higher energy prices in excess to supply excess consumption and ancillary services costs allocated from ERCOT and a $24.1 million accrued liability related to potential ERCOT default uplift charges for other counterparties defaulting to ERCOT.

Base gross margin, which excludes the financial impact to the Company of the Weather Event, decreased by 28% to $130.7 million for the three months ended March 31, 2021 compared to $180.4 million for the three months ended March 31, 2020. The decrease in Base gross margin was primarily driven by a decline in the customer base.

Administrative expenses decreased by 35% to $29.9 million for the three months ended March 31, 2021 compared to $46.1 million for the three months ended March 31, 2020. Excluding expenses related to the Strategic Review, Administrative expenses decreased by 25% to $29.8 million for the three months ended March 31, 2021 compared to $39.9 million for the three months ended March 31, 2020 due to lower employee related costs and lower professional fees.

Selling commission expenses decreased by 23% to $28.3 million for the three months ended March 31, 2021 compared to $37.0 million for the three months ended March 31, 2020. The decrease was driven by lower commission expenses from lower sales from direct in-person channels driven by impacts by the COVID-19 pandemic and lower commercial sales driven by competitive price pressures and the COVID-19 pandemic.

Selling non-commission and marketing expenses decreased by 15% to $14.1 million for the three months ended March 31, 2021 compared to $16.6 million for the three months ended March 31, 2020, as a result of cost reductions from the shut down of the internal door-to-door sales channel and continued focus on cost containment, partially offset by increased investment in digital marketing.

Bad debt expense decreased by 45% to $7.3 million for the three months ended March 31, 2021 compared to $13.2 million for the three months ended March 31, 2020. The significant decrease in bad debt was a result of enhanced operating controls and processes implemented during fiscal 2020 and release of previous credit reserves as the Company continues to see consistent payment trends and minimal impact from the COVID-19 pandemic.

Summary of quarterly results for continuing operations

(thousands of dollars, except per share amounts)

	Q4 Fiscal 2021	Q3 Fiscal 2021	Q2 Fiscal 2021	Q1 Fiscal 2021
Sales[1]	**$ 689,064**	$ 627,015	$ 737,994	$ 685,964
Cost of goods sold[1]	**3,131,485**	446,571	517,283	416,827
Gross margin	**(2,442,421)**	180,445	220,711	269,137
Realized gain (loss) of derivative instruments and other	**2,152,866**	(56,778)	(82,438)	(132,858)
Weather Event	**418,369**	–	–	–
Sales Tax settlement	**1,885**	7,941	–	–
Base gross margin	**130,699**	131,608	138,273	136,279
Administrative expenses	**29,884**	30,408	43,957	38,142
Selling commission expenses	**28,295**	30,485	34,895	35,979
Selling non-commission and marketing expenses	**14,086**	11,784	13,017	10,981
Bad debt expense	**7,301**	3,358	11,662	11,940
Restructuring costs	–	–	7,118	–
Finance costs	**17,346**	17,677	29,744	21,853
Profit (loss) for the period from continuing operations	**(382,371)**	(52,327)	(50,156)	82,098
Profit (loss) for the period from discontinued operations, net	**(162)**	4,788	(1,210)	(2,948)
Profit (loss) for the period	**(382,533)**	(47,539)	(51,366)	79,150
Base EBITDA from continuing operations	**53,794**	55,785	32,774	40,479

	Q4 Fiscal 2020	Q3 Fiscal 2020	Q2 Fiscal 2020	Q1 Fiscal 2020
Sales[1]	$ 776,921	$ 750,615	$ 860,395	$ 765,722
Cost of goods sold[1]	489,411	538,646	935,743	553,498
Gross margin	287,510	211,969	(75,348)	212,224
Realized gain (loss) of derivative instruments and other	(107,089)	(69,485)	230,732	(79,932)
Base gross margin	180,421	142,484	155,384	132,292
Administrative expenses	46,051	39,616	41,466	40,803
Selling commission expenses	36,983	36,698	33,499	35,502
Selling non-commission and marketing expenses	16,584	14,572	20,780	26,202
Bad debt expense	13,197	19,996	29,570	17,288
Finance costs	26,770	28,178	28,451	23,546
Profit (loss) for the period from continuing operations	(138,210)	20,601	89,349	(269,971)
Profit (loss) for the period from discontinued operations, net	(2,721)	6,293	(9,809)	(5,189)
Profit (loss) for the period	(140,931)	26,894	79,540	(275,160)
Base EBITDA from continuing operations	74,632	37,950	49,069	24,184

1 Sales amounts have been corrected to reflect sales on a gross basis for TDSP whereby TDSP charges to the customer and payments to the service provider are presented in sales and cost of goods sold, respectively. There is no net impact to gross margin or base gross margin. Please refer to note 5 in the Consolidated Financial Statements.

Just Energy's results reflect seasonality, as electricity consumption is slightly greater in the first and second quarters (summer quarters) and gas consumption is significantly greater during the third and fourth quarters (winter quarters). Electricity and gas customers (RCEs) currently represent 76% and 24% of the commodity customer base, respectively. Since consumption for each commodity is influenced by weather, Just Energy believes the annual quarter over quarter comparisons are more relevant than sequential quarter comparisons.

Segmented Base EBITDA[1]

For the year ended March 31.
(thousands of dollars)

Fiscal 2021

	Mass Markets	Commercial	Corporate and shared services	Consolidated
Sales	**$ 1,530,617**	**$ 1,209,420**	**$ –**	**$ 2,740,037**
Cost of sales	**(2,915,079)**	**(1,597,087)**	**–**	**(4,512,166)**
Gross margin	**(1,384,462)**	**(387,667)**	**–**	**(1,772,129)**
Weather Event	**344,805**	**73,564**	**–**	**418,369**
Sales tax settlement	**9,826**	**–**	**–**	**9,826**
Realized gain of derivative instruments and other	**1,441,171**	**439,621**	**–**	**1,880,792**
Base gross margin	**411,340**	**125,518**	**–**	**536,858**
Add (subtract):				
Administrative expenses	**(35,403)**	**(16,673)**	**(90,315)**	**(142,391)**
Selling commission expenses	**(64,282)**	**(65,371)**	**–**	**(129,653)**
Selling non-commission and marketing expenses	**(43,650)**	**(6,218)**	**–**	**(49,868)**
Bad debt expense	**(23,509)**	**(10,751)**	**–**	**(34,260)**
Amortization included in cost of sales	**206**	**–**	**–**	**206**
Strategic Review costs	**–**	**–**	**3,750**	**3,750**
Other income (expense), net	**(1,951)**	**–**	**–**	**(1,951)**
Loss attributable to non-controlling interest	**140**	–	**–**	**140**
Base EBITDA from continuing operations	**$ 242,891**	**$ 26,505**	**$ (86,565)**	**$ 182,831**

Fiscal 2020

	Mass Markets	Commercial	Corporate and shared services	Consolidated
Sales[1]	$ 1,757,245	$ 1,396,407	$ –	$ 3,153,652
Cost of sales[1]	(1,285,122)	(1,232,177)	–	(2,517,299)
Gross margin	472,123	164,230	–	636,353
Realized loss of derivative instruments and other	(5,010)	(20,763)		(25,773)
Base gross margin	467,113	143,467	–	610,580
Add (subtract):				
Administrative expenses	(37,780)	(20,262)	(109,894)	(167,936)
Selling commission expenses	(72,546)	(70,136)	–	(142,682)
Selling non-commission and marketing expenses	(69,002)	(9,136)	–	(78,138)
Bad debt expense	(72,365)	(7,685)	–	(80,050)
Texas residential enrolment and collections impairment	4,900	–	–	4,900
Amortization included in cost of sales	(406)	–	–	(406)
Strategic Review costs	–	–	13,926	13,926
Other income (expense), net	25,569	–	–	25,569
Loss attributable to non-controlling interest	73	–	–	73
Base EBITDA from continuing operations	$ 245,556	$ 36,248	$ (95,968)	$ 185,836

1 Sales amounts have been corrected to reflect sales on a gross basis for TDSP whereby TDSP charges to the customer and payments to the service provider are presented in sales and cost of goods sold, respectively. There is no net impact to gross margin or base gross margin. Please refer to note 5 in the Consolidated Financial Statements.
2 The segment definitions are provided on page 3.

Mass Markets segment Base EBITDA, which excludes the financial impact to the Company of the Weather Event, decreased by 1% to $242.9 million for the year ended March 31, 2021 compared to $245.6 million for the year ended March 31, 2020. The decrease was driven by lower Base gross margin primarily due to a decline in the customer base, partially offset by a current year reduction in bad debt expense and, lower selling commission and expenses.

Commercial segment Base EBITDA, which excludes the financial impact to the Company of the Weather Event, decreased by 27% to $26.5 million for the year ended March 31, 2021 compared to $36.2 million for the year ended March 31, 2020. The decrease in Commercial segment Base EBITDA is primarily driven by a decline in the customer base driven by impacts by the competitive price pressures and COVID-19 pandemic.

Corporate and shared services costs relate to management oversight of the business units, public reporting and filings, corporate governance and other shared services functions. The corporate expenses were $86.6 million for the year ended March 31, 2021, compared to $96.0 million in fiscal 2020. The decrease in corporate expenses is due to savings from the Canadian emergency wage subsidy, partially offset by higher legal expenses. The Corporate expenses exclude Strategic Review costs in both the years because the costs are non-recurring and therefore excluded from Base EBITDA.

Acquisition costs

The acquisition costs per customer for the last 12 months for Mass Market customers signed by sales agents and Commercial customers signed by brokers were as follows:

	Fiscal 2021	Fiscal 2020
Mass Markets	**$ 253/RCE**	$ 281/RCE
Commercial	**$ 39/RCE**	$ 53/RCE

The Mass Markets average acquisition cost decreased by 10% to $253/RCE for the year March 31, 2021 compared to $281/RCE reported for the year ended March 31, 2020, primarily from lower sales from direct in–person channels.

The Commercial average customer acquisition cost decreased by 27% to $39/RCE for the year ended March 31, 2021 compared to $53/RCE for the year ended March 31, 2020. The decrease is primarily driven by larger index deals signed at lower margin in the first quarter of fiscal 2021 and ongoing COVID-19 impact.

Customer summary

CUSTOMER COUNT

	As at March 31, 2021	As at March 31, 2020	% decrease
Mass Markets	**845,000**	988,000	(14)%
Commercial	**110,000**	119,000	(8)%
Total customer count	**955,000**	1,107,000	(14)%

The Mass Markets customer count decreased 14% to 845,000 compared to March 31, 2020. The decline in Mass Markets customers is due to the Company's continued focus on adding high quality customers, impacts of the COVID-19 pandemic on direct in-person sales channels and a reduction in the Company's customer base due to regulatory restrictions in New York and Ontario.

The Commercial customer count decreased 8% to 110,000 compared to March 31, 2020. The decline in commercial customers is due to competitive price pressures in the United States together with impacts related to the COVID-19 pandemic and exiting the California electricity market.

COMMODITY RCE SUMMARY

	April 1, 2020	Additions	Attrition	Failed to renew	**March 31, 2021**	% increase (decrease)
Mass Markets						
Gas	349,000	7,000	(46,000)	(27,000)	**283,000**	(19)%
Electricity	974,000	159,000	(144,000)	(85,000)	**904,000**	(7)%
Total Mass Markets RCEs	**1,323,000**	**166,000**	**(190,000)**	**(112,000)**	**1,187,000**	**(10)%**
Commercial						
Gas	397,000	52,000	(49,000)	(27,000)	**373,000**	(6)%
Electricity	1,668,000	142,000	(197,000)	(229,000)	**1,384,000**	(17)%
Total Commercial RCEs	**2,065,000**	**194,000**	**(246,000)**	**(256,000)**	**1,757,000**	**(15)%**
Total RCEs	**3,388,000**	**360,000**	**(436,000)**	**(368,000)**	**2,944,000**	**(13)%**

MASS MARKETS

Mass Markets additions RCEs decreased by 37% to 166,000 for the year ended March 31, 2021 compared to 262,000 for the year ended March 31, 2020. The decrease in customer additions are primarily driven by selling constraints posed by the COVID-19 pandemic in the retail and door-to-door channel and due to regulatory restrictions in New York and Ontario, offset by increases in digital sales channels.

Mass Markets attrition RCEs decreased 49% to 190,000 for the year ended March 31, 2021 compared to 374,000 for the year ended March 31, 2020. The improvements in attrition are a result of enhanced enrolment processes and increased focus on customer experience.

Mass Markets failed to renew RCEs decreased 3% to 112,000 for the year ended March 31, 2021 compared to 115,000 for the year ended March 31, 2020.

As at March 31, 2021, the U.S. and Canadian operations accounted for 85% and 15% of the Mass Markets RCE base, respectively.

COMMERCIAL

Commercial additions RCEs decreased by 57% to 194,000 for the year ended March 31, 2021 compared to 454,000 for the year ended March 31, 2020. The decrease is primarily due to the selling constraints posed by the COVID-19 pandemic and the competitive pressures on pricing in the U.S. market.

Commercial attrition RCEs increased 2% to 246,000 for the year ended March 31, 2021 compared to 241,000 for the year ended March 31, 2020.

Commercial failed to renew RCEs increased by 12% to 256,000 RCEs for the year ended March 31, 2021 compared to 229,000 RCE's for the year ended March 31, 2020 resulting from the competitive pressures on pricing in the U.S. markets.

As at March 31, 2021, the U.S. and Canadian operations accounted for 67% and 33% of the Commercial RCE base, respectively.

Overall, as at March 31, 2021, the U.S. and Canadian operations accounted for 74% and 26% of the RCE base, respectively, compared to 76% and 24%, respectively, as at March 31, 2020.

COMMODITY RCE ATTRITION

	Fiscal 2021	Fiscal 2020
Mass Markets	**15%**	25%
Commercial	**12%**	11%

The Mass Markets attrition rate for the year ended March 31, 2021 decreased ten percentage points to 15% reflecting the benefits of focus sales to higher quality customers and increased focus on the customer experience. The Commercial attrition rate for the trailing 12 months ended March 31, 2021 increased one percentage point to 12% reflecting a very competitive pricing market for commercial customers.

	Three months ended March 31, 2021	Three months ended March 31, 2020
Mass Markets	**4%**	5%
Commercial	**2%**	4%

The Mass Markets attrition rate for the three months ended March 31, 2021 decreased one percentage point to 4% from 5% for the three months ended March 31, 2020, reflecting the continued benefits of focus sales to higher quality customers and increased focus on the customer experience. The Commercial attrition rate for the three months ended March 31, 2021 decreased by two percentage points to 2% from 4% compared to the year ended March 31, 2020 reflecting the improvements in retaining the commercial customers by having a more focused customer experience.

COMMODITY RCE RENEWALS

	Fiscal 2021	Fiscal 2020
Mass Markets	**74%**	73%
Commercial	**51%**	56%

The Mass Markets renewal rate increased one percentage point to 74% for the year ended March 31, 2021. The increase in the Mass Markets renewal rate was driven by improved retention offerings and increased focus on the customer experience. The Commercial renewal rate decreased by five percentage points to 51% as compared to the same period of fiscal 2020. The decline in the Commercial renewal rate reflected a competitive market for Commercial renewals.

	Three months ended March 31, 2021	Three months ended March 31, 2020
Mass Markets	**74%**	71%
Commercial	**53%**	52%

The Mass Markets renewal rate for the three months ended March 31, 2021, increased to 74% from 71% for the three months ended March 31, 2020 driven by improved retention offerings and increased focus on the customer experience. The Commercial renewal rate for the three months ended March 31, 2021 increased to 53% from 52% for the three months ended March 31, 2020.

AVERAGE GROSS MARGIN PER RCE

The table below depicts the annual design margins on new and renewed contracts signed during the year for standard commodities, which does not include non-recurring non-commodity fees.

	Fiscal 2021	**Number of RCEs**	Fiscal 2020	Number of RCEs
Mass Markets added or renewed	**$ 307**	**426,995**	$ 311	525,627
Commercial added or renewed[1]	**72**	**363,479**	91	688,666

1 Annual gross margin per RCE excludes margins from Interactive Energy Group and large Commercial and Industrial customers.

For the year ended March 31, 2021, the average gross margin per RCE for the customers added or renewed by the Mass Markets segment was $307/RCE, a decrease of 1% from $311/RCE for the year ended March 31, 2020.

For the Commercial segment, the average gross margin per RCE for the customers signed during the year ended March 31, 2021 was $72/RCE, a decrease of 21% from $91/RCE reported in the prior comparable period due to a larger proportion of Canadian Commercial RCEs signed on Index products.

Liquidity and capital resources from continuing operations

SUMMARY OF CASH FLOWS

For the year ended March 31.
(thousands of dollars)

	Fiscal 2021	Fiscal 2020
Operating activities from continuing operations	**$ 46,301**	$ 41,137
Investing activities from continuing operations	**(6,937)**	(20,882)
Financing activities from continuing operations, excluding dividends	**175,060**	21,096
Effect of foreign currency translation	**(24,528)**	1,026
Increase in cash before dividends	**189,896**	42,377
Dividends (cash payments)	**—**	(26,172)
Increase in cash	**189,896**	16,205
Cash and cash equivalents – beginning of period	**26,093**	9,888
Cash and cash equivalents – end of period	**$ 215,989**	$ 26,093

OPERATING ACTIVITIES

Cash flow from operating activities was an inflow of $46.3 million for the year ended March 31, 2021 compared to an inflow of $41.1 million for the year ended March 31, 2020. The increase in the cash flow from operating activities was mainly driven by an increase in trade payables subject to compromise under the CCAA and decrease in financing costs from the September Recapitalization partially offset by payments related to the Weather Event.

INVESTING ACTIVITIES

Cash flow from investing activities was an outflow of $6.9 million for the year ended March 31, 2021 compared to an outflow of $20.9 million for the year ended March 31, 2020. Investing activities included purchases of property and equipment and intangible assets totaling $11.5 million partially offset by $4.6 million of proceeds from the disposition of subsidiaries.

FINANCING ACTIVITIES, EXCLUDING DIVIDENDS

Cash flow from financing activities, excluding dividends was an inflow of $175.1 million the year ended March 31, 2021 compared to an inflow of $21.1 million for the year ended March 31, 2020. The inflow during the year ended March 31, 2021 is primarily a result of the issuance of approximately $101.0 million of common shares as part of the September Recapitalization and the $126.7 million borrowing under the DIP Facility, partially off set by a $21.5 million payment on the share swap settlement, repayment of debt of $14.3 million and debt issuance costs of $12.9 million.

LIQUIDITY

The Company has $247.5 million of total liquidity available as at March 31, 2021 consisting of $216.0 million of cash and $31.5 million available under the DIP Facility which was drawn on April 6, 2021.

Free cash flow and unlevered free cash flow[1]

For the year ended March 31.
(thousands of dollars)

	Fiscal 2021	Fiscal 2020
Cash flows from operating activities	**$ 46,301**	$ 41,137
Subtract: Maintenance capital expenditures	**(11,555)**	(16,541)
Free cash flow	**34,746**	24,596
Finance costs, cash portion	**56,076**	78,749
Unlevered free cash flow	**$ 90,822**	$ 103,345

1 See "Non-IFRS financial measures" on page 5.

Unlevered free cash flow decreased by 12% to an inflow of $90.8 million for the year ended March 31, 2021 compared to an inflow of $103.3 million for the year ended March 31, 2020. The decrease is related to higher payments associated with the Weather Event, partially offset by the stay of trade and other payables subject to compromise under the CCAA.

Selected Balance sheet data as at March 31, 2021, compared to March 31, 2020

The following table shows selected data from the Consolidated Financial Statements as at the following periods:

	As at March 31, 2021	As at March 31, 2020
Assets:		
Cash	**$ 215,989**	$ 26,093
Trade and other receivables, net	**340,201**	403,907
Total fair value of derivative financial assets	**35,626**	65,145
Other current assets	**163,405**	203,270
Total assets	**1,091,806**	1,215,833
Liabilities:		
Trade and other payables	**$ 921,595**	$ 685,665
Total fair value of derivative financial liabilities	**75,146**	189,706
Total long-term debt	**655,740**	782,003
Total liabilities	**$ 1,686,628**	$ 1,711,121

Total cash and cash equivalents increased to $216.0 million as at March 31, 2021 from $26.1 million as at March 31, 2020. The increase in cash is primarily attributable to cash flows from financing operations.

Trade and other receivables, net decreased to $340.2 million as at March 31, 2021 from $403.9 million as at March 31, 2020. The changes are primarily due to the lower customer base.

Other current assets decreased to $163.4 million as at March 31, 2021 from $203.3 million as at March 31, 2020 due to the reduction in customer acquisition costs and green certificates.

Trade and other payables increased to $921.6 million as at March 31, 2021 from $685.7 million as at March 31, 2020 driven by the increase in commodity and supplier payables subject to compromise from the Weather Event.

Fair value of derivative financial assets and fair value of financial liabilities relate entirely to the financial derivatives. The mark to market gains and losses can result in significant changes in profit and, accordingly, shareholders' deficit from year to year due to commodity price volatility. As Just Energy has purchased this supply to cover future customer usage at fixed prices, management believes that these unrealized changes do not impact the long-term financial performance of Just Energy.

Total long-term debt was $655.7 million as at March 31, 2021, down from $782.0 million as at March 31, 2020. The reduction in total debt is a result of the completion of the September Recapitalization offset by the increase by the borrowings under the DIP Facility. Regarding the long-term debt, $530.7 million of the long-term debt is subject to compromise under the CCAA proceedings.

Embedded gross margin[1]

Management's estimate of EGM is as follows:
(millions of dollars)

	As at March 31, 2021	As at March 31, 2020	% decrease
Mass Markets embedded gross margin	**$ 1,026.2**	$ 1,380.0	(26)%
Commercial embedded gross margin	**366.2**	427.8	(14)%
Total embedded gross margin	**$ 1,392.4**	$ 1,807.8	(23)%

1 See "Non-IFRS financial measures" on page 5.

Management's estimate of the Mass Markets EGM decreased by 26% to $1,026.2 million as at March 31, 2021 compared to $1,380.0 million as at March 31, 2020. The decline resulted from the decline in the customer base and the unfavorable foreign exchange.

Management's estimate of the Commercial EGM decreased by 14% to $366.2 million as at March 31, 2021 compared to $427.8 as at March 31, 2020. The decline resulted from the decline in the customer base and the unfavorable foreign exchange.

PROVISION FOR INCOME TAX/DEFERRED TAXES

For the years ended March 31.
(thousands of dollars)

		Fiscal 2021		Fiscal 2020
Current income tax expense	**$**	**2,688**	$	7,047
Deferred income tax (recovery) expense		**(380)**		346
Provision for income tax	**$**	**2,308**	$	7,393

Current income tax expense was $2.7 million for the year ended March 31, 2021 compared to $7.0 million for the year ended March 31, 2020. Just Energy continues to have current tax expense from profitability in taxable jurisdictions.

Deferred tax recovery was $(0.4) million for the year ended March 31, 2021 compared to an expense of $0.3 million for the year ended March 31, 2020.

Deferred income tax assets of $3.7 million and $3.6 million have been recorded on the Consolidated Financial Statements as at March 31, 2021 and March 31, 2020, respectively. When evaluating the future tax position, Just Energy assesses its ability to use deferred tax assets based on expected taxable income in future periods and other taxable temporary differences.

Deferred income tax liabilities of $2.8 million and $2.9 million have been recorded on the Consolidated Financial Statements as at March 31, 2021 and March 31, 2020, respectively. The decrease in the deferred tax liabilities is due to decreases in taxable differences on other assets.

On a net basis, as at March 31, 2021, $1.0 million of deferred tax assets were recognized.

Contractual obligations

In the normal course of business, Just Energy is obligated to make future payments for contracts and other commitments that are known and non-cancellable.

PAYMENTS DUE BY PERIOD

(thousands of dollars)

		Less than 1 year		1 – 3 years		4 – 5 years		After 5 years		Total
Trade and other payables	$	377,962	$	–	$	–	$	–	$	377,962
Trade and other payables subject to compromise		531,627		–		–		–		531,627
Long-term debt		123,480		1,560		–		–		125,040
Long-term debt subject to compromise		530,700		–		–		–		530,700
Gas, electricity and non-commodity contracts		1,339,637		960,907		183,269		48,057		2,531,870
	$	2,903,406	$	962,467	$	183,269	$	48,057	$	4,097,199

Under the terms of the Court Orders (defined below in Risk Factors), any actions against Just Energy to enforce or otherwise effect payment from Just Energy of pre-petition obligations were stayed during the CCAA proceedings.

OTHER OBLIGATIONS

In the opinion of management, Just Energy has no material pending actions, claims or proceedings that have not been included in the Consolidated Financial Statements. In the normal course of business, Just Energy could be subject to certain contingent obligations that become payable only if certain events were to occur. The inherent uncertainty surrounding the timing and financial impact of any events prevents any meaningful measurement, which is necessary to assess any material impact on future liquidity. Such obligations include potential judgments, settlements, fines and other penalties resulting from actions, claims or proceedings.

Transactions with related parties

Parties are considered to be related if one party has the ability to control the other party or exercise influence over the other party in making financial or operating decisions. The definition includes subsidiaries and other persons.

Pacific Investment Management Company ("PIMCO") through certain affiliates became a 28.9% shareholder of the Company as part of the September Recapitalization. On March 9, 2021, certain PIMCO affiliates entered into the DIP facility with the Company as described in note 15(a) of the Consolidated Financial Statements.

Off balance sheet items

The Company has issued letters of credit in accordance with its credit facility totaling $99.4 million as at March 31, 2021 to various counterparties, primarily utilities in the markets where it operates, as well as suppliers.

Pursuant to separate arrangements with various companies, Just Energy has issued surety bonds to various counterparties including States, regulatory bodies, utilities and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required in order to operate in certain states or markets. Total surety bonds issued as at March 31, 2021 were $46.3 million. As at March 31, 2021, $46.1 million were backed by either cash collateral or letters of credit which are included below.

Just Energy common and preferred shares

As at March 31, 2021, there were 48,078,637 Common Shares and no preferred shares of Just Energy outstanding.

Under the Company's 2020 Equity Compensation Plan (the "Equity Plan") approved as part of the September Recapitalization, Just Energy is allowed to issue Options, Restricted Share Units ("RSUs"), Deferred Share Units ("DSUs") and Performance Share Units ("PSUs") for the employees and directors of the Company. Under the Equity Plan, 650,000 Options were issued to management on October 12, 2020 with an exercise price of $8.46. The exercise price was based on the higher of the closing price on October 9, 2020 or the 5-day volume weighted trading price as of October 9, 2020. The Company also issued an aggregate of 186,929 DSUs to the directors in lieu of materially all of their annual cash retainers based on the 5-day volume weighted trading price as of October 9, 2020 of $8.37. On February 3, 2021, 4,054 additional DSU's were issued to the existing directors in lieu of the Directors' Shares Grants ("DSGs") they already held at the September Recapitalization. In addition, the Company issued 23,513 RSUs to one employee based on the 5-day volume weighted trading price as of October 9, 2020 of $8.37. All 23,513 RSU's vested and 16,541 shares were issued and the remaining 6,972 RSU's were canceled for tax withholding.

Critical accounting estimates and judgments

The Consolidated Financial Statements of Just Energy have been prepared in accordance with IFRS. Certain accounting policies require management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, cost of goods sold, selling and marketing, and administrative expenses. Estimates are based on historical experience, current information and various other assumptions that are believed to be reasonable under the circumstances. The emergence of new information and changed circumstances may result in actual results or changes to estimated amounts that differ materially from current estimates.

The following assessment of critical accounting estimates is not meant to be exhaustive. Just Energy might realize different results from the application of new accounting standards promulgated, from time to time, by various rule-making bodies.

COVID-19 IMPACT

As a result of COVID-19, we have reviewed the estimates, judgments and assumptions used in the preparation of the Consolidated Financial Statements and determined that no significant revisions to such estimates, judgments or assumptions were required for the year ended March 31, 2021.

FAIR VALUE OF FINANCIAL INSTRUMENTS AND RISK MANAGEMENT

Just Energy has entered into a variety of derivative financial instruments as part of the business of purchasing and selling gas, electricity and JustGreen supply and as part of the risk management practice. In addition, Just Energy uses derivative financial instruments to manage foreign exchange, interest rate and other risks.

Just Energy enters into contracts with customers to provide electricity and gas at fixed prices and provide comfort to certain customers that a specified amount of energy will be derived from green generation or carbon destruction. These customer contracts expose Just Energy to changes in market prices to supply these commodities. To reduce its exposure to commodity market price changes, Just Energy uses derivative financial and physical contracts to secure fixed-price commodity supply to cover its estimated fixed-price delivery or green commitment.

Just Energy's objective is to minimize commodity risk, other than consumption changes, usually attributable to weather. Accordingly, it is Just Energy's policy to hedge the estimated fixed-price requirements of its customers with offsetting hedges of natural gas and electricity at fixed prices for terms equal to those of the customer contracts. The cash flow from these supply contracts is expected to be effective in offsetting Just Energy's price exposure and serves to fix acquisition costs of gas and electricity to be delivered under the fixed-price or price-protected customer contracts; however, hedge accounting under IFRS 9, *Financial Instruments* ("IFRS 9") is not applied. Just Energy's policy is not to use derivative instruments for speculative purposes.

Just Energy's U.S. operations introduce foreign exchange-related risks. Just Energy enters into foreign exchange forwards in order to hedge its exposure to fluctuations in cross border cash flows; however, hedge accounting under IFRS 9 is not applied.

The Consolidated Financial Statements are in compliance with International Accounting Standard ("IAS") 32, *Financial Instruments: Presentation*; IFRS 9 and IFRS 7, Financial Instruments: Disclosure. Due to commodity volatility and to the size of Just Energy, the swings in mark to market on these positions will increase the volatility in Just Energy's earnings.

The Company's financial instruments are valued based on the following fair value ("FV") hierarchy:

Level 1 – Unadjusted quoted prices in active markets for identical assets or liabilities;

Level 2 – Inputs other than quoted prices that are observable for the asset or liability either directly or indirectly; and

Level 3 – Inputs that are not based on observable market data.

The main cause of changes in the fair value of derivative instruments is changes in the forward curve prices used for the fair value calculations. For a sensitivity analysis of these forward curves, see Note 12 of the Consolidated Financial Statements for the year ended March 31, 2021. Other inputs, including volatility and correlations, are driven off historical settlements.

RECEIVABLES AND LIFETIME EXPECTED CREDIT LOSSES

The lifetime expected credit loss reflects Just Energy's best estimate of losses on the trade accounts receivable and unbilled revenue balances. Just Energy determines the lifetime expected credit loss by using historical loss rates and forward-looking factors if applicable. Just Energy is exposed to customer credit risk on its continuing operations in Alberta, Texas, Illinois (gas), California (gas) and Ohio (electricity). Credit review processes have been implemented to perform credit evaluations of customers and manage customer default. In addition, the Company may from time to time change the criteria that it uses to determine the creditworthiness of its customers and such changes could result in decreased creditworthiness of its customers and/or result in increased customer defaults. If a significant number of customers were to default on their payments, including as a result of any changes to the Company's credit criteria, it could have a material adverse effect on the operations and cash flows of Just Energy. Management factors default from credit risk in its margin expectations for all of the above markets. Reference the "Customer credit risk" section within Note 7 of the Consolidated Financial Statements for further details.

Sales are recorded when energy is delivered to customers. The determination of energy sales to individual customers is based on systematic readings of customer meters generally on a monthly basis. At the end of each month, amounts of energy delivered to customers since the date of the last meter reading are estimated, and corresponding unbilled revenue is recorded. The measurement of unbilled revenue is affected by the following factors: daily customer usage, losses of energy during delivery to customers and applicable customer rates.

Increases in volumes delivered to the utilities' customers and favourable rate mix due to changes in usage patterns in the period could be significant to the calculation of unbilled revenue. Changes in the timing of meter reading schedules and the number and type of customers scheduled for each meter reading date would also have an effect on the measurement of unbilled revenue; however, total operating revenues would remain materially unchanged.

The measurement of the expected credit loss allowance for trade accounts receivable requires the use of management judgment in estimation techniques, building models, selecting key inputs and making significant assumptions about future economic conditions and credit behaviour of the customers, including the likelihood of customers defaulting and the resulting losses. The Company's current significant estimates include the historical collection rates as a percentage of sales and the use of the Company's historical rates of recovery across aging buckets. Both of these inputs are sensitive to the number of months or years of history included in the analysis, which is a key input and judgment made by management.

IMPAIRMENT OF NON-FINANCIAL ASSETS

Just Energy assesses whether there is an indication that an asset may be impaired at each reporting date. If such an indication exists or when annual testing for an asset is required, Just Energy estimates the asset's recoverable amount. The recoverable amounts of goodwill and intangible assets with an indefinite useful life are tested at least annually. The recoverable amount is the higher of an asset's or cash generating units ("CGU") fair value less costs to sell and its value in use. Value in use is determined by discounting estimated future pre-tax cash flows using a pre-tax discount rate that reflects the current market assessment of the time value of money and the specific risks of the asset. The recoverable amount of assets that do not generate independent cash flows is determined based on the CGU to which the asset belongs.

The recoverable amount of each of the operating segments has been determined based on a discounted cash flow model.

DEFERRED TAXES

In accordance with IFRS, Just Energy uses the liability method of accounting for income taxes. Under the liability method, deferred income tax assets and liabilities are recognized on the differences between the carrying amounts of assets and liabilities and their respective income tax basis.

The tax effects of these differences are reflected in the Consolidated Statements of Financial Position as deferred income tax assets and liabilities. An assessment must be made to determine the likelihood that future taxable income will be sufficient to permit the recovery of deferred income tax assets. To the extent that such recovery is not probable, deferred income tax assets must be reduced. The reduction of the deferred income tax asset can be reversed if the estimated future taxable income improves. No assurances can be given as to whether any reversal will occur or as to the amount or timing of any such reversal. Management must exercise judgment in its assessment of continually changing tax interpretations, regulations and legislation to ensure deferred income tax assets and liabilities are complete and fairly presented. Assessments and applications differing from estimates could materially impact the amount recognized for deferred income tax assets and liabilities.

Risk factors

Described below are the principal risks and uncertainties that Just Energy can foresee. It is not an exhaustive list, as some future risks may be yet unknown and other risks, currently regarded as immaterial, could turn out to be material. If any of the identified risks were to materialize, it could have a material adverse effect on Just Energy's business, operations, financial condition, operating results, cash flow and liquidity.

On March 9, 2021, the Ontario Court issued an order (the "Initial Order") providing the Company protection under the CCAA. On the same date, the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Bankruptcy Court") issued an order under Chapter 15 of the United States Bankruptcy Code (the "Chapter 15 Order" and together with the Initial Order and subsequent orders issued pursuant to the CCAA proceedings, the "Court Orders") recognizing the protection granted via the Initial Order so that the CCAA protections also apply to the Company's assets and creditors located in the United States. As a result of the foregoing, many of the risks and uncertainties listed below must be read taking this particular context into consideration. While the Company endeavors to emerge from the CCAA process with an arrangement satisfactory to its stakeholders, there is no guarantee that any such outcome will occur. Further information regarding the CCAA proceedings is available at http://cfcanada.fticonsulting.com/justenergy. Information regarding the CCAA proceedings can also be obtained by calling 416-649-8127 or 844-669- 6340 or by email at justenergy@fticonsulting.com.

Risks Related to COVID-19

The COVID-19 pandemic has had and could continue to have a material adverse impact on the Company's business, financial condition, cash flow and operating results.

COVID-19 has had and could continue to have a material adverse impact on the Company's business, including its financial condition, cash flow and operating results. COVID-19 was first reported in December 2019 and has since spread to over 200 countries and territories. In March 2020, the World Health Organization declared COVID-19 a pandemic and recommended containment and mitigation measures worldwide. The resulting emergency measures enacted by governments in Canada, the United States and around the world, caused material disruption to many businesses and the economies in Canada and the United States. As the pandemic and responses to it continue, the Company may experience further disruptions to commodities markets, supply chains and the health, availability and efficiency of the Company's workforce, which could adversely affect its ability to conduct its business and operations and limit the Company's ability to execute its business plan. Both the outbreak of the disease and measures taken to slow its spread have created significant uncertainty and economic volatility and disruption, which have impacted and may continue to impact the Company's business, financial condition, cash flow and operating results.

Mandatory civilian lockdowns or emergency orders, including with respect to COVID-19, may have a material adverse impact on the Company's business, financial condition, cash flow and liquidity.

Just Energy's sales channels may require face-to-face interaction with customers, sales brokers or agents. These sales channels may be impacted during mandatory civilian lockdown or emergency orders passed by regulatory bodies, including those implemented as a result of COVID-19. In addition, the emergency orders may also result in temporary closures of commercial customers' sites. This may result in an unplanned interruption in Just Energy's business operations.

In addition, should the lockdowns as a result of the COVID-19 pandemic be reinstated or continue longer than anticipated, the resulting market-wide economic impact may have a significant financial impact on Just Energy and trigger other material risks such as customer credit risks, supplier failures, liquidity risks and market-wide impact on the retail energy industry as well as capital markets. The occurrence of any of the foregoing may have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

Public health crises, such as COVID-19, may have a material adverse impact on the Company's operations.

Just Energy's business, operations, financial condition and operating results could be materially adversely affected by the outbreak of epidemics, pandemics or other health crises, such as the outbreak of the COVID-19. Such public health crises can result in operational and supply chain delays and disruptions, global stock market and financial market volatility, declining trade and market sentiment, reduced movement of people and labor shortages, and travel and shipping disruption and shutdowns, including as a result of government regulation and prevention measures, or a fear of any of the foregoing, all of which could affect commodity prices, interest rates, credit ratings, credit risk and inflation.

Just Energy may experience business and operational interruptions relating to COVID-19 and other such events outside of the Company's control, which could have a material adverse impact on the business, financial condition, operating results and the market for the securities.

In addition, Just Energy has certain back-office operations conducted by its affiliate located in India. The COVID-19 pandemic in India and resulting government measures have impacted Just Energy's business and operations and may have a material adverse impact on the Company's business if such operations are unable to run at full capacity.

Risks Related to the Company's Business

The Company's business is subject to substantial energy regulation and may be adversely affected by legislative or regulatory changes, as well as liability under, or any future inability to comply with, existing or future energy regulations or requirements.

Just Energy's business is subject to extensive Canadian and U.S. federal, state and local laws and foreign and provincial laws. Compliance with, or changes to, the requirements under these legal and regulatory regimes may cause the Company to incur

significant additional costs, reduce the Company's ability to hedge exposure or to sell retail power or natural gas within certain states and provinces or to certain classes of retail customers, or restrict the Company's marketing practices, its ability to pass through costs to retail customers, or its ability to compete on favorable terms with competitors, including the incumbent utility. Retail energy competition is regulated on a state-by-state or at the province-by-province level and is highly dependent on state and provincial laws, regulations and policies, which could change at any moment. Failure to comply with such requirements could result in the loss of license, exit from the market, shutdown, the imposition of liens, fines, and/or civil or criminal liability.

The regulatory environment has undergone significant changes in the last several years due to state, provincial and federal policies affecting wholesale and retail competition and the creation of incentives for the addition of large amounts of new renewable generation. For example, changes to, or development of, legislation that requires the use of clean renewable and alternate fuel sources or mandate the implementation of energy conservation programs that require the implementation of new technologies, could increase the Company's cost to serve and/or impact the Company's financial condition. Additionally, in some retail energy markets, state legislators, government agencies and other interested parties have made proposals to change the use of market-based pricing, re-regulate areas of these markets that have previously been competitive, or permit electricity delivery companies to construct or acquire generating facilities. Other proposals to re-regulate the retail energy industry may be made, and legislative or other actions affecting electricity and natural gas deregulation or restructuring process may be delayed, discontinued or reversed in states in which we currently operate or may in the future operate. If such changes were to be enacted by a regulatory body, we may lose customers, incur higher costs and/or find it more difficult to acquire new customers. These changes are ongoing, and we cannot predict the future design of the retail markets or the ultimate effect that the changing regulatory environment will have on our business.

The Company's retail operations are subject to significant competition from other retail energy providers ("REPs") and changes in customer behavior or preferences, which could result in a loss of existing customers and the inability to attract new customers.

Just Energy may experience an increase in attrition rates and lower acceptance rates on renewal requests due to commodity price volatility, increased competition or change in customer behavior. There can be no assurance that the historical rates of annual attrition will not increase substantially in the future or that Just Energy will be able to renew its existing energy contracts at the expiry of their terms. Any such increase in attrition or failure to renew could have a material adverse effect on Just Energy's business, financial condition, operating results, cash flow, liquidity and prospects.

Just Energy has customer credit risk in various markets where bills are sent directly to customers for energy consumption from Just Energy, including in Texas and Alberta. In addition, if the Company changes the criteria for assessing the creditworthiness of its customers, any such change could result in increased customer credit risk for Just Energy. If a significant number of direct bill customers were to default on their payments, including as a result of any changes to the Company's criteria for assessing customer creditworthiness or the impact of COVID-19, it could have a material adverse effect on the financial condition, operating results, cash flow and liquidity of Just Energy.

For other customers, the LDCs provide collection services and assume the risk of any bad debts owing from Just Energy's customers for a fee. There is no assurance that the LDCs that provide these services will continue to do so in the future or that current rates charged by LDCs will remain at the same level, which would mean that Just Energy may have to accept additional customer credit risk.

The Company is exposed to the risk of fraud, misconduct and other deceptive practices that could be committed by our customers, employees or other third parties engaged by us, including but not limited to fraudulent customer enrolments and invalid brokerage relationships. It is not always possible to deter fraud, misconduct or other deceptive practices and the Company's systems that are in place to prevent and detect such activity may not be effective in all circumstances. Instances of fraud, misconduct or other deceptive practices could lead to, among other things, increased bad debts and/or payment of improper commissions by the Company, and generally could harm Just Energy's reputation. Any fraud, misconduct or other deceptive practices that are perpetrated against the Company could have a material adverse effect on the financial condition, operating results, cash flow and liquidity of Just Energy.

A number of companies and incumbent utility subsidiaries compete with Just Energy in the residential, commercial and small industrial market. It is possible that new entrants may enter the market as marketers and compete directly for the customer base that Just Energy targets, slowing or reducing Just Energy's market share. If the LDCs are permitted by changes in the current regulatory framework to sell natural gas or electricity at prices other than at cost, their existing customer bases could provide them with a significant competitive advantage. This could limit the number of customers available for marketers, including Just Energy, and impact Just Energy's growth and retention.

Just Energy's residential customers are generally acquired through the use of digital marketing, retail stores, inbound telemarketing and door-to-door sales. Commercial customers are primarily solicited through commercial brokers and independent sales agents. Just Energy's ability to increase revenues in the future will depend significantly on the success of these marketing techniques, as well as its ability to expand into new sales channels to acquire customers. There is no assurance that competitive conditions will allow this sales channel strategy to continue or whether new sales channels will be successful in signing up new customers. In addition, a number of Just Energy's sales channels were closed or otherwise limited in operations as a result of government initiatives mandated due to COVID-19. Further, if Just Energy's services are not attractive to, or do not generate sufficient revenue for commercial brokers, retail stores and sales partners, or if Just Energy's sales channels continue to be adversely impacted by COVID-19 or the

CCAA proceedings, Just Energy may lose these existing relationships, which would have a material adverse effect on the business, revenues, financial condition and operating results of Just Energy.

Just Energy's profitability and growth depends upon its customers' broad acceptance of energy retailers and their products. There is no assurance that customers will widely accept Just Energy or its retail energy and value-added products. The acceptance of Just Energy's products may be adversely affected by Just Energy's ability to offer a competitive value proposition, and customer concerns relating to product reliability and general resistance to change. Unfavorable publicity involving customer experiences with other energy retailers could also adversely affect Just Energy's acceptance. Lastly, market acceptance could be affected by regulatory and legal developments. Failure to achieve deep market penetration may have material adverse effects on Just Energy's business, financial condition and operating results.

The operation of the Company's businesses is subject to cyber-based security and integrity risk. Attacks on the Company's infrastructure that breach cyber/data security measures could expose the Company to significant liabilities, reputational damage, regulatory action, and disrupt business operations, which could have a material adverse effect on the Company's business, operations, financial condition and operating results.

Just Energy's business requires retaining important customer information that is considered private, such as name, address, banking and payment information, drivers' licenses, and Social Security Numbers. Although Just Energy protects this information with restricted access and enters into cyber risk insurance policies, there could be a material adverse impact to the Company's reputation and customer relations should such private information be compromised due to a cyber-attack on Just Energy's information technology systems.

Just Energy's vendors, suppliers and market operators rely on information technology systems to deliver services to Just Energy. These systems may be prone to cyber-attacks, which could result in market disruption and impact Just Energy's business, operations, financial condition, operating results and cash flow.

Just Energy is also subject to federal, state, provincial and foreign laws regarding privacy and protection of data. Changes to such data protection laws may impose more stringent requirements for compliance and impose significant penalties for non-compliance. For example, on January 1, 2020, the California Consumer Privacy Act broadly expanded the rights of California consumers and requires companies that are subject to such legislation to be significantly more transparent about how they collect, use and disclose personal information. Any failure by Just Energy to comply with federal, state, provincial and foreign laws regarding privacy and protection of data could lead to significant fines and penalties imposed by regulators, as well as claims by customers. There can be no assurance that the limitations of liability in Just Energy's contracts would be enforceable or adequate or would otherwise protect Just Energy from any such liabilities or damages with respect to any particular claim. The successful assertion of one or more large claims against Just Energy that exceeds its available insurance coverage could have a material adverse effect on Just Energy's business, operations, financial condition and operating results.

The operation of Just Energy's businesses relies on information technology systems and third party service providers. Failure of information technology systems or by third-party service providers could have a material adverse impact on Just Energy's business, operations, financial condition and cash flows.

Just Energy relies on information technology ("IT") systems to store critical information, generate financial forecasts, report financial results and make applicable securities law filings. Just Energy also relies on IT systems to make payments to suppliers, pay commissions to brokers and independent contractors, enroll new customers, send monthly bills to customers and collect payments from customers. The partial or total failure of any these systems could have a material adverse effect on Just Energy's business, operations, financial condition or operating results or cause Just Energy to fail to meet its reporting obligations.

Just Energy has outsourcing arrangements to support its call center's requirements for business continuity plans and independence for regulatory purposes, billing and settlement arrangements for certain jurisdictions. Contract data input is also outsourced as is some corporate business continuity, IT development and disaster recovery functions. Should the outsourced counterparties not deliver their contracted services, Just Energy may experience service and operational gaps that could adversely impact Just Energy's business, operations, customer retention and aggregation and cash flows.

In most jurisdictions in which Just Energy operates, the LDCs currently perform billing and collection services. If the LDCs cease to perform these services, Just Energy would have to seek a third party billing provider or develop internal systems to perform these functions. This could be time consuming and expensive, which could have a material adverse effect on Just Energy's business, operations, financial condition and cash flows.

The Company's retail operations rely on the infrastructure of local utilities or independent transmission system operators to provide electricity to, and to obtain information about, the Company's customers. Any infrastructure failure could negatively impact customer satisfaction and could have a material adverse effect on the Company's business and operations.

Customers are reliant upon the LDCs to deliver their contracted commodity. LDCs are reliant upon the continuing availability of their distribution infrastructure. Any disruptions in this infrastructure as a result of a hurricane, act of terrorism, work stoppage due to the COVID-19 pandemic, cyber-attack or otherwise could result in counterparties' default and, thereafter, Just Energy enacting the force majeure clauses of its contracts. Under such severe circumstances there could be no revenue or margin for the affected areas.

Additionally, any disruptions to Just Energy's operations or sales offices may also have a significant impact on Just Energy's business, financial condition, operating results, cash flow and liquidity.

Although Just Energy has insurance policies that cover business interruption and natural calamities, in certain cases, the insurance coverage may not be sufficient to cover the potential loss in whole or in part. In particular, the extent to which COVID-19 impacts the Company's business and operations, will depend on future developments, which are highly uncertain and cannot be predicted at this time, and include the duration, severity and scope of the COVID-19 outbreak; the actions taken to contain or treat the COVID-19 outbreak and the extent of the Company's insurance coverage for any impact that the pandemic may have on the Company's business and operations.

The occurrence of any of the foregoing could have a material adverse effect on the Company's business and operations.

Risks Related to Market Volatility

The trading price of the Common Shares has in the past been, and may in the future be, subject to significant fluctuations.

Prior to March 9, 2021, Just Energy's Common Shares traded on the TSX and the NYSE. Following the CCAA filing by Just Energy, the TSX and NYSE halted trading of the Common Shares on the respective exchanges and commenced delisting proceedings. On March 16, 2021, Just Energy announced that it would voluntarily delist from the TSX and that it planned to be listed on the TSX-V. On March 22, 2021, Just Energy announced that it would not appeal the delisting of its Common Shares from the NYSE. As of March 23, 2021 and June 4, 2021, the Common Shares trade on the OTC and the TSX-V, respectively. The trading price of the Common Shares has in the past been, and may in the future be, subject to significant fluctuations. These fluctuations may be caused by events related or unrelated to Just Energy's operating performance and beyond its control. Factors such as the outcome of the CCAA proceedings, actual or anticipated fluctuations in Just Energy's operating results (including as a result of seasonality and volatility caused by mark to market accounting for commodity contracts), fluctuations in the share prices of other companies operating in business sectors comparable to those in which Just Energy operates, outcomes of litigation or regulatory proceedings or changes in estimates of future operating results by securities analysts, among other things, including due to the impact of COVID-19, may have a significant impact on the market price of the Common Shares. In addition, the stock market has experienced volatility, which often has been unrelated to the operating performance of Just Energy and other affected companies. These market fluctuations may materially and adversely affect the market price of the Common Shares, which may make it more difficult for shareholders to sell their Common Shares.

Risks Related to Commodity Prices

Just Energy's business is exposed to fluctuations in commodity prices, which could have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

Just Energy's cost to serve its retail energy customers is exposed to fluctuations in commodity prices, in particular natural gas and electricity. Although Just Energy enters into commodity derivative instruments with its suppliers to manage the commodity price risks, it is exposed to commodity price risk where estimated customer requirements do not match actual customer requirements. Furthermore, sudden and significant increase in customers' consumption can require Just Energy to purchase excess supply in the spot market. Spot market prices during periods of scarcity, such as the Weather Event, can be extremely volatile and being forced to purchase commodities in the spot market to meet customer demand can have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity. Additionally, Just Energy may also suffer losses if it is required to sell excess supply in the spot market.

Furthermore, a sudden and significant drop in the commodity market price could result in an increase in customer churn, regulatory pressure and resistance on enforcement of liquidated damages and/or enactment of provisions to reset the customer price to current market price levels. If this occurs it could have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

Commodity volume imbalance could have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

Depending on several factors, including weather, Just Energy's customers may use more or less commodity than the volume purchased by Just Energy for delivery to them. Just Energy bears the financial responsibility, is exposed to market risk and, furthermore, may also be exposed to penalties by the LDCs for balancing customer volume requirements. Although Just Energy manages volume balancing risk through balancing language in some of its retail energy contracts, enters into weather options, and derivative structures to mitigate weather and volume balancing risk, and leverages natural gas storage facilities to manage daily delivery requirements, increased costs and/or losses resulting from occurrences of volume imbalance net of Just Energy's risk management activities could have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

During periods of extreme weather, such as the Weather Event, Just Energy's obligations to serve its customers on a full requirement basis requires Just Energy to balance its commodity requirements in the spot market. Just Energy attempts to purchase additional supply through weather options and derivative structures (options, call rights, put rights etc.), which strategies are developed using empirical analysis. There can be no assurances that future periods of extreme weather will not be more severe than historical scenarios and the commodity balancing impact from extreme weather could have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

Risks Related to Interest Rates and Foreign Exchange Rates

Large fluctuations in interest rates could have a material adverse impact on the Company's financial condition, operating results, cash flow and liquidity.

Just Energy is exposed to interest rate risk associated with its debt agreements, customer delivery obligations and supplier payment terms. Just Energy may enter into derivative instruments to mitigate interest rate risk; however, large fluctuations in interest rates and increases in interest costs net of Just Energy's risk management activities could have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

The outflow and repatriation of foreign currency denominated earnings and foreign investments could have a material adverse impact on the Company's financial condition.

Just Energy is exposed to foreign exchange risk on foreign investment outflow and repatriation of foreign currency denominated income against Canadian dollar denominated expenditures, interest and common share dividends (as applicable). In addition, Just Energy is exposed to translation risk on foreign currency denominated earnings and foreign investments. Just Energy enters into foreign exchange derivative instruments to manage the cash flow risk on foreign investments and repatriation of foreign funds. Currently, Just Energy does not enter into derivative instruments to manage foreign exchange translation risk. Large fluctuations in foreign exchange rates may have a significant impact on Just Energy's financial condition. In particular, a significant rise in the relative value of the Canadian dollar to the U.S. dollar could materially reduce the Company's operating results, earnings and cash flow and could have a material adverse effect on the Company's financial condition.

Risks Related to Liquidity

Just Energy may not be able to extend, replace, refinance or repay its debt obligations, which could have a material adverse impact on Just Energy's business and financial condition.

Just Energy is at risk of not being able to settle its debt obligations, including under its DIP Facility, Credit Agreement (as defined on page 30), Term Loan, and Note Indenture . Just Energy may not be able to extend, replace or refinance its existing debt obligations on terms reasonably acceptable to the Company, or at all during or to emerge from the CCAA proceedings. If liquidity is needed, the Company may not be able to access other external financial resources sufficient to enable it to repay its debt obligations when due. Failure to pay debt obligations when due may cause the lenders under the DIP Facility, Credit Agreement, Term Loan and Note Indenture to take certain actions and Just Energy may be required to cease operations, close down, sell or otherwise dispose of all or part of the business of Just Energy's subsidiaries, any of which would have a material adverse impact on Just Energy's business and financial condition.

The pending CCAA proceeding may adversely affect the Company's business, relationships, operations, financial condition and reputation.

On March 9, 2021, the Company announced that it had sought and received creditor protection via the Initial Order from the Ontario Court and the Chapter 15 Order from the Bankruptcy Court. On May 26, 2021, the Ontario Court extended the stay period until September 30, 2021. Just Energy may be unable to extend the stay period further. If Just Energy is unable to extend the stay period, creditors will be entitled to exercise their various rights and remedies against the Company. Furthermore, the Company's ability to obtain adequate financing to fund working capital needs and capital expenditures to maintain its ongoing obligations during the CCAA proceedings may not be available on terms reasonable to the Company, or at all.

The results of the CCAA proceeding are also unknown and may result in the implementation of a sale process, reorganization or restructuring of the assets, business and financial affairs of the Company. Such actions may also result in the Common Shares being terminated, exchanged, converted or diluted, in which case holders of Common Shares may lose some or all of their investment in Just Energy. Following the completion of the CCAA proceeding, it is possible that filing for CCAA protection and protection under Chapter 15 of the Bankruptcy Code in the United States, may adversely affect our business and relationships with customers, vendors, contractors or employees. This may result in suppliers, customers, and other contract counterparties terminating their relationship with the Company or requiring additional financial assurances or enhanced performance from the Company. Additionally, the CCAA proceeding may impact the Company's ability to renew existing contracts, compete for new business, attract, motivate and/or retain key executive. The occurrence of one or more of these events may materially affect the Company's business, operations, financial condition and reputation.

The DIP Facility has substantial restrictions and financial covenants and if the Company is unable to comply with the covenant requirements under the DIP Facility it could have a material adverse impact on the Company's financial condition, operating results and cash flows.

In connection with the CCAA proceedings and in order to provide required liquidity during the CCAA process, on March 9, 2021, the Company and certain holders of the Term Loan (the "**DIP Lenders**"), entered into an agreement, as amended from time to time (the "**DIP Term Sheet**") with respect to the DIP Facility. The DIP Facility bears interest at 13% per annum, calculated and payable quarterly in cash in arrears on the last business day of each calendar quarter (commencing on June 30, 2021). Amounts drawn under the DIP Facility are secured by a super priority charge on the Company's assets, pursuant to the Court Orders. The Company was obligated to pay a commitment fee of USD $1.25 million and an origination fee of US$1.25 million. Subject to the terms of the DIP Term Sheet, proceeds of advances under the DIP Facility may be used to provide for general corporate and working capital purposes,

including funding of the CCAA proceedings. The DIP Facility matures on the earlier of (i) December 31, 2021, (ii) implementation of a plan of compromise or arrangement under the CCAA proceedings, (iii) the expiry of the stay under the CCAA proceedings, (iv) the termination of the CCAA proceedings, and (v) the acceleration of the DIP Facility upon the occurrence and continuation of an Event of Default (as defined in the DIP Term Sheet).

In addition to customary affirmative covenant obligations, the DIP Facility provides for certain information delivery requirements including every four weeks (i) a new consolidated statement setting out the weekly projected cash flow forecasts of cash disbursements of the Borrowers (as defined in the DIP Term Sheet) for a 13-week period from the date of delivery thereof, which new statement shall replace the immediately preceding statement of cash flow forecasts in its entirety upon the DIP Lenders' approval thereof, and (ii) a variance report setting out actual versus projected cash disbursements since the date of the Initial Order on an individual and aggregate basis. Additionally, the DIP Facility requires that there will be no negative variance in the Company's actual expenditures from that set out in the most recently approved budget for the previous four weeks, in excess of 20% for each individual line item, and 15% on an aggregate basis, excluding advisor fees and expenses as defined in the DIP Term Sheet.

The DIP Term Sheet also contains customary negative covenants restricting a certain number of the Company's activities, including restrictions on the ability to incur indebtedness, incur liens, consummate certain fundamental changes, make investments, dispose of assets, enter into sale and lease transactions, and make restricted payments. Furthermore, the DIP Facility contains customary events of default, in addition to the negative budget variance discussed above, as well as certain other CCAA proceeding related events. In the event of default, the interest rate will increase by an additional 2% per annum until amounts owing under the DIP Facility are repaid in full.

If the Company is unable to comply with the covenant requirements under the DIP Facility, it could have a material adverse impact on the Company's financial condition, operating results and cash flows.

The Company's various lenders may take actions if the stay under the CCAA proceedings is lifted and such actions may have a material adverse impact on the Company's financial condition, operating results, and cash flows.

Just Energy has a credit facility of up to $335 million, which includes a $60 million letter of credit only facility, with various lenders (the "Credit Agreement"). The lenders under the Credit Agreement, together with certain suppliers of Just Energy and its affiliates, are party to the Credit Agreement and related intercreditor and security agreements, which provide for a joint security interest over all of Just Energy's core assets in North America (excluding Filter Group Inc.). There are various covenants pursuant to the Credit Agreement that govern certain activities of Just Energy and its affiliates. The filing under the CCAA is an event of default under the Credit Agreement. Pursuant to the Court Orders, the lenders under the Credit Agreement have been stayed from taking any action with respect to the default without court authorization. On March 18, 2021, the lenders under the Credit Agreement and Just Energy and its affiliates entered into an Accommodation and Support Agreement (the "Lender Support Agreement"). Pursuant to the Lender Support Agreement, the lenders agree to continue to issue letters of credit on behalf of Just Energy and its affiliates provided that Just Energy repay advances under the Credit Agreement solely for the purpose of creating availability under the Credit Agreement to issue the letter of credit. Upon such letter of credit being reduced or returned, the lenders will advance the cash amount back to Just Energy. Under the Lender Support Agreement, the lenders have also agreed to continue certain cash management services for Just Energy and its affiliates. The Lender Support Agreement contains termination events, including the termination of the stay under the CCAA proceedings, the termination of the DIP Term Sheet and the termination of the support agreement, dated March 9, 2021, among certain Just Energy entities, Shell Energy North America (Canada) Inc. and Shell Energy North America (U.S.) Inc. (the "Shell Support Agreement").

On September 28, 2020, Just Energy entered into the Term Loan as part of the September Recapitalization. The Term Loan contains usual and customary covenants for this type of financing, including but not limited to financial covenants and limitations on debt incurrence, distributions, asset sales, and transactions with affiliates. The filing under the CCAA is an event of default under the Term Loan.. Pursuant to the Court Orders, the lenders under the Term Loan have been stayed from taking any action with respect to the default without court authorization.

On September 28, 2020, Just Energy entered into a Note Indenture with respect to the 7.0% $15 million subordinated notes issued as part of the September Recapitalization. On October 19, 2020, approximately $1.8 million of the notes were redeemed for no consideration. The filing under the CCAA is an event of default under the Note Indenture. Pursuant to the Court Orders, the holders of notes under the Note Indenture have been stayed from taking any action with respect to the default without court authorization.

In connection with the filing under the CCAA, Just Energy entered into Qualified Commodity/ISO Supplier (as defined in the Initial Order) with certain supplier parties, which provides standard payment terms for commodity supply and ISO services without the requirement for Just Energy to post collateral in the form of cash or letters of credit. A termination event under the Qualified Commodity/ISO Supplier Agreements could have a material adverse impact on Just Energy's financial condition, operating results and cash flows.

If the stay implemented pursuant to the Court Orders is lifted or expires and the Company's lenders are able to take action with respect to the events of default caused by the filing of the CCAA proceedings, it could have a material adverse impact on the Company's financial condition and liquidity.

The Company is subject to increased collateral requirements as a result of the CCAA proceedings, if the Company is unable to satisfy future collateral requirements it could have a material adverse impact on the Company's financial condition, operating results and liquidity.

In several markets where Just Energy operates, payment is provided to Just Energy by LDCs only when the customer has paid the LDC for the consumed commodity, rather than when the commodity is delivered. Just Energy also manages natural gas storage

facilities where Just Energy must inject natural gas in advance of payment. These factors, along with seasonality in energy consumption, create a working capital requirement necessitating the use of Just Energy's available liquidity. In addition, Just Energy and its subsidiaries are required to post collateral to LDCs and independent system operators. The filing under the CCAA caused Just Energy to have to post additional collateral to certain independent system operators and pipelines. Any significant changes in payment terms managed by LDCs, any increase in cost of carrying natural gas storage inventory, and any increase in collateral posting requirements could result in significant liquidity risk to Just Energy and could have a material adverse impact on the Company's financial condition, operating results and liquidity.

Risks Related to Seasonality

The earnings volatility of Just Energy's business may affect the ability of Just Energy to access capital and could have a material adverse impact on Just Energy's liquidity.

Just Energy's business is seasonal in nature. In addition to regular seasonal fluctuations in its earnings, there is significant volatility in its earnings associated with the requirement to mark its commodity contracts to market. The earnings volatility associated with seasonality and mark-to-market accounting may affect the ability of Just Energy to access capital and could have a material adverse impact on Just Energy's liquidity.

Risks Related to Ownership of the Common Shares

Just Energy does not currently pay a dividend on the Common Shares.

Just Energy does not currently pay a dividend on the Common Shares and is under no obligation to pay dividends in the future. As a result, owners of Common Shares may never receive a dividend during the time such owners hold Common Shares.

Holders of Common Shares may experience substantial dilution.

Just Energy may issue an unlimited number of Common Shares and up to 50,000,000 preferred shares. There are 48,078,637 Common Shares and no preferred shares currently issued and outstanding. In connection with the CCAA proceeding, or at other future times, we may issue additional Common Shares. As a result of any future issuance of Common Shares, holder of Common Shares may experience substantial dilution.

Risks Related to Counterparties

The Company is subject to counterparty risk, if a counterparty were to default on its contractual obligations, it could have a material adverse impact on the Company's financial condition, operating results, cash flow and liquidity.

Just Energy enters into long-term derivative contracts with its counterparties. If a derivative counterparty were to default on its contractual obligations, Just Energy would be required to replace its contracted commodities or instruments at prevailing market prices, which may negatively affect related gross margin or cash flows. Just Energy mitigates credit risk by procuring a majority of its derivatives from investment grade rated counterparties, therefore restricting its exposure to unrated counterparties. Failure to perform by a counterparty or provide adequate financial assurances to offset Just Energy's financial exposure to a counterparty may have a material adverse impact on the Company's financial condition, operating results, cash flow and liquidity.

Just Energy's suppliers may fail to deliver commodities to Just Energy, which could have a material adverse impact on the Company's financial condition, operating results, cash flow and liquidity.

Just Energy's business model is based on contracting for supply of electricity or natural gas to deliver to its customers. Failure by Just Energy's supply counterparties to deliver these commodities to Just Energy due to business failure, supply shortage, force majeure including as a result of COVID-19, or any other failure of such counterparties to perform their obligations under the applicable contracts would put Just Energy at risk of not meeting its delivery requirements with LDCs, thereby resulting in penalties, price risk, liquidity and collateral risk. Just Energy attempts to mitigate supply delivery risk by diversifying its commodity procurement and purchasing from multiple suppliers. Following the filing under the CCAA, several of Just Energy's supply counterparties terminated their supply agreements with Just Energy, limiting Just Energy's ability to source supply from multiple counterparties. As a result, Just Energy may not be able to source supply from additional counterparties and may be limited to fewer suppliers especially in tight and illiquid markets. If any of the Company's suppliers fail to deliver commodities or otherwise fail to perform under their contracts with Just Energy, it could have a material adverse impact on the Company's financial condition, operating results, cash flow and liquidity.

Risks Related to Legal and Regulatory Requirements

Regulatory investigations or other administrative proceedings could expose us to significant liabilities and reputational damage that could have a material adverse effect on us.

Just Energy may receive complaints from consumers which may involve sanctions from regulatory and legal authorities. The most significant potential sanction is the suspension or revocation of a license which would prevent Just Energy from selling in a particular jurisdiction.

Litigation and legal proceedings could expose us to significant liabilities and reputational damage that could have a material adverse effect on us.

In addition to the litigation referenced herein (see "Legal proceedings" on page 33) and occurring in the ordinary course of business, Just Energy may in the future be subject to additional class actions and other actions. This litigation is, and any such additional litigation could be, time consuming and expensive and could distract the executive team from the conduct of Just Energy's business and may result in costly settlement arrangements. An adverse resolution or reputational damage of any specific lawsuit could have a material adverse effect on Just Energy's business, financial condition or operating results and the ability to favorably resolve other lawsuits.

In certain jurisdictions, independent contractors that contracted with Just Energy to provide door-to-door sales have made claims, either individually or as a class, that they are entitled to employee benefits such as minimum wage or overtime pursuant to legislation, even though they have entered into a contract with Just Energy that provides that they are not entitled to benefits normally available to employees. Just Energy's position has been confirmed in some instances and overturned by regulatory bodies and courts in others, and some of these decisions are under appeal. Should the regulatory bodies or claimants ultimately be successful, Just Energy may be required to remit unpaid tax amounts plus interest and might be assessed a penalty, of which amounts could be substantial and could have a material adverse effect on Just Energy's business, financial condition, operating results and cash flows.

Just Energy relies upon forecasts and models which could be materially different than actual results and could have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

Just Energy relies upon forecasts and models because the approach to calculation of market value and customer forecasts requires data-intensive modelling used in conjunction with certain assumptions when independently verifiable information is not available. Although Just Energy uses industry standard approaches and validates its internally developed models, should underlying assumptions prove incorrect or an embedded modelling error go undetected in the vetting process, it could result in incorrect estimates and thereby have a material adverse impact on Just Energy's financial condition, operating results, cash flow and liquidity.

The Company makes significant estimates and judgements in connection with the development of its financial statements. To the extent actual results are different than the estimates, it could result in a material adverse impact on the Company's financial condition, operating results, cash flow and liquidity.

Just Energy makes accounting estimates and judgments in the ordinary course of business. Such accounting estimates and judgments will affect the reported amounts of Just Energy's assets and liabilities as of the date of its financial statements and the reported amounts of its operating results during the periods presented. Additionally, Just Energy interprets the accounting rules in existence as at the date of its financial statements when the accounting rules are not specific to a particular event or transaction. If the underlying estimates are ultimately proven to be incorrect, or if Just Energy's auditors or regulators subsequently interpret Just Energy's application of accounting rules differently, subsequent adjustments could have a material adverse effect on Just Energy's operating results for the period or periods in which the change is identified. Additionally, subsequent adjustments could require Just Energy to restate its historical financial statements. The occurrence of any of the foregoing could result in a material adverse impact on the Company's financial condition, operating results, cash flow and liquidity.

Just Energy implements changes to accounting rules and interpretations as required in accordance with IFRS, there is no guarantee that such changes will not have a material adverse impact on Just Energy's financial condition and operating results.

Implementation of and compliance with changes in accounting rules and interpretations could adversely affect Just Energy's financial condition and operating results or cause unanticipated fluctuations in operating results in future periods. The accounting rules and regulations that Just Energy must comply with are complex and regularly changing. Any future changes to accounting rules and interpretations of such rules in accordance with IFRS may have a material adverse impact on Just Energy's financial condition and operating results.

Just Energy has reported material weakness in its financial statements. The inability of Just Energy to remedy such material weaknesses effectively could have a material adverse impact on Just Energy's business, financial condition, operating results and liquidity.

Just Energy faces the risk of deficiencies in its internal control over financial reporting and disclosure controls and procedures. The Board, in coordination with the Audit Committee, is responsible for assessing the progress and sufficiency of internal control over financial reporting and disclosure controls and procedures, which are adjusted as necessary. Any deficiencies, if uncorrected, could result in Just Energy's financial statements being inaccurate and may require future adjustments and/or restatements of historical financial statements. The occurrence of any of the foregoing could have a material adverse impact on Just Energy's business, financial condition, operating results and liquidity.

The loss of the services of key management and personnel could adversely affect the Company's ability to successfully operate its businesses.

Just Energy's future success depends on, among other things, its ability to keep the services of its executives and to hire other highly qualified employees at all levels. Just Energy competes with other potential employers for employees and may not be successful in hiring and keeping the services of executives and other employees that it needs. The loss of the services of, or the inability

to hire, executives or key employees could hinder Just Energy's business operations and growth and adversely affect Just Energy's ability to successfully operate its business.

Additionally, while the Company has modified or restricted certain business and workforce practices (including employee travel, presence at employee work locations, and physical participation in meetings, events, and conferences) to protect the health and safety of the Company's workforce, and to conform to government orders and best practices encouraged by governmental and regulatory authorities, Just Energy depends on its workforce to operate its business and deliver products and services to its customers. If a large portion of the Company's operational workforce were to contract COVID-19 or otherwise become unavailable, it could adversely affect the Company's ability to successfully operate its business.

Just Energy may not be able to complete future acquisitions on favorable terms or at all, successfully integrate future acquisitions into its business, or effectively identify and invest in value-creating businesses

Just Energy relies on acquisitions to expand its business and may in the future acquire businesses from time to time. The ability to realize the anticipated benefits of such acquisitions will depend in part on Just Energy successfully consolidating functions and integrating operations, procedures and personnel in a timely and efficient manner, as well as on the ability to realize the anticipated growth and potential synergies from such acquisitions into Just Energy's current operations. There can be no assurance that Just Energy will be successful in effectively identifying value creating businesses, closing acquisitions of, and integrating the operations of, such businesses, or ultimately realizing any expected benefits.

Legal proceedings

Just Energy's subsidiaries are party to a number of legal proceedings. Other than as set out below, Just Energy believes that each proceeding constitutes legal matters that are incidental to the business conducted by Just Energy and that the ultimate disposition of the proceedings will not have a material adverse effect on its consolidated earnings, cash flows or financial position.

On March 9, 2021, Just Energy filed for and received creditor protection pursuant to the Court Order under the CCAA and similar protection under Chapter 15 of the Bankruptcy Code in the United States in connection with the Weather Event.

In March 2012, Davina Hurt and Dominic Hill filed a lawsuit against Commerce Energy Inc. ("Commerce"), Just Energy Marketing Corp. and the Company in the Ohio Federal Court (the "Ohio Court") claiming entitlement to payment of minimum wage and overtime under Ohio wage claim laws and the Federal Fair Labor Standards Act ("FLSA") on their own behalf and similarly situated door-to-door sales representatives who sold for Commerce in certain regions of the United States. The Ohio Court granted the plaintiffs' request to certify the lawsuit as a class action. Approximately 1,800 plaintiffs opted into the federal minimum wage and overtime claims, and approximately 8,000 plaintiffs were certified as part of the Ohio state overtime claims. On October 6, 2014, the jury refused to find a willful violation but concluded that certain individuals were not properly classified as outside salespeople in order to qualify for an exemption under the minimum wage and overtime requirements. On September 28, 2018, the Ohio Court issued a final judgment, opinion and order. Just Energy filed its appeal to the Court of Appeals for the Sixth Circuit on October 25, 2018 and provided a bond to the Ohio Court to cover the potential damages. On August 31, 2020, the Appeals Court denied the appeal in a 2-1 decision. On February 2, 2021, Just Energy filed a petition for certiorari seeking the United States Supreme Court (the "Supreme Court") review to resolve the newly created circuit split with the Court of Appeals for the Second Circuit unanimous decision in Flood v. Just Energy, 904 F.3d 219 (2d Cir. 2018) and with the inconsistency with the Supreme Court's recent decision in Encino Motorcars, LLC v Navarro, 138 S. Ct. 1134, 1142 (2018), with broad, national, unsustainable implications for all employers who have outside sales employees. On June 7, 2021, the Supreme Court denied Just Energy's petition for certioriari. The Company accrued approximately $5.7 million in the last quarter of fiscal 2021 in connection with this matter and expects to make this payment promptly.

In May 2015, Kia Kordestani, a former door-to-door independent contractor sales representative for Just Energy Corp., filed a lawsuit against Just Energy Corp., Just Energy Ontario L.P. and the Company (collectively referred to as "Just Energy") in the Superior Court of Justice, Ontario, claiming status as an employee and seeking benefits and protections of the Employment Standards Act, 2000, such as minimum wage, overtime pay, and vacation and public holiday pay on his own behalf and similarly situated door-to-door sales representatives who sold in Ontario. On Just Energy's request, Mr. Kordestani was removed as a plaintiff but replaced with Haidar Omarali, also a former door-to-door sales representative. On July 27, 2016, the Court granted Omarali's request for certification, but refused to certify Omarali's request for damages on an aggregate basis and refused to certify Omarali's request for punitive damages. Omarali's motion for summary judgment was dismissed in its entirety on June 21, 2019. The matter is currently set for trial in November 2021. Pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims.

On July 23, 2019, Just Energy announced that, as part of its Strategic Review process, management identified customer enrolment and non-payment issues, primarily in Texas. In response to this announcement, and in some cases in response to this and other subsequent related announcements, putative class action lawsuits were filed in the United States District Court for the Southern District of New York, in the United States District Court for the Southern District of Texas and in the Ontario Court, on behalf of investors that purchased Just Energy Group Inc. securities during various periods, ranging from November 9, 2017 through August 19, 2019. The U.S. lawsuits have been consolidated in the United States District Court for the Southern District of Texas with one lead plaintiff and the Ontario lawsuits have been consolidated with one lead plaintiff. The U.S. lawsuit seeks damages allegedly arising from violations of the United States Securities Exchange Act. The Ontario lawsuit seeks damages allegedly arising from violations of

Canadian securities legislation and of common law. The Ontario lawsuit was subsequently amended to, among other things, extend the period to July 7, 2020. On September 2, 2020, pursuant to Just Energy's plan of arrangement, the Superior Court of Justice (Ontario) ordered that all existing equity class action claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the insurance policies payable on behalf of Just Energy or its directors and officers in respect of any such existing equity class action claims, and such existing equity class action claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the released parties or any of their respective current or former officers and directors in respect of any existing equity class action claims, other than enforcing their rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. Pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims.

Controls and procedures

DISCLOSURE CONTROLS AND PROCEDURES

Both the chief executive officer ("CEO") and chief financial officer ("CFO") have designed, or caused to be designed under their supervision, the Company's disclosure controls and procedures which provide reasonable assurance that: (i) material information relating to the Company is made known to management by others, particularly during the period in which the annual and interim filings are being prepared; and (ii) information required to be disclosed by the Company in its annual and interim filings or other reports filed or submitted under securities legislation is recorded, processed, summarized and reported within the time period specified in securities legislation. The CEO and CFO are assisted in this responsibility by a Disclosure Committee composed of senior management. The Disclosure Committee has established procedures so that it becomes aware of any material information affecting Just Energy to evaluate and communicate this information to management, including the CEO and CFO as appropriate, and determine the appropriateness and timing of any required disclosure. Based on the foregoing evaluation, conducted by or under the supervision of the CEO and CFO of the Company's Internal Control over Financial Reporting ("ICFR") in connection with the Company's financial year-end, it was concluded that because of the material weakness described below, the Company's disclosure controls and procedures were not effective.

INTERNAL CONTROL OVER FINANCIAL REPORTING

Management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control – Integrated Framework (2013) to evaluate the effectiveness of its ICFR as at March 31, 2021. The COSO framework summarizes each of the components of a company's internal control system, including the: (i) control environment; (ii) control activities (process-level controls); (iii) risk assessment; (iv) information and communication; and (v) monitoring activities. The COSO framework defines a material weakness as a deficiency, or combination of deficiencies, that results in a reasonable possibility that a material misstatement of the annual or interim condensed Consolidated Financial Statements will not be prevented or detected on a timely basis.

Remediation of previously identified control activities and monitoring material weaknesses associated with control activities and monitoring activities regarding reconciliation and estimation procedures

Management enhanced its system of internal control methodology to foster a stronger interaction between the Company's finance and operations teams to produce more precise information for accruals and reconciliation performance by requiring both teams to participate in reconciliation and monitoring activities. The Company deployed a formal balance sheet reconciliation policy across the organization, trained accountants and other participants to perform reconciliations, and instituted a quality review of certain reconciliations. During closing of the first and second quarters of fiscal 2021, management further increased the amount of personnel to perform the financial statement close and estimation processes for commodity suppliers' payables, initial estimates and final costs incurred, to assist in the performance of balance sheet reconciliations. Additionally, the Company deployed a third-party reconciliation tool to further increase the rigour used in performance balance sheet reconciliations and continued training the finance and accounting team to utilize the tool as part of its normal reconciliation and financial statement close process.

To further remediate the material weakness identified herein, the management team, including the CEO and CFO, have reaffirmed and re-emphasized the importance of internal control as part of its commitment to competence, to control consciousness and to fostering a strong control environment. The Company hired additional personnel with expertise in finance and accounting, and within the retail energy sector, and has provided enhanced training regarding the importance and application of internal control to the teams addressing the material weaknesses. These activities were completed at January 1, 2021 and were tested for operational effectiveness through March 31, 2021. As at March 31, 2021, management has concluded it has completed remediation efforts of these material weaknesses.

Identification of control deficiency and ongoing remediation of material weakness within financial statement close process

Management's evaluation of ICFR identified an ongoing material weakness resulting from the failure to operate several controls within the financial statement close process that allowed errors to manifest, and, the failure to detect them for an extended period of time, as follows:

Identification of control activities deficiency within financial statement close process

The Company did not design or maintain effective control activities to prevent or detect misstatements during the operation of the financial statement close process, including from finalization of the trial balance to the preparation of financial statements and the

review of the financial statement disclosure checklist. As described in Note 5 of the Consolidated Financial Statements, during the quarter ended March 31, 2021, management identified a presentation difference on the gross versus net sales presentation, which was not prevented or detected by controls within the financial statement close process. Management aggregated this control deficiency into the ongoing financial statement close material weakness.

Ongoing remediation of previously identified control activities material weakness associated with financial statement close process

Management remains committed to the planning and implementation of remediation efforts to address the material weaknesses, as well as to foster improvement in the Company's internal controls. These remediation efforts continue and are intended to address this identified material weakness and enhance the overall financial control environment. During closing of the first three quarters of fiscal 2021, management further increased the amount of personnel to perform the financial statement close process, including the hiring of a CFO and a controller, both with significant financial reporting and retail energy industry experience, promoting individuals within the team and training those individuals to perform their enhanced roles, and strengthening the managerial review process of the financial statement preparation. These enhancements remaining ongoing, and management continues strengthening the design and operational effectiveness of the financial statement preparation process, including the financial statement disclosure checklist; however, not enough time has elapsed to complete remediation efforts of this material weakness.

No assurance can be provided at this time that the actions and remediation efforts the Company has taken or will implement will effectively remediate the material weaknesses described above or prevent the incidence of other significant deficiencies or material weaknesses in the Company's internal controls over financial reporting in the future. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving the stated goals under all potential future conditions.

Other changes in internal control over financial reporting

Other than as described above, there were no changes in ICFR during the last fiscal quarter that materially affected, or are reasonably likely to materially affect, ICFR.

INHERENT LIMITATIONS

A control system, no matter how well conceived and operated, can only provide reasonable, not absolute, assurance that its objectives are met. Due to these inherent limitations in such systems, no evaluation of controls can provide absolute assurance that all control issues within any company have been detected. Accordingly, Just Energy's disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the Company's disclosure control and procedure objectives are met.

Corporate governance

Just Energy is committed to maintaining transparency in its operations and ensuring its approach to governance meets all recommended standards. Full disclosure of Just Energy's compliance with existing corporate governance rules is available at investors.justenergy.com https://investors.justenergy.com/and is included in Just Energy's Management Proxy Circular. Just Energy actively monitors the corporate governance and disclosure environment to ensure timely compliance with current and future requirements.

Report of independent registered public accounting firm

To the Shareholders and the Board of Directors of Just Energy Group Inc.

OPINION ON INTERNAL CONTROL OVER FINANCIAL REPORTING

We have audited Just Energy Group Inc.'s internal control over financial reporting as of March 31, 2021, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) ("COSO criteria"). In our opinion, because of the effect of the material weakness described below on the achievement of the objectives of the control criteria, Just Energy Group Inc. (the "Company") has not maintained effective internal control over financial reporting as of March 31, 2020, based on the COSO criteria.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management's assessment: an aggregation of deficiencies within the financial statement close process impacting the control activities.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated statements of financial position as of March 31, 2021 and 2020, and the related consolidated statements of loss, comprehensive loss, changes in shareholders' deficit and cash flows for the years then ended and the related notes. This material weakness was considered in determining the nature, timing and extent of audit tests applied in our audit of the 2021 consolidated financial statements, and this report does not affect our report dated June 27, 2021, which expressed an unqualified opinion thereon that included an explanatory paragraph regarding the Company's ability to continue as a going concern.

BASIS FOR OPINION

Just Energy Group Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Discussion and Analysis. Our responsibility is to express an opinion on Just Energy Group Inc.'s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to Just Energy Group Inc. in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

DEFINITION AND LIMITATIONS OF INTERNAL CONTROL OVER FINANCIAL REPORTING

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Chartered Professional Accountants
Licensed Public Accountants
Toronto, Canada
June 27, 2021

Report of independent registered public accounting firm

To the Shareholders and Board of Directors of Just Energy Group Inc.

OPINION ON THE CONSOLIDATED FINANCIAL STATEMENTS

We have audited the accompanying consolidated statements of financial position of Just Energy Group Inc. as of March 31, 2021 and 2020, and the related consolidated statements of loss, comprehensive loss, changes in shareholders' deficit and cash flows for each of the three years in the period ended March 31, 2021 and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Just Energy Group Inc. at March 31, 2021 and 2020, and its financial performance and its cash flows for each of the three years in the period ended March 31, 2021, in conformity with International Financial Reporting Standards (IFRSs) as issued by the International Accounting Standards Board.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), Just Energy Group Inc.'s internal control over financial reporting as of March 31, 2021, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organization of the Treadway Commission ("COSO") and our report dated June 27, 2021 expressed an adverse opinion on the effectiveness of Just Energy Group Inc.'s internal control over financial reporting.

JUST ENERGY GROUP INC.'S ABILITY TO CONTINUE AS A GOING CONCERN

The accompanying consolidated financial statements have been prepared assuming that Just Energy Group Inc. will continue as a going concern. As discussed in Note 3 to the financial statements, Just Energy Group Inc. is currently undergoing *Companies' Creditors Arrangement Act (Canada)* ("CCAA") proceedings and the debt has been classified in the consolidated Financial Statements as a current liability and contributes to the net current liability position at March 31, 2021. Just Energy Group Inc. has stated that these conditions, along with other matters as set forth in Note 3, indicate the existence of material uncertainties that raise substantial doubt about Just Energy Group Inc.'s ability to continue as a going concern. Management's evaluation of the events and conditions and management's plans regarding these matters are also described in Note 3. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

BASIS FOR OPINION

These consolidated financial statements are the responsibility of Just Energy Group Inc.'s management. Our responsibility is to express an opinion on Just Energy Group Inc.'s consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to Just Energy Group Inc. in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

CRITICAL AUDIT MATTERS

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

	Valuation of level III derivative financial instruments
Description of the Matter	As disclosed in notes 4 and 12 of the consolidated financial statements, the Company enters into transactions that are accounted for as derivative financial instruments and are recorded at fair value. The valuation of derivative financial instruments classified as level III are determined using assumptions that are unobservable. As at March 31, 2021 the Company's derivative financial instruments classified as level III were $35 million in an asset position and $75 million in a liability position.

Auditing the valuation of level III derivative financial instruments requires the involvement of internal valuation specialists, significant auditor judgments, and estimates concerning unobservable inputs in relation to forward pricing curves and credit spreads used to calculate the fair value. Therefore, the fair value measurement of level III derivative financial instruments was identified as a critical audit matter.

How We Addressed the Matter in Our Audit

We obtained an understanding of the Company's processes and we evaluated and tested the design and operating effectiveness of internal controls addressing the determination and review of inputs used in measuring the fair value of level III derivatives.

Our audit procedures included, among others, with the assistance of our internal valuation specialists, evaluating management's internal valuation methodologies and unobservable inputs applied to level III derivative financial instruments. We completed an independent revaluation for a sample of level III derivative financial instruments to test the mathematical accuracy, which included testing the unobservable inputs by agreeing to third party information. For a sample of level III derivative financial instruments, we agreed the contractual trade inputs to the executed commodity contracts. We reviewed the appropriateness and completeness of level III derivative financial instruments disclosures with the requirements of IFRS.

Assessment of Commercial segment goodwill impairment

Description of the Matter

As disclosed in notes 4 and 11 of the consolidated financial statements, goodwill is tested annually for impairment at the level of the two operating segments at which the Company's operations are monitored by the chief operational decision maker. Goodwill is also tested for impairment whenever events or circumstances occur which could potentially reduce the recoverable amount of one of more of the segments below the carrying value. For the year ended March 31, 2021, an impairment loss was recognized on the goodwill of the Commercial segment in the amount of $100 million. As at March 31, 2021 the balance of goodwill remaining in the Commercial segment after the recognized impairment loss is nil.

Auditing the Company's annual impairment assessment requires the involvement of internal valuation specialists and significant auditor judgments and estimates in assessing the recoverable amount of the Company's Commercial segment. The key assumptions used to determine the recoverable amount estimate of the Company's Commercial segment include customer attrition and renewal rates, forecasted gross margins, and the weighted average cost of capital, each of which is affected by significant assumptions as to expectations about future market and economic conditions.

How We Addressed the Matter in Our Audit

We obtained an understanding of the Company's processes and we evaluated and tested the design and operating effectiveness of internal controls addressing the assessment and measurement of goodwill impairment.

To test the estimated recoverable amount of the Commercial segment, our audit procedures included, among others, assessing the methodologies and the significant assumptions discussed above and underlying data used by the Company in its analysis. We recalculated the carrying and recoverable amount for mathematical accuracy and reconciled the underlying information to the Company's financial reporting systems or approved business plan. We evaluated the customer attrition and renewal rates, forecasted gross margins used in the valuation model to the Company's historical experience and approved business plan. Our valuation specialists compared the weighted average cost of capital to current industry and economic trends and comparable Company information. We performed a sensitivity analysis of significant assumptions to evaluate the changes in the recoverable amounts of the Commercial segment that would result from changes in assumptions. We reviewed the appropriateness and completeness of the goodwill impairment disclosures with the requirements of IFRS.

Measurement of expected credit loss

Description of the Matter

As disclosed in notes 4 and 7 of the consolidated financial statements, the Company measures the expected credit loss where the Company bears customer credit risk. The expected credit loss allowance is the Company's estimate of losses on account receivables and unbilled revenue based on historical loss rates and forward-looking information. As at March 31, 2021 the Company's balance of account receivables where the Company bears customer credit risk were

$95 million with a related allowance for doubtful accounts of $23 million.

Auditing the determination of the account receivables and unbilled revenue expected credit allowance relies on judgements and estimates in the assessment of expected credit loss rates. Therefore, measurement of expected credit loss allowance was identified as a critical audit matter.

How We Addressed the Matter in Our Audit

We obtained an understanding of the Company's processes and we evaluated and tested the design and operating effectiveness of internal controls addressing the determination and review of inputs used in determining the expected credit loss rate.

We tested the completeness and accuracy of the data underlying the calculation of the expected credit loss allowance by reconciling to the Company's financial reporting systems and recalculated the expected credit loss allowance. We assessed management's expected credit loss rates against the actual historical credit loss rates. We assessed management's consideration of forward-looking information in the determination of the expected credit loss rates by evaluating the reasonableness of management's judgements applied. We obtained and inspected an analysis prepared by management that utilized subsequent cash collection information to analyze the precision of the Company's expected credit loss rates in determining the expected credit loss allowance.

/s/ Ernst & Young LLP

Chartered Professional Accountants
Licensed Public Accountants

We have served as Just Energy Group Inc.'s auditor since 2011
Toronto, Canada
June 27, 2021

Consolidated statements of financial position

As at March 31
(in thousands of Canadian dollars)

	Notes	**2021**	2020
ASSETS			
Current assets			
Cash and cash equivalents		**$ 215,989**	$ 26,093
Restricted cash		**1,139**	4,326
Trade and other receivables, net	7	**340,201**	403,907
Gas in storage		**2,993**	6,177
Fair value of derivative financial assets	12	**25,026**	36,353
Income taxes recoverable		**8,238**	6,641
Other current assets	8	**163,405**	203,270
		756,991	686,767
Assets classified as held for sale	25	**—**	7,611
		756,991	694,378
Non-current assets			
Investments	9	**32,889**	32,889
Property and equipment, net	10	**17,827**	28,794
Intangible assets, net	11	**70,723**	98,266
Goodwill	11	**163,770**	272,692
Fair value of derivative financial assets	12	**10,600**	28,792
Deferred income tax assets	17	**3,744**	3,572
Other non-current assets	8	**35,262**	56,450
		334,815	521,455
TOTAL ASSETS		**$ 1,091,806**	$ 1,215,833
LIABILITIES			
Current liabilities			
Trade and other payables	13	**$ 921,595**	$ 685,665
Deferred revenue	14	**1,408**	852
Income taxes payable		**4,126**	5,799
Fair value of derivative financial liabilities	12	**13,977**	113,438
Provisions	21	**6,786**	1,529
Current portion of long-term debt	15	**654,180**	253,485
		1,602,072	1,060,768
Liabilities relating to assets classified as held for sale	25	**—**	4,906
		1,602,072	1,065,674
Non-current liabilities			
Long-term debt	15	**1,560**	528,518
Fair value of derivative financial liabilities	12	**61,169**	76,268
Deferred income tax liabilities	17	**2,749**	2,931
Other non-current liabilities		**19,078**	37,730
		84,556	645,447
TOTAL LIABILITIES		**$ 1,686,628**	$ 1,711,121
SHAREHOLDERS' DEFICIT			
Shareholders' capital	18	**$ 1,537,863**	$ 1,246,829
Equity component of convertible debentures		**—**	13,029
Contributed deficit		**(11,634)**	(29,826)
Accumulated deficit		**(2,211,728)**	(1,809,557)
Accumulated other comprehensive income		**91,069**	84,651
Non-controlling interest		**(392)**	(414)
TOTAL SHAREHOLDERS' DEFICIT		**(594,822)**	(495,288)
TOTAL LIABILITIES AND SHAREHOLDERS' DEFICIT		**$ 1,091,806**	$ 1,215,833

Basis of presentation (Note 3b)
Commitments and contingencies (Note 26)

See accompanying notes to the Consolidated Financial Statements

Scott Gahn
Chief Executive Officer and President

Stephen Schaefer
Corporate Director

Consolidated statements of loss

For the years ended March 31
(in thousands of Canadian dollars, except where indicated and per share amounts)

	Notes	2021	2020	2019
CONTINUING OPERATIONS				
Sales	5, 16	**$ 2,740,037**	$ 3,153,652	$ 3,441,392
Cost of goods sold	5	**4,512,166**	2,517,299	2,762,821
GROSS MARGIN		**(1,772,129)**	636,353	678,571
INCOMES (EXPENSES)				
Administrative		**(142,391)**	(167,936)	(165,328)
Selling and marketing		**(179,521)**	(220,820)	(211,738)
Other operating expenses	20(a)	**(64,681)**	(133,948)	(156,399)
Finance costs	15	**(86,620)**	(106,945)	(87,779)
Restructuring costs	22	**(7,118)**	–	(14,844)
Reorganization costs	23	**(43,245)**	–	–
Gain on September Recapitalization transaction, net	18(c)	**51,360**	–	–
Unrealized gain (loss) of derivative instruments and other	12	**83,499**	(213,417)	(87,459)
Realized gain (loss) of derivative instruments		**1,877,339**	(24,386)	(83,776)
Impairment of goodwill, intangible assets and other	11	**(114,990)**	(92,401)	–
Other income (expenses), net		**(1,951)**	32,660	2,312
Loss from continuing operations before income taxes		**(400,448)**	(290,840)	(126,440)
Provision for income taxes	17	**2,308**	7,393	11,832
LOSS FROM CONTINUING OPERATIONS		**$ (402,756)**	$ (298,233)	$ (138,272)
DISCONTINUED OPERATIONS				
Profit (loss) after tax from discontinued operations	25	**468**	(11,426)	(128,259)
LOSS FOR THE YEAR		**$ (402,288)**	$ (309,659)	$ (266,531)
Attributable to:				
Shareholders of Just Energy		**$ (402,148)**	$ (309,586)	$ (266,339)
Non-controlling interest		**(140)**	(73)	(192)
LOSS FOR THE YEAR		**$ (402,288)**	$ (309,659)	$ (266,531)
Loss per share from continuing operations	24			
Basic		**$ (11.80)**	$ (30.26)	$ (14.21)
Diluted		**$ (11.80)**	$ (30.26)	$ (14.21)
Earnings (loss) per share from discontinued operations	25			
Basic		**$ 0.01**	$ (1.16)	$ (13.18)
Diluted		**$ 0.01**	$ (1.16)	$ (13.18)
Loss per share available to shareholders	24			
Basic		**$ (11.79)**	$ (31.42)	$ (27.39)
Diluted		**$ (11.79)**	$ (31.42)	$ (27.39)

See accompanying notes to the Consolidated Financial Statements

Consolidated statements of comprehensive loss

For the years ended March 31
(in thousands of Canadian dollars)

	Notes	2021	2020	2019
LOSS FOR THE YEAR		**$ (402,288)**	$ (309,659)	$ (266,531)
Other comprehensive profit (loss) to be reclassified to profit or loss in subsequent periods:				
Unrealized gain on translation of foreign operations		**5,648**	3,551	6,708
Unrealized gain (loss) on translation of foreign operations from discontinued operations		**1,185**	(9,603)	(1,686)
Gain (loss) on translation of foreign operations disposed and reclassified to Consolidated Statements of Loss	25	**(415)**	11,610	–
		6,418	5,558	5,022
TOTAL COMPREHENSIVE LOSS FOR THE YEAR, NET OF TAX		**$ (395,870)**	$ (304,101)	$ (261,509)
Total comprehensive loss attributable to:				
Shareholders of Just Energy		**$ (395,730)**	$ (304,028)	$ (261,317)
Non-controlling interest		**(140)**	(73)	(192)
TOTAL COMPREHENSIVE LOSS FOR THE YEAR, NET OF TAX		**$ (395,870)**	$ (304,101)	$ (261,509)

See accompanying notes to the Consolidated Financial Statements

Consolidated statements of changes in shareholders' deficit

For the years ended March 31
(in thousands of Canadian dollars)

	Notes	**2021**	2020	2019
ATTRIBUTABLE TO THE SHAREHOLDERS				
Accumulated earnings				
Accumulated earnings, beginning of year		**$ 140,446**	$ 450,032	$ 716,371
Loss for the year as reported, attributable to shareholders		**(402,148)**	(309,586)	(266,339)
Accumulated earnings, end of year		**$ (261,702)**	$ 140,446	$ 450,032
DIVIDENDS AND DISTRIBUTIONS				
Dividends and distributions, beginning of year		**(1,950,003)**	(1,923,808)	(1,835,778)
Dividends and distributions declared and paid		**(23)**	(26,195)	(88,030)
Dividends and distributions, end of year		**$ (1,950,026)**	$ (1,950,003)	$ (1,923,808)
ACCUMULATED DEFICIT		**$ (2,211,728)**	$ (1,809,557)	$ (1,473,776)
ACCUMULATED OTHER COMPREHENSIVE INCOME				
Accumulated other comprehensive income, beginning of year		**$ 84,651**	$ 79,093	$ 74,071
Other comprehensive income		**6,418**	5,558	5,022
Accumulated other comprehensive income, end of year		**$ 91,069**	$ 84,651	$ 79,093
SHAREHOLDERS' CAPITAL	18			
Common shares				
Common shares, beginning of year		**$ 1,099,864**	$ 1,088,538	$ 1,079,055
Issuance of shares-September Recapitalization	18(a)	**438,642**	–	–
Issuance cost associated with September Recapitalization	18(a)	**(1,572)**	–	–
Share-based units exercised	18(a)	**929**	11,326	9,483
Common shares, end of year		**$ 1,537,863**	$ 1,099,864	$ 1,088,538
Preferred shares	18			
Preferred shares, beginning of year		**$ 146,965**	$ 146,965	$ 136,771
Transferred to common shares with September Recapitalization	18(c)	**(146,965)**	–	–
Shares issued		**–**	–	10,447
Shares issuance costs		**–**	–	(253)
Preferred shares, end of year		**$ –**	$ 146,965	$ 146,965
SHAREHOLDERS' CAPITAL		**$ 1,537,863**	$ 1,246,829	$ 1,235,503
EQUITY COMPONENT OF CONVERTIBLE DEBENTURES				
Balance, beginning of year		**$ 13,029**	$ 13,029	$ 13,029
Settled with common shares		**(13,029)**	–	–
Balance, end of year		**$ –**	$ 13,029	$ 13,029
CONTRIBUTED DEFICIT				
Balance, beginning of year		**$ (29,826)**	$ (25,540)	$ (22,693)
Add: Share-based compensation expense	20(a)	**6,492**	12,250	5,916
Discontinued operations		**–**	269	217
Purchase of non-controlling interest		**–**	–	1,462
Transferred from equity component		**13,029**	–	–
Less: Share-based units exercised		**(929)**	(11,326)	(9,483)
Share-based compensation adjustment		**(423)**	(3,664)	(1,031)
Non-cash deferred share grants		**23**	(1,815)	72
Balance, end of year		**$ (11,634)**	$ (29,826)	$ (25,540)
NON-CONTROLLING INTEREST				
Balance, beginning of year		**$ (414)**	$ (399)	$ (422)
Foreign exchange impact on non-controlling interest		**162**	58	215
Loss attributable to non-controlling interest		**(140)**	(73)	(192)
Balance, end of year		**$ (392)**	$ (414)	$ (399)
TOTAL SHAREHOLDERS' DEFICIT		**$ (594,822)**	$ (495,288)	$ (172,090)

See accompanying notes to the Consolidated Financial Statements

Consolidated statements of cash flows

For the years ended March 31
(in thousands of Canadian dollars)

	Notes	**2021**	2020	2019
Net inflow (outflow) of cash related to the following activities				
OPERATING				
Loss from continuing operations before income taxes		**$ (400,448)**	$ (290,840)	$ (126,440)
Profit (loss) from discontinued operations before income taxes		**518**	(11,349)	(132,004)
Loss before income taxes		**(399,930)**	(302,189)	(258,444)
Items not affecting cash				
Amortization and depreciation	20(a)	**24,135**	41,242	29,861
Impairment of goodwill, intangible assets and other	11	**114,990**	92,401	–
Share-based compensation expense	20(a)	**6,492**	12,250	5,916
Financing charges, non-cash portion		**30,542**	20,435	18,223
Loss (gain) on sale of subsidiaries, net	25	**423**	(45,138)	–
Unrealized (gain) loss in fair value of derivative instruments and other	12	**(83,499)**	213,417	87,459
Gain from Recapitalization transaction		**(78,792)**	–	–
Net change in working capital balances	28	**(102,758)**	43,994	18,514
Liabilities subject to compromise	1	**544,442**	–	–
Adjustment for discontinued operations, net	25	⍰	(34,814)	66,411
Income taxes paid		**(9,744)**	(461)	(12,435)
Cash inflow (outflow) from operating activities		**46,301**	41,137	(44,495)
INVESTING				
Purchase of property and equipment		**(423)**	(2,159)	(5,159)
Purchase of intangible assets		**(11,132)**	(14,382)	(38,383)
Payments for acquired business		⍰	(12,013)	(4,281)
Proceeds from disposition of subsidiaries	25	**4,618**	7,672	–
Cash outflow from investing activities		**(6,937)**	(20,882)	(47,823)
FINANCING				
Proceeds from DIP Facility	15	**126,735**	–	–
Proceeds from issuance of common stock, net	18(c)	**100,969**	–	–
Debt issuance costs		**(12,937)**	180	(18,132)
Repayment of long-term debt	15	**(5,073)**	(25,257)	(173,366)
Credit facilities withdrawal (payments)	15	**(9,200)**	34,812	79,462
Share swap payout		**(21,488)**	–	(10,000)
Leased asset payments		**(3,946)**	(5,802)	–
Dividends paid	15	⍰	(26,172)	(87,959)
Issuance of long-term debt	15	⍰	17,163	253,242
Issuance of preferred shares		⍰	–	10,447
Preferred shares issuance costs		⍰	–	(352)
Cash inflow (outflow) from financing activities		**175,060**	(5,076)	53,342
Effect of foreign currency translation on cash balances		**(24,528)**	1,026	3
Net cash inflow (outflow)		**189,896**	16,205	(38,973)
Cash and cash equivalents, beginning of year		**26,093**	9,888	48,861
Cash and cash equivalents, end of year		**$ 215,989**	$ 26,093	$ 9,888
Supplemental cash flow information:				
Interest paid		**$ 56,076**	$ 78,749	$ 52,836

See accompanying notes to the Consolidated Financial Statements

Notes to the consolidated financial statements

For the year ended March 31, 2021
(in thousands of Canadian dollars, except where indicated and per share amounts)

1. ORGANIZATION

Just Energy Group Inc. ("Just Energy" or the "Company") is a corporation established under the laws of Canada to hold securities of its directly or indirectly owned operating subsidiaries and affiliates. The registered office of Just Energy is First Canadian Place, 100 King Street West, Toronto, Ontario, Canada. The Consolidated Financial Statements consist of Just Energy and its subsidiaries and affiliates. The Consolidated Financial Statements were approved by the Board of Directors on June 25, 2021.

In February 2021, the State of Texas experienced extremely cold weather (the "Weather Event"). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. ("ERCOT") when due, and accordingly, on March 9, 2021, Just Energy applied for and received creditor protection under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") and under Chapter 15 ("Chapter 15") in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division (the "Court Orders"). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD$125 million Debtor-In-Possession ("DIP Facility") financing with certain affiliates of Pacific Investment Management Company ("PIMCO") (refer to Note 27). The Company also entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The filings and associated USD$125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the U.S. and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On March 9, 2021, the Company announced that it had sought and received creditor protection via an order (the "Initial Order") from the Ontario Court and the Chapter 15 Order from the Bankruptcy Court. On May 26, 2021, the stay period was extended by the Ontario Court to September 30, 2021.

As at March 31, 2021, in connection with the CCAA proceedings, the Company identified the following obligations that are subject to potential compromise:

	Amounts in 000's
Trade and other payables	$ 531,627
Other non-current liabilities	12,815
Current portion of long-term debt	530,700
Total liabilities subject to compromise	**$ 1,075,142**

The common shares of the Company were halted from trading on the Toronto Stock Exchange ("TSX") on March 9, 2021 and the Company delisted from the TSX on June 3, 2021. The Company has listed its common shares on the TSX Venture Exchange as of June 4, 2021, under the symbol "JE". In addition, the Company was delisted from the New York Stock Exchange on March 22, 2021 and was listed on the OTC Pink Market under the symbol "JENGQ" on March 23, 2021.

2. OPERATIONS

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions and renewable energy options to customers. Operating in the United States ("U.S.") and Canada, Just Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Tara Energy and terrapass.

Just Energy's current commodity product offerings include fixed, variable, index and flat rate options. By fixing the price of electricity or natural gas under its fixed-price or price-protected program contracts for a period of up to five years, Just Energy's customers offset their exposure to changes in the price of these essential commodities. Variable rate products allow customers to maintain competitive rates while retaining the ability to lock into a fixed price at their discretion. Flat-bill products allow customers to pay a flat rate each month regardless of usage. Just Energy derives its gross margin from the difference between the price at which it is able to sell the commodities to its customers and the related price at which it purchases the associated volumes from its suppliers.

Just Energy offers green products through terrapass and its JustGreen program. Green products offered through terrapass allow customers to offset their carbon footprint without buying energy commodity products and can be offered in all states and provinces without being dependent on energy deregulation. The JustGreen electricity product offers customers the option of having all or a portion of their electricity sourced from renewable green sources such as wind, solar, hydropower or biomass, via

power purchase agreements and renewable energy certificates. The JustGreen gas product offers carbon offset credits that allow customers to reduce or eliminate the carbon footprint of their homes or businesses. Through the Filter Group, Just Energy provides subscription-based home water filtration systems to residential customers, including under-counter and whole-home water filtration solutions. Just Energy markets its product offerings through multiple sales channels including digital, retail, door-to-door, brokers and affinity relationships.

In March 2019, Just Energy formally approved and commenced a process to dispose of its businesses in Germany, Ireland and Japan. In June 2019, Just Energy also formally approved and commenced a process to dispose of its business in the United Kingdom ("U.K."), as part of the Company's strategic review. The decision was part of a strategic transition to focus on the core business in North America. The U.K. and Ireland businesses were disposed of during the year ended March 31, 2020 as described in Note 25. The disposal of operations in Japan was completed in April 2020. In March 2021, the Company commenced insolvency proceedings for its German operations and expects to liquidate the German businesses within the next 12 months.

As at March 31, 2021, the German business operations were classified as a discontinued operation. Previously, these operations were reported within the Mass Market segment, while a portion of the U.K. business was allocated to the Commercial segment. On November 30, 2020, the Company sold EdgePower. The disposal of these operations was reclassified and presented in discontinued operations and were previously reported as a Commercial segment.

On September 28, 2020, the Company completed a recapitalization plan (the "September Recapitalization"). The September Recapitalization was undertaken through a plan of arrangement under the Canada Business Corporations Act ("CBCA"). See further discussion in Note 15 and Note 18.

3. BASIS OF PRESENTATION

(a) Compliance with IFRS

The Consolidated Financial Statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board. The policies applied in these Consolidated Financial Statements were based on IFRS issued and effective as at March 31, 2021.

(b) Basis of presentation

The Consolidated Financial Statements are presented in Canadian dollars, the functional currency of Just Energy, and all values are rounded to the nearest thousand, except where otherwise indicated. The Consolidated Financial Statements are prepared on a going concern basis under the historical cost convention, except for certain financial assets and liabilities that are stated at fair value.

Principles of consolidation

The Consolidated Financial Statements include the accounts of Just Energy and its directly or indirectly owned subsidiaries as at March 31, 2021. Subsidiaries are consolidated from the date of acquisition and control and continue to be consolidated until the date that such control ceases. Control is achieved when the Company is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect these returns through its power over the investee. The financial statements of the subsidiaries are prepared for the same reporting period as Just Energy, using consistent accounting policies. All intercompany balances, income, expenses, and unrealized gains and losses resulting from intercompany transactions are eliminated on consolidation.

Going concern

Due to the Weather Event and associated CCAA filing, the Company's ability to continue as a going concern for the next 12 months is dependent on the Company emerging from CCAA protection, meeting the liquidity challenges and complying with DIP Facility covenants. The material uncertainties arising from the CCAA filings cast substantial doubt upon the Company's ability to continue as a going concern and, accordingly the ultimate appropriateness of the use of accounting principles applicable to a going concern. These Consolidated Financial Statements do not reflect the adjustments to carrying values of assets and liabilities and the reported expenses and Consolidated Statements of Financial Position classifications that would be necessary if the going concern assumption was deemed inappropriate. These adjustments could be material. There can be no assurance that the Company will be successful in emerging from CCAA as a going concern.

4. SIGNIFICANT ACCOUNTING POLICIES

Cash and cash equivalents and restricted cash

All highly liquid temporary cash investments with an original maturity of three months or less when purchased are cash equivalents. For the Consolidated Statements of Cash Flows, cash and cash equivalents consist of cash and cash equivalents as defined above.

Restricted cash includes cash and cash equivalents, where the availability of cash to be exchanged or used to settle a liability is restricted by debt arrangements.

Accrued gas receivable/accrued gas payable or gas delivered in excess of consumption/deferred revenue

Accrued gas receivable from Just Energy's customers is stated at fair value and results from customers consuming more gas than has been delivered by Just Energy to local distribution companies ("LDCs"). Accrued gas payable represents Just Energy's obligation to the LDCs for the customers' excess consumption, over what was delivered to the LDCs.

Gas delivered to LDCs in excess of consumption by customers is stated at the lower of cost and net realizable value. Collections from customers in advance of their consumption of gas result in deferred revenue.

Assuming normal weather and consumption patterns, during the winter months, customers will have consumed more than was delivered, resulting in the recognition of accrued gas receivable/accrued gas payable. In the summer months, customers will have consumed less than what was delivered, resulting in the recognition of gas delivered in excess of consumption/deferred revenue.

Gas in storage

Gas in storage represents the gas delivered to the LDCs. The balance will fluctuate as gas is injected into or withdrawn from storage.

Gas in storage is valued at the lower of cost and net realizable value, with cost being determined based on market cost on a weighted average basis. Net realizable value is the estimated selling price in the ordinary course of business.

Property and equipment

Property and equipment are stated at cost, net of any accumulated depreciation and impairment losses. Cost includes the purchase price and, where relevant, any costs directly attributable to bringing the asset to the location and condition necessary for its intended use and the present value of all dismantling and removal costs. Where major components of property and equipment have different useful lives, the components are recognized and depreciated separately. Just Energy recognizes, in the carrying amount, the cost of replacing part of an item when the cost is incurred and if it is probable that the future economic benefits embodied in the item can be reliably measured. Depreciation is provided over the estimated useful lives of the assets as follows:

Asset category	Depreciation method	Rate/useful life
Furniture and fixtures	Declining balance	20%
Office equipment	Declining balance	20%
Computer equipment	Declining balance	30%
Leasehold improvements	Straight-line	Shorter of useful life and lease term
Premise assets	Straight-line	4-7 years

An item of property and equipment and any significant part initially recognized is derecognized upon disposal or when no future economic benefits are expected from its use or disposal. Any gain or loss arising on derecognition of the asset is included in the Consolidated Statements of Loss.

The useful lives and methods of depreciation are reviewed at each financial year-end and adjusted prospectively, if appropriate.

Business combinations

All identifiable assets acquired and liabilities assumed are measured at the acquisition date at fair value. The Company records all identifiable intangible assets including identifiable assets that had not been recognized by the acquiree before the business combination. Any excess of the cost of acquisition over the Company's share of the net fair value of the identifiable assets acquired and liabilities assumed is recorded as goodwill. During the measurement period (which is within one year from the acquisition date), Just Energy may adjust the amounts recognized at the acquisition date to reflect new information obtained about facts and circumstances that existed as of the acquisition date. Adjustments related to facts and circumstances that did not exist as at the Consolidated Statements of Financial Position dates are taken to the Consolidated Statements of Loss. The Company records acquisition-related costs as expenses in the periods in which the costs are incurred with the exception of certain costs relating to registering and issuing debt or equity securities which are accounted for as part of the financing. Non-controlling interest is recognized at its proportionate share of the fair value of identifiable assets and liabilities, unless otherwise indicated.

Goodwill

Goodwill is initially measured at cost, which is the excess of the cost of the business combination over Just Energy's share in the net fair value of the acquiree's identifiable assets, liabilities and contingent liabilities.

After initial recognition, goodwill is measured at cost, less impairment losses. For the purpose of impairment testing, goodwill is allocated to each of Just Energy's operating segments that are expected to benefit from the synergies of the combination, irrespective of whether other assets and liabilities of the acquiree are assigned to those segments.

Intangible assets

Intangible assets acquired outside of a business combination are measured at cost on initial recognition. Following initial recognition, intangible assets are carried at cost less any accumulated amortization and/or accumulated impairment losses.

Intangible assets with finite useful lives are amortized over the useful economic life and assessed for impairment whenever there is an indication that the intangible asset may be impaired. The amortization method and amortization period of an intangible asset with a finite useful life are reviewed at least annually. Changes in the expected useful life or the expected pattern of

consumption of future economic benefits embodied in the asset are accounted for by changing the amortization period or method, as appropriate, and are treated as changes in accounting estimates. The amortization expense related to intangible assets with finite lives is recognized in the Consolidated Statements of Loss.

Internally developed intangible assets are capitalized when the product or process is technically and commercially feasible, the future economic benefit is measurable, Just Energy can demonstrate how the asset will generate future economic benefits and Just Energy has sufficient resources to complete development. The cost of an internally developed intangible asset comprises all directly attributable costs necessary to create, produce and prepare the asset to be capable of operating in the manner intended by management.

Gains or losses arising from disposal of an intangible asset are measured as the difference between the net disposal proceeds and the carrying amount of the asset and are recognized in the Consolidated Statements of Loss when the asset is derecognized.

Intangible asset category	Amortization method	Rate/useful life
Customer relationships	Straight-line	10 years
Technology	Straight-line	3-5 years
Brand (finite life)	Straight-line	10 years

Impairment of non-financial assets

Just Energy assesses whether there is an indication that an asset may be impaired at each reporting date. If such an indication exists or when annual testing for an asset is required, Just Energy estimates the asset's recoverable amount. The recoverable amounts of goodwill and intangible assets with an indefinite useful life are tested at least annually. The recoverable amount is the higher of an asset's or cash-generating unit's ("CGU") or group of CGUs' fair value less costs to sell and its value-in-use. Value-in-use is determined by discounting estimated future pre-tax cash flows using a pre-tax discount rate that reflects the current market assessment of the time value of money and the specific risks of the asset. The recoverable amount of assets that do not generate independent cash flows is determined based on the CGU or group of CGUs to which the asset belongs.

The goodwill and certain brands are considered to have indefinite lives and are not amortized, but rather tested annually for impairment or when there are indications that these assets may be impaired. The assessment of indefinite life is reviewed annually.

An impairment loss is recognized if an asset's carrying amount or that of the CGU or groups of CGUs to which it is allocated is higher than its recoverable amount. Impairment losses of individual CGUs or group of CGUs are charged against the goodwill, then indefinite-life intangibles and if any value is left, then to the assets in proportion to their carrying amount.

For assets excluding goodwill, an assessment is made at each reporting date as to whether there is any indication that previously recognized impairment losses may no longer exist or may have decreased. If such an indication exists, Just Energy estimates the asset's or CGU's or group of CGUs' recoverable amount. A previously recognized impairment loss is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount since the last impairment loss was recognized. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of amortization, had no impairment loss been recognized for the asset in prior years. Such a reversal is recognized in the Consolidated Statements of Loss.

Goodwill is tested for impairment annually and when circumstances indicate that the carrying value may be impaired. Goodwill is tested at the operating segment level, representing a group of CGUs, as that is the lowest level at which goodwill is monitored. Impairment is determined for goodwill by assessing the recoverable amount of each operating segment to which the goodwill relates. Where the recoverable amount of the operating segment is less than its carrying amount, an impairment loss is recognized. Impairment losses relating to goodwill cannot be reversed in future periods.

Leases

A lease is an arrangement whereby the lessor conveys to the lessee, in return for a payment or series of payments, the right to use an asset for an agreed period of time. Right-of-use ("ROU") assets are measured at cost, less any accumulated depreciation and impairment losses, and adjusted for any remeasurement of lease liabilities. The cost of ROU assets includes the amount of lease liabilities recognized, initial direct costs incurred, and lease payments made at or before the commencement date less any lease incentives received. ROU assets are depreciated on a straight-line basis over the shorter of the lease term and the estimated useful lives of the assets, within a range of two years to six years.

The determination of whether an arrangement is or contains a lease is based on the substance of the arrangement at the inception date and whether fulfillment of the arrangement is dependent on the use of a specific asset or assets, or the arrangement conveys a right to use the asset.

Lease liabilities

At the commencement date of the lease, Just Energy recognizes lease liabilities measured at the present value of lease payments to be made over the lease term. The lease payments include fixed payments (including in-substance fixed payments) less any lease incentives receivable. The lease payments also include payments of penalties for terminating the lease, if the lease term reflects the exercising of the option to terminate. Lease liabilities are grouped into other liabilities on the Consolidated Statements of Financial Position.

In calculating the present value of lease payments, Just Energy uses its incremental borrowing rate at the lease commencement date because the interest rate implicit in the lease is not readily determinable. After the commencement date, the amount of lease liabilities is increased to reflect the accretion of interest and reduced for the lease payments made. In addition, the carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term, or a change in the lease.

Just Energy as a lessee

Just Energy applies the short-term lease recognition exemption to its short-term leases of machinery and equipment (i.e., those leases that have a lease term of 12 months or less from the commencement date and do not contain a purchase option). It also applies the lease of low-value assets recognition exemption to leases of office equipment that are considered to be low value. Lease payments on short-term leases and leases of low-value assets are recognized as expense on a straight-line basis over the lease term.

Financial instruments

(i) Recognition

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. Regular purchases and sales of financial assets are recognized on the trade date, being the date on which Just Energy commits to purchase or sell the asset. All financial liabilities are recognized initially at fair value and, in the case of loans and borrowings and payables, net of directly attributable transaction costs.

(ii) Classification

Just Energy classified its financial assets and liabilities in the following measurement categories:

Financial assets at fair value through profit or loss

Financial assets at fair value through profit or loss include financial assets held for trading and financial assets designated upon initial recognition as at fair value through profit or loss. This category includes derivative financial instruments entered into that are not designated as hedging instruments in hedge relationships as defined by IFRS 9, *Financial Instruments* (“IFRS 9”). Included in this class are primarily physical delivered energy contracts, for which the own-use exemption could not be applied, financially settled energy contracts and foreign currency forward contracts.

An analysis of fair values of financial instruments and further details as to how they are measured are provided in Note 12. Related realized and unrealized gains and losses are included in the Consolidated Statements of Loss.

Financial assets classified at fair value through other comprehensive income (OCI)

Financial assets at fair value through OCI are equity instruments that Just Energy has elected to recognize the changes in fair value through OCI. They were recognized initially at fair value in the Consolidated Statements of Financial Position and were remeasured subsequently at fair value with gains and losses arising from changes in fair value recognized directly in equity and presented in OCI.

Amortized cost

Assets held for collection of contractual cash flows that represent solely payments of principal and interest are measured at amortized cost. A gain or loss on a financial asset is recognized in the Consolidated Statements of Loss when the asset is derecognized or impaired. Trade and other receivables and trade and other payables are included in this category.

Financial liabilities at fair value through profit or loss

Financial liabilities at fair value through profit or loss include financial liabilities held for trading and financial liabilities designated upon initial recognition as at fair value through profit or loss.

Financial liabilities are classified as held for trading if they are acquired for the purpose of selling in the near term. This category includes derivative financial instruments entered into by Just Energy that are not designated as hedging instruments in hedge relationships as defined by IFRS 9. Included in this class are primarily physically delivered energy contracts, for which the own-use exemption could not be applied, financially settled energy contracts and foreign currency forward contracts.

Gains or losses on liabilities held for trading are recognized in the Consolidated Statements of Loss.

Other financial liabilities at amortized cost

Other financial liabilities are measured at amortized cost using the effective interest rate method. Financial liabilities include long-term debt issued and are initially measured at fair value. Transaction costs related to the long-term debt instruments are included in the value of the instruments and amortized using the effective interest rate method. The effective interest expense is included in finance costs in the Consolidated Statements of Loss.

(iii) Measurement

At initial recognition, Just Energy measures a financial asset at its fair value. In the case of a financial asset not categorized as fair value through profit or loss transaction costs that are directly attributable to the acquisition of the financial asset are included in measurement at initial recognition. Transaction costs of financial assets carried at fair value through profit or loss are expensed in the Consolidated Statements of Loss.

All financial liabilities are recognized initially at fair value and, in the case of loans and borrowings and payables, net of directly attributable transaction costs.

Subsequent measurement of financial assets depends on Just Energy's business objective for managing the asset and the cash flow characteristics of the asset.

Derivative instruments

Just Energy enters into fixed-term contracts with customers to provide electricity and natural gas at fixed prices. These customer contracts expose Just Energy to changes in consumption as well as changes in the market prices of electricity and natural gas. To reduce its exposure to movements in commodity prices, Just Energy enters into contracts with suppliers that expose the Company to changes in prices for the purchase and sale of electricity and natural gas. These contracts are treated as derivatives as they do not meet the own-use criteria under International Accounting Standards ("IAS") 32, *Financial Instruments: Presentation*. The primary factors affecting the fair value of derivative instruments at any point in time are the volume of open derivative positions and the changes of commodity market prices. Prices for electricity and natural gas are volatile, which can result in material changes in the fair value measurements reported in Just Energy's Consolidated Financial Statements in the future.

Just Energy analyzes all its contracts, of both a financial and non-financial nature, to identify the existence of any "embedded" derivatives. Embedded derivatives are accounted for separately from the underlying contract at the inception date when their economic characteristics are not closely related to those of the host contract and the host contract is not carried as held for trading or designated as fair value through profit or loss. These embedded derivatives are measured at fair value with changes in fair value recognized in Consolidated Statements of Loss.

All derivatives are recognized at fair value on the date on which the derivative is entered into and are remeasured to fair value at each reporting date. Derivatives are carried in the Consolidated Statements of Financial Position as fair value of derivative financial assets when the fair value is positive and as fair value of derivative financial liabilities when the fair value is negative. Just Energy does not utilize hedge accounting; therefore, changes in the fair value of these derivatives are recorded directly to the Consolidated Statements of Loss and are included within unrealized gain (loss) on derivative instruments.

The contracts to buy or sell a non-financial item that can be settled net in cash or another financial instrument, or by exchanging financial instruments, are accounted for as derivatives at fair value through profit or loss. These contracts are physically settled by the underlying non-financial item. These are recognized as a corresponding adjustment to cost of goods sold or inventory when the contract is physically settled. These realized gains and losses on financial swap contracts are recorded in the line item realized gain (loss) on derivative instruments in the Consolidated Statements of Loss.

(iv) Derecognition

A financial asset is derecognized when the rights to receive cash flows from the asset have expired or when Just Energy has transferred its rights to receive cash flows from the asset.

A financial liability is derecognized when the obligation under the liability is discharged or cancelled or expires. When an existing financial liability is replaced by another from the same lender on substantially different terms, or the terms of an existing liability are substantially modified, such an exchange or modification is treated as a derecognition of the original liability and the recognition of a new liability, and the difference in the respective carrying amounts is recognized in the Consolidated Statements of Loss.

(v) Impairment

Just Energy assesses on a forward-looking basis the expected credit loss ("ECL") associated with its assets carried at amortized cost. For trade receivables, other receivables and unbilled revenue only, Just Energy applies the simplified approach permitted by IFRS 9, which requires expected lifetime losses to be recognized from initial recognition of the receivables.

Trade receivables are reviewed qualitatively to determine if they need to be written off.

(vi) Offsetting of financial instruments

Financial assets and financial liabilities are offset and the net amount reported in the Consolidated Statements of Financial Position if, and only if, there is currently an enforceable legal right to offset the recognized amounts and there is an intention to settle on a net basis, or to realize the assets and settle the liabilities simultaneously.

Fair value of financial instruments

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (i.e., an exit price). The fair value of financial instruments that are traded in active markets at each reporting date is determined by reference to quoted market prices, without any deduction for transaction costs.

For financial instruments not traded in an active market, the fair value is determined using appropriate valuation techniques that are recognized by market participants. Such techniques may include using recent arm's-length market transactions, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis, or other valuation models. An analysis of fair values of financial instruments and further details as to how they are measured are provided in Note 12.

Revenue recognition

Just Energy has identified that the material performance obligation is the provision of electricity and natural gas to customers, which is satisfied over time throughout the contract term. Just Energy utilizes the output method to recognize revenue based on

the units of electricity and natural gas delivered and billed to the customer each month and Just Energy has elected to adopt the practical expedient to recognize revenue in the amount to which the entity has a right to invoice, as the entity has a right to consideration from a customer in an amount that corresponds directly with the value to the customer of the entity's performance to date.

Revenue is measured at the fair value of the consideration received, excluding discounts, rebates and sales taxes.

Just Energy accounts for Transmission and Distribution Service Provider ("TDSP") charges charged to electricity customers on a gross basis whereby TDSP charges to the customer and payments to the service provider are presented in sales and cost of goods sold, respectively.

In Alberta, Texas, Illinois, California (gas), and Ohio, Just Energy assumes the credit risk associated with the collection of customer accounts. Credit review processes have been established to manage the customer default rate. Management factors default from credit risk into its margin expectations for all of the above-noted markets.

Foreign currency translation

Functional and presentation currency

Items included in the Consolidated Financial Statements of each of the Company's entities are measured using the currency of the primary economic environment in which the entity operates (the "functional currency"). For U.S.-based subsidiaries, this is U.S. dollars. The Consolidated Financial Statements are presented in Canadian dollars, which is the parent Company's presentation and functional currency.

Transactions

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at period-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognized in the Consolidated Statements of Loss.

Translation of foreign operations

The consolidated results and Consolidated Statements of Financial Position of all the group entities that have a functional currency different from the presentation currency are translated into the presentation currency as follows:

- Assets and liabilities for each Consolidated Statements of Financial Position presented are translated at the closing rate as at the date of that Consolidated Statements of Financial Position; and
- Income and expenses for each Consolidated Statements of Loss are translated at the exchange rates prevailing at the dates of the transactions.

On consolidation, exchange differences arising from the translation of the net investment in foreign operations are recorded in OCI.

When a foreign operation is partially disposed of or sold, exchange differences that were recorded in accumulated other comprehensive income are recognized in the Consolidated Statements of Loss as part of the gain or loss on sale.

Goodwill and fair value adjustments arising on the acquisition of a foreign entity are treated as assets and liabilities of the foreign entity and translated at the closing rate.

Earnings (loss) per share amounts

The computation of earnings (loss) per share is based on the weighted average number of shares outstanding during the year. Diluted earnings (loss) per share is computed in a similar way to basic earnings (loss) per share except that the weighted average number of shares outstanding is increased to include additional shares introduced after the equity compensation plans described in Note 19 assuming the exercise of stock options, restricted share units ("RSUs"), performance share units ("PSUs") and deferred share units ("DSUs"). These outstanding shares are also adjusted for any pre-September Recapitalization restricted share grants ("RSGs"), performance bonus incentive grants ("PBGs"), deferred share grants ("DSGs") and convertible debentures, if dilutive.

Share-based compensation plans

Equity-based compensation liability

Share-based compensation plans are equity-settled transactions. The cost of share-based compensation is measured by reference to the fair value at the date on which it was granted. Awards are valued at the grant date and are not adjusted for changes in the prices of the underlying shares and other measurement assumptions. The cost of equity-settled transactions is recognized, together with the corresponding increase in equity, over the period in which the performance or service conditions are fulfilled, ending on the date on which the relevant grantee becomes fully entitled to the award. The cumulative expense recognized for equity-settled transactions at each reporting date until the vesting period reflects the extent to which the vesting period has expired and Just Energy's best estimate of the number of the shares that will ultimately vest. The expense or credit recognized for a period represents the movement in cumulative expense recognized as at the beginning and end of that period.

When units are exercised or exchanged, the amounts previously credited to contributed deficit are reversed and credited to shareholders' capital.

Employee future benefits

In Canada, Just Energy offers a long-term wealth accumulation plan (the "Canadian Plan") for all permanent full-time and permanent part-time employees (working more than 26 hours per week).

For U.S. employees, Just Energy has established a long-term savings plan (the "U.S. Plan") for all permanent full-time and part-time employees (working more than 30 hours per week) of its subsidiaries.

Participation in the plans in Canada or the U.S. is voluntary. Obligations for contributions to the Canadian and U.S. Plans are recognized as an expense in the Consolidated Statements of Loss when the contribution is made by the Company.

Income taxes

Current income tax assets and liabilities for the current and prior periods are measured at the amount expected to be recovered from, or paid to, the taxation authorities. The tax rates and tax laws used to compute the amount are those that are enacted or substantively enacted at the reporting date in the countries where Just Energy operates and generates taxable income.

Current income taxes relating to items recognized directly in OCI or equity are recognized in OCI or equity and not in the Consolidated Statements of Loss. Management periodically evaluates positions taken in the tax returns with respect to situations where applicable tax regulations are subject to interpretation and establishes provisions where appropriate.

Just Energy follows the liability method of accounting for deferred income taxes. Under this method, deferred income tax assets and liabilities are recognized for the estimated tax consequences attributable to the temporary differences between the carrying value of the assets and liabilities in the Consolidated Financial Statements and their respective tax bases.

Deferred income tax liabilities are recognized for all taxable temporary differences except:

- Where the deferred income tax liability arises from the initial recognition of goodwill or of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the accounting profit or loss nor taxable profit or loss; and
- In respect of taxable temporary differences associated with investments in subsidiaries, where the timing of the reversal of the temporary differences can be controlled by the parent and it is probable that the temporary differences will not reverse in the foreseeable future.

Deferred income tax assets are recognized for all deductible temporary differences, the carryforward of unused tax credits and any unused tax losses, to the extent that it is probable that taxable profit will be available against which the deductible temporary differences, and the carryforward of unused tax credits and unused tax losses, can be utilized except:

- Where the deferred income tax asset relating to the deductible temporary difference arises from the initial recognition of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the accounting profit nor taxable profit or loss; and
- In respect of deductible temporary differences associated with investments in subsidiaries, deferred income tax assets are recognized only to the extent that it is probable that the temporary differences will reverse in the foreseeable future and taxable profit will be available against which the temporary differences can be utilized.

The carrying amount of deferred income tax assets is reviewed at the end of each reporting period and reduced to the extent that it is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred income tax asset to be utilized. Unrecognized deferred income tax assets are reassessed at the end of each reporting period and are recognized to the extent that it has become probable that future taxable profits will allow the deferred income tax asset to be recovered.

Deferred income tax assets and liabilities are measured at the tax rates that are expected to apply to the year when the asset is realized, or the liability is settled, based on tax rates (and tax laws) that have been enacted or substantively enacted at the reporting date.

Deferred income taxes relating to items recognized in cumulative translation adjustment or equity are recognized in OCI or equity and not in the Consolidated Statements of Loss.

Deferred income tax assets and deferred income tax liabilities are offset, if a legally enforceable right exists to set off current income tax assets against current income tax liabilities and the deferred income taxes relate to the same taxable entity and the same taxation authority.

Provisions and restructuring

Provisions are recognized when Just Energy has a present obligation, legal or constructive, as a result of a past event and it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. Where Just Energy expects some or all provisions to be reimbursed, the reimbursement is recognized as a separate asset but only when the reimbursement is virtually certain. The expense relating to any provision is presented in the Consolidated Statements of Loss, net of any reimbursement. If the effect of the time value of money is material, provisions are discounted using a current pre-tax rate that reflects, where appropriate, the risks specific to

the liability. If there are uncertainties on the timing and amounts of the obligation, the provisions are not discounted and presented in full based on the best estimate.

Restructuring provisions comprise activities including termination or relocation of a business, management structural reorganization and employee-related costs. Incremental costs directly associated with the restructuring are included in the restructuring provision. Costs associated with ongoing activities, including training or relocating continuing staff, are excluded from the provision. Measurement of the provision is at the best estimate of the anticipated costs to be incurred.

Where discounting is used, the increase in the provision due to the passage of time is recognized as a finance cost in the Consolidated Statements of Loss.

Selling and marketing expenses

Commissions and various other costs related to obtaining and renewing customer contracts are charged to expense in the Consolidated Statements of Loss in the period incurred except as disclosed below:

Commissions related to obtaining and renewing customer contracts are paid in one of the following ways: all or partially up front or as a residual payment over the term of the contract. If the commission is paid all or partially up front, it is recorded as a customer acquisition cost in other current or non-current assets in the Consolidated Statements of Financial Position and expensed in selling and marketing expenses over the term for which the associated revenue is earned. If the commission is paid as a residual payment, the amount is expensed as earned.

Just Energy capitalizes the incremental acquisition costs of obtaining a customer contract as an asset as these costs would not have been incurred if the contract had not been obtained and these costs are amortized in selling and marketing expense over the life of the contract. When the term of the contract is one year or less, the incremental costs incurred to obtain the customer contracts are expensed when incurred.

Just Energy expenses advertising costs as incurred.

Green provision and certificates

Just Energy is a retailer of green energy and records a provision to its regulators as green energy sales are recognized. A corresponding cost is included in cost of goods sold. Just Energy measures its provision based on the compliance requirements of different jurisdictions in which it has operations or where the customers voluntarily subscribed for green energy.

Green certificates are purchased by Just Energy to settle its obligation with the regulators or for trading in the normal course of business. Green certificates are held at cost and presented at the gross amount in the Consolidated Statements of Financial Position. These certificates are only netted against the obligation when the liability is retired as per the regulations of the respective jurisdiction. Any provision balance in excess of the green certificates held or that Just Energy has committed to purchase is measured at fair value.

Any green energy-related derivatives are forward contracts and are recognized in accordance with the accounting policy discussed under “Financial Instruments” above.

Non-current assets held for sale and discontinued operations

Just Energy classifies non-current assets and disposal groups as held for sale if their carrying amounts will be recovered principally through a sale transaction rather than through continuing use. Non-current assets and disposal groups classified as held for sale are measured at the lower of their carrying amount and fair value less costs to sell. The criteria for the held for sale classification is regarded as met only when the sale is highly probable, and the asset or disposal group is available for immediate sale in its present condition. Management must be committed to the sale, which should be expected to qualify for recognition as a completed sale within one year from the date of classification. Discontinued operations are excluded from the results of continuing operations and are presented as a single amount as profit or loss after tax from discontinued operations in the Consolidated Statements of Loss. Property and equipment and intangible assets are not depreciated or amortized once classified as held for sale.

5. CORRECTION OF PRIOR PERIOD FINANCIAL STATEMENTS

The Company determined that the TDSP charges charged to electricity customers were accounted for on a gross basis in certain markets and net in other markets. Under the gross basis, TDSP charges to the customer and payments to the service provider are presented gross within sales and cost of goods sold, respectively. Under the net method, TDSP charges to the customer and payments to the service provider are presented net within cost of goods sold.

Management analyzed the appropriate accounting treatment under IFRS 15, *Revenue from Contracts with Customers*, based on accounting standards and guidance, terms of the contract, commercial understanding and industry practice. Based on the analysis performed, it was determined that the Company undertakes to deliver the commodity to the customer at their location across various markets and contract offers. Arranging delivery to the customer’s meter is a part of the activities the Company performs to fulfill its obligation to customers and, as such, the Company is the primary obligor to deliver the commodity to the customer. The Company determined that TDSP charges should be accounted for consistently on a gross basis for the relevant markets where the nature and contractual terms of TDSP charges were similar. As a result, prior years amounts on the

Consolidated Statements of Loss with respect to sales and cost of goods sold were corrected to reflect the gross basis of presentation. Amounts reflected for the year ended March 31, 2021 are presented gross.

	Year ended March 31, 2020, as originally reported	Correction	**Year ended March 31, 2020 (Re-presented)**
Sales	$ 2,772,809	$ 380,843	**$ 3,153,652**
Cost of goods sold	2,136,456	380,843	**2,517,299**
Gross margin	$ 636,353	$ –	**$ 636,353**

	Year ended March 31, 2019, as originally reported	Correction	**Year ended March 31, 2019 (Re-presented)**
Sales	$ 3,038,438	$ 402,954	**$ 3,441,392**
Cost of goods sold	2,359,867	402,954	**2,762,821**
Gross margin	$ 678,571	$ –	**$ 678,571**

Management assessed the materiality of the correction described above on prior period financial statements in accordance with SEC Staff Accounting Bulletin ("SAB") No. 99, Materiality and concluded that these corrections were not material to any prior annual or interim periods. Accordingly, in accordance with SAB No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, the Consolidated Financial Statements for the years ended March 31, 2020 and 2019, which are presented herein, have been re-presented after correction of such immaterial adjustments solely for comparability purposes.

6. SIGNIFICANT ACCOUNTING JUDGMENTS, ESTIMATES AND ASSUMPTIONS

The preparation of the Consolidated Financial Statements requires the use of estimates and assumptions to be made in applying the accounting policies that affect the reported amounts of assets, liabilities, income and expenses. The estimates and related assumptions are based on previous experience and other factors considered reasonable under the circumstances, the results of which form the basis for making the assumptions about carrying values of assets and liabilities that are not readily apparent from other sources.

The estimates and underlying assumptions are reviewed on an ongoing basis. In its review, the Company has considered the on-going impact of the coronavirus disease ("COVID-19") pandemic. Revisions to accounting estimates are recognized in the period in which the estimate is revised. Judgments made by management in the application of IFRS that have a significant impact on the Consolidated Financial Statements relate to the following:

Allowance for doubtful accounts

The measurement of the ECL allowance for trade accounts receivable requires the use of management's judgment in estimation techniques, building models, selecting key inputs and making significant assumptions about future economic conditions and credit behaviour of the customers, including the likelihood of customers defaulting and the resulting losses. The Company's current significant estimates include the historical collection rates as a percentage of revenue and the use of the Company's historical rates of recovery across aging buckets and the consideration of forward-looking information. All of these inputs are sensitive to the number of months or years of history included in the analysis, which is a key input and judgment made by management.

Deferred income taxes

Significant management judgment is required to determine the amount of deferred income tax assets and liabilities that can be recognized, based upon the likely timing and the level of future taxable income realized, including the usage of tax-planning strategies. Determining the tax treatment on certain transactions also involves management's judgment.

Fair value of financial instruments

Where the fair values of financial assets and financial liabilities recorded in the Consolidated Statements of Financial Position cannot be derived from active markets, they are determined using valuation techniques including discounted cash flow models or transacted/quoted prices of identical assets that are not active. The inputs to these models are taken from observable markets where possible, but where this is not feasible, a degree of judgment is required in establishing fair values. The judgment includes consideration of inputs such as liquidity risk, credit risk and volatility. Changes in assumptions about these factors could affect the reported fair value of financial instruments. Refer to Note 12 for further details about the assumptions as well as a sensitivity analysis.

Impairment of non-financial assets

Just Energy's impairment test is based on the estimated value-in-use and uses a discounted cash flow approach model. Management is required to exercise judgment in identifying the CGUs or group of CGUs to which to allocate goodwill, working capital and related assets and liabilities. Judgment is applied in the determination of perspective financial information that includes the weighted cost of capital, forecasted growth rates, and expected margin. Refer to Note 11 for further information.

7. TRADE AND OTHER RECEIVABLES, NET

(a) Trade and other receivables, net

	As at March 31, 2021	As at March 31, 2020
Trade account receivables, net	**$ 189,250**	$ 241,969
Unbilled revenue, net	**103,986**	121,993
Accrued gas receivable	**833**	7,224
Other	**46,132**	32,721
	$ 340,201	$ 403,907

(b) Aging of accounts receivable

Customer credit risk

The lifetime expected credit loss reflects Just Energy's best estimate of losses on the accounts receivable and unbilled revenue balances. Just Energy determines the lifetime ECL by using historical loss rates and forward-looking factors, if applicable. Just Energy is exposed to customer credit risk on its continuing operations in Alberta, Texas, Illinois (gas), California (gas) and Ohio (electricity). Credit review processes have been implemented to perform credit evaluations of customers and manage customer default. If a significant number of customers were to default on their payments, it could have a material adverse effect on the operations and cash flows of Just Energy. Management factors default from credit risk in its margin expectations for all of the above markets.

In the remaining markets, the LDCs provide collection services and assume the risk of any bad debts owing from Just Energy's customers for a fee that is recorded in cost of goods sold. Although there is no assurance that the LDCs providing these services will continue to do so in the future, management believes that the risk of the LDCs failing to deliver payment to Just Energy is minimal.

The aging of the trade accounts receivable, excluding the allowance for doubtful accounts, from the markets where the Company bears customer credit risk was as follows:

	As at March 31, 2021	As at March 31, 2020
Current	**$ 58,737**	$ 83,431
1-30 days	**19,415**	26,678
31-60 days	**3,794**	6,513
61-90 days	**2,144**	5,505
Over 90 days	**10,446**	35,252
	$ 94,536	$ 157,379

(c) Allowance for doubtful accounts

Changes in the allowance for doubtful accounts related to the balances in the table above were as follows:

	As at March 31, 2021	As at March 31, 2020
Balance, beginning of year	**$ 45,832**	$ 182,365
Provision for doubtful accounts	**34,260**	80,050
Bad debts written off	**(62,529)**	(138,514)
Foreign exchange	**5,800**	3,124
Assets classified as held for sale/sold	**—**	(81,193)
Balance, end of year	**$ 23,363**	$ 45,832

8. OTHER CURRENT AND NON-CURRENT ASSETS

(a) Other current assets

	As at March 31, 2021	As at March 31, 2020
Prepaid expenses and deposits	$ 52,216	$ 55,972
Customer acquisition costs (a)	45,681	77,939
Green certificates	61,467	63,728
Gas delivered in excess of consumption	650	2,393
Inventory	3,391	3,238
	$ 163,405	$ 203,270

(b) Other non-current assets

	As at March 31, 2021	As at March 31, 2020
Customer acquisition costs (a)	$ 27,318	$ 43,686
Other long-term assets	7,944	12,764
	$ 35,262	$ 56,450

(a) Amortization of $88.5 million is charged to selling and marketing expense in the Consolidated Statements of Loss.

9. INVESTMENTS

As at March 31, 2021, Just Energy owns approximately 8% (on a fully diluted basis) of ecobee, a private company that designs, manufactures and sells smart thermostats. This investment is measured at and classified as fair value through profit or loss. The fair value of the investment has been determined directly from transacted/quoted prices of similar assets that are not active (Level 3 measurement). As at March 31, 2021, the fair value of the ecobee investment is $32.9 million (2020 – $32.9 million).

10. PROPERTY AND EQUIPMENT

	As at March 31, 2021			As at March 31, 2020		
	Cost	Accumulated depreciation	Net book value	Cost	Accumulated depreciation	Net book value
Premise and ROU assets	$ 31,167	$ (20,397)	$ 10,770	$ 35,899	$ (19,729)	$ 16,170
Computer equipment	25,646	(20,788)	4,858	27,959	(19,548)	8,411
Others[1]	26,806	(24,607)	2,199	27,777	(23,564)	4,213
Total	$ 83,619	$ (65,792)	$ 17,827	$ 91,635	$ (62,841)	$ 28,794

1 Others include office equipment, furniture and fixture and leasehold improvements.

11. INTANGIBLE ASSETS

(a) Intangible assets

	As at March 31, 2021				As at March 31, 2020		
	Cost	Accumulated amortization	Impairment	Net book value	Cost	Accumulated amortization	Net book value
Technology[1]	$ 122,763	$ (70,655)	$ (1,116)	$ 50,992	$ 121,382	$ (61,531)	$ 59,851
Brand[2]	32,459	(700)	(13,864)	17,895	36,235	(400)	35,835
Others[3]	55,610	(53,774)	—	1,836	65,800	(63,220)	2,580
Total	$ 210,832	$ (125,129)	$ (14,980)	$ 70,723	$ 223,417	$ (125,151)	$ 98,266

1 Technology includes work in progress projects of $5.2 million, which are not being amortized until completion.
2 This includes an indefinite-lived brand of $15.6 million.
3 This includes sales networks and customer relationships.

The capitalized internally developed costs relate to the development of a new customer relationship management software for the different energy markets of Just Energy. All research costs and development costs, not eligible for capitalization have been expensed and are recognized in administrative expenses.

(b) Impairment testing of goodwill and intangible assets with indefinite lives

Goodwill acquired through business combinations and intangible assets with indefinite lives have been allocated to one of two operating segments. These segments are Mass Market and Commercial.

Goodwill and indefinite-life intangible assets

Goodwill is tested annually for impairment at the level of the two operating segments. Goodwill is also tested for impairment whenever events or circumstances occur that could potentially reduce the recoverable amount of one or more of the operating segments below its carrying value. For the year ended March 31, 2021, an impairment loss was recognized for the full remaining balance of the goodwill of the Commercial segment in the amount of $100.0 million (2020 – $61.4 million) as the carrying value exceeded the recoverable amount. An impairment was also recognized for an indefinite-life intangible in the amount of $13.9 million for the full remaining balance of the Commercial brand. The impairment amount was included in the Consolidated Statements of Loss. An impairment loss was not recognized for the Mass Market segment as its recoverable value exceeded its carrying value.

The recoverable amount for purposes of impairment testing for the Commercial segment represented the estimated value-in-use. The value-in-use was calculated using the present value of estimated future cash flows applying an appropriate risk-adjusted rate to internal operating forecasts. Management believes that the forecasted cash flows generated based on operating forecasts is the appropriate basis upon which to assess goodwill and individual assets for impairment. The value-in-use calculation has been prepared solely for the purposes of determining whether the goodwill balance was impaired. Estimated future cash flows were prepared based on certain assumptions prevailing at the time of the test. The actual outcomes may differ from the assumptions made.

The period included in the estimated future cash flows for the Commercial segment includes five years of the operating plans plus an estimated terminal value beyond the five years driven by historical and forecasted trends. Discount rates were derived using a capital asset pricing model and by analyzing published rates for industries relevant to the Company's reporting units. The key assumptions used in determining the value-in-use of the Commercial segment include historical rates of attrition and renewal.

The underlying growth rate is driven by sales forecast, consistent with recent historical performance and taking into consideration sales channels and strategies in place today. Customer acquisition costs included in the forecast are consistent with current trends considering today's competitive environment. Cost to operate represents management's best estimate of future cost to operate. Sensitivities to different variables have been estimated using certain simplifying assumptions and did not have a significant impact on the results of the impairment test.

Intangible assets

Impairment losses were recognized on definite-lived intangible assets for certain technology projects in the amount of $1.1 million. The impairment amount is included in the Consolidated Statements of Loss. The impairment on certain technology projects was recorded to the Mass Market segment. Intangible assets are reviewed annually for any indicators of impairment. Indicators of impairment were evident for the specific IT projects given the use of the software.

In 2020, impairment losses were recognized on definite-lived intangible assets for Filter Group Inc., EdgePower Inc. and certain technology projects in the amounts of $8.5 million, $14.7 million and $3.9 million, respectively. The impairment amounts were included in the Consolidated Statements of Loss for that period.

12. FINANCIAL INSTRUMENTS

(a) Fair value of derivative financial instruments and other

The fair value of financial instruments is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (i.e., an exit price). Management has estimated the value of financial swaps, physical forwards and option contracts for electricity, natural gas, carbon offsets and renewable energy certificates ("RECs"), and generation and transmission capacity contracts using a discounted cash flow method, which employs market forward curves that are either directly sourced from third parties or developed internally based on third-party market data. These curves can be volatile, thus leading to volatility in the mark to market with no immediate impact to cash flows. Gas options and green power options have been valued using the Black option pricing model using the applicable market forward curves and the implied volatility from other market traded options. Management periodically uses non-exchange-traded swap agreements based on cooling degree days ("CDDs") and heating degree days ("HDDs") measured in its utility service territories to reduce the impact of weather volatility on Just Energy's electricity and natural gas volumes, commonly referred to as "weather derivatives". The fair value of these swaps on a given measurement station indicated in the derivative contract is determined by calculating the difference between the agreed strike and expected variable observed at the same station.

The following table illustrates unrealized gains (losses) related to Just Energy's derivative financial instruments classified as fair value through profit or loss and recorded on the Consolidated Statements of Financial Position as fair value of derivative financial assets and fair value of derivative financial liabilities, with their offsetting values recorded in unrealized gain (loss) in fair value of derivative instruments and other on the Consolidated Statements of Loss.

	As at March 31, 2021	As at March 31, 2020	As at March 31, 2019
Physical forward contracts and options (i)	**$ 5,250**	$ (130,182)	$ (116,350)
Financial swap contracts and options (ii)	**68,944**	(62,612)	39,832
Foreign exchange forward contracts	**(7,826)**	9,055	72
Share swap	⍰	(9,581)	(3,507)
6.5% convertible bond conversion feature	⍰	–	247
Unrealized foreign exchange on Term Loan	**17,077**	–	–
Unrealized foreign exchange on the 6.5% convertible bond and 8.75% loan transferred to realized foreign exchange resulting from the September Recapitalization	⍰	(18,132)	(8,061)
Weather derivatives (iii)	**2,242**	(229)	7,796
Other derivative options	**(2,188)**	(1,736)	(7,488)
Unrealized gain (loss) of derivative instruments and other	**$ 83,499**	$ (213,417)	$ (87,459)

The following table summarizes certain aspects of the fair value of derivative financial assets and liabilities recorded in the Consolidated Statements of Financial Position as at March 31, 2021:

	Financial assets (current)	**Financial assets (non-current)**	**Financial liabilities (current)**	**Financial liabilities (non-current)**
Physical forward contracts and options (i)	**$ 12,513**	**$ 6,713**	**$ 10,157**	**$ 56,122**
Financial swap contracts and options (ii)	**6,942**	**2,634**	**3,548**	**5,047**
Foreign exchange forward contracts	⍰	⍰	**272**	⍰
Weather derivatives (iii)	**1,911**	⍰	⍰	⍰
Other derivative options	**3,660**	**1,253**	⍰	⍰
As at March 31, 2021	**$ 25,026**	**$ 10,600**	**$ 13,977**	**$ 61,169**

The following table summarizes certain aspects of the fair value of derivative financial assets and liabilities recorded in the Consolidated Statements of Financial Position as at March 31, 2020:

	Financial assets (current)	Financial assets (non-current)	Financial liabilities (current)	Financial liabilities (non-current)
Physical forward contracts and options (i)	$ 24,549	$ 17,673	$ 57,461	$ 51,836
Financial swap contracts and options (ii)	6,915	1,492	53,917	24,432
Foreign exchange forward contracts	4,519	3,036	–	–
Weather derivatives (iii)	–	–	280	–
Other derivative options	370	6,591	1,780	–
As at March 31, 2020	$ 36,353	$ 28,792	$ 113,438	$ 76,268

Individual derivative asset and liability transactions are offset, and the net amount reported in the Consolidated Statements of Financial Position if, and only if, there is currently an enforceable legal right to offset the recognized amounts and there is an intention to settle on a net basis, or to realize the assets and settle the liabilities simultaneously. Individual derivative transactions are typically offset at the legal entity and counterparty level. The gross amount for the financial assets and financial liabilities are $569.6 million (2020 – $1.0 billion) and $609.1 million (2020 – $1.1 billion), respectively.

Below is a summary of the financial instruments classified through profit or loss as at March 31, 2021, to which Just Energy has committed:

(i) Physical forward contracts and options consist of:

- Electricity contracts with a total remaining volume of 26,364,660 MWh, a weighted average price of $45.50/MWh and expiry dates up to December 31, 2029.
- Natural gas contracts with a total remaining volume of 85,702,596 GJs, a weighted average price of $2.89/GJ and expiry dates up to October 31, 2025.
- RECs with a total remaining volume of 2,469,441 MWh, a weighted average price of $38.02/REC and expiry dates up to December 31, 2029.
- Electricity generation capacity contracts with a total remaining volume of 2,855 MWCap, a weighted average price of $4,737.46/MWCap and expiry dates up to May 31, 2025.
- Ancillary contracts with a total remaining volume of 681,070 MWh, a weighted average price of $16.13/MWh and expiry dates up to December 31, 2022.

(ii) Financial swap contracts and options consist of:

- Electricity contracts with a total remaining volume of 15,526,415 MWh, a weighted average price of $42.91/MWh and expiry dates up to December 31, 2024.
- Natural gas contracts with a total remaining volume of 96,373,985 GJs, a weighted average price of $3.11/GJ and expiry dates up to December 31, 2026.

(iii) Weather derivatives consist of:

- HDD natural gas swaps with price strikes to be set on futures index and temperature strikes from 1,813F to 4,985F HDD and an expiry date of March 31, 2022.
- HDD natural gas swaps with price strikes to be set on futures index and temperature strikes from 3,439C to 4,985F HDD and an expiry date of March 31, 2023.

These derivative financial instruments create a credit risk for Just Energy since they have been transacted with a limited number of counterparties. Should any counterparty be unable to fulfill its obligations under the contracts, Just Energy may not be able to realize the financial assets' balance recognized in the Consolidated Financial Statements.

Share swap agreement

Just Energy had entered into a share swap agreement to manage the volatility associated with the Company's restricted share grants and deferred share grants plans under the old equity compensation plan described in Note 19. The value on inception of the 2,500,000 shares under this share swap agreement was approximately $33.8 million. On August 22, 2018, Just Energy reduced the notional value of the share swap to $23.8 million through a payment of $10.0 million and renewed the share swap agreement. On March 31, 2020, the share swap agreement expired and settled. Net monthly settlements received (paid) under the share swap agreement were recorded in other income (expense) in the Consolidated Statements of Loss.

Fair value ("FV") hierarchy of derivatives

Level 1

The fair value measurements are classified as Level 1 in the FV hierarchy if the fair value is determined using quoted unadjusted market prices. Currently there are no derivatives carried in this level.

Level 2

Fair value measurements that require observable inputs other than quoted prices in Level 1, either directly or indirectly, are classified as Level 2 in the FV hierarchy. This could include the use of statistical techniques to derive the FV curve from observable market prices. However, in order to be classified under Level 2, significant inputs must be directly or indirectly observable in the market. Just Energy values its New York Mercantile Exchange ("NYMEX") financial gas fixed-for-floating swaps under Level 2.

Level 3

Fair value measurements that require unobservable market data or use statistical techniques to derive forward curves from observable market data and unobservable inputs are classified as Level 3 in the FV hierarchy. For the electricity supply contracts, Just Energy uses quoted market prices as per available market forward data and applies a price-shaping profile to calculate the monthly prices from annual strips and hourly prices from block strips for the purposes of mark to market calculations. The profile is based on historical settlements with counterparties or with the system operator and is considered an unobservable input for the purposes of establishing the level in the FV hierarchy. For the natural gas supply contracts, Just Energy uses three different market observable curves: (i) commodity (predominately NYMEX), (ii) basis and (iii) foreign exchange. NYMEX curves extend for over five years (thereby covering the length of Just Energy's contracts); however, most basis curves extend only 12 to

15 months into the future. In order to calculate basis curves for the remaining years, Just Energy uses extrapolation, which leads natural gas supply contracts to be classified under Level 3.

Weather derivatives are non-exchange-traded financial instruments used as part of a risk management strategy to mitigate the impact adverse weather conditions have on gross margin. The fair values of the derivatives are determined using an internally developed model that relies upon both observable inputs and significant unobservable inputs. Accordingly, the fair values of these derivatives are classified as Level 3. Market and contractual inputs to these models vary by contract type and would typically include notional amounts, reference weather stations, strike prices, temperature strike values, terms to expiration, historical weather data and historical commodity prices. The historical weather data and commodity prices were utilized to value the expected payouts with respect to weather derivatives and, as a result, are the most significant assumptions contributing to the determination of fair value estimates, and changes in these inputs can result in a significantly higher or lower fair value measurement.

For the share swap agreement, Just Energy used a forward interest rate curve along with a volume weighted average share price to model out its value. As the inputs had no observable market, it was classified as Level 3.

Just Energy's accounting policy is to recognize transfers between levels of the fair value hierarchy on the date of the event or change in circumstances that caused the transfer.

Fair value measurement input sensitivity

The main cause of changes in the fair value of derivative instruments is changes in the forward curve prices used for the fair value calculations. Just Energy provides a sensitivity analysis of these forward curves under the "Market risk" section of this note. Other inputs, including volatility and correlations, are driven off historical settlements.

The following table illustrates the classification of derivative financial assets (liabilities) in the FV hierarchy as at March 31, 2021:

		Level 1		**Level 2**		**Level 3**		**Total**
Derivative financial assets	**$**	**�**	**$**	**682**	**$**	**34,944**	**$**	**35,626**
Derivative financial liabilities		**�**		**�**		**(75,146)**		**(75,146)**
Total net derivative financial assets (liabilities)	**$**	**�**	**$**	**682**	**$**	**(40,202)**	**$**	**(39,520)**

The following table illustrates the classification of derivative financial assets (liabilities) in the FV hierarchy as at March 31, 2020:

		Level 1		Level 2		Level 3		Total
Derivative financial assets	$	–	$	–	$	65,145	$	65,145
Derivative financial liabilities		–		(38,676)		(151,030)		(189,706)
Total net derivative financial liabilities	$	–	$	(38,676)	$	(85,885)	$	(124,561)

Commodity price sensitivity � Level 3 derivative financial instruments

If the energy prices associated with only Level 3 derivative financial instruments including natural gas, electricity, and RECs had risen (fallen) by 10%, assuming that all of the other variables had remained constant, loss from continuing operations before income taxes for the year ended March 31, 2021 would have increased (decreased) by $139.2 million ($136.6 million), primarily as a result of the change in fair value of Just Energy's derivative financial instruments.

Key assumptions used when determining the significant unobservable inputs for all commodity supply contracts included in Level 3 of the FV hierarchy consist of up to 5% price extrapolation to calculate monthly prices that extend beyond the market observable 12- to 15-month forward curve.

The following table illustrates the changes in net fair value of financial assets (liabilities) classified as Level 3 in the FV hierarchy for the following periods:

		Year ended March 31, 2021		Year ended March 31, 2020
Balance, beginning of year	**$**	**(85,885)**	$	17,310
Total gains		**(2,900)**		(3,822)
Purchases		**(4,059)**		(43,663)
Sales		**(1,670)**		14,549
Settlements		**54,312**		(70,259)
Balance, end of year	**$**	**(40,202)**	$	(85,885)

(b) Classification of non-derivative financial assets and liabilities

As at March 31, 2021 and March 31, 2020, the carrying value of cash and cash equivalents, restricted cash, trade and other receivables, and trade and other payables approximates their fair value due to their short-term nature.

Prior to the exchange under the September Recapitalization, the 8.75% loan, 6.75% $100M convertible debentures, 6.75% $160M convertible debentures and 6.5% convertible bonds were fair valued based on market value. The 6.75% $100M convertible debentures, 6.75% $160M convertible debentures and 6.5% convertible bonds were classified as Level 1 in the FV hierarchy.

The risks associated with Just Energy's financial instruments are as follows:

(i) Market risk

Market risk is the potential loss that may be incurred as a result of changes in the market or fair value of a particular instrument or commodity. Components of market risk to which Just Energy is exposed are discussed below.

Foreign currency risk

Foreign currency risk is created by fluctuations in the fair value or cash flows of financial instruments due to changes in foreign exchange rates and exposure as a result of investments in U.S. operations.

The performance of the Canadian dollar relative to the U.S. dollars could positively or negatively affect Just Energy's Consolidated Statements of Loss, as a significant portion of Just Energy's profit or loss is generated in U.S. dollars and is subject to currency fluctuations upon translation to Canadian dollars. Due to its growing operations in the U.S., Just Energy expects to have a greater exposure to foreign currency fluctuations in the future than in prior years. Just Energy has a policy to economically hedge between 50% and 100% of forecasted cross-border cash flows that are expected to occur within the next 12 months and between 0% and 50% of certain forecasted cross-border cash flows that are expected to occur within the following 13 to 24 months. The level of economic hedging is dependent on the source of the cash flows and the time remaining until the cash repatriation occurs.

Just Energy may, from time to time, experience losses resulting from fluctuations in the values of its foreign currency transactions, which could adversely affect its operating results. Translation risk is not hedged.

With respect to translation exposure, if the Canadian dollar had been 5% stronger or weaker against the U.S. dollar for the year ended March 31, 2021, assuming that all the other variables had remained constant, the net loss for the year ended March 31, 2021 would have been $6.6 million lower/higher and other comprehensive loss would have been $26.9 million lower/higher.

Interest rate risk

Just Energy is only exposed to interest rate fluctuations associated with its floating rate Credit Facility. Just Energy's current exposure to interest rates does not economically warrant the use of derivative instruments. Just Energy's exposure to interest rate risk is relatively immaterial and temporary in nature. Just Energy does not currently believe that its long-term debt exposes the Company to material interest rate risks but has set out parameters to actively manage this risk within its risk management policy.

A 1% increase (decrease) in interest rates would have resulted in an increase (decrease) of approximately $1.8 million in loss from continuing operations before income taxes in the Consolidated Statements of Loss for the year ended March 31, 2021 (2020 – $2.4 million).

Commodity price risk

Just Energy is exposed to market risks associated with commodity prices and market volatility where estimated customer requirements do not match actual customer requirements. Management actively monitors these positions on a daily basis in accordance with its risk management policy. This policy sets out a variety of limits, most importantly thresholds for open positions in the gas and electricity portfolios, which also feed a value at risk limit. Should any of the limits be exceeded, they are closed expeditiously or express approval to continue to hold is obtained. Just Energy's exposure to market risk is affected by a number of factors, including accuracy of estimation of customer commodity requirements, commodity prices, volatility and liquidity of markets. Just Energy enters into derivative instruments in order to manage exposures to changes in commodity prices. The derivative instruments that are used are designed to fix the price of supply for estimated customer commodity demand and thereby fix margins. Derivative instruments are generally transacted over the counter. The inability or failure of Just Energy to manage and monitor the above market risks could have a material adverse effect on the operations and cash flows of Just Energy. Just Energy mitigates the exposure to variances in customer requirements that are driven by changes in expected weather conditions through active management of the underlying portfolio, which involves, but is not limited to, the purchase of options including weather derivatives. Just Energy's ability to mitigate weather effects is limited by the degree to which weather conditions deviate from normal.

Commodity price sensitivity – all derivative financial instruments

If all the energy prices associated with derivative financial instruments including natural gas, electricity and RECs had risen (fallen) by 10%, assuming that all of the other variables had remained constant, loss from continuing operations before income taxes for the year ended March 31, 2021 would have increased (decreased) by $138.8 million ($136.2 million), primarily as a result of the change in fair value of Just Energy's derivative financial instruments.

Credit risk adjustment – sensitivity

For valuation of derivative instruments that are in liability position, the Company applied a credit risk adjustment in valuation of these instruments. If this rate is increased (decreased) by 1% assuming that all other variables remained constant, there would be $1.4 million impact on loss from continuing operations before income taxes for the year ended March 31, 2021.

(ii) Physical supplier risk

Just Energy purchases the majority of the gas and electricity delivered to its customers through long-term contracts entered into with various suppliers. Just Energy has an exposure to supplier risk as the ability to continue to deliver gas and electricity to its customers is reliant upon the ongoing operations of these suppliers and their ability to fulfill their contractual obligations. As at March 31, 2021, Just Energy has applied an adjustment factor to determine the fair value of its financial instruments in the amount of $1.1 million (2020 – $23.8 million) to accommodate for its counterparties' risk of default.

(iii) Counterparty credit risk

Counterparty credit risk represents the loss that Just Energy would incur if a counterparty fails to perform under its contractual obligations. This risk would manifest itself in Just Energy replacing contracted supply at prevailing market rates, thus impacting the related customer margin. Counterparty limits are established within the risk management policy. Any exceptions to these limits require approval from the Risk Committee of the Board of Directors of Just Energy. The risk department and Risk Committee of the Board of Directors monitor current and potential credit exposure to individual counterparties and also monitor overall aggregate counterparty exposure. However, the failure of a counterparty to meet its contractual obligations could have a material adverse effect on the operations and cash flows of Just Energy.

As at March 31, 2021, the estimated counterparty credit risk exposure amounted to $35.6 million (2020 – $65.1 million), representing the risk relating to Just Energy's exposure to derivatives that are in an asset position.

13. TRADE AND OTHER PAYABLES

	As at March 31, 2021	As at March 31, 2020
Commodity suppliers' accruals and payables (a)	**$ 712,144**	$ 414,581
Green provisions and repurchase obligations	**77,882**	103,245
Sales tax payable	**27,684**	19,706
Non-commodity trade accruals and accounts payable (b)	**80,573**	117,473
Current portion of payable to former joint venture partner (c)	**11,467**	18,194
Accrued gas payable	**544**	3,295
Other payables	**11,301**	9,171
	$ 921,595	$ 685,665

(a) Includes $507.3 million, that is subject to compromise depending on the outcome of the CCAA proceedings.

(b) Includes $12.9 million, that is subject to compromise depending on the outcome of the CCAA proceedings.

(c) The amount due to the former joint venture partner is subject to compromise depending on the outcome of the CCAA proceedings.

14. DEFERRED REVENUE

	As at March 31, 2021	As at March 31, 2020
Balance, beginning of year	**$ 852**	$ 43,228
Additions to deferred revenue	**10,963**	7,499
Revenue recognized during the year	**(10,312)**	(10,726)
Foreign exchange impact	**(95)**	352
Liabilities classified as held for sale/sold	**-**	(39,501)
Balance, end of year	**$ 1,408**	$ 852

U.K. operations recorded substantially all of its revenue within deferred revenue. The change for 2020 was substantially related to operations sold during the year.

15. LONG-TERM DEBT AND FINANCING

		As at March 31, 2021		As at March 31, 2020
DIP Facility (a)	$	126,735	$	–
Less: Debt issue costs (a)		(6,312)		–
Filter Group financing (b)		4,617		9,690
Credit facility – subject to compromise (c)		227,189		236,389
Less: Debt issue costs (c)		�		(1,644)
Term Loan – subject to compromise (d)		289,904		–
Note Indenture – subject to compromise (e)		13,607		–
8.75% loan (f)		�		280,535
6.75% $100M convertible debentures (g)		�		90,187
6.75% $160M convertible debentures (h)		�		153,995
6.5% convertible bonds (i)		�		12,851
		655,740		782,003
Less: Current portion		(654,180)		(253,485)
	$	1,560	$	528,518

Future annual minimum principal repayments are as follows:

		Less than 1 year		1-3 years		4-5 years		More than 5 years		Total
DIP Facility (a)	$	126,735	$	–	$	–	$	–	$	126,735
Less: Debt issue costs (a)		(6,312)		–		–		–		(6,312)
Filter Group financing (b)		3,057		1,560		–		–		4,617
Credit facility – subject to compromise (c)		227,189		–		–		–		227,189
Term Loan – subject to compromise (d)		289,904		–		–		–		289,904
Note Indenture – subject to compromise (e)		13,607		–		–		–		13,607
	$	654,180	$	1,560	$	–	$	–	$	655,740

The details for long-term debt are as follows:

	As at April 1, 2020	**Cash inflows (outflows)**	**Foreign exchange**	**Payment in kind (“PIK”)**	**Non-cash changes**	**(Gain) loss on September Recapital-ization**	**As at March 31, 2021**
DIP Facility (a)	**$ –**	**$ 120,423**	**$ –**	**$ –**	**$ –**	**$ –**	**$ 120,423**
Filter Group financing (b)	**9,690**	**(5,073)**	**–**	**–**	**–**	**–**	**4,617**
Credit facility (c)	**234,745**	**(13,826)**	**–**	**–**	**6,270**	**–**	**227,189**
Term Loan (d)	**–**	**–**	**(17,077)**	**15,123**	**291,858**	**–**	**289,904**
Note Indenture (e)	**–**	**(2,000)**	**–**	**428**	**15,179**	**–**	**13,607**
8.75% term loan (f)	**280,535**	**–**	**–**	**–**	**(281,632)**	**1,097**	**–**
6.75% $100M convertible debentures (g)	**90,187**	**–**	**–**	**–**	**(74,544)**	**(15,643)**	**–**
6.75% $160M convertible debentures (h)	**153,995**	**–**	**–**	**–**	**(101,955)**	**(52,040)**	**–**
6.5% convertible bonds (i)	**12,851**	**–**	**–**	**–**	**(643)**	**(12,208)**	**–**
	$ 782,003	**$ 99,524**	**$ (17,077)**	**$ 15,551**	**$(145,467)**	**(78,794)**	**$ 655,740**
Less: Current portion	**(253,485)**	**–**	**–**	**–**	**–**	**–**	**(654,180)**
	$ 528,518						**$ 1,560**

	As at April 1, 2019	Cash inflows (outflows)	Foreign exchange	PIK	Non-cash changes	(Gain) loss on September Recapital-ization	As at March 31, 2020
Filter Group financing (b)	$ 17,577	$ (7,887)	$ –	$ –	$ –	$ –	$ 9,690
Credit facility (c)	199,753	34,812	–	–	180	–	234,745
8.75% term loan (f)	240,094	17,163	17,613	–	5,665	–	280,535
6.75% $100M convertible debentures (g)	87,520	–	–	–	2,667	–	90,187
6.75% $160M convertible debentures (h)	150,945	–	–	–	3,050	–	153,995
6.5% convertible bonds (i)	29,483	(17,370)	518	–	220	–	12,851
	$ 725,372	$ 26,718	$ 18,131	$ –	$ 11,782	$ –	$ 782,003
Less: Current portion	(479,101)	–	–	–	–	–	(253,485)
	$ 246,271						$ 528,518

The following table details the finance costs for the year ended March 31. Interest is expensed based on the effective interest rate.

	2021	2020	2019
DIP Facility (a)	**$ 1,490**	$ –	$ –
Filter Group financing (b)	**627**	1,793	875
Credit facility (c)	**20,544**	23,736	20,715
Term Loan (d)	**14,785**	–	–
Note Indenture (e)	**557**	–	–
8.75% term loan (f)	**18,055**	35,089	8,999
6.75% $100M convertible debentures (g)	**4,762**	9,417	8,819
6.75% $160M convertible debentures (h)	**6,948**	13,850	13,598
6.5% convertible bonds (i)	**539**	2,746	18,387
Supplier finance and others (j)	**18,313**	20,314	16,386
	$ 86,620	$ 106,945	$ 87,779

(a) As discussed in Note 1, Just Energy filed and received the Court Order under the CCAA on March 9, 2021. In conjunction with the CCAA filing, the Company entered into the DIP Facility for USD$125 million. Just Energy Ontario L.P., Just Energy Group Inc. and Just Energy (U.S.) Corp. are the borrowers under the DIP Facility and are supported by guarantees of certain subsidiaries and affiliates and secured by a super-priority charge against and attaching to the property that secures the obligations arising under the Credit Facility, created by the Court Order. The DIP Facility has an interest rate of 13%, paid quarterly in arrears. The DIP Facility terminates at the earlier of: (a) December 31, 2021, (b) the implementation date of the CCAA plan, (c) the lifting of the stay in the CCAA proceedings or (d) the termination of the CCAA proceedings. On March 9, 2021, the Company borrowed USD$100 million and borrowed the remaining USD$25 million on April 6, 2021. For consideration for making the DIP Facility available, Just Energy paid a 1% origination fee and a 1% commitment fee.

(b) Filter Group has a $4.6 million outstanding loan payable to Home Trust Company ("HTC"). The loan is a result of factoring receivables to finance the cost of rental equipment over a period of three to five years with HTC and bears interest at 8.99% per annum. Principal and interest are payable monthly. Filter Group did not file under the CCAA and accordingly, the stay does not apply to Filter Group and any amounts outstanding under the loan payable to Home Trust Company.

(c) On March 18, 2021, Just Energy Ontario L.P, Just Energy (U.S.) Corp. and Just Energy Group Inc. entered into an Accommodation and Support Agreement (the "Lender Support Agreement") with the lenders under the Credit Facility. Under the Lender Support Agreement, the lenders agreed to allow issuance or renewals of Letters of Credit under the Credit Facility during the pendency of the CCAA proceedings within certain restrictions. In return, the Company has agreed to continue paying interest and fees at the non-default rate on the outstanding advances and Letters of Credit under the Credit Facility. The amount of Letters of Credit that may be issued is limited to the lesser of $46.1 million (excluding the Letters of Credit guaranteed by Export Development Canada under its Account Performance Security Guarantee Program), plus any amount the Company has repaid and $125 million.

As part of the September Recapitalization, Just Energy extended the Credit Facility to December 2023; it was previously scheduled to mature in December 2020. Certain principal amounts outstanding under the letter of Credit Facility ("LC Facility") are guaranteed by Export Development Canada under its Account Performance Security Guarantee Program. Just Energy's obligations under the Credit Facility are supported by guarantees of certain subsidiaries and affiliates and secured by a general security agreement and a pledge of the assets and securities of Just Energy and the majority of its operating subsidiaries and affiliates excluding, primarily the Filter Group. Just Energy has also entered into an inter-creditor agreement in which certain commodity and hedge providers are also secured by the same collateral. As a result of the CCAA filing, the borrowers are in default under the Credit Facility. However, any potential actions by the lenders have been stayed pursuant to the Court Order. As at March 31, 2021, the Company had Letter of Credit capacity of $4.5 million available.

The outstanding Advances are all Prime rate advances at a rate of bank prime (Canadian bank prime rate or U.S. prime rate) plus 4.25% and letters of credit are at a rate of 5.25%.

As at March 31, 2021, the Canadian prime rate was 2.45% and the U.S. prime rate was 3.25%. As at March 31, 2021, $227.2 million has been drawn against the facility, $41.7 million of letters of credit outstanding have been issued under the Canadian and U.S. facilities and $57.7 million of Letters of Credit are outstanding under the LC Facility.

As a result of the CCAA filing, the Credit Facility has been reclassified to short-term reflecting the potential acceleration of the debt allowed under the Credit Facility. Additionally, all deferred debt issue costs have been accelerated in the year ended March 31, 2021 to reflect the current classification and presented in reorganization costs in the Consolidated Statement of Loss.

(d) As part of the September Recapitalization, Just Energy issued a USD$205.9 million principal note (the "Term Loan") maturing on March 31, 2024. The note bears interest at 10.25%. The balance at March 31, 2021 includes an accrual of $13.9 million for interest payable on the notes. As a result of the CCAA filing, the Company is in default under the Term Loan, as described below. However, any potential actions by the lenders under the Term Loan have been stayed pursuant to the Court Order, and the Company is not issuing additional notes equal to the capitalized interest. Given this acceleration option, the Term Loan has been classified as current. As a result, the prepayment fee has been accelerated and accrued and is presented in the Reorganization cost on the Consolidated Statements of Loss.

(e) As part of the September Recapitalization, Just Energy issued $15 million principal amount of 7.0% subordinated notes ("Note Indenture") to holders of the subordinated convertible debentures, which has a six-year maturity. The Note Indenture bears an annual interest rate of 7.0% payable in kind. The balance at March 31, 2021 includes an accrual of $0.4 million for interest payable on the notes. The Note Indenture had a principal amount of $15 million as at September 28, 2020, which was reduced to $13.2 million through a tender offer for no consideration on October 19, 2020. As a result of the CCAA filing, the Company is in default under the Note Indenture's Trust Indenture agreement. However, any potential actions by the lenders under the Note Indenture have been stayed pursuant to the Court Order and the Company is not issuing additional notes equal to the capitalized interest. Given this acceleration option, the Note Indenture has been classified as current. Additionally, all deferred debt issue costs have been accelerated to the year ended March 31, 2021 to reflect the current classification and presented in reorganization costs in the Consolidated Statements of Loss.

(f) As part of the September Recapitalization, the 8.75% loan was exchanged for its pro-rata share of the Term Loan and 786,982 common shares. At the time of the September Recapitalization, the 8.75% loan had USD$207.0 million outstanding plus accrued interest.

(g) As part of the September Recapitalization, the 6.75% $100M convertible debentures were exchanged for 3,592,069 common shares along with its pro-rata share of the Note Indenture and the payment of accrued interest.

(h) As part of the September Recapitalization, the 6.75% $160M convertible debentures were exchanged for 5,747,310 common shares along with its pro-rata share of the Note Indenture and the payment of accrued interest.

(i) As part of the September Recapitalization, the 6.5% convertible bonds were exchanged for its pro-rata share of the Term Loan and 35,737 common shares. At the time of the September Recapitalization, $9.2 million of the 6.5% convertible bonds were outstanding plus accrued interest.

(j) Supplier finance and other costs for the year ended March 31, 2021 primarily consist of charges for extended payment terms. An amount of $3.0 million was accrued but not paid as at March 31, 2021 (March 31, 2020 — $0.7 million).

16. REPORTABLE BUSINESS SEGMENTS

Just Energy's reportable segments are the Mass Market (formerly called Consumer) and the Commercial segments.

The chief operating decision-maker monitors the operational results of the Mass Market and Commercial segments for the purpose of making decisions about resource allocation and performance assessment. Segment performance is evaluated based on certain non-IFRS measures such as Base EBITDA, Base gross margin and Embedded gross margin as defined in the Company's Management Discussion and Analysis.

Transactions between segments are in the normal course of operations and are recorded at the exchange amount.

Corporate and shared services report the costs related to management oversight of the business units, public reporting and filings, corporate governance and other shared services functions such as Human Resources, Finance and Information Technology.

For the year ended March 31, 2021:

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 1,530,617	$ 1,209,420	$ —	$ 2,740,037
Cost of goods sold	2,915,079	1,597,087	—	4,512,166
Gross margin	(1,384,462)	(387,667)	—	(1,772,129)
Depreciation and amortization	20,342	3,587	—	23,929
Administrative expenses	35,403	16,673	90,315	142,391
Selling and marketing expenses	107,932	71,589	—	179,521
Other operating expenses	29,898	10,854	—	40,752
Segment loss	$ (1,578,037)	$ (490,370)	$ (90,315)	$ (2,158,722)
Finance costs				(86,620)
Restructuring costs				(7,118)
Gain on September Recapitalization transaction, net				51,360
Unrealized gain on derivative instruments and other				83,499
Realized gain on derivative instruments				1,877,339
Impairment of goodwill, intangible assets and other				(114,990)
Other expense, net				(1,951)
Reorganization costs				(43,245)
Provision for income taxes				(2,308)
Loss from continuing operations				(402,756)
Profit from discontinued operations				468
Loss for the year				$ (402,288)
Capital expenditures	$ 10,382	$ 1,173	$ —	$ 11,555
As at March 31, 2021				
Total goodwill	$ 163,770	$ —	$ —	$ 163,770

For the year ended March 31, 2020:

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 1,757,245	$ 1,396,407	$ –	$ 3,153,652
Cost of goods sold	1,285,122	1,232,177	–	2,517,299
Gross margin	472,123	164,230	–	636,353
Depreciation and amortization	38,224	3,424	–	41,648
Administrative expenses	37,780	20,262	109,894	167,936
Selling and marketing expenses	141,548	79,272	–	220,820
Other operating expenses	84,271	8,029	–	92,300
Segment profit (loss)	$ 170,300	$ 53,243	$ (109,894)	$ 113,649
Finance costs				(106,945)
Unrealized loss of derivative instruments and other				(213,417)
Realized gain of derivative instruments				(24,386)
Other income, net				32,660
Impairment of goodwill, intangible assets and other				(92,401)
Provision for income taxes				(7,393)
Loss from continuing operations				$ (298,233)
Loss from discontinued operations				(11,426)
Loss for the year				(309,659)
Capital expenditures	$ 12,881	$ 1,171	$ –	$ 14,052
As at March 31, 2020				
Total goodwill	$ 172,429	$ 100,263	$ –	$ 272,692

For the year ended March 31, 2019

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 2,010,054	$ 1,431,338	$ –	$ 3,441,392
Cost of goods sold	1,523,090	1,239,731	–	2,762,821
Gross margin	486,964	191,607	–	678,571
Depreciation and amortization	24,906	2,289	–	27,195
Administrative expenses	42,573	32,377	90,378	165,328
Selling and marketing expenses	142,560	69,178	–	211,738
Restructuring costs	2,741	3,289	8,814	14,844
Other operating expenses	123,798	5,406	–	129,204
Segment profit (loss)	$ 150,386	$ 79,068	$ (99,192)	$ 130,262
Finance costs				(87,779)
Unrealized loss on derivative instruments and other				(87,459)
Realized loss on derivative instruments				(83,776)
Other income, net				2,312
Provision for income taxes				(11,832)
Loss from continuing operations				$ (138,272)
Loss from discontinued operations				(128,259)
Loss for the year				(266,531)
Capital expenditures	$ 39,474	$ 4,068	$ –	$ 43,542
As at March 31, 2019				
Total goodwill	$ 181,358	$ 158,563	$ –	$ 339,921

Sales from external customers

The revenue is based on the location of the customer.

	For the year ended March 31, 2021	For the year ended March 31, 2020	For the year ended March 31, 2019
Canada	**$ 303,666**	$ 509,910	$ 613,944
U.S.	**2,436,371**	2,643,742	2,827,448
Total	**$ 2,740,037**	$ 3,153,652	$ 3,441,392

Non-current assets

Non-current assets by geographic segment consist of property and equipment, goodwill and intangible assets and are summarized as follows:

	As at March 31, 2021	As at March 31, 2020
Canada	**$ 178,802**	$ 233,678
U.S.	**73,518**	166,074
Total	**$ 252,320**	$ 399,752

17. INCOME TAXES

(a) Tax expense

	For the year ended March 31, 2021	For the year ended March 31, 2020	For the year ended March 31, 2019
Current tax expense	**$ 2,688**	$ 7,047	$ 7,622
Deferred tax expense (benefit)			
Origination and reversal of temporary differences	**$ (102,712)**	$ (90,459)	$ (35,825)
Expense arising from previously unrecognized tax loss or temporary difference	**102,332**	90,805	40,035
Deferred (benefit) tax expense	**(380)**	346	4,210
Provision for income taxes	**$ 2,308**	$ 7,393	$ 11,832

(b) Reconciliation of the effective tax rate

	For the year ended March 31, 2021	For the year ended March 31, 2020	For the year ended March 31, 2019
Loss before income taxes	**$ (400,448)**	$ (290,840)	$ (126,440)
Combined statutory Canadian federal and provincial income tax rate	**26.50%**	26.50%	26.50%
Income tax recovery based on statutory rate	**$ (106,119)**	$ (77,073)	$ (33,507)
Increase (decrease) in income taxes resulting from:			
Expense of mark to market loss and other temporary differences not recognized	**$ 102,332**	$ 90,805	$ 40,035
Variance between combined Canadian tax rate and the tax rate applicable to foreign earnings	**(5,589)**	(5,554)	(3,841)
Other permanent items	**11,684**	(785)	9,145
Total provision for income taxes	**$ 2,308**	$ 7,393	$ 11,832

(c) Recognized net deferred income tax assets and liabilities

Recognized net deferred income tax assets and liabilities are attributed to the following:

	As at March 31, 2021	As at March 31, 2020
Tax losses and excess of tax basis over book basis	**$ 15,005**	$ 23,191
Total deferred income tax assets	**15,005**	23,191
Offset of deferred income taxes	**(14,010)**	(22,550)
Net deferred income tax assets	**$ 995**	$ 641
Book to tax differences on other assets	**(14,010)**	(18,367)
Convertible debentures	**–**	(4,183)
Total deferred income tax liabilities	**(14,010)**	(22,550)
Offset of deferred income taxes	**14,010**	22,550
Net deferred income tax liabilities	**$ –**	$ –

(d) Movement in deferred income tax balances

	As at April 1, 2020	**Recognized in Consolidated Statements of Loss**	**Recognized in OCI**	**As at March 31, 2021**
Book to tax differences	**$ 4,824**	**$ (3,803)**	**(26)**	**$ 995**
Convertible debentures	**(4,183)**	**4,183**	**–**	**–**
	$ 641	**$ 380**	**$ (26)**	**$ 995**

	As at April 1, 2019	Recognized in Consolidated Statements of Loss	Recognized in OCI	As at March 31, 2020
Partnership income deferred for tax	$ (3,542)	$ 3,542	$ –	$ –
Book to tax differences	27,316	(23,364)	872	4,824
Mark to market (gains) losses on derivative instruments	(17,586)	17,586	–	–
Convertible debentures	(6,073)	1,890	–	(4,183)
	$ 115	$ (346)	$ 872	$ 641

(e) Unrecognized deferred income tax assets

Deferred income tax assets not reflected as at March 31 are as follows:

	2021	2020
Mark to market losses on derivative instruments	**$ 13,088**	$ 31,897
Excess of tax over book basis	**71,954**	47,038

The Company has tax losses of $697.3 million (2020 – $381 million) available for carryforward (recognized and unrecognized), which are set to expire starting 2028 until 2041. Certain U.S. tax losses are subject to annual limitation under Section 382. To the extent there is insufficient taxable income during the carryforward periods, such losses may expire unused.

18. SHAREHOLDERS’ CAPITAL

Just Energy is authorized to issue an unlimited number of common shares with no par value. Shares outstanding have no preferences, rights or restrictions attached to them.

(a) Details of issued and outstanding shareholders’ capital are as follows:

	As at March 31, 2021		As at March 31, 2020	
	Shares	**Amount**	Shares	Amount
Common shares:				
Issued and outstanding				
Balance, beginning of year	**4,594,371**	**$ 1,099,864**	4,533,211	$ 1,088,538
Share-based awards exercised	**91,854**	**929**	61,160	11,326
Issuance of shares due to September Recapitalization	**43,392,412**	**438,642**	–	–
Issuance cost	–	**(1,572)**	–	–
Balance, end of year	**48,078,637**	**$ 1,537,863**	4,594,371	$ 1,099,864
Preferred shares:				
Balance, beginning of year	**4,662,165**	**$ 146,965**	4,662,165	$ 146,965
Exchanged to common shares	**(4,662,165)**	**(146,965)**	–	–
Balance, end of year	–	**$ –**	4,662,165	$ 146,965
Shareholders’ capital	**48,078,637**	**$ 1,537,863**	9,256,536	$ 1,246,829

Just Energy defines capital as shareholders’ equity (excluding accumulated other comprehensive income) and long-term debt. Just Energy’s objectives when managing capital are to maintain flexibility by:

(i) Enabling it to operate efficiently; and

(ii) Providing liquidity and access to capital for growth opportunities;

Just Energy manages the capital structure and adjusts to it in light of changes in economic conditions and the risk characteristics of the underlying assets. The Board of Directors does not establish quantitative return on capital criteria for management, but rather promotes year-over-year sustainable and profitable growth. Just Energy is not subject to any externally imposed capital requirements other than financial covenants in its long-term debts. However, due to the CCAA filing, these covenants have been stayed as at March 31, 2021.

(b) Dividends

In the second quarter of fiscal 2020, the Company made the decision to suspend its dividend on common shares. For the year ended March 31, 2021, dividends of $nil (2020 – $0.125) per common share were declared by Just Energy. These dividends amounted to $18.7 million for the year ended March 31, 2020. Because of the dividend suspension, distributions related to the dividends also ceased.

As a result of the September Recapitalization, the preferred shares were exchanged for common shares and there were no dividends for the year ended March 31, 2021. For the year ended March 31, 2020, dividends of USD$1.0625 per preferred share were declared by Just Energy in the amount of $6.6 million.

(c) September Recapitalization

On September 28, 2020, the Company completed the September Recapitalization. The September Recapitalization was undertaken through a plan of arrangement under the CBCA and included:

- The consolidation of the Company’s common shares on a 1-for-33 basis;
- Exchange of the 6.75% $100M convertible debentures and the 6.75% $160M convertible debentures for common shares and the Note Indenture, as described in note 15(e), 15(g) and 15(h). The Note Indenture had a principal amount of $15 million as at September 28, 2020, which was reduced to $13.2 million through a tender offer for no consideration on October 19, 2020;
- Extension of $335 million of the Company’s senior secured credit facilities to December 2023, with revised covenants and a schedule of commitment reductions throughout the term;
- Existing 8.75% loan and the remaining convertible bonds due December 31, 2020 were exchanged for the Term Loan and common shares as described in note 15(f), with interest on the new Term Loan to be initially paid in kind until certain financial measures are achieved;
- Exchange of all of the 8.50%, fixed-to-floating rate, cumulative, redeemable, perpetual preferred shares for 1,556,563 common shares;

- Accrued and unpaid interest paid in cash on the subordinated convertible debentures until September 28, 2020;
- The payment of certain expenses of the ad hoc group of convertible debenture holders;
- The entitlement of holders of Just Energy's existing 8.75% loan, 6.5% convertible bonds, the subordinated convertible debentures, preferred shares and common shares as of July 23, 2020 to subscribe for post-consolidation common shares at a price per share of $3.412, with subscriptions totaling 15,174,950 common shares resulting in cash proceeds for Just Energy of approximately $51.8 million;
- Pursuant to the previously announced backstop commitments, the acquisition of 14,137,580 common shares by the backstop parties, on a post-consolidation basis resulting in cash proceeds for Just Energy of approximately $48.2 million, for total aggregate proceeds from the equity subscription option of approximately $100.0 million;
- The issuance of 1,075,615 of common shares amounting to $3.67 million by way of an additional private placement to the Company's 8.75% term loan lenders at the same subscription price available to all securityholders pursuant to the new equity subscription offering;
- The settlement of litigation related to the 2018 acquisition of Filter Group Inc. pursuant to which shareholders of the Filter Group received an aggregate of $1.8 million in cash and 429,958 common shares; and
- The implementation of a new management equity incentive plan as described in Note 19.

The September Recapitalization resulted in total net gain of $51.4 million for the year ended March 31, 2021. The net gain reported in the Consolidated Statements of Loss is made up of the gain of $78.8 million related to reduction in debt, partially offset by $27.4 million of expense incurred in relation to the September Recapitalization.

The September Recapitalization did not result in tax expense or cash taxes since any debt forgiveness resulting from the exchange of the convertible debentures was fully reduced by operating and capital losses previously not used.

19. SHARE-BASED COMPENSATION PLANS

On September 28, 2020, the Board of Directors of Just Energy approved a new compensation plan referred to as the Just Energy Group Inc., 2020 Equity Compensation Plan ("Equity Plan"). The Equity Plan includes options, RSUs, DSUs and PSUs.

Under the Equity Plan, the Company is required to reserve a certain number of (i) options issuable and (ii) other securities issuable under the Plan. The Equity Plan includes a 5% cap on the total number of equity-based securities that can be issued (5% of the issued and outstanding common shares). Accordingly, there is a separate record for options and a separate record for all the other securities (RSUs, DSUs, PSUs) for TSX purposes. Amounts reserved for the various security types can be amended at any time. The 2020 Equity Compensation Plan was amended on June 25, 2021 to comply with the requirements of the TSX Venture Exchange. In addition to a number of non-material changes, the maximum number of common shares that may be issued pursuant to Awards (as defined in the 2020 Equity Compensation Plan) under the Plan that are not options is limited to a maximum of 2,403,931 common shares.

Under the Equity Plan, the Company is required to reserve a certain number of (i) options issuable and (ii) other securities issuable under the Plan. The Equity Plan includes a 5% cap on the total number of equity-based securities that can be issued (5% of the issued and outstanding common shares). Accordingly, there is a separate record for options and a separate record for all the other securities (RSUs, DSUs, PSUs) for TSX purposes. Amounts reserved for the various security types can be amended at any time. The 2020 Equity Compensation Plan was amended on June 25, 2021 to comply with the requirements of the TSX Venture Exchange. In addition to a number of non-material changes, the maximum number of common shares that may be issued pursuant to Awards (as defined in the 2020 Equity Compensation Plan) under the Plan that are not options is limited to a maximum of 2,403,931 common shares.

(a) Equity Plan

Under the Equity Plan, 650,000 options were issued to management on October 12, 2020 with an exercise price of $8.46. The exercise price was based on the higher of the closing price on October 9, 2020 or the five-day volume weighted trading price as of October 9, 2020. The estimated market price of the options was $5.70 based on the Black-Scholes option pricing model. The options vest over a three-year period and the option value is being amortized as share-based compensation over the vesting period of the options.

(b) Restricted Share Units

Under the Equity Plan, 23,513 RSUs were granted to one employee based on the five-day volume weighted trading price as of October 9, 2020 of $8.37 with vesting date of December 1, 2020. All 23,513 RSU's vested and 16,541 shares were issued and the remaining 6,972 RSU's were canceled for tax withholding.

(c) Deferred Share Units

Under the Equity Plan, 190,983 DSUs were granted to company directors in lieu of materially all their annual cash retainers based on the 5-day volume weighted trading price as of October 9, 2020 of $8.37. These units were vested immediately on October 12, 2020 and expensed in the current year. There were an additional 4,054 DSUs issued on February 3, 2021.

(d) Performance Share Units

The Equity Plan also includes the issuance of PSUs. The Board of Directors, in its sole discretion, determines the performance period applicable to each grant of PSUs at the time of such grant. Unless otherwise specified by the Board of Directors, the performance period applicable to a grant of a period is 36 months starting on the first day and ending on the last day of the Company's fiscal year.

As at March 31, 2021, no PSUs were granted to any employees.

Pre-September Recapitalization stock-based compensation plan

Just Energy granted awards under its 2010 share option plan (formerly the 2001 Unit Option Plan) to directors, officers, full-time employees and service providers (non-employees) of Just Energy and its subsidiaries and affiliates. The Company's previous stock-based compensation plan grants awarded under the 2010 RSGs Plan (formerly the 2004 unit appreciation rights) were in the form of fully paid RSGs to senior officers, employees and service providers of its subsidiaries and affiliates. The previous plan also granted awards under the 2013 performance bonus incentive plan in the form of fully paid performance bonus grants to senior officers, employees, consultants and service providers of its subsidiaries and affiliates. Additionally, the previous plan granted awards under its 2010 Directors' Compensation Plan (formerly the 2004 Directors' deferred unit grants) to all independent directors on the basis that each director was required to annually receive 15% of their compensation entitlement in deferred share grants.. As a result of the September Recapitalization, all existing restricted share grants, performance bonus grants, and deferred share grants have been exercised and/or cancelled.

20. OTHER EXPENSES

(a) Other operating expenses

	Year ended March 31, 2021	Year ended March 31, 2020	Year ended March 31, 2019
Amortization of intangible assets	**$ 16,166**	$ 27,997	$ 22,680
Depreciation of property and equipment	**7,763**	13,651	4,515
Bad debt expense	**34,260**	80,050	123,288
Share-based compensation	**6,492**	12,250	5,916
	$ 64,681	$ 133,948	$ 156,399

(b) Employee expenses

	Year ended March 31, 2021	Year ended March 31, 2020	Year ended March 31, 2019
Wages, salaries and commissions	**$ 159,386**	$ 211,457	$ 233,575
Benefits	**14,652**	22,218	22,315
	$ 174,038	$ 233,675	$ 255,890

Employee expenses of $64.2 million and $109.8 million are included in administrative expense and selling and marketing expenses, respectively, in the fiscal 2021 Consolidated Statements of Loss. Corresponding amounts of $80.3 million and $153.4 million, respectively, are reflected in the comparable year in fiscal 2020 and $93.8 million and $162.1 million, respectively, are reflected in the comparable year in fiscal 2019.

21. PROVISIONS

	Year ended March 31, 2021	Year ended March 31, 2020
Balance, beginning of the year	**$ 1,529**	$ 7,205
Provisions recorded	**6,643**	950
Provisions utilized	**(1,867)**	(6,038)
Liabilities related to assets held for sale	–	(195)
Foreign exchange impact	**481**	(393)
Balance, end of the year	**$ 6,786**	$ 1,529

22. RESTRUCTURING COSTS

For the year ended March 31, 2021, the Company incurred $7.1 million in restructuring costs in relation to the September 2020 restructuring of its senior management. These costs include management costs, structural reorganization and employee-related costs. Approximately $2.5 million of this remains unpaid as at March 31, 2021 which is subject to compromise as described in Note 1.

23. REORGANIZATION COSTS

For the year ended March 31, 2021, the Company incurred reorganization costs related to CCAA and Bankruptcy under Chapter 15 proceedings. These costs include legal and professional charges of $9.3 million incurred to obtain professional services for the proceedings. In addition, $33.9 million in the charges associated with early termination of certain agreeements allowed by the CCAA filing and the acceleration of deferred financing costs and other fees for the long-term debt subject to compromise and certain other related costs.

24. LOSS PER SHARE

	Year ended March 31, 2021	Year ended March 31, 2020	Year ended March 31, 2019
BASIC LOSS PER SHARE			
Loss from continuing operations available to shareholders	**$ (402,756)**	$ (298,233)	$ (138,272)
Loss for the year available to shareholders	**(402,288)**	(309,659)	(138,272)
Basic weighted average shares outstanding[2]	**34,125,199**	9,856,639	9,732,966
Basic loss per share from continuing operations available to shareholders	**$ (11.80)**	$ (30.26)	$ (14.21)
Basic loss per share available to shareholders	**$ (11.79)**	$ (31.42)	$ (27.39)
DILUTED LOSS PER SHARE			
Loss from continuing operations available to shareholders	**$ (402,756)**	$ (298,233)	$ (138,272)
Adjusted loss for the year available to shareholders	**$ (402,288)**	$ (298,233)	$ (138,272)
Basic weighted average shares outstanding	**34,125,199**	9,856,639	9,732,966
Dilutive effect of:			
Restricted share and performance bonus grants	**38,990**[1]	80,761[1]	73,030[1]
Deferred share grants	**6,437**[1]	8,841[1]	4,331[1]
Restricted share units	**4,252**[1]	–	–
Deferred share units	**87,926**[1]	–	–
Options	**305,357**[1]	–	–
Shares outstanding on a diluted basis	**34,568,161**[1]	9,946,241	9,810,327
Diluted loss from continuing operations per share available to shareholders	**$ (11.80)**	$ (30.26)	$ (14.21)
Diluted loss per share available to shareholders	**$ (11.79)**	$ (31.42)	$ (27.39)

1 The assumed settlement of shares results in an anti-dilutive position; therefore, these items have not been included in the computation of diluted loss per share.

2 The shares have been adjusted to reflect the share consolidation due to the September Recapitalization.

25. DISCONTINUED OPERATIONS

In March 2019, Just Energy formally approved and commenced the process to dispose of its businesses in Germany, Ireland and Japan. In June 2019, the U.K. was added to the disposal group. The decision was part of a strategic transition to focus on the core business in North America. In November 2019, Just Energy closed its previously announced sale of Hudson U.K. to Shell Energy Retail Limited and completed the Ireland sale in February 2020. In April 2020, the Company announced that it has sold all of the shares of Just Energy Japan KK to Astmax Trading, Inc. The purchase price was nominal. As at March 31, 2021, the remaining operations were classified as discontinued operations.

In March 2021, the Company commenced insolvency proceedings for its German operations and is expected to be liquidated within the next 12 months. The tax impact on the discontinued operations is minimal.

In November 2020, Just Energy sold EdgePower Inc., resulting in a gain of $1.5 million and the results of which have been included in profit (loss) after tax from discontinued operations in the Consolidated Statements of Loss.

Assets, and liabilities associated with assets, classified as held for sale were as follows:

	As at March 31, 2021	As at March 31, 2020
ASSETS		
Current assets		
Cash and cash equivalents	**$** —	$ 898
Current trade and other receivables, net	—	4,978
Income taxes recoverable	—	12
Other current assets	—	1,140
	—	7,028
Non-current assets		
Property and equipment	—	38
Intangible assets	—	545
ASSETS CLASSIFIED AS HELD FOR SALE	**$** —	$ 7,611
Liabilities		
Current liabilities		
Trade and other payables	**$** —	$ 4,823
Deferred revenue	—	83
LIABILITIES ASSOCIATED WITH ASSETS CLASSIFIED AS HELD FOR SALE	**$** —	$ 4,906

26. COMMITMENTS AND CONTINGENCIES

Commitments for each of the next five years and thereafter are as follows:

As at March 31, 2021

	Less than 1 year	**1-3 years**	**4-5 years**	**More than 5 years**	**Total**
Gas, electricity and non-commodity contracts	$ 1,339,637	$ 960,907	$ 183,269	$ 48,057	$ 2,531,870

Just Energy has entered into leasing contracts for office buildings and administrative equipment. These leases have a leasing period of between one and six years. Eight office leases, with a net balance of $1.3 million, were terminated subsequent to the CCAA in April 2021. No purchase options are included in any major leasing contracts. Just Energy is also committed under long-term contracts with customers to supply gas and electricity. These contracts have various expiry dates and renewal options.

(a) Surety bonds and letters of credit

Pursuant to separate arrangements with various insurance companies. Just Energy has issued surety bonds to various counterparties including states, regulatory bodies, utilities and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required in order to operate in certain states or markets. Total surety bonds issued as at March 31, 2021 were $46.3 million. As at March 31, 2021, $46.1 million were backed by either cash collateral or letters of credit, which are included below.

As at March 31, 2021, Just Energy had total letters of credit outstanding in the amount of $99.4 million (Note 15(c)).

(b) Officers and directors

Corporate indemnities have been provided by Just Energy to all directors and certain officers of its subsidiaries and affiliates for various items including, but not limited to, all costs to settle suits or actions due to their association with Just Energy and its subsidiaries and/or affiliates, subject to certain restrictions. Just Energy has purchased directors' and officers' liability insurance to mitigate the cost of any potential future suits or actions and is entitled to a Priority Charge under the Court Order in CCAA proceedings. Each indemnity, subject to certain exceptions, applies for so long as the indemnified person is a director or officer of one of Just Energy's subsidiaries and/or affiliates. The maximum amount of any potential future payment cannot be reasonably estimated.

(c) Operations

In the normal course of business, Just Energy and/or Just Energy's subsidiaries and affiliates have entered into agreements that include guarantees in favour of third parties, such as purchase and sale agreements, leasing agreements and transportation agreements. These guarantees may require Just Energy and/or its subsidiaries to compensate counterparties for losses incurred by the counterparties as a result of breaches in representation and regulation or as a result of litigation claims or statutory sanctions that may be suffered by the counterparty as a consequence of the transaction. The maximum payable under these guarantees is estimated to be $77.6 million and are subject to compromise under the CCAA.

(d) Legal proceedings

Just Energy's subsidiaries are party to a number of legal proceedings. Other than as set out below, Just Energy believes that each proceeding constitutes legal matters that are incidental to the business conducted by Just Energy and that the ultimate disposition of the proceedings will not have a material adverse effect on its consolidated earnings, cash flows or financial position.

On March 9, 2021, Just Energy filed for and received creditor protection pursuant to the Court Order under the CCAA and similar protection under Chapter 15 of the Bankruptcy Code in the United States in connection with the material adverse financial impact of the Weather Event.

In March 2012, Davina Hurt and Dominic Hill filed a lawsuit against Commerce Energy Inc. ("Commerce"), Just Energy Marketing Corp. and the Company in the Ohio Federal Court (the "Ohio Court") claiming entitlement to payment of minimum wage and overtime under Ohio wage claim laws and the Federal Fair Labor Standards Act ("FLSA") on their own behalf and similarly situated door-to-door sales representatives who sold for Commerce in certain regions of the United States. The Ohio Court granted the plaintiffs' request to certify the lawsuit as a class action. Approximately 1,800 plaintiffs opted into the federal minimum wage and overtime claims, and approximately 8,000 plaintiffs were certified as part of the Ohio state overtime claims. On October 6, 2014, the jury refused to find a willful violation but concluded that certain individuals were not properly classified as outside salespeople in order to qualify for an exemption under the minimum wage and overtime requirements. On September 28, 2018, the Ohio Court issued a final judgment, opinion and order. Just Energy filed its appeal to the Court of Appeals for the Sixth Circuit on October 25, 2018 and provided a bond to the Ohio Court to cover the potential damages. On August 31, 2020, the Appeals Court denied the appeal in a 2-1 decision. On February 2, 2021, Just Energy filed a petition for certiorari seeking the United States Supreme Court (the "Supreme Court") review to resolve the newly created circuit split with the Court of Appeals for the Second Circuit unanimous decision in Flood v. Just Energy, 904 F.3d 219 (2d Cir. 2018) and with the inconsistency with the Supreme Court's recent decision in Encino Motorcars, LLC v Navarro, 138 S. Ct. 1134, 1142 (2018), with broad, national, unsustainable implications for all employers who have outside sales employees. On June 7, 2021, the Supreme Court denied Just Energy's petition for certiorari. The Company accrued approximately $5.7 million in the last quarter of fiscal 2021 in connection with this matter and expects to make this payment promptly.

In May 2015, Kia Kordestani, a former door-to-door independent contractor sales representative for Just Energy Corp., filed a lawsuit against Just Energy Corp., Just Energy Ontario L.P. and the Company (collectively referred to as "Just Energy") in the Superior Court of Justice, Ontario, claiming status as an employee and seeking benefits and protections of the Employment Standards Act, 2000, such as minimum wage, overtime pay, and vacation and public holiday pay on his own behalf and similarly situated door-to-door sales representatives who sold in Ontario. On Just Energy's request, Mr. Kordestani was removed as a plaintiff but replaced with Haidar Omarali, also a former door-to-door sales representative. On July 27, 2016, the Court granted Omarali's request for certification, but refused to certify Omarali's request for damages on an aggregate basis, and refused to certify Omarali's request for punitive damages. Omarali's motion for summary judgment was dismissed in its entirety on June 21, 2019. The matter is currently set for trial in November 2021. Pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims.

On July 23, 2019, Just Energy announced that, as part of its Strategic Review process, management identified customer enrolment and non-payment issues, primarily in Texas. In response to this announcement, and in some cases in response to this and other subsequent related announcements, putative class action lawsuits were filed in the United States District Court for the Southern District of New York, in the United States District Court for the Southern District of Texas and in the Ontario Superior Court of Justice, on behalf of investors that purchased Just Energy Group Inc. securities during various periods, ranging from November 9, 2017 through August 19, 2019. The U.S. lawsuits have been consolidated in the United States District Court for the Southern District of Texas with one lead plaintiff and the Ontario lawsuits have been consolidated with one lead plaintiff. The U.S. lawsuit seeks damages allegedly arising from violations of the United States Securities Exchange Act. The Ontario lawsuit seeks damages allegedly arising from violations of Canadian securities legislation and of common law. The Ontario lawsuit was subsequently amended to, among other things, extend the period to July 7, 2020. On September 2, 2020, pursuant to Just Energy's plan of arrangement, the Superior Court of Justice (Ontario) ordered that all existing equity class action claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the insurance policies payable on behalf of Just Energy or its directors and officers in respect of any such existing equity class action claims, and such existing equity class action claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the released parties or any of their respective current or former officers and directors in respect of any existing equity class action claims, other than enforcing their rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. Pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims.

27. RELATED PARTY TRANSACTIONS

Parties are considered to be related if one party has the ability to control the other party or exercise influence over the other party in making financial or operating decisions. The definition includes subsidiaries and other persons.

Pacific Investment Management Company ("PIMCO"), through certain affiliates, became a 28.9% shareholder of the Company as part of the September Recapitalization. On March 9, 2021, certain PIMCO affiliates entered into a term sheet (the "DIP Agreement") with the Company to make the DIP Facility for USD $125 million as described in note 15(a).

Key management personnel are defined as those individuals having authority and responsibility for planning, directing and controlling the activities of Just Energy and consist of the Executive Chair, the Chief Executive Officer and the Chief Financial Officers.

	March 31, 2021	March 31, 2020	March 31, 2019
Salaries and benefits	**$ 3,817**	$ 2,334	$ 2,493
Share-based compensation expense, net	**1,539**	625	1,163
	$ 5,356	$ 2,959	$ 3,656

28. SUPPLEMENTAL CASH FLOW INFORMATION

(a) Net change in working capital

	As at March 31, 2021	As at March 31, 2020	As at March 31, 2019
Accounts receivable and unbilled revenue, net	**$ 120,870**	$ 33,839	$ (35,427)
Gas in storage	**3,185**	(3,234)	(601)
Prepaid expenses and deposits	**56,585**	(89,087)	(128,911)
Provisions	**6,145**	(4,607)	4,309
Trade and other payables	**(289,543)**	107,083	179,144
	$ (102,758)	$ 43,994	$ 18,514

29. SUBSEQUENT EVENTS

On June 16, 2021 Texas House Bill 4492 ("HB 4492"), which provides a mechanism for recovery of certain costs incurred by various parties, including the Company, during the Weather Event through certain securitization structures, became law in Texas. HB 4492 addresses securitization of (i) ancillary service charges above USD$9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by the ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently "short-paid" to market participants, including Just Energy (collectively, the "Costs").

HB 4492 provides that ERCOT request that the Public Utility Commission of Texas (the "Commission") establish financing mechanisms for the payment of the Costs incurred by load-serving entities, including Just Energy. The timing of any such request by ERCOT, the details of the financing mechanism and the process to apply for recovery of the Costs are undetermined at this the time of this filing. The Company continues to evaluate HB 4492. Based on current information, if the Commission approves the financing provided for in HB 4492, Just Energy anticipates that it will recover approximately USD $100 million of Costs. The total amount that the Company may recover through the mechanisms authorized in HB 4492 may change materially based on a number of factors, including the details of an established financing order issued by the Commission, additional ERCOT resettlements, the aggregate amount of funds applied for under HB 4492 by participants, the outcome of the dispute resolution process initiated by the Company with ERCOT, and any potential challenges to the Commission's order or orders. There is no assurance that the Company will be able to recover all of the Costs.

Corporate Information

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Shares Listed
TSX Venture Exchange
Trading symbol: JE

OTC Pink Market
Trading symbol: JENGQ

just
energy™

THIS IS **EXHIBIT "K"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,
SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

2022 FIRST QUARTER REPORT TO SHAREHOLDERS

Q1

Management’s discussion and analysis – August 13, 2021

The following management’s discussion and analysis (“MD&A”) is a review of the financial condition and operating results of Just Energy Group Inc. (“Just Energy” or the “Company”) for the quarter ended June 30, 2021. This MD&A has been prepared with all information available up to and including August 13, 2021. This MD&A should be read in conjunction with Just Energy’s unaudited Interim Condensed Consolidated Financial Statements (the “Interim Condensed Consolidated Financial Statements”) for the quarter ended June 30, 2021. The financial information contained herein has been prepared in accordance with International Financial Reporting Standards (“IFRS”), as issued by the International Accounting Standards Board (“IASB”). All dollar amounts are expressed in Canadian dollars unless otherwise noted. Quarterly reports, the annual report and supplementary information can be found on Just Energy’s corporate website at www.investors.justenergy.com. Additional information can be found on SEDAR at www.sedar.com or on the U.S. Securities and Exchange Commission’s (“SEC”) website at www.sec.gov.

WEATHER EVENT AND CREDITOR PROTECTION FILINGS

In February 2021, the State of Texas experienced extremely cold weather (the “Weather Event”). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. (“ERCOT”) when due, and accordingly, on March 9, 2021, Just Energy applied for and received creditor protection under the Companies’ Creditors Arrangement Act (Canada) (“CCAA”) from the Ontario Superior Court of Justice (Commercial List) (the “Ontario Court”) and under Chapter 15 (“Chapter 15”) in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division (the “Court Orders”). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD$125 million Debtor-In-Possession (“DIP Facility”) financing with certain affiliates of Pacific Investment Management Company (“PIMCO). The Company entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The Company entered into a Lender Support Agreement with the lenders under its Credit Facility (for details refer to note 8(c) in the Interim Condensed Consolidated Financial Statements). The filings and associated USD$125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the U.S. and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On May 26, 2021, the stay period was extended by the Ontario Court to September 30, 2021. As at June 30, 2021, in connection with the CCAA proceeds, the Company identified $997.2 million of liabilities subject to compromise (see Note 1 in the Interim Condensed Consolidated Financial Statements). The Company also recorded Reorganization Costs (defined below in Key Terms) of $20.0 million in the three months ended June 30, 2021 (see Note 13 in the Interim Condensed Consolidated Financial Statements).

The Common Shares, no par value, of the Company (the “Common Shares”) are listed on the TSX Venture Exchange under the symbol “JE” and on the OTC Pink Market under the symbol “JENGQ”.

SECURITIZATION UNDER HOUSE BILL 4492

On June 16, 2021 Texas House Bill 4492 (“HB 4492”), which provides a mechanism for recovery of certain costs incurred by various parties, including the Company, during the Weather Event through certain securitization structures, became law in Texas. HB 4492 addresses securitization of (i) ancillary service charges above USD $9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by the ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently “short-paid” to market participants, including Just Energy, (collectively, the “Costs”).

HB 4492 provides that ERCOT request that the Public Utility Commission of Texas (the “Commission”) establish financing mechanisms for the payment of the Costs incurred by load-serving entities, including Just Energy. On July 16, 2021, ERCOT filed the request with the Commission (Docket number 52322). The Company continues to evaluate HB 4492. Based on current information, if the Commission approves the financing provided for in HB 4492, Just Energy anticipates that it will recover up to approximately USD $100 million of Costs. The total amount that the Company may recover through the mechanisms authorized in HB 4492 may change materially based on a number of factors, including the details of an established financing order issued by the Commission, additional ERCOT resettlements, the aggregate amount of funds applied for under HB 4492 by participants, the outcome of the dispute resolution process initiated by the Company with ERCOT, and any potential challenges to the Commission’s order or orders. There is no assurance that the Company will be able to recover all of the Costs.

Forward-looking information

This MD&A may contain forward-looking statements, including, without limitation, statements with respect to the implementation of HB 4492 by the Commission, the establishment of financing mechanisms for the payment of the Costs incurred by load-serving entities, and whether the Company may ultimately recover any amount of Costs. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but

are not limited to, risks with respect to the Commission's decisions with respect to the financing mechanisms to recover the Costs, Just Energy failing to meet any requirements under any rules established by the Commission with respect to financing mechanisms to recover the Costs, and any litigation with respect to the financing mechanism established by the Commission; the ability of the Company to continue as a going concern; the outcome of proceedings under CCAA proceedings with respect to the Company and similar legislation in the United States; the impact of any recovery of the Costs on the Company and/or its proceedings under CCAA and similar United States legislation; the outcome of any legislative or regulatory actions; the outcome of any invoice dispute with ERCOT; the outcome of potential litigation in connection with the Weather Event; the quantum of the financial loss to the Company from the Weather Event and its impact on the Company's liquidity; the Company's discussions with key stakeholders regarding the Weather Event and the CCAA proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Company overview

Just Energy is a retail energy provider specializing in electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options to customers. Operating in the United States ("U.S.") and Canada, Just Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Tara Energy and terrapass.

Continuing operations overview

MASS MARKETS SEGMENT

The Mass Markets segment (formerly referred to as "Consumer Segment") includes customers acquired and served under the Just Energy, Tara Energy, Amigo Energy and terrapass brands. Marketing of the energy products of this segment is primarily done through digital and retail sales channels. Mass Market customers make up 75% of Just Energy's Base gross margin (defined below in non-IFRS financial measures), which is currently focused on price-protected and flat-bill product offerings, as well as JustGreen products. To the extent that certain markets are better served by shorter-term or enhanced variable rate products, the Mass Markets segment's sales channels offer these products.

Just Energy also provides home water filtration systems with its line of consumer product and service offerings through Filter Group.

COMMERCIAL SEGMENT

The Commercial segment includes customers acquired and served under the Hudson Energy, as well as brokerage services managed by the Interactive Energy Group. Hudson sales are made through three main channels: brokers, door-to-door commercial independent contractors and inside commercial sales representatives. Commercial customers make up 25% of Just Energy's Base gross margin. Products offered to Commercial customers range from standard fixed-price offerings to "one off" offerings, tailored to meet the customer's specific needs. These products can be fixed or floating rate or a blend of the two, and normally have a term of less than five years. Gross margin per RCE for this segment is lower than it is for the Mass Markets segment, but customer acquisition costs and ongoing customer care costs per RCE are lower as well. Commercial customers also have significantly lower attrition rates than Mass Markets customers.

ABOUT JUST ENERGY’S PRODUCTS

Just Energy offers products and services to address customers’ essential needs, including electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options as well as water quality and filtration devices to customers.

Electricity

Just Energy services various states and territories in U.S. and Canada with electricity. A variety of electricity solutions are offered, including fixed-price, flat-bill and variable-price products on both short-term and longer-term contracts. Most of these products provide customers with price-protection programs for the majority of their electricity requirements. Just Energy uses historical usage data for enrolled customers to predict future customer consumption and to help with long-term supply procurement decisions. Flat-bill products offer customers the ability to pay a fixed amount per period regardless of usage.

Just Energy purchases electricity supply from market counterparties for Mass Markets and Commercial customers based on forecasted customer aggregation. Electricity supply is generally purchased concurrently with the execution of a contract for larger Commercial customers. Historical customer usage is obtained from LDCs (as defined in key terms), which, when normalized to average weather, provides Just Energy with expected normal customer consumption. Just Energy mitigates exposure to weather variations through active management of the electricity portfolio and the purchase of options, including weather derivatives. Just Energy’s ability to successfully mitigate weather effects is limited by the degree to which weather conditions deviate from normal. To the extent that balancing electricity purchases are outside the acceptable forecast, Just Energy bears the financial responsibility for excess or short supply caused by fluctuations in customer usage. Any supply balancing not fully covered through customer pass-throughs, active management or the options employed may increase or decrease Just Energy’s Base gross margin (as defined in Non-IFRS financial measures) depending upon market conditions at the time of balancing.

Natural gas

Just Energy offers natural gas customers a variety of products ranging from five-year fixed-price contracts to month-to-month variable-price contracts. Gas supply is purchased from market counterparties based on forecasted consumption. For larger Commercial customers, gas supply is generally purchased concurrently with the execution of a contract. Variable rate products allow customers to maintain competitive rates while retaining the ability to lock into a fixed price at their discretion. Flat-bill products offer customers the ability to pay a fixed amount per period regardless of usage or changes in the price of the commodity.

The LDCs provide historical customer usage which, when normalized to average weather, enables Just Energy to purchase the expected normal customer load. Just Energy mitigates exposure to weather variations through active management of the gas portfolio, which involves, but is not limited to, the purchase of options, including weather derivatives. Just Energy’s ability to successfully mitigate weather effects is limited by the degree to which weather conditions deviate from normal. To the extent that balancing requirements are outside the forecasted purchase, Just Energy bears the financial responsibility for fluctuations in customer usage. To the extent that supply balancing is not fully covered through active management or the options employed, Just Energy’s Base gross margin may increase or decrease depending upon market conditions at the time of balancing.

Territory	Gas delivery method
Manitoba, Ontario, Quebec and Michigan	The volumes delivered for a customer typically remain constant throughout the year. Sales are not recognized until the customer consumes the gas. During the winter months, gas is consumed at a rate that is greater than delivery, resulting in accrued gas receivables, and, in the summer months, deliveries to LDCs exceed customer consumption, resulting in gas delivered in excess of consumption. Just Energy receives cash from the LDCs as the gas is delivered.
Alberta, British Columbia, Saskatchewan, California, Illinois, Indiana, Maryland, New Jersey, New York, Ohio and Pennsylvania	The volume of gas delivered is based on the estimated consumption and storage requirements for each month. The amount of gas delivered in the months of October to March is higher than in the months of April to September. Cash flow received from most of these markets is greatest during the fall and winter quarters, as cash is normally received from the LDCs in the same period as customer consumption.

JustGreen

Many customers have the ability to choose an appropriate JustGreen program to supplement their electricity and natural gas, providing an effective method to offset their carbon footprint associated with the respective commodity consumption.

JustGreen’s electricity products offer customers the option of having all or a portion of the volume of their electricity usage sourced from renewable green sources such as wind, solar, hydropower or biomass, via power purchase agreements and renewable energy certificates. JustGreen programs for gas customers involve the purchase of carbon offsets from carbon capture and reduction projects. Additional green products allow customers to offset their carbon footprint without buying energy commodity products and can be offered in all states and provinces without being dependent on energy deregulation.

Just Energy currently sells JustGreen electricity and gas in eligible markets across North America. Of all customers who contracted with Just Energy in the past year, 38% purchased JustGreen for some or all of their energy needs. On average, these customers elected to purchase 93% of their consumption as green supply. For comparison, as reported for the trailing 12 months ended June 30, 2020, 55% of Consumer customers who contracted with Just Energy chose to include JustGreen for an average of 90% of their consumption. As at June 30, 2021, JustGreen makes up 25% of the Mass Market electricity portfolio, compared to 21% in the year ago period. JustGreen makes up 13% of the Mass Market gas portfolio, compared to 17% in the year ago period.

Terrapass

Through terrapass, customers can offset their environmental impact by purchasing high quality environmental products. Terrapass supports projects throughout North America and are exploring other projects world-wide that destroy greenhouse gases, produce renewable energy and restore freshwater ecosystems. Each project is made possible through the purchase of carbon offsets and renewable energy credits. Terrapass offers various purchase options for residential or commercial customers as well as non-commodity customers, depending on the impact the customer wishes to make.

Key terms

"6.5% convertible bonds" refers to the US$150 million in convertible bonds issued in January 2014, which were exchanged for Common Shares and a pro-rata portion of the Term loan as part of the September 2020 Recapitalization.

"6.75% $160M convertible debentures" refers to the $160 million in convertible debentures issued in October 2016, which were exchanged for Common Shares and its pro-rata allocation of the 7.0% $13M subordinated notes issued as part of the September 2020 Recapitalization.

"6.75% $100M convertible debentures" refers to the $100 million in convertible debentures issued in February 2018, which were exchanged for Common Shares and its pro-rata allocation of the 7.0% $13M subordinated notes issued as part of the September 2020 Recapitalization.

"8.75% loan" refers to the US$250 million non-revolving multi-draw senior unsecured term loan facility entered into on September 12, 2018. The 8.75% loan was exchanged for Common Shares and a pro-rata portion of the Term loan as part of the September 2020 Recapitalization.

"Base gross margin per RCE" refers to the energy Base gross margin realized on Just Energy's RCE customer base, including gains (losses) from the sale of excess commodity supply excluding the impacts of the Weather Event or Reorganization Costs.

"Commodity RCE attrition" refers to the percentage of energy customers whose contracts were terminated prior to the end of the term either at the option of the customer or by Just Energy.

"Customer count" refers to the number of customers with a distinct address rather than RCEs (see key term below).

"Failed to renew" means customers who did not renew expiring contracts at the end of their term.

"Filter Group financing" refers to the outstanding loan balance between Home Trust Company ("HTC") and Filter Group. The loan bears an annual interest rate of 8.99%.

"LDC" means a local distribution company; the natural gas or electricity distributor for a regulatory or governmentally defined geographic area.

"Liquidity" means cash on hand.

"Maintenance capital expenditures" means the necessary property and equipment and intangible asset capital expenditures required to maintain existing operations at functional levels.

"Note Indenture" refers to the $15 million subordinated notes with a six-year maturity and bearing an annual interest rate of 7.0% (payable in kind semi-annually) issued in relation to the September 2020 Recapitalization, which have a maturity date of September 15, 2026. The principal amount was reduced through a tender offer for no consideration, on October 19, 2020 to $13.2 million.

"RCE" means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m^3 (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada.

"Reorganization Costs" means the amounts incurred related to the filings under the CCAA and Chapter 15 under the U.S. Bankruptcy Code proceedings. These costs include professional and advisory costs, key employee retention plan, contract terminations and prepetition claims, and other costs.

"Selling commission expenses" means customer acquisition costs amortized under IFRS 15, *Revenue from contracts with customers*, or directly expensed within the current period and consist of commissions paid to independent sales contractors, brokers and sales agents and is reflected on the Interim Condensed Consolidated Statements of Income as part of selling and marketing expenses.

"Selling non-commission and marketing expenses" means the cost of selling overhead, including digital marketing cost not directly associated with the costs of direct customer acquisition costs within the current period and is reflected on the Interim Condensed Consolidated Statements of Income as part of selling and marketing expenses.

"Strategic Review" means the Company's formal review announced on June 6, 2019 to evaluate strategic alternatives available to the Company. The Company finalized the Strategic Review with the completed September 2020 Recapitalization.

"Term Loan" refers to the US$206 million senior unsecured 10.25% term loan facility entered into on September 28, 2020 pursuant to the September 2020 Recapitalization, which has a maturity date of March 31, 2024.

Non-IFRS financial measures

Just Energy's Interim Condensed Consolidated Financial Statements are prepared in accordance with IFRS. The financial measures that are defined below do not have a standardized meaning prescribed by IFRS and may not be comparable to similar measures presented by other companies. These financial measures should not be considered as an alternative to, or more meaningful than, net income (loss), cash flow from operating activities and other measures of financial performance as determined in accordance with IFRS; however, the Company believes that these measures are useful in providing relative operational profitability of the Company's business.

BASE GROSS MARGIN

"Base gross margin" represents gross margin adjusted to exclude the effect of applying IFRS Interpretation Committee Agenda Decision 11, *Physical Settlement of Contracts to Buy or Sell a Non-Financial Item*, for realized gains (losses) on derivative instruments, the one-time impact of the Weather Event, and the one-time non-recurring sales tax settlement. Base gross margin is a key measure used by management to assess performance and allocate resources. Management believes that these realized gains (losses) on derivative instruments reflect the long-term financial performance of Just Energy and thus have included them in the Base gross margin calculation.

EBITDA

"EBITDA" refers to earnings before finance costs, income taxes, depreciation and amortization with an adjustment for discontinued operations. EBITDA is a non-IFRS measure that reflects the operational profitability of the business.

BASE EBITDA

"Base EBITDA" refers to EBITDA adjusted to exclude the impact of unrealized mark to market gains (losses) arising from IFRS requirements for derivative financial instruments, Reorganization costs, share-based compensation, impairment of inventory, Strategic Review costs, realized gains (losses) related to gas held in storage until gas is sold, and non-controlling interest. This measure reflects operational profitability as the impact of the non-cash gains (losses), impairment of inventory and Reorganization costs are one-time non-recurring events. Non-cash share-based compensation expense is treated as an equity issuance for the purposes of this calculation as it will be settled in Common Shares; the unrealized mark to market gains (losses) are associated with supply already sold in the future at fixed prices; and, the unrealized mark to market gains (losses) of weather derivatives are not related to weather in the current period.

Just Energy ensures that customer margins are protected by entering into fixed-price supply contracts. Under IFRS, the customer contracts are not marked to market; however, there is a requirement to mark to market the future supply contracts. This creates unrealized and realized gains (losses) depending upon current supply pricing. Management believes that the unrealized mark to market gains (losses) do not impact the long-term financial performance of Just Energy and has excluded them from the Base EBITDA calculation.

Just Energy uses derivative financial instruments to hedge the gas held in storage for future delivery to customers. Under IFRS, the customer contracts are not marked to market: however, there is a requirement to report the realized gains (losses) in the current period instead of recognizing them as a cost of inventory until delivery to the customer. Just Energy excludes the realized gains (losses) to EBITDA during the injection season and includes them during the withdrawal season in accordance with the customers receiving the gas. Management believes that including the realized gains (losses) during the withdrawal season when the customers receive the gas is more reflective of the operations of the business.

Just Energy recognizes the incremental acquisition costs of obtaining a customer contract as an asset since these costs would not have been incurred if the contract was not obtained and are recovered through the consideration collected from the contract. Commissions and incentives paid for commodity contracts and value-added products contracts are capitalized and amortized over the term of the contract. Amortization of these costs with respect to customer contracts is included in the calculation of Base EBITDA (as selling commission expenses). Amortization of incremental acquisition costs on value-added product contracts is excluded from the Base EBITDA calculation as value-added products are considered to be a lease asset akin to a fixed asset whereby amortization or depreciation expenses are excluded from Base EBITDA.

FREE CASH FLOW AND UNLEVERED FREE CASH FLOW

Free cash flow represents cash flow from operations less maintenance capital expenditures. Unlevered free cash flow represents free cash flows plus finance costs excluding the non-cash portion.

EMBEDDED GROSS MARGIN (“EGM”)

EGM is a rolling five-year measure of management’s estimate of future contracted energy and product gross margin. The commodity EGM is the difference between existing energy customer contract prices and the cost of supply for the remainder of the term, with appropriate assumptions for commodity RCE attrition and renewals. The product gross margin is the difference between existing value-added product customer contract prices and the cost of goods sold on a five-year undiscounted basis for such customer contracts, with appropriate assumptions for value-added product attrition and renewals. It is assumed that expiring contracts will be renewed at target margin renewal rates.

EGM indicates the gross margin expected to be realized over the next five years from existing customers. It is intended only as a directional measure for future gross margin. It is neither discounted to present value nor is it intended to consider administrative and other costs necessary to realize this margin.

Financial and operating highlights

For the three months ended June 30.
(thousands of dollars, except where indicated and per share amounts)

	Fiscal 2022	% increase (decrease)	Fiscal 2021
Sales	**$ 608,672**	**(11)%**	$ 685,964
Base gross margin[1]	**99,617**	**(27)%**	136,279
Administrative expenses[2]	**29,770**	**(25)%**	39,953
Selling commission expenses	**25,294**	**(30)%**	35,979
Selling non-commission and marketing expense	**14,378**	**31%**	10,981
Bad debt expense	**7,418**	**(38)%**	11,940
Reorganization costs	**20,009**	**NMF[3]**	–
Finance costs	**12,913**	**(41)%**	21,853
Profit from continuing operations	**275,299**	**NMF[3]**	82,098
Base EBITDA[1]	**23,021**	**(43)%**	40,479
Unlevered free cash flow[1]	**7,610**	**(65)%**	21,897
EGM Mass Market	**1,017,300**	**(15)%**	1,203,800
EGM Commercial	**332,500**	**(24)%**	438,700
RCE Mass Markets count	**1,127,000**	**(11)%**	1,261,000
RCE Mass Markets net adds	**(6,000)**	**90%**	(62,000)
RCE Commercial count	**1,734,000**	**(10)%**	1,922,000

1 See “Non-IFRS financial measures” on page 5.
2 Includes $3.6 million of Strategic Review costs for the first quarter of fiscal 2021.
3 Not a meaningful figure.

Sales decreased by 11% to $608.7 million for the three months ended June 30, 2021 compared to $686.0 million for the three months ended June 30, 2020. The decrease was primarily driven by a decline in the customer base due to Company’s continued strategy to increase the onboarding of high-quality customers; regulatory restrictions in Ontario, New York and California; and selling constraints in direct in-person channels previously posed by the COVID-19 pandemic; and by competitive pressures on pricing and COVID-19 pandemic in the commercial segment.

Base gross margin decreased by 27% to $99.6 million for the quarter ended June 30, 2021 compared to $136.3 million for the quarter ended June 30, 2020. The decrease was primarily driven by a lower customer base, unfavourable exchange rate fluctuations and favourable resettlements during the prior comparable quarter.

Base EBITDA decreased by 43% to $23.0 million for the three months ended June 30, 2021 compared to $40.5 million for the three months ended June 30, 2020. The decrease was driven by lower Base gross margin and increased investment in digital marketing, partially offset by lower administrative, selling commission and bad debt expenses.

Administrative expenses decreased by 25% to $29.8 million for the three months ended June 30, 2021 compared to $40.0 million for the three months ended June 30, 2020. The decrease was primarily driven by Strategic Review costs in the prior comparable quarter, lower wages expense, and lower professional and legal fee costs.

Selling commission expenses decreased by 30% to $25.3 million for the three months ended June 30, 2021 compared to $36.0 for the three months ended June 30, 2020. The decrease is primarily driven by lower sales from direct in-person channels driven by the impacts of the COVID-19 pandemic and lower commercial sales driven competitive price pressures and the COVID-19 pandemic in prior periods.

Selling non-commission and marketing expenses increased by 31% to $14.4 million for the three months ended June 30, 2021 compared to $11.0 million for the three months ended June 30, 2020. The increase was driven by the increased investment in digital marketing.

Bad debt expense decreased by 38% to $7.4 million for the three months ended June 30, 2021 compared to $11.9 million for the three months ended June 30, 2020. The decrease in bad debt was driven by lower revenues from overall lower customer base and improvements in commercial segment.

Reorganization costs represent the amounts incurred related to the filings under the CCAA and Chapter 15 under the U.S. Bankruptcy Code proceedings. These costs include professional and advisory costs of $12.5 million, $2.5 million for the key employee retention plan and $5.0 million in prepetition claims, contract terminations and other costs.

Finance costs decreased by 41% to $12.9 million for the three months ended June 30, 2021 compared to $21.9 million for the three months ended June 30, 2020. The decrease is due to September 2020 Recapitalization together with no longer accruing finance costs on the unsecured debt due to the CCAA filing as shown in Note 8 of the Interim Condensed Consolidated Financial Statements.

Unlevered free cash flow decreased by 65% to an inflow of $7.6 million for the three months ended June 30, 2021 compared to an inflow of $21.9 million for the three months ended June 30, 2020. The decrease is related to higher payments to ERCOT associated with the Weather Event, partially offset by the non-payment of trade and other payables subject to compromise under the CCAA.

Mass Markets EGM decreased by 15% to $1,017.3 million as at June 30, 2021 compared to $1,203.8 million as at June 30, 2020. The decline resulted from the decline in the customer base and the unfavorable foreign exchange.

Commercial EGM decreased by 24% to $332.5 million as at June 30, 2021 compared to $438.7 million as at June 30, 2020. The decline resulted from the decline in the customer base and the unfavourable foreign exchange.

Mass Markets RCE Net Adds for the three months ended June 30, 2021 was a loss of 6,000 compared to a loss of 62,000 for the three months ended June 30, 2020. Excluding the one-time 29,000 loss related to the regulatory changes in New York coming into effect in April 2021, Mass Markets RCE Net Adds for the three months ended June 30, 2021 was a positive 23,000.

Base gross margin[1]

For the three months ended June 30.
(thousands of dollars)

			Fiscal 2022			Fiscal 2021
	Mass Market	**Commercial**	**Total**	Mass Market	Commercial	Total
Gas	**$ 14,232**	**$ 1,818**	**$ 16,050**	$ 27,816	$ 6,429	$ 34,245
Electricity	**60,743**	**22,824**	**83,567**	83,210	18,824	102,034
	$ 74,975	**$ 24,642**	**$ 99,617**	$ 111,026	$ 25,253	$ 136,279
Decrease	**(32)%**	**(2)%**	**(27)%**			

1 See "Non-IFRS financial measures" on page 5.

MASS MARKETS

Mass Markets Base gross margin decreased by 32% to $75.0 million for the three months ended June 30, 2021 compared to $111.0 million for the three months ended June 30, 2020. The decline in Base gross margin was primarily driven by a decline in the customer base, lower exchange rate and favorable resettlements during prior comparable quarter.

Gas

Mass Market gas Base gross margin decreased by 49% to $14.2 million for the three months ended June 30, 2021 compared to $27.8 million for the three months ended June 30, 2020. The decline in gas Base gross margin was driven by a decline in customer base and favorable resettlements during prior comparable quarter.

Electricity

Mass Market electricity Base gross margin decreased by 27% to $60.7 million for the three months ended June 30, 2021 compared to $83.2 million for the three months ended June 30, 2020. The decrease in electricity Base gross margin is due to the decline in the customer base, lower fee revenue disconnect moratorium by the Commission, and lower exchange rate.

COMMERCIAL

Commercial Base gross margin decreased by 2% to $24.6 million for the three months ended June 30, 2021 compared to $25.3 million for the three months ended June 30, 2020. The decrease in Commercial Base gross margin was driven primarily by a decline in the customer base, favorable resettlements during prior comparable quarter and lower exchange rate, partially offset by lower capacity obligation across several markets.

Gas

Commercial gas base gross margin decreased by 72% to $1.8 million for the three months ended June 30, 2021 compared to $6.4 million for the three months ended June 30, 2020. The Commercial gas Base gross margin decrease was primarily driven by favorable resettlements during prior comparable quarter.

Electricity

Commercial electricity base gross margin increased by 21% to $22.8 million for the three months ended June 30, 2021 compared to $18.8 million for the three months ended June 30, 2020. Commercial electricity Base gross margin increase is primarily driven by lower capacity obligation across several markets and higher realized margin, partially offset by a decline in the customer base.

Mass Markets average realized Base gross margin

For the trailing 12 months ended June 30.
(thousands of dollars)

	Fiscal 2022 GM/RCE	% Change	Fiscal 2021 GM/RCE
Gas	**$ 373**	**(1)%**	$ 377
Electricity	**320**	**(10)%**	355
Total	**$ 333**	**(8)%**	361

Mass Market average realized Base gross margin for the trailing 12 months ended June 30, 2021 decreased 8% to $333/RCE compared to $361/RCE for the trailing 12 months ended June 30, 2020. The decrease is primarily attributable favorable resettlements during the prior year and lower exchange rate.

Commercial average realized Base gross margin

For the trailing 12 months ended June 30.
(thousands of dollars)

	Fiscal 2022 GM/RCE	% Change	Fiscal 2021 GM/RCE
Gas	**$ 89**	**(6)%**	$ 95
Electricity	**97**	**3%**	94
Total	**$ 96**	**1%**	95

Commercial Average realized Base gross margin for the trailing 12 months ended June 30, 2021 increased by 1% to $96/RCE compared to $95/RCE for the trailing 12 months ended June 30, 2020.

Base EBITDA

For the three months ended June 30.
(thousands of dollars)

	Fiscal 2022	Fiscal 2021
Reconciliation to Interim Condensed Consolidated Statements of Income		
Profit for the period	**$ 275,299**	$ 79,150
Add:		
Finance costs	**12,913**	21,853
Provision (recovery) for income taxes	**(967)**	634
Loss from discontinued operations	**—**	2,948
Amortization and depreciation	**4,487**	7,352
EBITDA	**$ 291,732**	$ 111,937
Add (subtract):		
Unrealized gain of derivative instruments and other	**(292,137)**	(77,349)
Weather event	**3,666**	—
Reorganization costs	**20,009**	—
Share-based compensation	**610**	692
Impairment of inventory	**648**	—
Strategic Review costs	**—**	3,614
Realized (gain) loss included in cost of goods sold	**(1,570)**	1,588
Loss attributable to non-controlling interest	**63**	(3)
Base EBITDA	**$ 23,021**	$ 40,479
Gross margin	**$ 80,309**	$ 269,137
Realized gain (loss) of derivative instruments and other	**15,642**	(132,858)
Weather Event	**3,666**	—
Base gross margin	**99,617**	136,279
Add (subtract):		
Administrative expenses	**(29,770)**	(39,953)
Selling commission expenses	**(25,294)**	(35,979)
Selling non-commission and marketing expense	**(14,378)**	(10,981)
Bad debt expense	**(7,418)**	(11,940)
Strategic Review costs	**—**	3,614
Amortization included in cost of sales	**42**	74
Loss attributable to non-controlling interest	**63**	(3)
Other income (expense)	**159**	(632)
Base EBITDA	**$ 23,021**	$ 40,479

Base EBITDA decreased by 43% to $23.0 million for the three months ended June 30, 2021 compared to $40.5 million for the three months ended June 30, 2020. The decrease was driven by lower Base gross margin and increased investment in digital marketing, partially offset by lower administrative, selling commission and bad debt expenses.

Base gross margin decreased by 27% to $99.6 million for the quarter ended June 30, 2021 compared to $136.3 million for the quarter ended June 30, 2020. The decrease was primarily driven by a lower customer base, unfavourable exchange rate fluctuations and favourable resettlements during the prior comparable quarter.

For more information on the changes in the results from operations by segment, refer to pages 11 through 14 below.

Summary of quarterly results for continuing operations

(thousands of dollars, except per share amounts)

	Q1 Fiscal 2022	Q4 Fiscal 2021	Q3 Fiscal 2021	Q2 Fiscal 2021
Sales[1]	**$ 608,672**	$ 689,064	$ 627,015	$ 737,994
Cost of goods sold[1]	**528,363**	3,131,485	446,571	517,283
Gross margin	**80,309**	(2,442,421)	180,445	220,711
Realized gain (loss) of derivative instruments and other	**15,642**	2,152,866	(48,837)	(82,438)
Weather Event	**3,666**	418,369	—	—
Sales Tax settlement	—	1,885	—	—
Base gross margin	**99,617**	130,699	131,608	138,273
Administrative expenses	**29,770**	29,884	30,408	43,957
Selling commission expenses	**25,294**	28,295	30,485	34,895
Selling non-commission and marketing expenses	**14,378**	14,086	11,784	13,017
Bad debt expense	**7,418**	7,301	3,358	11,662
Restructuring costs	—	—	—	7,118
Finance costs	**12,913**	17,346	17,677	29,744
Profit (loss) for the period from continuing operations	**275,299**	(382,371)	(52,327)	(50,156)
Profit (loss) for the period from discontinued operations, net	—	(162)	4,788	(1,210)
Profit (loss) for the period	**275,299**	(382,533)	(47,539)	(51,366)
Base EBITDA from continuing operations	**23,021**	53,794	55,785	32,774

	Q1 Fiscal 2021	Q4 Fiscal 2020	Q3 Fiscal 2020	Q2 Fiscal 2020
Sales[1]	$ 685,964	$ 776,921	$ 750,615	$ 860,395
Cost of goods sold[1]	416,827	489,411	538,646	935,743
Gross margin	269,137	287,510	211,969	(75,348)
Realized gain (loss) of derivative instruments and other	(132,858)	(107,089)	(69,485)	230,732
Base gross margin	136,279	180,421	142,484	155,384
Administrative expenses	39,953	46,051	39,616	41,466
Selling commission expenses	35,979	36,983	36,698	33,499
Selling non-commission and marketing expenses	10,981	16,584	14,572	20,780
Bad debt expense	11,940	13,197	19,996	29,570
Finance costs	21,853	26,770	28,178	28,451
Profit (loss) for the period from continuing operations	82,098	(138,210)	20,601	89,349
Profit (loss) for the period from discontinued operations, net	(2,948)	(2,721)	6,293	(9,809)
Profit (loss) for the period	79,150	(140,931)	26,894	79,540
Base EBITDA from continuing operations	40,479	74,632	37,950	49,069

1 Sales amounts have been corrected from the statements previously presented to conform to the presentation of the current Interim Condensed Consolidated Financial Statements.

Just Energy’s results reflect seasonality, as electricity consumption is slightly greater in the first and second quarters (summer quarters) and gas consumption is significantly greater during the third and fourth quarters (winter quarters). Electricity and gas customers (RCEs) currently represent 77% and 23% of the commodity customer base, respectively. Since consumption for each commodity is influenced by weather, Just Energy believes the annual quarter over quarter comparisons are more relevant than sequential quarter comparisons.

Segmented Base EBITDA[1]

For the three months ended June 30.
(thousands of dollars)

				Fiscal 2022
	Mass Market	**Commercial**	**Corporate and shared services**	**Consolidated**
Sales	**$ 314,987**	**$ 293,685**	**$ –**	**$ 608,672**
Cost of goods sold	**(255,498)**	**(272,865)**	**–**	**(528,363)**
Gross margin	**59,489**	**20,820**	**–**	**80,309**
Weather event	**3,666**	**–**	**–**	**3,666**
Realized loss of derivative instruments and other	**11,820**	**3,822**	**–**	**15,642**
Base gross margin	**74,975**	**24,642**	**–**	**99,617**
Add (subtract):				
Administrative expenses	**(9,153)**	**(3,339)**	**(17,278)**	**(29,770)**
Selling commission expenses	**(11,856)**	**(13,438)**	**–**	**(25,294)**
Selling non-commission and marketing expense	**(13,276)**	**(1,102)**	**–**	**(14,378)**
Bad debt expense	**(5,940)**	**(1,478)**	**–**	**(7,418)**
Amortization included in cost of goods sold	**42**	**–**	**–**	**42**
Other income	**124**	**35**	**–**	**159**
Loss attributable to non-controlling interest	**63**	**–**	**–**	**63**
Base EBITDA from continuing operations	**$ 34,979**	**$ 5,320**	**$ (17,278)**	**$ 23,021**

				Fiscal 2021
	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales[1]	$ 390,663	$ 295,301	$ –	$ 685,964
Cost of goods sold[1]	(204,308)	(212,519)	–	(416,827)
Gross margin	186,355	82,782	–	269,137
Realized loss of derivative instruments and other	(75,329)	(57,529)	–	(132,858)
Base gross margin	111,026	25,253	–	136,279
Add (subtract):				
Administrative expenses	(8,461)	(5,835)	(25,657)	(39,953)
Selling commission expenses	(18,451)	(17,528)	–	(35,979)
Selling non-commission and marketing expense	(9,106)	(1,875)	–	(10,981)
Bad debt expense	(8,449)	(3,491)	–	(11,940)
Amortization included in cost of goods sold	74	–	–	74
Strategic Review costs	–	–	3,614	3,614
Other expense	(632)	–	–	(632)
Loss attributable to non-controlling interest	(3)	–	–	(3)
Base EBITDA from continuing operations	$ 65,998	$ (3,476)	$ (22,043)	$ 40,479

1 Sales amounts have been corrected from the statements previously presented to conform to the presentation of the current Interim Condensed Consolidated Financial Statements.

2 The segment definitions are provided on page 3.

Mass Markets segment Base EBITDA decreased by 47% to $35.0 million for the three months ended June 30, 2021 compared to $66.0 million for the three months ended June 30, 2020. The decrease was driven by lower Base gross margin primarily due to a decline in the customer base and increased investment in digital marketing partially offset by a lower selling commission and bad debt expenses.

Commercial segment Base EBITDA increased by $8.8 million to $5.3 million for the three months ended June 30, 2021 compared to a negative $3.5 million for the three months ended June 30, 2020. The increase in Commercial segment Base EBITDA is driven by lower selling commission and bad debt expenses.

Corporate and shared services costs relate to management oversight of the business units, public reporting and filings, corporate governance and other shared services functions. The corporate expenses were $17.3 million for the three months ended June 30, 2021, compared to $22.0 million for the three months ended June 30, 2020.

Acquisition Costs

The acquisition costs per customer for the last twelve months for Mass Market customers signed by sales agents including sales through digital channel and the Commercial customers signed by brokers were as follows:

	Fiscal 2022	Fiscal 2021
Mass Markets	**$ 235/RCE**	$ 261/RCE
Commercial	**$ 45/RCE**	$ 47/RCE

The Mass Markets average acquisition cost decreased by 10% to $235/RCE for the twelve months ended June 30, 2021 compared to $261/RCE reported for the twelve months ended June 30, 2020, primarily from lower exchange rate and a change in channel mix towards lower cost channels.

The Commercial average customer acquisition cost decreased by 4% to $45/RCE for the twelve months ended June 30, 2021 compared to $47/RCE for the twelve months ended June 30, 2020, due to lower exchange rate.

Customer summary

CUSTOMER COUNT

	As at June 30, 2021	As at June 30, 2020	% decrease
Mass Markets	**830,000**	947,000	(12)%
Commercial	**100,000**	114,000	(12)%
Total customer count	**930,000**	1,061,000	(12)%

The Mass Markets customer count, decreased 12% to 830,000 compared to June 30, 2020. The decline in Mass Markets customers is due to the Company's continued focus on adding high quality customers, impacts of the COVID-19 pandemic on direct in-person sales channels and a reduction in the Company's customer base due to regulatory restrictions in New York and Ontario.

The Commercial customer count, decreased 12% to 100,000 compared to June 30, 2020. The decline in commercial customers is due to competitive price pressures in the United States together with impacts related to the COVID-19 pandemic and exiting the California electricity market.

COMMODITY RCE SUMMARY

	April 1, 2021	Additions	Attrition	Failed to renew	**June 30, 2021**	% increase (decrease)
Mass Markets						
Gas	262,000	6,000	(24,000)	(4,000)	**240,000**	(8)%
Electricity	871,000	75,000	(39,000)	(20,000)	**887,000**	2%
Total Mass Markets RCEs	**1,133,000**	**81,000**	**(63,000)**	**(24,000)**	**1,127,000**	**(1)%**
Commercial						
Gas	413,000	4,000	(3,000)	(7,000)	**407,000**	(1)%
Electricity	1,414,000	39,000	(21,000)	(105,000)	**1,327,000**	(6)%
Total Commercial RCEs	**1,827,000**	**43,000**	**(24,000)**	**(112,000)**	**1,734,000**	**(5)%**
Total RCEs	**2,960,000**	**124,000**	**(87,000)**	**(136,000)**	**2,861,000**	**(3)%**

MASS MARKETS

Mass Markets RCE additions increased by 326% to 81,000 for the three months ended June 30, 2021 compared to 19,000 for the three months ended June 30, 2020. The increase is due to increased investment in Digital Marketing and increases in direct face-to-face channels. The COVID-19 pandemic had substantial impacts in the three months ended June 30, 2020.

Mass Markets RCE attrition increased 43% to 63,000 for the three months ended June 30, 2021 compared to 44,000 for the three months ended June 30, 2020. The increase in attrition is driven by regulatory constraints in New York coming into effect in April 2021 requiring certain variable rate customers to be dropped to the utility.

Mass Markets failed to renew RCEs decreased by 35% to 24,000 for the three months ended June 30, 2021 compared to 37,000 for the three months ended June 30, 2020, driven by improved renewal rates and fewer RCEs maturing in the current quarter.

Mass Markets RCE Net Adds for the three months ended June 30, 2021 was a loss of 6,000 compared to a loss of 62,000 for the three months ended June 30, 2020. Excluding the one-time 29,000 loss related to the regulatory changes in New York coming into effect in April 2021, Mass Markets RCE Net Adds for the three months ended June 30, 2021 was a positive 23,000.

As at June 30, 2021, the U.S. and Canadian operations accounted for 86% and 14% of the Mass Markets RCE base, respectively.

COMMERCIAL

Commercial RCE additions increased by 65% to 43,000 for the three months ended June 30, 2021 compared to 26,000 for the three months ended June 30, 2020. The COVID-19 pandemic had substantial impacts in the three months ended June 30, 2020.

Commercial RCE attrition decreased 76% to 24,000 for the three months ended June 30, 2021 compared to 102,000 for the three months ended June 30, 2020. The company continues to see improved attrition on the commercial segment in line with the general recovery in economic activity.

Commercial failed to renew RCEs increased by 67% to 112,000 RCEs for the three months ended June 30, 2021 compared to 67,000 RCE's for the three months ended June 30, 2020.

As at June 30, 2021, the U.S. and Canadian operations accounted for 65% and 35% of the Commercial RCE base, respectively.

Overall, as at June 30, 2021, the U.S. and Canadian operations accounted for 73% and 27% of the RCE base, respectively, compared to 76% and 24%, respectively, as at June 30, 2020.

COMMODITY RCE ATTRITION

	Trailing 12 months ended June 30, 2021	Trailing 12 months ended June 30, 2020
Mass Markets	**18%**	22%
Commercial	**9%**	12%

The Mass Markets attrition rate for the trailing 12 months ended June 30, 2021 decreased four percentage points to 18% reflecting the benefits of focus sales to higher quality customers and increased focus on the customer experience. The Commercial attrition rate for the trailing 12 months ended June 30, 2021 decreased three percentage points to 9%.

	Three months ended June 30, 2021	Three months ended June 30, 2020
Mass Markets	**6%**	3%
Commercial	**1%**	4%

The Mass Markets attrition rate for the three months ended June 30, 2021 increased three percentage points to 6% from 3% for the three months ended June 30, 2020, driven by regulatory constraints in New York coming into effect in April 2021. The Commercial attrition rate for the three months ended June 30, 2021 decreased by three percentage point to 1% from 4% compared to the three months ended June 30, 2020 reflecting improvement in customer retention following the reduction of restrictions due to the COVID-19 pandemic.

COMMODITY RCE RENEWALS

	Trailing 12 months ended June 30, 2021	Trailing 12 months ended June 30, 2020
Mass Markets	**76%**	72%
Commercial	**49%**	55%

The Mass Markets renewal rate increased four percentage points to 76% for the trailing 12 months ended June 30, 2021. The increase in the Mass Markets renewal rate was driven by improved retention offerings and increased focus on the customer experience. The Commercial renewal rate decreased by six percentage points to 49% as compared to the same period of fiscal 2021. The decline in the Commercial renewal rate reflects competitive market for Commercial renewals.

	Three months ended June 30, 2021	Three months ended June 30, 2020
Mass Markets	**78%**	69%
Commercial	**49%**	55%

The Mass Markets renewal rate for the three months ended June 30, 2021, increased to 78% from 69% for the three months ended June 30, 2020 driven by improved retention offerings and increased focus on the customer experience. The Commercial renewal rate for the three months ended June 30, 2021 decreased to 49% from 55% for the three months ended June 30, 2020.

AVERAGE GROSS MARGIN PER RCE

The table below depicts the annual design margins on new and renewed contracts signed during the three months ended June 30, 2021 compared to three months ended June 30, 2020 for standard commodities, which does not include non-recurring non-commodity fees.

		Q1 Fiscal 2022	**Number of RCEs**		Q1 Fiscal 2021	Number of RCEs
Mass Markets added or renewed	**$**	**239**	**151,000**	$	273	90,000
Commercial added or renewed[1]		**86**	**85,000**		36	73,000

1 Annual gross margin per RCE excludes margins from Interactive Energy Group and large Commercial and Industrial customers.

For the three months ended June 30, 2021, the average gross margin per RCE for the customers added or renewed by the Mass Markets segment was $239/RCE, a decrease of 12% from $273/RCE for the three months ended June 30, 2020 due to change in channel mix including lower cost of acquisition channels.

For the Commercial segment, the average gross margin per RCE for the customers signed during the three months ended June 30, 2021 was $86/RCE, an increase of 139% from $36/RCE for the three months ended June 30, 2020 due to the mix of the type contracts added or renewed in the prior comparable quarter.

Liquidity and capital resources from continuing operations

SUMMARY OF CASH FLOWS

For the three months ended June 30.
(thousands of dollars)

	Fiscal 2022	Fiscal 2021
Operating activities from continuing operations	$ (1,314)	$ 10,649
Investing activities from continuing operations	(1,809)	(1,686)
Financing activities from continuing operations	(26,234)	(14,353)
Effect of foreign currency translation	(2,361)	(697)
Decrease in cash	(31,718)	(6,087)
Cash and cash equivalents – beginning of period	215,989	26,093
Cash and cash equivalents – end of period	$ 184,271	$ 20,006

OPERATING ACTIVITIES

Cash flow from operating activities was an outflow of $1.3 million for the three months ended June 30, 2021 compared to an inflow of $10.6 million for the three months ended June 30, 2020. The decrease in the cash flow from operating activities is related to higher payments to ERCOT associated with the Weather Event, partially offset by the non-payment of trade and other payables subject to compromise under the CCAA.

INVESTING ACTIVITIES

Cash flow from investing activities was an outflow of $1.8 million for the three months ended June 30, 2021 compared to an outflow of $1.7 million for the three months ended June 30, 2020. Investing activities included purchases of property and equipment and intangible assets totaling $1.8 million.

FINANCING ACTIVITIES, EXCLUDING DIVIDENDS

Cash flow from financing activities was an outflow of $26.2 million for the three months ended June 30, 2021 compared to an outflow of $14.4 million for the three months ended June 30, 2020. The outflow is primarily driven by payments of $57.5 million under the Credit Facility to allow the issuance of Letters of Credit partially offset by proceeds from DIP facility.

LIQUIDITY

The Company has $184.3 million of total liquidity available as at June 30, 2021.

Free cash flow and unlevered free cash flow[1]

For the three months ended June 30.
(thousands of dollars)

	Fiscal 2022	Fiscal 2021
Cash flows from operating activities	$ (1,314)	$ 10,649
Subtract: Maintenance capital expenditures	(1,809)	(1,686)
Free cash flow	(3,123)	8,963
Finance costs, cash portion	10,733	12,934
Unlevered free cash flow	$ 7,610	$ 21,897

1 See "Non-IFRS financial measures" on page 5.

Unlevered free cash flow decreased by 65% to an inflow of $7.6 million for the quarter ended June 30, 2021 compared to an inflow of $21.9 million for the quarter ended June 30, 2020. The decrease is related to higher payments to ERCOT associated with the Weather Event, partially offset by the non-payment of trade and other payables subject to compromise under the CCAA.

Selected Balance sheet data as at June 30, 2021, compared to March 31, 2021

The following table shows selected data from the Interim Condensed Consolidated Financial Statements as at the following periods:

	As at June 30, 2021	As at March 31, 2021
Assets:		
Cash	**$ 184,271**	$ 215,989
Trade and other receivables, net	**365,766**	340,201
Total fair value of derivative financial assets	**270,755**	35,626
Other current assets	**148,826**	163,405
Total assets	**1,311,278**	1,091,806
Liabilities:		
Trade and other payables	**$ 945,977**	$ 921,595
Total fair value of derivative financial liabilities	**19,338**	75,146
Total debt	**623,186**	655,740
Total liabilities	**1,622,815**	1,686,628

Total cash and cash equivalents decreased to $184.3 million as at June 30, 2021 from $216.0 million as at March 31, 2021. The decrease in cash is primarily attributable to cash outflows from financing operations.

Trade and other receivables, net increased $365.8 million as at June 30, 2021 from $340.2 million as at March 31, 2021. The changes are primarily due to increase in receivables from commodity suppliers in the normal course of business.

Other current assets decreased to $148.8 million as at June 30, 2021 from $163.4 million as at March 31, 2021 due to the reduction in customer acquisition costs and green certificates.

Trade and other payables increased to $946.0 million as at June 30, 2021 from $921.6 million as at March 31, 2021 driven by the increase in commodity and supplier payables.

Fair value of derivative financial assets and fair value of financial liabilities relate entirely to the financial derivatives. The unrealized mark to market gains and losses can result in significant changes in profit and, accordingly, shareholders' deficit from year to year due to commodity price volatility. As Just Energy has purchased this supply to cover future customer usage at fixed prices, management believes that these unrealized changes do not impact the long-term financial performance of Just Energy.

Total debt was $623.2 million as at June 30, 2021, down from $655.7 million as at March 31, 2021. The reduction in total debt is a result of the payments made under the credit facility to allow the issuance of letters of credit to be issued. As at June 30, 2021, $468.6 million of the debt is subject to compromise under the CCAA proceedings.

Embedded gross margin[1]

Management's estimate of EGM is as follows:
(millions of dollars)

	As at June 30, 2021	As at June 30, 2020	% decrease
Mass Markets embedded gross margin	**1,017.3**	1,203.8	(15)%
Commercial embedded gross margin	**332.5**	438.7	(24)%
Total embedded gross margin	**$ 1,349.8**	$ 1,642.5	(18)%

1 See "Non-IFRS financial measures" on page 6

Management's estimate of the Mass Markets EGM decreased by 15% to $1,017.3 million as at June 30, 2021 compared to $1,203.8 million as at June 30, 2020. The decline resulted from the decline in the customer base and the unfavorable foreign exchange.

Management's estimate of the Commercial EGM decreased by 24% to $332.5 million as at June 30, 2021 compared to $438.7 million as at June 30, 2020. The decline resulted from the decline in the customer base and the unfavorable foreign exchange.

Provision (Recovery) for income and deferred tax

For the three months ended June 30.
(thousands of dollars)

	Fiscal 2022	Fiscal 2021
Current income tax expense (recovery)	**$ (1,112)**	$ 873
Deferred income tax expense (recovery)	**145**	(239)
Provision for (recovery of) income tax	**$ (967)**	$ 634

Just Energy recorded a current income tax recovery of $1.1 million for the three months ended June 30, 2021, compared to $0.9 million expense in the three months ended June 30, 2020. Just Energy continues to have a current tax expense from profitability in taxable jurisdictions however during the first quarter of fiscal 2022 a recovery was recognized due to the benefit of a current year loss carried back.

During the three months ended June 30, 2021, a deferred tax expense of $0.1 million was recorded as compared to a recovery of $0.2 million during the three months ended June 30, 2020.

OTHER OBLIGATIONS

In the opinion of management, Just Energy has no material pending actions, claims or proceedings that have not been included either in its accrued liabilities or in the interim condensed consolidated financial statements. In the normal course of business, Just Energy could be subject to certain contingent obligations that become payable only if certain events were to occur. The inherent uncertainty surrounding the timing and financial impact of any events prevents any meaningful measurement, which is necessary to assess any material impact on future liquidity. Such obligations include potential judgments, settlements, fines and other penalties resulting from actions, claims or proceedings.

Transactions with related parties

Parties are considered to be related if one party has the ability to control the other party or exercise influence over the other party in making financial or operating decisions. The definition includes subsidiaries and other persons. Pacific Investment Management Company ("PIMCO") through certain affiliates became a 28.9% shareholder of the Company as part of the September 2020 Recapitalization. On March 9, 2021, certain PIMCO affiliates entered into the DIP facility with the Company as discussed in the interim condensed consolidated financial statements.

Off balance sheet items

The Company has issued letters of credit in accordance with its credit facility and Lender Support Agreement totaling $153.2 million as at June 30, 2021 to various counterparties, utilities in the markets it operates in, certain commodity suppliers and surety bond providers.

Pursuant to separate arrangements with various insurance companies. Just Energy has issued surety bonds to various counterparties including states, regulatory bodies, utilities and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required in order to operate in certain states or markets. Total surety bonds issued as at June 30, 2021 was $45.4 million and are backed by letters of credit or cash collateral.

Critical accounting estimates and judgments

The Interim Condensed Consolidated Financial Statements of Just Energy have been prepared in accordance with IFRS. Certain accounting policies require management to make estimates and judgments that affect the reported amounts of assets, liabilities, sales, cost of goods sold, administrative expenses, selling and marketing expenses, and other operating expenses. Estimates are based on historical experience, current information and various other assumptions that are believed to be reasonable under the circumstances. The emergence of new information and changed circumstances may result in actual results or changes to estimated amounts that differ materially from current estimates.

The following assessment of critical accounting estimates is not meant to be exhaustive. Just Energy might realize different results from the application of new accounting standards promulgated, from time to time, by various rule-making bodies.

COVID-19 IMPACT

As a result of the continued coronavirus disease ("COVID-19") pandemic, we have reviewed the estimates, judgments and assumptions used in the preparation of the Interim Condensed Consolidated Financial Statements and determined that no significant revisions to such estimates, judgments or assumptions were required for the three months ended June 30, 2021.

FAIR VALUE OF FINANCIAL INSTRUMENTS AND RISK MANAGEMENT

Just Energy has entered into a variety of derivative financial instruments as part of the business of purchasing and selling gas, electricity and JustGreen supply and as part of the risk management practice. In addition, Just Energy uses derivative financial instruments to manage foreign exchange, interest rate and other risks.

Just Energy enters into contracts with customers to provide electricity and gas at fixed prices and provide comfort to certain customers that a specified amount of energy will be derived from green generation or carbon destruction. These customer contracts expose Just Energy to changes in market prices to supply these commodities. To reduce its exposure to commodity market price changes, Just Energy uses derivative financial and physical contracts to secure fixed-price commodity supply to cover its estimated fixed-price delivery or green commitment. Certain derivative contracts were purchased to manage ERCOT collateral requirements.

Just Energy's objective is to minimize commodity risk, other than consumption changes, usually attributable to weather. Accordingly, it is Just Energy's policy to hedge the estimated fixed-price requirements of its customers with offsetting hedges of natural gas and electricity at fixed prices for terms equal to those of the customer contracts. The cash flow from these supply contracts is expected to be effective in offsetting Just Energy's price exposure and serves to fix acquisition costs of gas and electricity to be delivered under the fixed-price or price-protected customer contracts; however, hedge accounting under IFRS 9, "*Financial Instruments*" ("IFRS 9") is not applied. Just Energy's policy is not to use derivative instruments for speculative purposes.

Just Energy's U.S. operations introduce foreign exchange-related risks. Just Energy enters into foreign exchange forwards in order to hedge its exposure to fluctuations in cross border cash flows, however, hedge accounting under IFRS 9 is not applied.

The Interim Financial Statements are in compliance with IAS 32, "*Financial Instruments: Presentation*" IFRS 9; and IFRS 7, *Financial Instruments: Disclosure*. Due to commodity volatility and to the size of Just Energy, the swings in mark to market on these positions will increase the volatility in Just Energy's earnings.

The Company's financial instruments are valued based on the following fair value ("FV") hierarchy:

Level 1 – Unadjusted quoted prices in active markets for identical assets or liabilities;

Level 2 – Inputs other than quoted prices that are observable for the asset or liability either directly or indirectly; and

Level 3 – Inputs that are not based on observable market data.

The main cause of changes in the fair value of derivative instruments is changes in the forward curve prices used for the fair value calculations. For a sensitivity analysis of these forward curves, see Note 6 of the Interim Condensed Consolidated Financial Statements. Other inputs, including volatility and correlations, are driven off historical settlements.

RECEIVABLES AND LIFETIME EXPECTED CREDIT LOSSES

The lifetime expected credit loss reflects Just Energy's best estimate of losses on the accounts receivable and unbilled revenue balances. Just Energy determines the lifetime expected credit loss by using historical loss rates and forward-looking factors if applicable. Just Energy is exposed to customer credit risk on its continuing operations in Alberta, Texas, Illinois (gas), California (gas) and Ohio (electricity). Credit review processes have been implemented to perform credit evaluations of customers and manage customer default. In addition, the Company may from time to time change the criteria that it uses to determine the creditworthiness of its customers, including RCE's, and such changes could result in decreased creditworthiness of its customers and/or result in increased customer defaults. If a significant number of customers were to default on their payments, including as a result of any changes to the Company's credit criteria, it could have a material adverse effect on the operations and cash flows of Just Energy. Management factors default from credit risk in its margin expectations for all of the above markets, See Note 4 of the Interim Condensed Consolidated Financial Statements.

Revenues related to the sale of energy are recorded when energy is delivered to customers. The determination of energy sales to individual customers is based on systematic readings of customer meters generally on a monthly basis. At the end of each month, amounts of energy delivered to customers since the date of the last meter reading are estimated, and corresponding unbilled revenue is recorded. The measurement of unbilled revenue is affected by the following factors: daily customer usage, losses of energy during delivery to customers and applicable customer rates.

Increases in volumes delivered to the utilities' customers and favourable rate mix due to changes in usage patterns in the period could be significant to the calculation of unbilled revenue. Changes in the timing of meter reading schedules and the number and type of customers scheduled for each meter reading date would also have an effect on the measurement of unbilled revenue; however, total operating revenues would remain materially unchanged.

The measurement of the expected credit loss allowance for accounts receivable requires the use of management judgment in estimation techniques, building models, selecting key inputs and making significant assumptions about future economic conditions and credit behaviour of the customers, including the likelihood of customers defaulting and the resulting losses. The Company's current significant estimates include the historical collection rates as a percentage of revenue and the use of the Company's historical rates of recovery across aging buckets. Both of these inputs are sensitive to the number of months or years of history included in the analysis, which is a key input and judgment made by management.

Just Energy common shares

Just Energy is authorized to issue an unlimited number of common shares with no par value and up to 50,000,000 preferred shares. Shares outstanding have no preferences, rights or restrictions attached to them.

As at June 30, 2021, there were 48,078,637 Common Shares and no preferred shares of Just Energy outstanding.

Legal proceedings

Just Energy’s subsidiaries are party to a number of legal proceedings. Other than as set out below, Just Energy believes that each proceeding constitutes legal matters that are incidental to the business conducted by Just Energy and that the ultimate disposition of the proceedings will not have a material adverse effect on its consolidated earnings, cash flows or financial position.

On March 9, 2021, Just Energy filed for and received creditor protection pursuant to the Court Order under the CCAA and similar protection under Chapter 15 of the Bankruptcy Code in the United States in connection with the Weather Event.

In May 2015, Kia Kordestani, a former door-to-door independent contractor sales representative for Just Energy Corp., filed a lawsuit against Just Energy Corp., Just Energy Ontario L.P. and the Company (collectively referred to as “Just Energy”) in the Superior Court of Justice, Ontario, claiming status as an employee and seeking benefits and protections of the Employment Standards Act, 2000, such as minimum wage, overtime pay, and vacation and public holiday pay on his own behalf and similarly situated door-to-door sales representatives who sold in Ontario. On Just Energy’s request, Mr. Kordestani was removed as a plaintiff but replaced with Haidar Omarali, also a former door-to-door sales representative. On July 27, 2016, the Court granted Omarali’s request for certification, but refused to certify Omarali’s request for damages on an aggregate basis and refused to certify Omarali’s request for punitive damages. Omarali’s motion for summary judgment was dismissed in its entirety on June 21, 2019. The matter was set for trial in November 2021. However, pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims, if they proceed.

On July 23, 2019, Just Energy announced that, as part of its Strategic Review process, management identified customer enrolment and non-payment issues, primarily in Texas. In response to this announcement, and in some cases in response to this and other subsequent related announcements, putative class action lawsuits were filed in the United States District Court for the Southern District of New York, in the United States District Court for the Southern District of Texas and in the Ontario Court, on behalf of investors that purchased Just Energy Group Inc. securities during various periods, ranging from November 9, 2017 through August 19, 2019. The U.S. lawsuits have been consolidated in the United States District Court for the Southern District of Texas with one lead plaintiff and the Ontario lawsuits have been consolidated with one lead plaintiff. The U.S. lawsuit seeks damages allegedly arising from violations of the United States Securities Exchange Act. The Ontario lawsuit seeks damages allegedly arising from violations of Canadian securities legislation and of common law. The Ontario lawsuit was subsequently amended to, among other things, extend the period to July 7, 2020. On September 2, 2020, pursuant to Just Energy’s plan of arrangement, the Superior Court of Justice (Ontario) ordered that all existing equity class action claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the insurance policies payable on behalf of Just Energy or its directors and officers in respect of any such existing equity class action claims, and such existing equity class action claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the released parties or any of their respective current or former officers and directors in respect of any existing equity class action claims, other than enforcing their rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. Pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims if they proceed.

Controls and procedures

DISCLOSURE CONTROLS AND PROCEDURES

Both the chief executive officer (“CEO”) and chief financial officer (“CFO”) have designed, or caused to be designed under their supervision, the Company’s disclosure controls and procedures which provide reasonable assurance that: (i) material information relating to the Company is made known to management by others, particularly during the period in which the annual and interim filings are being prepared; and (ii) information required to be disclosed by the Company in its annual and interim filings or other reports filed or submitted under securities legislation is recorded, processed, summarized and reported within the time period specified in securities legislation. The CEO and CFO are assisted in this responsibility by a Disclosure Committee composed of senior management. The Disclosure Committee has established procedures so that it becomes aware of any material information affecting Just Energy to evaluate and communicate this information to management, including the CEO and CFO as appropriate, and determine the appropriateness and timing of any required disclosure. Based on the foregoing evaluation, conducted by or under the supervision of the CEO and CFO of the Company’s Internal Control over Financial Reporting (“ICFR”) in connection with the Company’s financial year-end, it was concluded that because of the material weakness described below, the Company’s disclosure controls and procedures were not effective.

INTERNAL CONTROL OVER FINANCIAL REPORTING

Management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in Internal Control – Integrated Framework (2013) to evaluate the effectiveness of its ICFR as at March 31, 2021. The COSO framework summarizes each of the components of a company’s internal control system, including the: (i) control environment; (ii) control activities (process-level controls); (iii) risk assessment; (iv) information and communication; and (v) monitoring activities. The COSO framework defines a material weakness as a deficiency, or combination of deficiencies, that results in a reasonable possibility that a material misstatement of the annual or interim condensed Consolidated Financial Statements will not be prevented or detected on a timely basis.

Identification and ongoing remediation of material weakness within financial statement close process

Management's evaluation of ICFR identified an ongoing material weakness resulting from the failure to operate several controls within the financial statement close process that allowed errors to manifest, and, the failure to detect them for an extended period of time, as follows:

Previous identification of control activities material weakness within financial statement close process

The Company did not design or maintain effective control activities to prevent or detect misstatements during the operation of the financial statement close process, including from finalization of the trial balance to the preparation of financial statements.

Ongoing remediation of previously identified control activities material weakness associated with financial statement close process

Management remains committed to the planning and implementation of remediation efforts to address the material weaknesses, as well as to foster improvement in the Company's internal controls. These remediation efforts continue and are intended to address this identified material weakness and enhance the overall financial control environment. During the year ended March 31, 2021, management further increased the amount of personnel to perform the financial statement close process, including the hiring of a CFO and a controller, both with significant financial reporting and retail energy industry experience, promoting individuals within the team and training those individuals to perform their enhanced roles, and strengthening the managerial review process of the financial statement preparation. Management will continue to enhance the control environment and assess if the Company requires additional control and accounting individuals to operate the controls as designed, and provide additional training as required.These enhancements remaining ongoing, and management continues strengthening the design and operational effectiveness of the financial statement preparation process; however, not enough time has elapsed to complete remediation efforts of this material weakness.

No assurance can be provided at this time that the actions and remediation efforts the Company has taken or will implement will effectively remediate the material weaknesses described above or prevent the incidence of other significant deficiencies or material weaknesses in the Company's internal controls over financial reporting in the future. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving the stated goals under all potential future conditions.

Other changes in internal control over financial reporting

Other than as described above, there were no changes in ICFR during the last fiscal quarter that materially affected, or are reasonably likely to materially affect, ICFR.

INHERENT LIMITATIONS

A control system, no matter how well conceived and operated, can only provide reasonable, not absolute, assurance that its objectives are met. Due to these inherent limitations in such systems, no evaluation of controls can provide absolute assurance that all control issues within any company have been detected. Accordingly, Just Energy's disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the Company's disclosure control and procedure objectives are met.

Corporate governance

Just Energy is committed to maintaining transparency in its operations and ensuring its approach to governance meets all recommended standards. Full disclosure of Just Energy's compliance with existing corporate governance rules is available at investors.justenergy.com https://investors.justenergy.com/and is included in Just Energy's Management Proxy Circular. Just Energy actively monitors the corporate governance and disclosure environment to ensure timely compliance with current and future requirements.

Interim condensed consolidated statements of financial position

(in thousands of Canadian dollars)

	Notes	As at June 30, 2021 (Unaudited)	As at March 31, 2021 (Audited)
ASSETS			
Current assets			
Cash and cash equivalents		**$ 184,271**	$ 215,989
Restricted cash		**3,309**	1,139
Trade and other receivables, net	4(a)	**365,766**	340,201
Gas in storage		**8,820**	2,993
Fair value of derivative financial assets	6	**215,769**	25,026
Income taxes recoverable		**10,229**	8,238
Other current assets	5(a)	**148,826**	163,405
		936,990	756,991
Non-current assets			
Investments		**32,889**	32,889
Property and equipment, net		**16,125**	17,827
Intangible assets, net		**68,147**	70,723
Goodwill		**163,447**	163,770
Fair value of derivative financial assets	6	**54,986**	10,600
Deferred income tax assets		**3,599**	3,744
Other non-current assets	5(b)	**35,095**	35,262
		374,288	334,815
TOTAL ASSETS		**$ 1,311,278**	$ 1,091,806
LIABILITIES			
Current liabilities			
Trade and other payables	7	**$ 945,977**	$ 921,595
Deferred revenue		**2,876**	1,408
Income taxes payable		**3,750**	4,126
Fair value of derivative financial liabilities	6	**9,888**	13,977
Provisions		**7,895**	6,786
Current portion of long-term debt	8	**622,227**	654,180
		1,592,613	1,602,072
Non-current liabilities			
Long-term debt	8	**959**	1,560
Fair value of derivative financial liabilities	6	**9,450**	61,169
Deferred income tax liabilities		**2,773**	2,749
Other non-current liabilities		**17,020**	19,078
		30,202	84,556
TOTAL LIABILITIES		**$ 1,622,815**	$ 1,686,628
SHAREHOLDERS' DEFICIT			
Shareholders' capital	11	**$ 1,537,863**	$ 1,537,863
Contributed deficit		**(11,024)**	(11,634)
Accumulated deficit		**(1,936,366)**	(2,211,728)
Accumulated other comprehensive income		**98,381**	91,069
Non-controlling interest		**(391)**	(392)
TOTAL SHAREHOLDERS' DEFICIT		**(311,537)**	(594,822)
TOTAL LIABILITIES AND SHAREHOLDERS' DEFICIT		**$ 1,311,278**	$ 1,091,806

Basis of presentation (Note 3)

Commitments and guarantees (Note 15)

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Scott Gahn
Chief Executive Officer and President

Stephen Schaefer
Corporate Director

Interim condensed consolidated statements of income
For the three months ended June 30

(unaudited in thousands of Canadian dollars, except where indicated and per share amounts)

	Notes		2021		2020
CONTINUING OPERATIONS					
Sales	9	**$**	**608,672**	$	685,964
Cost of goods sold			**528,363**		416,827
GROSS MARGIN			**80,309**		269,137
INCOMES (EXPENSES)					
Administrative			**(29,770)**		(39,953)
Selling and marketing			**(39,672)**		(46,959)
Other operating expenses	12(a)		**(12,474)**		(19,911)
Finance costs	8		**(12,913)**		(21,853)
Reorganization costs	13		**(20,009)**		—
Unrealized gain of derivative instruments and other	6		**292,137**		77,349
Realized gain (loss) of derivative instruments			**17,213**		(134,446)
Other expenses, net			**(489)**		(632)
Profit from continuing operations before income taxes			**274,332**		82,732
Provision (recovery) for income taxes	10		**(967)**		634
PROFIT FROM CONTINUING OPERATIONS		**$**	**275,299**	$	82,098
DISCONTINUED OPERATIONS					
Loss after tax from discontinued operations			**—**		(2,948)
PROFIT FOR THE PERIOD		**$**	**275,299**	$	79,150
Attributable to:					
Shareholders of Just Energy		**$**	**275,362**	$	79,147
Non-controlling interest			**(63)**		3
PROFIT FOR THE PERIOD		**$**	**275,299**	$	79,150
Earnings per share from continuing operations	14				
Basic		**$**	**5.73**	$	7.96
Diluted		**$**	**5.63**	$	7.90
Loss per share from discontinued operations					
Basic		**$**	**—**	$	(0.30)
Diluted		**$**	**—**	$	(0.30)
Earnings per share available to shareholders	14				
Basic		**$**	**5.73**	$	7.66
Diluted		**$**	**5.63**	$	7.60

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Interim condensed consolidated statements of income For the three months ended June 30

(unaudited in thousands of Canadian dollars)

	Notes	**2021**	2020
PROFIT FOR THE PERIOD		**$ 275,299**	$ 79,150
Other comprehensive profit (loss) to be reclassified to profit or loss in subsequent periods:			
Unrealized gain on translation of foreign operations		**7,312**	1,143
Unrealized gain on translation of foreign operations from discontinued operations		–	426
Gain on translation of foreign operations disposed and reclassified to Consolidated Statements of Income		–	833
		7,312	2,402
TOTAL COMPREHENSIVE INCOME FOR THE PERIOD, NET OF TAX		**$ 282,611**	$ 81,552
Total comprehensive income attributable to:			
Shareholders of Just Energy		**$ 282,674**	$ 81,549
Non-controlling interest		**(63)**	3
TOTAL COMPREHENSIVE INCOME FOR THE PERIOD, NET OF TAX		**$ 282,611**	$ 81,552

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Interim condensed consolidated statements of changes in shareholders' deficit For the three months ended June 30

(unaudited in thousands of Canadian dollars)

	Notes	2021	2020
ATTRIBUTABLE TO THE SHAREHOLDERS			
Accumulated earnings			
Accumulated earnings, beginning of period		**$ (261,702)**	$ 140,446
Profit for the period as reported, attributable to shareholders		**275,362**	79,147
Accumulated earnings, end of period		**$ 13,660**	$ 219,593
DIVIDENDS AND DISTRIBUTIONS			
Dividends and distributions, beginning of period		**(1,950,026)**	(1,950,003)
Dividends and distributions declared and paid	11(b)	**—**	(23)
Dividends and distributions, end of period		**$ (1,950,026)**	$ (1,950,026)
ACCUMULATED DEFICIT		**$ (1,936,366)**	$ (1,730,433)
ACCUMULATED OTHER COMPREHENSIVE INCOME			
Accumulated other comprehensive income, beginning of period		**$ 91,069**	$ 84,651
Other comprehensive income		**7,312**	2,402
Accumulated other comprehensive income, end of period		**$ 98,381**	$ 87,053
SHAREHOLDERS' CAPITAL			
Common shares			
Common shares, beginning of period	11	**$ 1,537,863**	$ 1,099,864
Share-based units exercised		**—**	162
Common shares, end of period		**$ 1,537,863**	$ 1,100,026
Preferred shares			
Preferred shares, beginning of period	11	**$ —**	$ 146,965
Preferred shares, end of period		**$ —**	$ 146,965
SHAREHOLDERS' CAPITAL		**$ 1,537,863**	$ 1,246,991
EQUITY COMPONENT OF CONVERTIBLE DEBENTURES			
Balance, beginning of period		**$ —**	$ 13,029
Balance, end of period		**$ —**	$ 13,029
CONTRIBUTED DEFICIT			
Balance, beginning of period		**$ (11,634)**	$ (29,826)
Add: Share-based compensation expense	12(a)	**610**	692
Less: Share-based units exercised		**—**	(162)
Non-cash deferred share grants		**—**	23
Balance, end of period		**$ (11,024)**	$ (29,273)
NON-CONTROLLING INTEREST			
Balance, beginning of period		**$ (392)**	$ (414)
Foreign exchange impact on non-controlling interest		**64**	4
Gain (loss) attributable to non-controlling interest		**(63)**	3
Balance, end of period		**$ (391)**	$ (407)
TOTAL SHAREHOLDERS' DEFICIT		**$ (311,537)**	$ (413,040)

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Interim condensed consolidated statements of cash flows For the three months ended June 30

(unaudited in thousands of Canadian dollars)

	Notes	2021	2020
Net inflow (outflow) of cash related to the following activities			
OPERATING			
Profit from continuing operations before income taxes		**$ 274,332**	$ 82,732
Loss from discontinued operations before income taxes		—	(2,948)
Profit before income taxes		**274,332**	79,784
Items not affecting cash			
Amortization and depreciation	12(a)	**4,487**	7,352
Share-based compensation expense	12(a)	**610**	692
Financing charges, non-cash portion		**2,180**	5,561
Unrealized gain in fair value of derivative instruments and other	6	**(292,137)**	(77,349)
Net change in working capital balances		**26,468**	(8,641)
Liabilities subject to compromise	1	**(15,801)**	—
Adjustment for discontinued operations, net		—	3,920
Income taxes paid		**(1,453)**	(670)
Cash inflow (outflow)from operating activities		**(1,314)**	10,649
INVESTING			
Purchase of property and equipment		**(71)**	(16)
Purchase of intangible assets		**(1,738)**	(1,670)
Cash outflow from investing activities		**(1,809)**	(1,686)
FINANCING			
Proceeds from DIP Facility	8	**31,425**	—
Repayment of long-term debt	8	**(796)**	(1,651)
Credit facilities withdrawal (payments)	8	**(56,143)**	9,867
Share swap payout		—	(21,488)
Leased asset payments		**(720)**	(1,081)
Cash outflow from financing activities		**(26,234)**	(14,353)
Effect of foreign currency translation on cash balances		**(2,361)**	(697)
Net cash inflow (outflow)		**(31,718)**	(6,087)
Cash and cash equivalents, beginning of period		**215,989**	26,093
Cash and cash equivalents, end of period		**$ 184,271**	$ 20,006
Supplemental cash flow information:			
Interest paid		**$ 10,733**	$ 12,934

See accompanying notes to the Interim Condensed Consolidated Financial Statements

Notes to the interim condensed consolidated financial statements

For the three months ended June 30, 2021
(unaudited in thousands of Canadian dollars, except where indicated and per share amounts)

1. ORGANIZATION

Just Energy Group Inc. (“Just Energy” or the “Company”) is a corporation established under the laws of Canada to hold securities of its directly or indirectly owned operating subsidiaries and affiliates. The registered office of Just Energy is First Canadian Place, 100 King Street West, Toronto, Ontario, Canada. The Interim Condensed Consolidated Financial Statements consist of Just Energy and its subsidiaries and affiliates. The Interim Condensed Consolidated Financial Statements were approved by the Board of Directors on August 13, 2021.

In February 2021, the State of Texas experienced extremely cold weather (the “Weather Event”). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. (“ERCOT”) when due, and accordingly, on March 9, 2021, Just Energy applied for and received creditor protection under the Companies’ Creditors Arrangement Act (Canada) (“CCAA”) from the Ontario Superior Court of Justice (Commercial List) (the “Ontario Court”) and under Chapter 15 (“Chapter 15”) of the Bankruptcy Code in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division (the “Court Orders”). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD$125 million Debtor-In-Possession (“DIP Facility”) financing with certain affiliates of Pacific Investment Management Company (“PIMCO). The Company entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The Company entered a Lender Support Agreement with the lenders under its CreditFacility (refer to Note 8(c)). The filings and associated USD$125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the U.S. and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On May 26, 2021, the stay period was extended by the Ontario Court to September 30, 2021.

As at June 30, 2021, in connection with the CCAA proceedings, the Company identified the following obligations that are subject to compromise:

	Amounts in 000’s
Trade and other payables	**$ 516,910**
Other non-current liabilities	**11,730**
Current portion of long-term debt	**468,586**
Total liabilities subject to compromise	**$ 997,226**

The common shares of the Company are listed on the TSX Venture Exchange, under the symbol “JE” and on the OTC Pink Market under the symbol “JENGQ”.

On June 16, 2021 Texas House Bill 4492 (“HB 4492”), which provides a mechanism for recovery of certain costs incurred by various parties, including the Company, during the Weather Event through certain securitization structures, became law in Texas. HB 4492 addresses securitization of (i) ancillary service charges above USD $9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by the ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently “short-paid” to market participants, including Just Energy, (collectively, the “Costs”).

HB 4492 provides that ERCOT request that the Public Utility Commission of Texas (the “Commission”) establish financing mechanisms for the payment of the Costs incurred by load-serving entities, including Just Energy. On July 16, 2021, ERCOT filed the request with the commission (PUC Docket No. 52322). The Company continues to evaluate HB 4492. Based on current information, if the Commission approves the financing provided for in HB 4492, Just Energy anticipates that it will recover up to approximately USD $100 million of Costs. The total amount that the Company may recover through the mechanisms authorized in HB 4492 may change materially based on a number of factors, including the details of an established financing order issued by the Commission, additional ERCOT resettlements, the aggregate amount of funds applied for under HB 4492 by participants, the outcome of the dispute resolution process initiated by the Company with ERCOT, and any potential challenges to the Commission’s order or orders. There is no assurance that the Company will be able to recover all of the Costs.

2. OPERATIONS

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Operating in the United States (“U.S.”) and Canada, Just

Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Tara Energy and terrapass.

Just Energy's current commodity product offerings include fixed, variable, index and flat rate options. By fixing the price of electricity or natural gas under its fixed-price or price-protected program contracts for a period of up to five years, Just Energy's customers offset their exposure to changes in the price of these essential commodities. Variable rate products allow customers to maintain competitive rates while retaining the ability to lock into a fixed price at their discretion. Flat-bill products allow customers to pay a flat rate each month regardless of usage. Just Energy derives its gross margin from the difference between the price at which it is able to sell the commodities to its customers and the related price at which it purchases the associated volumes from its suppliers.

Just Energy offers green products through terrapass and its JustGreen program. Green products offered through terrapass allow customers to offset their carbon footprint without buying energy commodity products and can be offered in all states and provinces without being dependent on energy deregulation. The JustGreen electricity product offers customers the option of having all or a portion of their electricity sourced from renewable green sources such as wind, solar, hydropower or biomass, via power purchase agreements and renewable energy certificates. The JustGreen gas product offers carbon offset credits that allow customers to reduce or eliminate the carbon footprint of their homes or businesses. Through the Filter Group, Just Energy provides subscription-based home water filtration systems to residential customers, including under-counter and whole-home water filtration solutions. Just Energy markets its product offerings through multiple sales channels including digital, retail, door-to-door, brokers and affinity relationships.

3. FINANCIAL STATEMENT PRESENTATION

(a) Compliance with IFRS

These Interim Financial Statements have been prepared in accordance with International Accounting Standard ("IAS") 34, *Interim Financial Reporting*, as issued by the International Accounting Standards Board ("IASB"), utilizing the accounting policies Just Energy outlined in its March 31, 2021 annual audited consolidated financial statements, except the adoption of new International Financial Reporting Standards ("IFRS"). Accordingly, certain information and footnote disclosures normally included in the annual audited consolidated financial statements prepared in accordance with IFRS, as issued by the IASB, have been omitted or condensed.

(b) Basis of presentation and interim reporting

These Interim Condensed Consolidated Financial Statements should be read in conjunction with and follow the same accounting policies and methods of application as those used in the annual audited consolidated financial statements for the fiscal year ended March 31, 2021.

The comparative Interim Condensed Consolidated Financial Statements have been corrected from the interim statements previously presented to conform to the presentation of the current Interim Condensed Consolidated Financial Statements.

The Interim Condensed Consolidated Financial Statements are presented in Canadian dollars, the functional currency of Just Energy, and all values are rounded to the nearest thousands, except where otherwise indicated. The Interim Financial Statements are prepared on a going concern basis under the historical cost convention, except for certain financial assets and liabilities that are stated at fair value.

The interim operating results are not necessarily indicative of the results that may be expected for the full fiscal year ending March 31, 2022, due to seasonal variations resulting in fluctuations in quarterly results. Gas consumption by customers is typically highest in October through March and lowest in April through September. Electricity consumption is typically highest in January through March and July through September and lowest in October through December and April through June.

Principles of consolidation

The Interim Condensed Consolidated Financial Statements include the accounts of Just Energy and its directly or indirectly owned subsidiaries and affiliates as at June 30, 2021. Subsidiaries and affiliates are consolidated from the date of acquisition and control and continue to be consolidated until the date that such control ceases. The financial statements of the subsidiaries and affiliates are prepared for the same reporting period as Just Energy using consistent accounting policies. All intercompany balances, sales, expenses and unrealized gains and losses resulting from intercompany transactions are eliminated on consolidation.

Going Concern

Due to the Weather Event and associated CCAA filing, the Company's ability to continue as a going concern for the next 12 months is dependent on the Company emerging from CCAA protection, maintain liquidity and complying with DIP Facility covenants. The material uncertainties arising from the CCAA filings cast substantial doubt upon the Company's ability to continue as a going concern and, accordingly the ultimate appropriateness of the use of accounting principles applicable to a going concern. These Interim Condensed Consolidated Financial Statements do not reflect the adjustments to carrying values of assets and liabilities and the reported expenses and Interim Condensed Consolidated Statements of Financial Position classifications

that would be necessary if the going concern assumption was deemed inappropriate. These adjustments could be material. There can be no assurance that the Company will be successful in emerging from CCAA as a going concern.

(c) Significant accounting judgments, estimates, and assumptions

The preparation of the Interim Condensed Consolidated Financial Statements requires the use of estimates and assumptions to be made in applying the accounting policies that affect the reported amount of assets, liabilities, income and expenses. The estimates and related assumptions based on previous experience and other factors are considered reasonable under the circumstances, the results of which form the basis for making the assumptions about carrying values of assets and liabilities that are not readily apparent from other sources. There have been no material changes from the disclosures from the Company's Audited Consolidated Financial Statements and Notes to the Consolidated Financial Statements for the year ended March 31, 2021 with respect to significant accounting judgments, estimates and assumptions.

4. TRADE AND OTHER RECEIVABLES, NET

(a) Trade and other receivables, net

	As at June 30, 2021	As at March 31, 2021
Trade account receivables, net	**$ 160,582**	$ 189,250
Unbilled revenue, net	**124,389**	103,986
Accrued gas receivable	**226**	833
Other	**80,569**	46,132
	$ 365,766	$ 340,201

(b) Aging of accounts receivable

Customer credit risk

The lifetime expected credit loss reflects Just Energy's best estimate of losses on the accounts receivable and unbilled revenue balances. Just Energy determines the lifetime ECL by using historical loss rates and forward-looking factors, if applicable. Just Energy is exposed to customer credit risk on its continuing operations in Alberta, Texas, Illinois (gas), California (gas) and Ohio (electricity). Credit review processes have been implemented to perform credit evaluations of customers and manage customer default. If a significant number of customers were to default on their payments, it could have a material adverse effect on the operations and cash flows of Just Energy. Management factors default from credit risk in its margin expectations for all of the above markets.

In the remaining markets, the LDCs provide collection services and assume the risk of any bad debts owing from Just Energy's customers for a fee that is recorded in cost of goods sold. Although there is no assurance that the LDCs providing these services will continue to do so in the future, management believes that the risk of the LDCs failing to deliver payment to Just Energy is minimal.

The aging of the trade accounts receivable from the markets where the Company bears customer credit risk was as follows:

	As at June 30, 2021	As at March 31, 2021
Current	**$ 74,406**	$ 58,737
1-30 days	**28,141**	19,415
31-60 days	**5,098**	3,794
61-90 days	**2,245**	2,144
Over 90 days	**9,424**	10,446
	$ 119,314	$ 94,536

The unbilled revenue subject to customer credit risk is $115.2 million as at June 30, 2021 (March 31, 2021 – $87.1 million).

(c) Allowance for doubtful accounts

Changes in the allowance for doubtful accounts related to the balances in the table above were as follows:

	As at June 30, 2021	As at March 31, 2021
Balance, beginning of period	**$ 23,363**	$ 45,832
Provision for doubtful accounts	**7,418**	34,260
Bad debts written off	**(11,027)**	(62,529)
Foreign exchange	**2,306**	5,800
Balance, end of period	**$ 22,060**	$ 23,363

5. OTHER CURRENT AND NON-CURRENT ASSETS

(a) Other current assets

	As at June 30, 2021	As at March 31, 2021
Prepaid expenses and deposits	**$ 66,050**	$ 52,216
Customer acquisition costs	**43,617**	45,681
Green certificates assets	**35,570**	61,467
Gas delivered in excess of consumption	**1,644**	649
Inventory	**1,945**	3,392
	$ 148,826	$ 163,405

(b) Other non-current assets

	As at June 30, 2021	As at March 31, 2021
Customer acquisition costs	**$ 27,086**	$ 27,318
Other long-term assets	**8,009**	7,944
	$ 35,095	$ 35,262

6. FINANCIAL INSTRUMENTS

(a) Fair value of derivative financial instruments and other

The fair value of financial instruments is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (i.e., an exit price). Management has estimated the value of financial swaps, physical forwards and option contracts for electricity, natural gas, carbon offsets and renewable energy certificates (“RECs”), and generation and transmission capacity contracts using a discounted cash flow method, which employs market forward curves that are either directly sourced from third parties or developed internally based on third-party market data. These curves can be volatile, thus leading to volatility in the mark to market with no immediate impact to cash flows. Gas options and green power options have been valued using the Black option pricing model using the applicable market forward curves and the implied volatility from other market traded options. Management periodically uses non-exchange-traded swap agreements based on cooling degree days (“CDDs”) and heating degree days (“HDDs”) measured in its utility service territories to reduce the impact of weather volatility on Just Energy’s electricity and natural gas volumes, commonly referred to as “weather derivatives”. The fair value of these swaps on a given measurement station indicated in the derivative contract is determined by calculating the difference between the agreed strike and expected variable observed at the same station.

The following table illustrates unrealized gains (losses) related to Just Energy's derivative financial instruments classified as fair value through profit or loss and recorded on the Interim Condensed Consolidated Statements of Financial Position as fair value of derivative financial assets and fair value of derivative financial liabilities, with their offsetting values recorded in unrealized gain (loss) in fair value of derivative instruments and other on the Interim Condensed Consolidated Statements of Income.

	For the three months ended June 30, 2021	For the three months ended June 30, 2020
Physical forward contracts and options (i)	**$ 225,307**	$ 48,380
Financial swap contracts and options (ii)	**66,394**	28,121
Foreign exchange forward contracts	**1,105**	(6,051)
6.5% convertible bond conversion feature	**—**	12,218
Unrealized foreign exchange on Term Loan	**4,147**	—
Weather derivatives (iii)	**(1,704)**	(2,381)
Other derivative options	**(3,112)**	(2,938)
Unrealized gain of derivative instruments and other	**$ 292,137**	$ 77,349

The following table summarizes certain aspects of the fair value of derivative financial assets and liabilities recorded in the Interim Condensed Consolidated Statements of Financial Position as at June 30, 2021:

	Financial assets (current)	**Financial assets (non-current)**	**Financial liabilities (current)**	**Financial liabilities (non-current)**
Physical forward contracts and options (i)	**$ 155,295**	**$ 40,198**	**$ 6,062**	**$ 8,414**
Financial swap contracts and options (ii)	**55,702**	**14,715**	**2,004**	**1,031**
Foreign exchange forward contracts	**834**	**—**	**—**	**—**
Weather derivatives (iii)	**1,883**	**—**	**1,721**	**—**
Other derivative options	**2,055**	**73**	**101**	**5**
As at June 30, 2021	**$ 215,769**	**$ 54,986**	**$ 9,888**	**$ 9,450**

The following table summarizes certain aspects of the fair value of derivative financial assets and liabilities recorded in the Consolidated Statements of Financial Position as at March 31, 2021:

	Financial assets (current)	Financial assets (non-current)	Financial liabilities (current)	Financial liabilities (non-current)
Physical forward contracts and options (i)	$ 12,513	$ 6,713	$ 10,157	$ 56,122
Financial swap contracts and options (ii)	6,942	2,634	3,548	5,047
Foreign exchange forward contracts	—	—	272	—
Weather derivatives (iii)	1,911	—	—	—
Other derivative options	3,660	1,253	—	—
As at March 31, 2021	$ 25,026	$ 10,600	$ 13,977	$ 61,169

Individual derivative asset and liability transactions are offset, and the net amount reported in the Interim Condensed Consolidated Statements of Financial Position if, and only if, there is currently an enforceable legal right to offset the recognized amounts and there is an intention to settle on a net basis, or to realize the assets and settle the liabilities simultaneously. Individual derivative transactions are typically offset at the legal entity and counterparty level.

Below is a summary of the financial instruments classified through profit or loss as at June 30, 2021, to which Just Energy has committed:

(i) Physical forward contracts and options consist of:

- Electricity contracts with a total remaining volume of 28,121,312 MWh, a weighted average price of $44.94/MWh and expiry dates up to December 31, 2029.
- Natural gas contracts with a total remaining volume of 65,297,406 GJs, a weighted average price of $3.69/GJ and expiry dates up to October 31, 2025.

- RECs with a total remaining volume of 2,041,751 MWh, a weighted average price of $45.09/REC and expiry dates up to December 31, 2029.
- Green gas certificates with a total remaining volume of 500,000 tonnes, a weighted average price of $3.92/tonne and expiry dates up to December 31, 2021.
- Electricity generation capacity contracts with a total remaining volume of 2,579 MWCap, a weighted average price of $4,700.15/MWCap and expiry dates up to December 31, 2023.
- Ancillary contracts with a total remaining volume of 658,300 MWh, a weighted average price of $16.93/MWh and expiry dates up to December 31, 2022.

(ii) Financial swap contracts and options consist of:

- Electricity contracts with a total remaining volume of 17,672,286 MWh, a weighted average price of $49.62/MWh and expiry dates up to December 31, 2024.
- Natural gas contracts with a total remaining volume of 93,174,950 GJs, a weighted average price of $3.26/GJ and expiry dates up to October 31, 2025.

(iii) Weather derivatives consist of:

- HDD natural gas swaps with price strikes to be set on futures index and temperature strikes from 1,813F to 4,985F HDD and an expiry date of March 31, 2022.
- HDD natural gas swaps with price strikes to be set on futures index and temperature strikes from 3,439C to 4,985F HDD and an expiry date of March 31, 2023.
- CDD Puts with temperature strikes from 656F to 3399F CDD and an expiry date of October 31, 2021.
- Temperature Contingent Power Call Options with price strikes at various temperature strikes and an expiry date of October 31, 2021.
- Temperature and Power Price Contingent Call Option with an expiry date of August 31, 2021.

These derivative financial instruments create a credit risk for Just Energy since they have been transacted with a limited number of counterparties. Should any counterparty be unable to fulfill its obligations under the contracts, Just Energy may not be able to realize the financial assets' balance recognized in the Interim Condensed Consolidated Financial Statements.

Fair value ("FV") hierarchy of derivatives

Level 1

The fair value measurements are classified as Level 1 in the FV hierarchy if the fair value is determined using quoted unadjusted market prices. Currently there are no derivatives carried in this level.

Level 2

Fair value measurements that require observable inputs other than quoted prices in Level 1, either directly or indirectly, are classified as Level 2 in the FV hierarchy. This could include the use of statistical techniques to derive the FV curve from observable market prices. However, in order to be classified under Level 2, significant inputs must be directly or indirectly observable in the market. Just Energy values its New York Mercantile Exchange ("NYMEX") financial gas fixed-for-floating swaps under Level 2.

Level 3

Fair value measurements that require unobservable market data or use statistical techniques to derive forward curves from observable market data and unobservable inputs are classified as Level 3 in the FV hierarchy. For the electricity supply contracts, Just Energy uses quoted market prices as per available market forward data and applies a price-shaping profile to calculate the monthly prices from annual strips and hourly prices from block strips for the purposes of mark to market calculations. The profile is based on historical settlements with counterparties or with the system operator and is considered an unobservable input for the purposes of establishing the level in the FV hierarchy. For the natural gas supply contracts, Just Energy uses three different market observable curves: (i) commodity (predominately NYMEX), (ii) basis and (iii) foreign exchange. NYMEX curves extend for over five years (thereby covering the length of Just Energy's contracts); however, most basis curves extend only 12 to 15 months into the future. In order to calculate basis curves for the remaining years, Just Energy uses extrapolation, which leads natural gas supply contracts to be classified under Level 3.

Weather derivatives are non-exchange-traded financial instruments used as part of a risk management strategy to mitigate the impact adverse weather conditions have on gross margin. The fair values of the derivatives are determined using an internally developed model that relies upon both observable inputs and significant unobservable inputs. Accordingly, the fair values of these derivatives are classified as Level 3. Market and contractual inputs to these models vary by contract type and would typically include notional amounts, reference weather stations, strike prices, temperature strike values, terms to expiration, historical weather data and historical commodity prices. The historical weather data and commodity prices were utilized to value the

expected payouts with respect to weather derivatives and, as a result, are the most significant assumptions contributing to the determination of fair value estimates, and changes in these inputs can result in a significantly higher or lower fair value measurement.

Just Energy's accounting policy is to recognize transfers between levels of the fair value hierarchy on the date of the event or change in circumstances that caused the transfer.

Fair value measurement input sensitivity

The main cause of changes in the fair value of derivative instruments is changes in the forward curve prices used for the fair value calculations. Just Energy provides a sensitivity analysis of these forward curves under the "Market risk" section of this note. Other inputs, including volatility and correlations, are driven off historical settlements.

The following table illustrates the classification of derivative financial assets (liabilities) in the FV hierarchy as at June 30, 2021:

	Level 1	Level 2	Level 3	Total
Derivative financial assets	$ —	$ 37,472	$ 233,283	$ 270,755
Derivative financial liabilities	—	—	(19,338)	(19,338)
Total net derivative financial assets	$ —	$ 37,472	$ 213,945	$ 251,417

The following table illustrates the classification of derivative financial assets (liabilities) in the FV hierarchy as at March 31, 2021:

	Level 1	Level 2	Level 3	Total
Derivative financial assets	$ —	$ 682	$ 34,944	$ 35,626
Derivative financial liabilities	—	—	(75,146)	(75,146)
Total net derivative financial liabilities	$ —	$ 682	$ (40,202)	$ (39,520)

Commodity price sensitivity — Level 3 derivative financial instruments

If the energy prices associated with only Level 3 derivative financial instruments including natural gas, electricity, and RECs had risen (fallen) by 10%, assuming that all of the other variables had remained constant, profit from continuing operations before income taxes for the quarter ended June 30, 2021 would have increased (decreased) by $163.3 million ($158.2 million), primarily as a result of the change in fair value of Just Energy's derivative financial instruments.

Key assumptions used when determining the significant unobservable inputs for all commodity supply contracts included in Level 3 of the FV hierarchy consist of up to 5% price extrapolation to calculate monthly prices that extend beyond the market observable 12- to 15-month forward curve.

The following table illustrates the changes in net fair value of financial assets (liabilities) classified as Level 3 in the FV hierarchy for the following periods:

	Three months ended June 30, 2021	Year ended March 31, 2021
Balance, beginning of period	$ (40,202)	$ (85,885)
Total gains (losses)	210,743	(2,900)
Purchases	60,844	(4,059)
Sales	(9,290)	(1,670)
Settlements	(8,150)	54,312
Balance, end of period	$ 213,945	$ (40,202)

(b) Classification of non-derivative financial assets and liabilities

As at June 30, 2021 and March 31, 2021, the carrying value of cash and cash equivalents, restricted cash, trade and other receivables, and trade and other payables approximates their fair value due to their short-term nature.

The risks associated with Just Energy's financial instruments are as follows:

(i) Market risk

Market risk is the potential loss that may be incurred as a result of changes in the market or fair value of a particular instrument or commodity. Components of market risk to which Just Energy is exposed are discussed below.

Foreign currency risk

Foreign currency risk is created by fluctuations in the fair value or cash flows of financial instruments due to changes in foreign exchange rates and exposure as a result of investments in U.S. operations.

The performance of the Canadian dollar relative to the U.S. dollars could positively or negatively affect Just Energy’s Interim Condensed Consolidated Statements of Income, as a significant portion of Just Energy’s profit or loss is generated in U.S. dollars and is subject to currency fluctuations upon translation to Canadian dollars. Due to its growing operations in the U.S., Just Energy expects to have a greater exposure to foreign currency fluctuations in the future than in prior years. Just Energy has a policy to economically hedge between 50% and 100% of forecasted cross-border cash flows that are expected to occur within the next 12 months and between 0% and 50% of certain forecasted cross border cash flows that are expected to occur within the following 13 to 24 months. The level of economic hedging is dependent on the source of the cash flows and the time remaining until the cash repatriation occurs.

Just Energy may, from time to time, experience losses resulting from fluctuations in the values of its foreign currency transactions, which could adversely affect its operating results. Translation risk is not hedged.

With respect to translation exposure, if the Canadian dollar had been 5% stronger or weaker against the U.S. dollar for the three months ended June 30, 2021, assuming that all the other variables had remained constant, the net profit for the three months ended June 30, 2021 would have been $17.3 million lower/higher and other comprehensive loss would have been $9.8 million lower/higher.

Interest rate risk

Just Energy is only exposed to interest rate fluctuations associated with its floating rate Credit Facility. Just Energy’s current exposure to interest rates does not economically warrant the use of derivative instruments. Just Energy’s exposure to interest rate risk is relatively immaterial and temporary in nature. Just Energy does not currently believe that its debt exposes the Company to material interest rate risks but has set out parameters to actively manage this risk within its risk management policy.

A 1% increase (decrease) in interest rates would have resulted in an increase (decrease) of approximately $0.7 million in profit from continuing operations before income taxes in the Interim Condensed Consolidated Statements of Income for the three months ended June 30, 2021 (June 30, 2020 – $0.6 million).

Commodity price risk

Just Energy is exposed to market risks associated with commodity prices and market volatility where estimated customer requirements do not match actual customer requirements. Management actively monitors these positions on a daily basis in accordance with its risk management policy. This policy sets out a variety of limits, most importantly thresholds for open positions in the gas and electricity portfolios, which also feed a value at risk limit. Should any of the limits be exceeded, they are closed expeditiously or express approval to continue to hold is obtained. Just Energy’s exposure to market risk is affected by a number of factors, including accuracy of estimation of customer commodity requirements, commodity prices, volatility and liquidity of markets. Just Energy enters into derivative instruments in order to manage exposures to changes in commodity prices. The derivative instruments that are used are designed to fix the price of supply for estimated customer commodity demand and thereby fix margins. Derivative instruments are generally transacted over the counter. The inability or failure of Just Energy to manage and monitor the above market risks could have a material adverse effect on the operations and cash flows of Just Energy. Just Energy mitigates the exposure to variances in customer requirements that are driven by changes in expected weather conditions through active management of the underlying portfolio, which involves, but is not limited to, the purchase of options including weather derivatives. Just Energy’s ability to mitigate weather effects is limited by the degree to which weather conditions deviate from normal.

Commodity price sensitivity – all derivative financial instruments

If all the energy prices associated with derivative financial instruments including natural gas, electricity and RECs had risen (fallen) by 10%, assuming that all of the other variables had remained constant, profit from continuing operations before income taxes for the three months ended June 30, 2021 would have increased (decreased) by $171.1 million ($165.5 million), primarily as a result of the change in fair value of Just Energy’s derivative financial instruments.

(ii) Physical supplier risk

Just Energy purchases the majority of the gas and electricity delivered to its customers through long-term contracts entered into with various suppliers. Just Energy has an exposure to supplier risk as the ability to continue to deliver gas and electricity to its customers is reliant upon the ongoing operations of these suppliers and their ability to fulfill their contractual obligations.

(iii) Counterparty credit risk

Counterparty credit risk represents the loss that Just Energy would incur if a counterparty fails to perform under its contractual obligations. This risk would manifest itself in Just Energy replacing contracted supply at prevailing market rates, thus impacting the related customer margin. Counterparty limits are established within the risk management policy. Any exceptions to these limits require approval from the Risk Committee of the Board of Directors of Just Energy. The risk department and Risk Committee of the Board of Directors monitor current and potential credit exposure to individual counterparties and also monitor overall aggregate counterparty exposure. However, the failure of a counterparty to meet its contractual obligations could have a material adverse effect on the operations and cash flows of Just Energy.

As at June 30, 2021, Just Energy has applied an adjustment factor to determine the fair value of its financialinstruments in the amount of $0.5 million (March 31, 2021 �$1.1 million) to accommodate for itscounterparties�risk of default.

As at June 30, 2021, the estimated net counterparty credit risk exposure amounted to $258.4 million (March 31, 2021 � $35.6 million), representing the risk relating to Just Energy�s exposure to derivatives that are in an asset position.

7. TRADE AND OTHER PAYABLES

	As at June 30, 2021	As at March 31, 2021
Commodity suppliers�accruals and payables (a)	**$ 772,618**	$ 712,144
Green provisions and repurchase obligations	**53,921**	77,882
Sales tax payable	**27,035**	27,684
Non-commodity trade accruals and accounts payable (b)	**62,752**	80,573
Current portion of payable to former joint venture partner (c)	**13,829**	11,467
Accrued gas payable	**354**	544
Other payables	**15,468**	11,301
	$ 945,977	$ 921,595

(a) Includes $491.7 million (March 31, 2021 � $507.3 million) that is subject to compromise depending on the outcome of the CCAA proceedings.

(b) Includes $11.7 million (March 31, 2021 � $12.9 million) that is subject to compromise depending on the outcome of the CCAA proceedings.

(c) The amount due to the former joint venture partner is subject to compromise depending on the outcome of the CCAA proceedings.

8. LONG-TERM DEBT AND FINANCING

	As at June 30, 2021	As at March 31, 2021
DIP Facility (a)	**$ 154,925**	$ 126,735
Less: Debt issue costs (a)	**(4,147)**	(6,312)
Filter Group financing (b)	**3,822**	4,617
Credit facility � subject to compromise (c)	**171,046**	227,189
Term loan � subject to compromise (d)	**283,986**	289,904
Note Indenture � subject to compromise (e)	**13,554**	13,607
	623,186	655,740
Less: Current portion	**(622,227)**	(654,180)
	$ 959	$ 1,560

Future annual minimum principal repayments are as follows:

	Less than 1 year	1-3 years	4-5 years	More than 5 years	Total
DIP Facility (a)	$ 154,925	$ �	$ �	$ �	$ 154,925
Less: Debt issue costs (a)	(4,147)	�	�	�	(4,147)
Filter Group financing (b)	2,863	959	�	�	3,822
Credit facility � subject to compromise (c)	171,046	�	�	�	171,046
Term Loan � subject to compromise (d)	283,986	�	�	�	283,986
Note Indenture � subject to compromise (e)	13,554	�	�	�	13,554
	$ 622,227	$ 959	$ �	$ �	$ 623,186

The following table details the finance costs for the period ended June 30. Interest is expensed based on the effective interest rate.

	For the three months ended June 30, 2021	For the three months ended June 30, 2020
DIP Facility (a)	$ 7,100	$ —
Filter Group financing (b)	96	206
Credit facility (c)	5,717	5,135
8.75% term loan (f)	—	9,264
6.75% $100M convertible debentures (g)	—	2,408
6.75% $160M convertible debentures (h)	—	3,496
6.5% convertible bonds (i)	—	275
Supplier finance and others	—	1,069
	$ 12,913	$ 21,853

(a) As discussed in Note 1, Just Energy filed and received the Court Order under the CCAA on March 9, 2021. In conjunction with the CCAA filing, the Company entered into the DIP Facility for USD $125 million. Just Energy Ontario L.P., Just Energy Group Inc. and Just Energy (U.S.) Corp. are the borrowers under the DIP Facility and are supported by guarantees of certain subsidiaries and affiliates and secured by a super-priority charge against and attaching to the property that secures the obligations arising under the Credit Facility, created by the Court Order. The DIP Facility has an interest rate of 13%, paid quarterly in arrears. The DIP Facility terminates at the earlier of: (a) December 31, 2021, (b) the implementation date of the CCAA plan, (c) the lifting of the stay in the CCAA proceedings or (d) the termination of the CCAA proceedings. For consideration for making the DIP Facility available, Just Energy paid a 1% origination fee and a 1% commitment fee.

(b) Filter Group has a $3.8 million outstanding loan payable to Home Trust Company (“HTC”). The loan is a result of factoring receivables to finance the cost of rental equipment that matures no later than October 2023 with HTC and bears interest at 8.99% per annum. Principal and interest are payable monthly. Filter Group did not file under the CCAA and accordingly, the stay does not apply to Filter Group and any amounts outstanding under the loan payable to Home Trust Company.

(c) On March 18, 2021, Just Energy Ontario L.P, Just Energy (U.S.) Corp. and Just Energy Group Inc. entered into an Accommodation and Support Agreement (the “Lender Support Agreement”) with the lenders under the Credit Facility. Under the Lender Support Agreement, the lenders agreed to allow issuance or renewals of Letters of Credit under the Credit Facility during the pendency of the CCAA proceedings within certain restrictions. In return, the Company has agreed to continue paying interest and fees at the non-default rate on the outstanding advances and Letters of Credit under the Credit Facility. The amount of Letters of Credit that may be issued is limited to the lesser of $46.1 million (excluding the Letters of Credit guaranteed by Export Development Canada under its Account Performance Security Guarantee Program), plus any amount the Company has repaid and $125 million. As at June 30, 2021, the Company had repaid $62.0 million and had a total of $98.8 million of letters of Credit outstanding.

Certain amounts outstanding under the letter of Credit Facility (“LC Facility”) are guaranteed by Export Development Canada under its Account Performance Security Guarantee Program. Just Energy’s obligations under the Credit Facility are supported by guarantees of certain subsidiaries and affiliates and secured by a general security agreement and a pledge of the assets and securities of Just Energy and the majority of its operating subsidiaries and affiliates excluding, primarily the Filter Group. Just Energy has also entered into an inter-creditor agreement in which certain commodity and hedge providers are also secured by the same collateral. As a result of the CCAA filing, the borrowers are in default under the Credit Facility. However, any potential actions by the lenders have been stayed pursuant to the Court Order. As at June 30, 2021, the Company had $54.4 million of Letters of Credit outstanding and Letter of Credit capacity of $2.9 million available under the LC Facility.

The outstanding Advances are all Prime rate advances at a rate of bank prime (Canadian bank prime rate or U.S. prime rate) plus 4.25% and letters of credit are at a rate of 5.25%.

As at June 30, 2021, the Canadian prime rate was 2.45% and the U.S. prime rate was 3.25%.

As a result of the CCAA filing, the Credit Facility has been reclassified to short-term reflecting the potential acceleration of the debt allowed under the Credit Facility.

(d) As part of the September 2020 Recapitalization, Just Energy issued a USD $205.9 million principal note (the “10.25% Term Loan”) maturing on March 31, 2024. The note bears interest at 10.25%. The balance at June 30, 2021 includes an accrual of $13.4 million for interest payable on the notes. As a result of the CCAA filing, the Company is in default under the 10.25% Term Loan. However, any potential actions by the lenders under the 10.25% Term Loan have been stayed pursuant to the Court Order, and the Company is not issuing additional notes equal to the capitalized interest. Given this acceleration option, the 10.25% Term Loan has been classified as current.

(e) As part of the September 2020 Recapitalization, Just Energy issued $15 million principal amount of 7.0% subordinated notes ("Note Indenture") to holders of the subordinated convertible debentures, which has a six-year maturity. The principal amount was reduced through a tender offer for no consideration on October19, 2020 to $13.2 million. The Note Indenture bears an annual interest rate of 7.0% payable in kind. The balance at June 30, 2021 includes an accrual of $0.4 million for interest payable on the notes. As a result of the CCAA filing, the Company is in default under the Note Indenture's Trust Indenture agreement. However, any potential actions by the lenders under the Note Indenture have been stayed pursuant to the Court Order and the Company is not issuing additional notes equal to the capitalized interest. Given this acceleration option, the Note Indenture has been classified as current.

(f) As part of the September 2020 Recapitalization, the 8.75% loan was exchanged for its pro-rata share of the Term Loan and 786,982 common shares. At the time of the September 2020 Recapitalization, the 8.75% loan had USD $207.0 million outstanding plus accrued interest.

(g) As part of the September 2020 Recapitalization, the 6.75% $100M convertible debentures were exchanged for 3,592,069 common shares along with its pro-rata share of the Note Indenture and the payment of accrued interest.

(h) As part of the September 2020 Recapitalization, the 6.75% $160M convertible debentures were exchanged for 5,747,310 common shares along with its pro-rata share of the Note Indenture and the payment of accrued interest.

(i) As part of the September 2020 Recapitalization, the 6.5% convertible bonds were exchanged for its pro-rata share of the Term Loan and 35,737 common shares. At the time of the September 2020 Recapitalization, $9.2 million of the 6.5% convertible bonds were outstanding plus accrued interest.

9. REPORTABLE BUSINESS SEGMENTS

Just Energy's reportable segments are the Mass Market (formerly called Consumer) and the Commercial segments.

The chief operating decision maker monitors the operational results of the Mass Market and Commercial segments for the purpose of making decisions about resource allocation and performance assessment. Segment performance is evaluated based on certain non-IFRS measures such as Base EBITDA, Base gross margin and Embedded gross margin as defined in the Company's Management Discussion and Analysis.

Transactions between segments are in the normal course of operations and are recorded at the exchange amount.

Corporate and shared services report the costs related to management oversight of the business units, public reporting and filings, corporate governance and other shared services functions such as Human Resources, Finance and Information Technology.

For the period ended June 30, 2021:

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 314,987	$ 293,685	$ —	$ 608,672
Cost of goods sold	255,498	272,865	—	528,363
Gross margin	59,489	20,820	—	80,309
Depreciation and amortization	3,640	806	—	4,446
Administrative expenses	9,153	3,339	17,278	29,770
Selling and marketing expenses	25,132	14,540	—	39,672
Other operating expenses	7,038	990	—	8,028
Segment profit (loss)	$ 14,526	$ 1,145	$ (17,278)	$ (1,607)
Finance costs				(12,913)
Unrealized gain on derivative instruments and other				292,137
Realized gain on derivative instruments				17,213
Other expense, net				(489)
Reorganization costs				(20,009)
Provision for income taxes				967
Profit from continuing operations				275,299
Profit for the period				$ 275,299
Capital expenditures	$ 1,774	$ 35	$ —	$ 1,809
As at June 30, 2021				
Total goodwill	$ 163,447	$ —	$ —	$ 163,447

For the three months ended June 30, 2020:

	Mass Market	Commercial	Corporate and shared services	Consolidated
Sales	$ 390,664	$ 295,300	$ ⍰	$ 685,964
Cost of goods sold	204,309	212,518	⍰	416,827
Gross margin	186,355	82,782	⍰	269,137
Depreciation and amortization	6,365	914	⍰	7,279
Administrative expenses	8,461	5,835	25,657	39,953
Selling and marketing expenses	27,556	19,403	⍰	46,959
Other operating expenses	9,115	3,517	⍰	12,632
Segment profit (loss)	$ 134,858	$ 53,113	$ (25,657)	$ 162,314
Finance costs				(21,853)
Unrealized gain on derivative instruments and other				77,349
Realized loss of derivative instruments				(134,446)
Other income, net				(632)
Provision for income taxes				(634)
Profit from continuing operations				$ 82,098
Loss from discontinued operations				(2,948)
Profit for the period				79,150
Capital expenditures	$ 1,521	$ 165	$ ⍰	$ 1,686
As at June 30, 2020				
Total goodwill	$ 170,854	$ 98,748	$ ⍰	$ 269,602

Sales from external customers

Sales based on the location of the customer.

	For the three months ended June 30, 2021	For the three months ended June 30, 2020
Canada	**$ 140,478**	$ 104,454
United States	**468,194**	581,510
Total	**$ 608,672**	$ 685,964

Non-current assets

Non-current assets by geographic segment consist of goodwill, property and equipment and intangible assets and are summarized as follows:

	As at June 30, 2021	As at March 31, 2021
Canada	**$ 178,245**	$ 178,802
United States	**69,474**	73,518
Total	**$ 247,719**	$ 252,320

10. INCOME TAXES

	Three months ended June 30, 2021	Three months ended June 30, 2020
Current income tax expense	**$ (1,112)**	$ 873
Deferred income tax recovery	**145**	(239)
Provision for (recovery of) income taxes	**$ (967)**	$ 634

11. SHAREHOLDERS' CAPITAL

Just Energy is authorized to issue an unlimited number of common shares with no par value and up to 50,000,000 preferred shares. The common shares outstanding have no preferences, rights or restrictions attached to them and there are no preferred shares outstanding.

(a) Details of issued and outstanding shareholders' capital are as follows:

	Three months ended June 30, 2021		Year ended March 31, 2021	
	Shares	**Amount**	**Shares**	**Amount**
Common shares:				
Issued and outstanding				
Balance, beginning of period	**48,078,637**	**$ 1,537,863**	4,594,371	$ 1,099,864
Share-based awards exercised	–	–	91,854	929
Issuance of shares due to Recapitalization	–	–	43,392,412	438,642
Issuance cost	–	–	–	(1,572)
Balance, end of period	**48,078,637**	**$ 1,537,863**	48,078,637	$ 1,537,863
Preferred shares:				
Issued and outstanding				
Balance, beginning of period	–	**$** –	4,662,165	$ 146,965
Exchanged to common shares	–	–	(4,662,165)	(146,965)
Shareholders' capital	**48,078,637**	**$ 1,537,863**	48,078,637	$ 1,537,863

The above table reflects the impacts of the September 2020 Recapitalization including the extinguished convertible debentures, the settlement of the preferred shares and the issuance of new common shares. The common shares have been adjusted retrospectively to reflect the 33:1 share consolidation as part of the September 2020 Recapitalization.

(b) Dividends

For the quarter ended June 30, 2021, dividends of $nil (2020 – $nil) per common share were declared by Just Energy. Distributions in the three months ended June 30, 2021 amounted to $nil (2020 – $23). No dividends per preferred shares were declared during the three months ended June 30, 2020.

12. OTHER EXPENSES

(a) Other operating expenses

	Three months ended June 30, 2021	Three months ended June 30, 2020
Amortization of intangible assets	**$ 3,644**	$ 4,592
Depreciation of property and equipment	**802**	2,687
Bad debt expense	**7,418**	11,940
Share-based compensation	**610**	692
	$ 12,474	$ 19,911

(b) Employee expenses

	Three months ended June 30, 2021	Three months ended June 30, 2020
Wages, salaries and commissions	**$ 38,738**	$ 36,219
Benefits	**5,111**	6,488
	$ 43,849	$ 42,707

Employee expenses of $14.7 million and $29.1 million are included in administrative expense and selling and marketing expenses, respectively, for the three months ended June 30, 2021. Compared to $15.2 million and $27.5 million, respectively, for the three months ended June 30, 2020.

13. REORGANIZATION COSTS

Reorganization costs represent the amounts incurred related to the filings under the CCAA and Chapter 15 under the U.S. Bankruptcy Code proceedings and consist of:

	Three months ended June 30, 2021
Professional and advisory costs	**$ 12,546**
Key employee retention plan	**2,536**
Prepetition claims and other costs	**4,927**
	$ 20,009

14. EARNINGS PER SHARE

	Three months ended June 30, 2021	Three months ended June 30, 2020
BASIC EARNINGS PER SHARE		
Profit from continuing operations available to shareholders	**$ 275,299**	$ 82,098
Dividend to preferred shareholders, net of tax	**—**	3,319
Profit for the period available to shareholders	**275,299**	78,779
Basic weighted average shares outstanding[1]	**48,078,637**	9,895,058
Basic earnings per share from continuing operations available to shareholders	**$ 5.73**	$ 7.96
Basic earnings per share available to shareholders	**$ 5.73**	$ 7.66
DILUTED EARNINGS PER SHARE		
Profit from continuing operations available to shareholders	**$ 275,299**	$ 78,779
Adjusted profit for the period available to shareholders	**$ 275,299**	$ 78,779
Basic weighted average shares outstanding	**48,078,637**	9,895,058
Dilutive effect of:		
Restricted share and performance bonus grants	**—**	67,351
Deferred share grants	**—**	6,157
Deferred share units	**190,983**	—
Options	**650,000**	—
Shares outstanding on a diluted basis	**48,919,620**	9,968,566
Diluted earnings from continuing operations per share available to shareholders	**$ 5.63**	$ 7.90
Diluted earnings per share available to shareholders	**$ 5.63**	$ 7.60

1 The shares have been adjusted to reflect the share consolidation due to the September 2020 Recapitalization.

15. COMMITMENTS AND CONTINGENCIES

Commitments for each of the next five years and thereafter are as follows:

As at June 30, 2021

	Less than 1 year	**1-3 years**	**4-5 years**	**More than 5 years**	**Total**
Gas, electricity and non-commodity contracts	$ 1,252,345	$ 1,247,531	$ 238,030	$ 65,231	$ 2,803,137

(a) Surety bonds and letters of credit

Pursuant to separate arrangements with several bond agencies, Just Energy has issued surety bonds to various counterparties including states, regulatory bodies, utilities and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required in order to operate in certain states or markets. Total surety bonds issued as at June 30, 2021 amounted to $45.4 million (March 31, 2021 – $46.3 million) and are backed by letters of credit or cash collateral.

As at June 30, 2021, Just Energy had total letters of credit outstanding in the amount of $153.2 million (Note 8(c)).

(b) Legal proceedings

Just Energy's subsidiaries are party to a number of legal proceedings. Other than as set out below, Just Energy believes that each proceeding constitutes legal matters that are incidental to the business conducted by Just Energy and that the ultimate disposition of the proceedings will not have a material adverse effect on its consolidated earnings, cash flows or financial position.

On March 9, 2021, Just Energy filed for and received creditor protection pursuant to the Court Order under the CCAA and similar protection under Chapter 15 of the Bankruptcy Code in the United States in connection with the Weather Event.

In May 2015, Kia Kordestani, a former door-to-door independent contractor sales representative for Just Energy Corp., filed a lawsuit against Just Energy Corp., Just Energy Ontario L.P. and the Company (collectively referred to as "Just Energy") in the Superior Court of Justice, Ontario, claiming status as an employee and seeking benefits and protections of the Employment Standards Act, 2000, such as minimum wage, overtime pay, and vacation and public holiday pay on his own behalf and similarly situated door-to-door sales representatives who sold in Ontario. On Just Energy's request, Mr. Kordestani was removed as a plaintiff but replaced with Haidar Omarali, also a former door-to-door sales representative. On July 27, 2016, the Court granted Omarali's request for certification, but refused to certify Omarali's request for damages on an aggregate basis and refused to certify Omarali's request for punitive damages. Omarali's motion for summary judgment was dismissed in its entirety on June 21, 2019. The matter was set for trial in November 2021. However, pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims, if they proceed.

On July 23, 2019, Just Energy announced that, as part of its Strategic Review process, management identified customer enrolment and non-payment issues, primarily in Texas. In response to this announcement, and in some cases in response to this and other subsequent related announcements, putative class action lawsuits were filed in the United States District Court for the Southern District of New York, in the United States District Court for the Southern District of Texas and in the Ontario Court, on behalf of investors that purchased Just Energy Group Inc. securities during various periods, ranging from November 9, 2017 through August 19, 2019. The U.S. lawsuits have been consolidated in the United States District Court for the Southern District of Texas with one lead plaintiff and the Ontario lawsuits have been consolidated with one lead plaintiff. The U.S. lawsuit seeks damages allegedly arising from violations of the United States Securities Exchange Act. The Ontario lawsuit seeks damages allegedly arising from violations of Canadian securities legislation and of common law. The Ontario lawsuit was subsequently amended to, among other things, extend the period to July 7, 2020. On September 2, 2020, pursuant to Just Energy's plan of arrangement, the Superior Court of Justice (Ontario) ordered that all existing equity class action claimants shall be irrevocably and forever limited solely to recovery from the proceeds of the insurance policies payable on behalf of Just Energy or its directors and officers in respect of any such existing equity class action claims, and such existing equity class action claimants shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the released parties or any of their respective current or former officers and directors in respect of any existing equity class action claims, other than enforcing their rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. Pursuant to the CCAA proceedings, these proceedings have been stayed. Just Energy denies the allegations and will vigorously defend against these claims if they proceed.

Corporate Information

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Shares Listed
TSX Venture Exchange
Trading symbol: JE

OTC Pink Market
Trading symbol: JENGQ

just
energy™

THIS IS **EXHIBIT "L"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Just Energy Group Inc. Announces Substantial Financial Impact of Texas Weather Event and Delay in Filing its Third Quarter Financial Statements to February 26, 2021

February 22, 2021

TORONTO, Feb. 22, 2021 (GLOBE NEWSWIRE) -- Just Energy Group Inc. (TSX:JE; NYSE:JE) ("**Just Energy**" or the " **Company**"), a retail energy provider specializing in electricity and natural gas commodities, renewable energy options and carbon offsets, updated its previous announcement that management is continuing to assess the impact of the extreme cold temperatures throughout the State of Texas (the "**Weather Event**") on the Company, and cannot finalize its unaudited interim condensed consolidated financial statements for the three and nine months ended December 31, 2020, its management discussion and analysis on the Interim Financial Statements, and the CEO and CFO certificates in respect of the Interim Financial Statement (collectively the "**Reporting Documents**") until its review and understanding of the Weather Event and its impact on the Company's financial condition can be reasonably estimated. Accordingly, it now intends to file the Reporting Documents on or about February 26, 2021.

The financial impact of the Weather Event is not currently known due to challenges the Company is experiencing in obtaining accurate information regarding customers' usage from the applicable utilities. However, unless there is corrective action by the Texas government, because of, among other things, the sustained high prices from February 13, 2021 through February 19, 2021, during which real time market prices were artificially set at USD $9,000/MWh for much of the week, it is likely that the Weather Event has resulted in a substantial negative financial impact to the Company. Based on current information available to the Company as of the time of this press release, the Company estimates that the financial impact of the Weather Event on the Company could be a loss of approximately USD $250 million (approximately CAD $315 million), but the financial impact could change as additional information becomes available to the Company. Accordingly, the financial impact of the Weather Event on the Company once known, could be materially adverse to the Company's liquidity and its ability to continue as a going concern. The Company is in discussions with its key stakeholders regarding the impact of the Weather Event and will provide an update as appropriate.

Further to the Company's application to the Ontario Securities Commission, its principal regulator, the Company has received a management cease trade order in accordance with National Policy 12-203 - Management Cease Trade Orders ("**NP 12-203**").

The Company has established a blackout on trading of the Company's securities by directors and officers and intends to continue the blackout until such time as the Reporting Documents have been filed.

The Company confirms that it intends to satisfy the provisions of the alternative information guidelines found in Sections 9 and 10 of NP 12-203 for so long as it is delayed in filing the Reporting Documents.

ABOUT JUST ENERGY

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions and renewable energy options to customers. Currently operating in the United States and Canada, Just Energy serves residential and commercial customers. Just Energy is the parent company of Amigo Energy, Filter Group Inc., Hudson Energy, Interactive Energy Group, Tara Energy, and terrapass. Visit https://investors.justenergy.com/ to learn more.

FORWARD-LOOKING STATEMENTS

This press release may contain forward-looking statements, including with respect to the duration and financial impact of the Weather Event on the Company, the potential for government corrective action, the quantum of the financial loss to the Company from the Weather Event and its impact on the Company's liquidity and its ability to continue as a going concern, the Company's discussions with key stakeholders regarding the Weather Event and the outcome thereof, and the timing by which the Company will file the Reporting Documents. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but are not limited to, risks with respect to the impact of the Weather Event in the State of Texas commencing on or about February 13, 2021 and any intervention and/or corrective action by the Texas Government; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.justenergygroup.com.

Neither the Toronto Stock Exchange nor the New York Stock Exchange has approved nor disapproved of the information contained herein.

FOR FURTHER INFORMATION PLEASE CONTACT:

Michael Carter
Chief Financial Officer
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or

Investors
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JE@alpha-ir.com

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Boyd Erman
Longview Communications
Phone: 416-523-5885
berman@longviewcomms.ca

Source: Just Energy Group Inc.

THIS IS **EXHIBIT "M"** REFERRED TO IN THE
AFFIDAVIT OF MICHAEL CARTER,

SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg. 431/20, on February 2, 2022, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the Town of Flower Mound, in the State of Texas, THIS 2nd DAY OF FEBRUARY, 2022.

Commissioner for Taking Affidavits

Del Rizzo, Francesca

From:	Sachar, Karin
Sent:	Tuesday, February 01, 2022 1:08 PM
To:	Ken.Rosenberg@paliareroland.com; Jeff.Larry@paliareroland.com
Cc:	Dacks, Jeremy; MacDonald, John; Wasserman, Marc; De Lellis, Michael; Paul Bishop; Robert Thornton
Subject:	JE - Applicants' Proposed Adjudication Schedule
Attachments:	Applicants' Proposed Adjudication Schedule (Feb 1, 2022).pdf

Dear Ken and Jeff,

Attached please find the Applicants' proposed adjudication schedule. We are happy to discuss.

Thanks,
Karin

Karin Sachar
Partner
416.862.5949 | KSachar@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

Schedule to Adjudicate the *Donin/Jordet* Claims

If Just Energy were to agree to an expedited process for adjudicating the Donin and Jordet claims together, with a trial in the next twelve months,[1] the parties would need to agree to adhere to a schedule similar to that listed in the Hypothetical Expedited Schedule column below. The parties would also have to agree to dates for the delivery of materials such as a summary judgment motion or a motion for class certification. The Just Energy Entities are willing to discuss the appointment of an arbitrator from Arbitration Place or similar forum as Claims Officer. Ambitious estimates of schedules for Donin and Jordet proceeding in the ordinary course in the New York courts absent such expedition are also listed below for comparison purposes, with relevant assumptions noted. Each schedule assumes that the expedited process commences on February 9, 2022. This timetable does not take into account any appeals of decisions of the Claims Officer. This schedule would be subject in all respects to the discretion of the Claims Officer.

Step	**Hypothetical Expedited Schedule**	**Potential Donin Schedule[2]**	**Potential Jordet Schedule[3]**
Fact Discovery	After conducting a meet and confer among counsel, appropriately tailored document production by June 30, 2022 consistent with the status of the Donin and Jordet cases.	Completed/Deadline Passed	April 1, 2023
Expert Discovery	Opening Expert Disclosures: July 29, 2022	Completed/Deadline Passed	Plaintiffs' Expert Disclosures: May 15, 2023

[1] This schedule assumes the case survives summary judgment and certification and provides potential dates for trial for illustrative purposes.

[2] This schedule is based on the Eastern District of New York's last scheduling entry in *Donin*, which set the deadline for pre-motion letters on summary judgment to be brought within a month. Due to the stay of proceedings, no activity has occurred in these cases since the Initial Order was granted on March 9, 2021. *See* Minute Entry, dated October 22, 2021 ("ORDER: The deadline to take the first step in dispositive motion practice shall be 11/22/2021. Should the parties not seek to file a dispositive motion, then the parties shall file a joint pretrial order by 1/20/2022. Otherwise, the Court will set a joint pretrial order deadline following resolution of any dispositive motion.").

[3] This schedule is based on the Western District of New York's last scheduling order in *Jordet*, which contemplates the completion of fact and expert discovery within 18 months, class certification briefing the next month, and summary judgment the following month. ECF No. 52.

	Rebuttal Expert Disclosures: August 19, 2022 Expert Depositions: August 29, 2022		Defendants' Expert Disclosures: July 1, 2023 Expert Depositions: August 1, 2023
Dispositive Motions Hearing	November 10, 2022	September 3, 2022 (assuming pre-motion letters filed by March 3, 2022)	March 7, 2024 (assuming pre-motion letters filed September 7, 2023)
Class Certification Hearing	November 17, 2022	September 30, 2022 (assuming pre-motion letters filed March 31, 2022)	April 5, 2024 (assuming pre-motion letters October 5, 2023)
Joint Pretrial Order/Pretrial Conference	December 9, 2022	June 8, 2023[4]	December 5, 2024[5]
Trial	February 10, 2023	September 11, 2023[6]	January 6, 2025

[4] We assume one year to resolve the summary judgment and class certification motions and an additional three months to file a joint pretrial order, which tracks the timeline set by Magistrate Bulsara in the most recent *Donin* scheduling order.

[5] We assume one year to resolve the summary judgment and class certification motions. The Court's existing Scheduling Order contemplates a Status Conference within a few days of the dispositive motion date if no motions are filed. We assume that the Court would grant the parties time to prepare any pretrial materials, which are due within 30 days of trial.

[6] We assume another three months to trial and do not assume bifurcation of liability from damages, which would add additional time.

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

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at: TORONTO

AFFIDAVIT OF MICHAEL CARTER

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Counsel for the Applicants

Tab 8

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

Just Energy Group Inc. et al.

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

February 4, 2022

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APPENDICES

Appendix "A" Second Amended and Restated Initial Order dated May 26, 2021

Appendix "B" Cash Flow Forecast for the period ending March 12, 2022

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

FIFTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 9, 2021 (the "**Filing Date**"), Just Energy Group Inc. ("**Just Energy**") and certain of its affiliates (collectively, the "**Applicants**") were granted protection under the *Companies' Creditors Arrangement Act,* R.S.C., c. C-36, as amended (the "**CCAA**" and in reference to the proceedings, the "**CCAA Proceedings**").

2. Pursuant to the Initial Order, among other things:

(a) a stay of proceedings (the "**Stay of Proceedings**") was granted until March 19, 2021 (the "**Stay Period**");

(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 Applicants, the "**Just Energy Entities**");

(c) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the "**Monitor**");

(d) a debtor-in-possession interim financing facility was approved in the maximum principal amount of US$125 million subject to the terms and conditions set forth in the financing term sheet (the "**DIP Term Sheet**") between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the "**DIP Lenders**") dated March 9, 2021; and

(e) certain charges were granted with priority over all encumbrances on the Just Energy Entities' property, including two third-ranking charges on a *pari passu* basis in favour of: (A) the DIP Lenders to secure all Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time up to the maximum amount of the Obligations; and (B) each Commodity/ISO Supplier that executed a Qualified Support Agreement in an amount equal to the value of the Priority Commodity/ISO Obligations.

3. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the "**Chapter 15 Proceedings**") for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Court**"). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code.*

4. On March 19, 2021, at the comeback hearing in the CCAA Proceedings, the Court granted the Amended and Restated Initial Order (the "**First A&R Initial Order**"), that, among other things:

(a) extended the Stay Period to June 4, 2021;

(b) approved a key employee retention plan ("**KERP**") and an associated charge as security for payments under the KERP in respect of certain key employees of the Applicants deemed critical to the continued operation and stability of the Just Energy Entities;

(c) increased the amount of the Administration Charge, FA Charge and Directors' Charge;

(d) granted the Cash Management Charge in favour of the Cash Management Banks to secure Cash Management Obligations;

(e) confirmed that any obligations secured by a valid, enforceable and perfected security interest shall continue to be secured by the Property, including any Property acquired after the date of the applicable security agreement; and

(f) authorized the Just Energy Entities to provide cash collateral to third parties where so doing is necessary to operate the Business in the normal course, with the consent of the Monitor and subject to the terms of the Definitive Documents.

5. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the "**Final Recognition Order**"). The Final Recognition Order, among other things, gave full force and effect to the First A&R Initial Order in the United States, as may be further amended by the Court from time to time.

6. On May 26, 2021, the Court granted the Second Amended and Restated Initial Order (the "**Second A&R Initial Order**") that, among other things:

(a) amended the definition of "Qualified Commodity/ISO Supplier" in the Initial Order to include counterparties to a Commodity Agreement or ISO Agreement executed after the Filing Date;

(b) amended the definition of "Commodity Agreement" to include contracts entered into by a Just Energy Entity for protection against fluctuations in foreign currency exchanges rates; and

(c) amended the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021, without obtaining Court authorization in certain limited circumstances.

7. A copy of the Second A&R Initial Order is attached hereto as **Appendix "A"**.

8. Also on May 26, 2021, the Court granted an Order that, among other things, (a) extended the Stay Period to September 30, 2021, and (b) authorized, but did not obligate, Just Energy (U.S.) Corp. to repatriate funds to the Just Energy Entities operating in Canada should it become necessary to do so to ensure sufficient working capital is held by such entities to fund their ongoing operations, which repatriation was permitted to be by way of repayment of certain intercompany indebtedness, including interest.

9. On September 15, 2021, the Court granted the Claims Procedure Order (the "**Claims Procedure Order**") that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the "**Claims Procedure**"). Additionally, on September 15, 2021, the Court granted an Order that, among other things, extended the Stay Period to December 17, 2021.

10. On November 10, 2021, the Court granted an Order that, among other things, (i) authorized the Just Energy Entities to enter into the Fifteenth Amendment to the DIP Term Sheet (with amendments 1-14 having been amendments to certain milestone deadlines set out therein approved via email); (ii) approved the JE Finance Transaction (as defined therein); (iii) approved a second KERP; and (iv) extended the Stay Period to February 17, 2022.

11. Pursuant to an order dated November 10, 2021 (the "**ecobee Support Agreement Order**"), the Court authorized (i) Just Management Corp. ("**JMC**") to enter into a

support agreement with Generac to vote in favour of the ecobee Transaction (as such terms are defined below) (the "**Support Agreement**"), (ii) the completion of certain restructuring steps proposed to be taken by the Just Energy Entities to ensure that the sale of stock owned by JMC could be completed in a tax efficient manner, and (iii) the sale of the ecobee shares held by Just Energy as a result of the ecobee Transaction.

12. All references to monetary amounts in this Fifth Report of the Monitor (the "**Fifth Report**") are in Canadian dollars unless otherwise noted. Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Second A&R Initial Order.

13. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, are available on the Monitor's website at http://cfcanada.fticonsulting.com/justenergy/ (the "**Monitor's Website**").

14. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, are 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

15. The purpose of this Fifth Report is to provide information to the Court with respect to the following:

    (a) the Monitor's activities since the Monitor's Fourth Report to the Court dated November 5, 2021, and the supplement thereto dated November 9, 2021 (together, the "**Fourth Report**");

    (b) certain energy-related legislative developments in the state of Texas, including an update on House Bill 4492, and their impact on the Just Energy Entities;

    (c) the Just Energy Entities' restructuring initiatives;

    (d) the Claims Procedure;

(e) an update on the ecobee Transaction (as defined below);

(f) the Monitor's views in respect of the motion for advice and direction (the "**Donin/Jordet Motion**") filed by Canadian counsel to U.S. counsel for Fira Donin and Inna Golovan in their capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the "**Donin Action**") and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the "**Jordet Action**" and together with the Donin Action, the "**Donin/Jordet Actions**"); and

(g) the Just Energy Entities' actual cash receipts and disbursements for the 13-week period ending January 29, 2022, and a comparison to the cash flow forecast attached as Appendix "A" to the Fourth Report, along with an updated cash flow forecast for the period ending March 12, 2022;

(h) the relief sought by the Applicants in their proposed Order (the "**Proposed Order**"), which includes extending the Stay Period to March 4, 2022; and

(i) the Monitor's views in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

16. In preparing this Fifth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities' books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the "**Information**").

17. Except as otherwise described in this Fifth Report:

(a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

(b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Fifth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.

18. Future-oriented financial information reported in or relied on in preparing this Fifth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

19. The Monitor has prepared this Fifth Report to provide information to the Court in connection with the relief requested by the Applicants and in response to the Donin/Jordet Motion. The Fifth Report should not be relied on for any other purpose.

MONITOR'S ACTIVITIES SINCE THE FOURTH REPORT

20. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Fourth Report have included the following:

(a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;

(b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;

(c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of Revision or Disallowance (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;

(d) monitoring the cash receipts and disbursements of the Just Energy Entities;

(e) assisting the Just Energy Entities to update and extend their cash flow forecasts;

(f) working with and providing input to the Just Energy Entities and other stakeholders to assist with the development of a plan of compromise or arrangement and related draft documents;

(g) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:

(i) provide stakeholders with financial and other information;

(ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to possible exit strategies from the CCAA Proceedings and restructuring plan, including assisting with the preparation of related cash flow forecasts and presentations; and

(iii) ensure compliance with the requirements of regulators in applicable jurisdictions;

(h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;

(i) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;

(j) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;

(k) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and

(l) preparing this Fifth Report.

TEXAS LEGISLATIVE DEVELOPMENTS

21. As discussed in the Fourth Report, the Governor of Texas signed House Bill 4492 ("**HB 4492**") on June 16, 2021, which provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including certain of the Just Energy Entities, during the Texas weather event in February 2021.

22. HB 4492 addresses the securitization of (i) ancillary service charges above the system-wide offer cap of US$9,000/MWh during the weather event; (ii) reliability deployment price adders charged by the Electric Reliability Council of Texas, Inc. ("**ERCOT**") during the weather event; and (iii) non-payment of amounts owed to ERCOT due to defaults by competitive market participants, resulting in short payments to market participants, including Just Energy (collectively, the "**Costs**").

23. The Just Energy Entities had previously advised the Monitor that they anticipated recovering at least US$100 million of the Costs from ERCOT. The Just Energy Entities have continued to monitor and evaluate the potential benefits and impact of HB 4492 and, in a press release dated December 9, 2021, announced that their expected recovery from ERCOT of the Costs has increased to approximately US$147.5 million based on ERCOT's calculations filed with the Public Utility Commission of Texas, representing an increase of US$47.5 million over the previous estimate.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

24. The Just Energy Entities with the assistance of their counsel and the Financial Advisor, in consultation with the DIP Lenders (in their capacity as such, and in their capacity as assignee of the secured Claim asserted by BP Energy Company and its affiliates, and the sponsor in connection with the Recapitalization Plan (as defined below)), the Credit Facility Lenders, Shell, the lenders under the non-revolving term loan established pursuant to the Term Loan Agreement as part of the Applicants' 2020 balance sheet recapitalization transaction (the "**Term Loan Lenders**"), and their respective legal and financial advisors, have made significant progress in developing a recapitalization term sheet (the "**Recapitalization Term Sheet**") that provides for the recapitalization of the Just Energy Entities and their respective businesses via a plan of compromise or arrangement (the "**Recapitalization Plan**").

25. The Recapitalization Term Sheet and Recapitalization Plan are intended to facilitate emergence from the CCAA Proceedings, preserve the going concern value of the business, maintain customer relationships, and preserve employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities' stakeholders.

26. To provide sufficient time to advance these restructuring efforts, and finalize the Recapitalization Term Sheet and Recapitalization Plan, the Just Energy Entities have negotiated extensions to certain milestone deadlines provided for in the DIP Term Sheet including the following:

    (a) February 10, 2022 – deadline for delivery of the settled Recapitalization Term Sheet, which will form the basis of the Recapitalization Plan;

    (b) February 17, 2022 – deadline for the Court to grant an order approving one or more meetings for a vote on the Recapitalization Plan and related materials (the "**Meeting Order**"), if applicable, and February 22, 2022, being the deadline to mail the meeting materials;

    (c) March 15, 2022 – deadline for the U.S. Court to recognize the Meeting Order, if applicable;

    (d) March 30, 2022 – deadline for the meeting(s) to vote on the Recapitalization Plan, if applicable;

    (e) April 7, 2022 – deadline for the Court to grant an order approving and sanctioning the Recapitalization Plan, if applicable; and

    (f) April 21, 2022 – deadline for U.S. Court to enter an order recognizing the order approving and sanctioning the Recapitalization Plan, if applicable.

27. The Just Energy Entities and the Monitor are hopeful that agreement on the Recapitalization Term Sheet and Recapitalization Plan can be reached in the near future. To this end, the Monitor understands that the Just Energy Entities intend to bring a motion before the Court returnable on March 3, 2022, to seek the authority to file the Recapitalization Plan and request that the Court grant the Meeting Order. The Monitor will comment on the Meeting Order and Recapitalization Plan in a future report to the Court. The Monitor notes that March 3, 2022 is after the milestone dates currently established for the Meeting Order. The Monitor understands that it is the intention of the Just Energy Entities to negotiate for an extension of the applicable milestone.

UPDATE ON CLAIMS PROCEDURE

Claims Procedure Overview

28. As noted in the Monitor's Third Report to the Court dated September 8, 2021 (a copy of which is available on the Monitor's Website), the Just Energy Entities, in consultation with the Monitor and the Claims Agent, developed the Claims Procedure to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their Directors and Officers in a flexible, fair, comprehensive, and expeditious manner. Subject to certain exceptions, the deadline to file a Proof of Claim or a Notice of Dispute of Claim (in the case of Negative Notice Claimants) was November 1, 2021 (Toronto time) (the "**Claims Bar Date**"). For the purpose of this section, any capitalized terms not defined herein have the meanings ascribed thereto in the Claims Procedure Order.

29. The Claims Procedure Order incorporated a negative notice claims process for known and quantified Claims generally, while all other Claimants not included within the definition of "Negative Notice Claimant" were required to file a Proof of Claim. To the extent that a party received a Statement of Negative Notice Claim and failed to file a Notice of Dispute of Claim, the Negative Notice Claimant's Claim was deemed to be the amount set forth in the Statement of Negative Notice Claim.

30. Pursuant to noticing requirements and obligations of the Monitor contained within the Claims Procedure Order, the Monitor, with the assistance of the Claims Agent and the Just Energy Entities, has:

    (a) issued approximately 1,000 Negative Notice Claims Packages to 835 Negative Notice Claimants;

    (b) issued approximately 15,100 General Claims Packages to: (i) each person on the Service List (except Persons that are likely to assert only Excluded Claims); (ii) any Person who has requested a Proof of Claim and was not sent a Statement of Negative Notice Claim; (iii) any Person known to the Just Energy Entities or the Monitor as having a potential Claim that is not captured in any Statement of Negative Notice Claim; and (iv) any Person with a Claim arising out of the

restructuring, disclaimer, termination or breach on or after the Filing Date of any contract, lease or other agreement;

(c) issued approximately 3,700 notices advising of the existence of the Claims Procedure (which contained instructions for accessing a General Claims Package) to all active vendors of the Just Energy Entities listed in their books and records but not having any known Claims against the Just Energy Entities;

(d) caused the Notice to Claimants to be published on September 21, 2021, in the following printed publications: (i) the Global and Mail (National Edition); (ii) the Wall Street Journal; (iii) the Houston Chronicle; and (iv) the Dallas Morning News;

(e) posted all relevant documents with respect to the Claims Procedure on the Monitor's Website, including, but not limited to (i) the Notice to Claimants, (ii) the General Claims Package, (iii) a blank Notice of Dispute of Claim form, (iv) a blank Proof of Claim form, and (v) a blank D&O Proof of Claim form;

(f) received, reviewed, recorded and categorized all Notices of Dispute of Claim and Proofs of Claim that were received before, on, or after the Claims Bar Date;

(g) issued several Notices of Revision or Disallowance in respect of disallowed Claims prepared by the Applicants, in consultation with the Monitor;

(h) notified creditors of certain Claims accepted by the Just Energy Entities in consultation with the Monitor;

(i) engaged in numerous discussions and correspondence with various creditors that filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant, where appropriate; and

(j) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.

31. The Monitor has also engaged with numerous stakeholders in respect of questions that have arisen in respect of their Negative Notice Claims Package and the Claims Procedure generally.

32. The Just Energy Entities, with assistance from and in consultation with the Monitor, are in the process of completing a review of the Notices of Dispute of Claim and Proofs of Claim received, and are actively working to review, investigate, and/or resolve the various Claims as applicable.

Overview of Claims

33. Statements of Negative Notice Claim were issued to 835 Claimants, of which 15 subsequently submitted a Notice of Dispute of Claim. Additionally, there were 515 Claimants who submitted a Proof of Claim.

34. A summary of the Claims segregated by Statement of Negative Notice Claim, Notice of Dispute of Claim, Proof of Claim and category of claim, is presented in the table below. Please note that the amounts presented are inclusive of potential duplicate and/or erroneous claims and represent the total Claims recorded by the Monitor.

Category	Statement of Negative Notice		Notice of Dispute of Claim		Proof of Claim		Total Claims		
	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	TOTAL
(amounts stated in millions of CAD)									
Funded Debt	$ 331	$ 289	-	$ 13	-	-	$ 331	$ 302	**$ 633**
Commodity & Financial	472	2	2	-	377	2	852	3	**855**
Litigation	-	-	-	-	-	10,015	-	10,015	**10,015**
Tax & Unclaimed Property	-	5	-	-	0	90	0	95	**95**
Trade & Other	-	8	-	0	26	490	26	498	**524**
D&O	-	-	-	-	-	1,545	-	1,545	**1,545**
Total Claims Pool (Exl. Withdrawn & Rescinded Claims)	**804**	**304**	**2**	**14**	**403**	**12,140**	**1,209**	**12,458**	**13,667**
Withdrawn & Rescinded Claims	-	0	-	0	-	994	-	994	**994**
Total Claims Received	**$ 804**	**$ 304**	**$ 2**	**$ 14**	**$ 403**	**$ 13,134**	**$ 1,209**	**$ 13,452**	**$ 14,661**

35. The following provides an overview of the types of Claims contained within each category:

(a) Funded Debt: Funded Debt claims total approximately $633 million and include all aggregate claims that relate to the Credit Facility Lenders, the Term Loan Lenders, and the Claims of the Noteholders;

(b) Commodity & Financial: Commodity & Financial claims total approximately $855 million and include all aggregate Claims of Commodity Suppliers as well as Claims relating to financial hedges or the purchase of renewable energy certificates;

(c) Litigation: Litigation claims total approximately $10,015 million and include all aggregate Claims pertaining to on-going and settled litigation;

(d) Tax & Unclaimed Property: Tax & Unclaimed Property claims total approximately $95 million and include all aggregate Claims of various government bodies for taxes owing at the local, state/province, and/or federal level, and also includes all claims with respect to unclaimed property owed to various U.S. states. For the Just Energy Entities, unclaimed property typically represents cheques issued prior to each state's established dormancy period, which represents the date by which a payee must deposit a cheque – generally 2 or more years;

(e) Trade & Other: Trade & Other claims total approximately $524 million and include all aggregate Claims of trade vendors, IT vendors, former employees, commission vendors, landlords and other. In this category, it is estimated that there are approximately $435 million of Claims that are duplicative, which could reduce the total Claims to be resolved to approximately $89 million if such Claims are withdrawn or successfully resolved; and

(f) D&O Claims: D&O Claims include all Claims filed against the Directors and Officers of the Just Energy Entities. Approximately 302 D&O Proofs of Claim (including 193 "marker claims") were recorded totaling approximately $1,545 million. The Monitor understands that all of these D&O Claims are disputed by the Just Energy Entities. In fact, approximately $1,436 million of these claims have now been disallowed by the Just Energy Entities, in consultation with the Monitor, and pursuant to which the deadline to file a Notice of Dispute has lapsed, resulting in $109 million of D&O Claims remaining to be resolved.

36. As of January 31, 2022, secured claims initially recorded by the Monitor total approximately $1,209 million, which is comprised primarily of the Just Energy Entities secured funded debt obligations and other secured supplier obligations pursuant to the

Intercreditor Agreement. Based on the review of secured claims completed by the Just Energy Entities and the Monitor and subject to final resolution of all secured claims, if necessary, pursuant to the Claims Procedure Order, it is estimated that there are approximately $309 million of secured claims that are potentially duplicative or erroneous, which would reduce the total secured claims to be resolved to approximately $900 million if such Claims are withdrawn or successfully resolved.

37. As of January 31, 2022, unsecured claims initially recorded by the Monitor total approximately $13,452 million. Counsel for each of the Plaintiffs in the Donin Action and the Jordet Action filed a Proof of Claim each in the amount of US$3,662 million, or approximately $4,615 million (together, the "**Donin/Jordet Claims**"). Based on the review of unsecured claims completed by the Just Energy Entities and the Monitor and subject to final resolution of all unsecured claims, if necessary, pursuant to the Claims Procedure Order, it is estimated that there are approximately $6,362 million of unsecured claims recorded (including one of the contingent Donin/Jordet Claims in the amount mentioned above) that are duplicative or erroneous. Net of withdrawn and rescinded claims of $994 million and if the estimated duplicative or erroneous Claims of $6,362 million are withdrawn or successfully resolved, the total unsecured Claims to be resolved would be approximately $6,096 million.

38. The Just Energy Entities, with the assistance of the Monitor, are working to facilitate the voluntary withdrawal of duplicate and erroneous Claims submitted in an expeditious manner where possible. As of January 31, 2022, approximately $994 million of Claims have been withdrawn or rescinded. Of the $14,661 million total Claims received less withdrawn and rescinded Claims of $994 million, the total remaining Claims pool is $13,667.

39. In addition to the dollar value Claims listed in the above table and D&O "marker claims", there are an additional 275 Proofs of Claim which are recorded as "marker claims" for amounts yet to be determined. Of these "marker claims", 261 Proofs of Claim pertain to Claims filed by individuals who have sought to assert tort and/or similar Claims against the Just Energy Entities in relation to the Texas weather event. The

Monitor understands that all of these Claims are disputed by the Just Energy Entities. The remaining 14 "marker claims" generally pertain to Claims filed by certain governmental organizations and taxation bodies. The Just Energy Entities, in consultation with the Monitor, are working to determine and resolve these Claims.

40. The Monitor received 21 Claims totaling approximately $9 million after the applicable Claims Bar Date (the "**Late-Filed Claims**"). The Monitor and the Just Energy Entities are in the process of reviewing the Late-Filed Claims. To the extent any further late-filed claims are submitted, the Just Energy Entities, in consultation with the Monitor, will assess those claims in light of the circumstances existing at that time.

41. The Just Energy Entities, in consultation with the Monitor, continue to assess the nature, quantum and validity of the Claims with a view to either accepting or disputing each Claim based on its merits. The Monitor will provide an update regarding the status of the Claims in a future report.

UPDATE ON ECOBEE TRANSACTION

42. As discussed in the Fourth Report, it was announced on November 1, 2021 that ecobee Inc. ("**ecobee**"), a private company in which JMC owned approximately an 8% equity interest, had agreed to sell all of its issued and outstanding shares (the "**ecobee Transaction**") to 13462234 Canada Inc. ("**Generac**"), a wholly-owned subsidiary of Generac Power Systems, Inc., which is in turn a wholly-owned subsidiary of Generac Holdings Inc. ("**Generac Holdings**"). Generac Holdings stock trades on the New York Stock Exchange under the symbol GNRC. The sale was intended to be effected pursuant to a court approved arrangement under the *Canada Business Corporations Act*.

43. As consideration for the ecobee Transaction, Generac agreed to pay to the sellers of the ecobee shares US$200 million cash on closing, subject to customary adjustments, and US$450 million in Generac Holdings common stock. Additionally, upon achievement of certain performance targets between closing of the transaction and June 30, 2023, the sellers may receive a further amount up to an aggregate of US$120 million in shares of Generac Holdings common stock.

44. Subsequent to the issuance of the ecobee Support Agreement Order, the Just Energy Entities entered into the Support Agreement with Generac and voted in favour of the ecobee Transaction.

45. The ecobee Transaction closed on or around December 1, 2021. At closing, the Just Energy Entities received approximately $16 million in cash, which was net of certain adjustments totalling approximately $2 million, and approximately 80,281 common shares of Generac Holdings common stock. Commencing on December 7 through December 20, 2021, as authorized pursuant to the ecobee Support Agreement Order, the Just Energy Entities monetized the common shares of Generac Holdings common stock received for cash proceeds of $29 million, resulting in a combined total cash and share sale proceeds realized of $45 million.

DONIN/JORDET MOTION

Background

46. As mentioned above, the Donin/Jordet Motion was filed by the plaintiffs in the Donin Action and the Jordet Action (collectively, the "**Plaintiffs**"), who purport to represent a class of putative claimants. The Plaintiffs submitted two overlapping claims against the Just Energy Entities each in the amount of approximately US$3.66 billion, or US$7.32 billion combined, based on the proposed and uncertified class actions. The Monitor understands that the Plaintiffs are only claiming US$3.66 billion for the two overlapping claims, notwithstanding the fact that two duplicative claims were submitted, and that the Plaintiffs acknowledge that the damages calculation of US$3.66 billion is a joint and composite damages claim encompassing both the Donin Action and the Jordet Action.

47. The Donin Action claims damages on behalf of a putative class of "all Just Energy customers in the United States […] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment". The Jordet Action claims damages on behalf of a putative class of all "Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to present".

48. The Donin Action was filed against Just Energy and Just Energy New York Corp., and the Jordet Action was filed against Just Energy Solutions, Inc.

49. In both the Jordet Action and the Donin Action, the only claims that remain are allegations that the applicable Just Energy Entities' actions breached contractual provisions to consider "business and market conditions" and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and (in the case of the Donin Action only) electricity. All other causes of action asserted in the Donin/Jordet Actions were dismissed as part of summary dismissal orders issued by the New York Courts dated September 24, 2021 (in the Donin Action) and December 7, 2021 (in the Jordet Action).

50. In accordance with the Claims Procedure Order, counsel for each of the Plaintiffs in the Donin Action and the Jordet Action filed the Donin/Jordet Claims, which are appended as Exhibits F and G, respectively, to the Affidavit of Robert Tannor sworn January 17, 2022 (the "**Tannor Affidavit**") included in the Donin/Jordet Motion. Upon review of the Donin/Jordet Claims, and in consultation with the Monitor, the Just Energy Entities prepared Notices of Disallowance or Revision and disallowed the Donin/Jordet Claims in their entirety for the reasons set out in such notices, which are attached as Exhibits Q and R to the Tannor Affidavit. Further details regarding the basis for the disallowances are set out in the Affidavit of Michael Carter sworn February 2, 2022 (the "**Carter Affidavit**").

Discussions with the Monitor and Responses to Information Requests

51. The Monitor has had several meetings and discussions with U.S. and Canadian counsel representing the Plaintiffs in the Donin/Jordet Actions (collectively, "**Litigation Counsel**"), and a representative of Tannor Capital Management LLC ("**Tannor Capital**"), the Plaintiffs' financial advisor, to discuss the Donin/Jordet Claims. Further, counsel to the Just Energy Entities and the Monitor received a comprehensive list of information requests on December 13, 2021 from Litigation Counsel and Tannor Capital (the "**Information Requests**"). The Information Requests are attached as Exhibit M to the Tannor Affidavit.

52. Although omitted from the Tannor Affidavit, the Monitor, in consultation with the Just Energy Entities, did prepare and provide a comprehensive and detailed response to the Information Requests, despite most of the information being publicly available. The Monitor's responses to the Information Requests were promptly provided to Litigation Counsel and Mr. Tannor on December 23, 2021, a copy of which is attached as Confidential Appendix "G" to the Carter Affidavit.

Donin/Jordet Motion

53. In the Donin/Jordet Motion, the Plaintiffs are seeking an order, among other things, declaring that they are to be unaffected by the CCAA Proceedings. In the alternative, they are seeking, among other things, (a) an order directing the implementation of a litigation schedule and process leading to the final adjudication of the Donin/Jordet Claims prior to any consideration by the Court of any plan of compromise or arrangement put forth by the Just Energy Entities, and (b) an order directing the Just Energy Entities to provide the Plaintiffs with access to any data room and access to information, or in the alternative directing the production of specified documents and information listed.

54. The Monitor does not support the Plaintiffs' request to be treated as unaffected by the CCAA Proceedings. Given the quantum of the Donin/Jordet Claims, the Monitor is of the view that these Claims (and all other litigation claims) must be affected and dealt with as part of the CCAA Proceedings to allow the Just Energy Entities to emerge from these CCAA Proceedings as a successfully restructured business. The Monitor has also been informed by the DIP Lenders (who are also the Plan Sponsor) that under no circumstances will they support a CCAA Plan which leaves these uncertified contingent claims as unaffected. The Plaintiffs are contingent creditors and there is no basis for them to be treated differently than the other contingent creditors in these CCAA Proceedings.

Adjudication Process

55. The Monitor has attempted to facilitate discussions between parties to reach a settlement on a litigation schedule and process to resolve the Donin/Jordet Claims. The Monitor has continued these efforts after the date Litigation Counsel served their motion record. A consensus has not been reached as of the date of this Fifth Report.

56. With respect to the proposed litigation schedule set out in the Donin/Jordet Motion, the Monitor understands that there are several steps that would need to take place prior to the final determination or resolution of the Donin/Jordet Claims, including, without limitation, the following:

(a) discovery and production in respect of the Jordet Action;

(b) the exchange of any expert reports;

(c) a summary judgment motion or motions;

(d) a class certification hearing prior to a determination on the merits, as the putative class actions are currently uncertified;

(e) pre-trial steps, such as a pre-trial case conference;

(f) a trial on the merits; and

(g) the exercise of any potential appeal rights.

57. Given the complex nature and the early stages of the underlying litigation and size of the claims being alleged, the Monitor is of the view that the adjudication timeline proposed by the Plaintiffs is far too brief and not achievable from the outset. Rather, the Monitor is supportive of a more realistic adjudication schedule spanning approximately twelve months before a Claims Officer, as was proposed by the Just Energy Entities.

58. Further, the Monitor is of the view that it is unreasonable to delay the entire restructuring process of the Just Energy Entities to resolve one outstanding contingent litigation claim.

59. The Just Energy Entities' business is complex and requires diligent, focused management. The CCAA Proceedings have imposed considerable additional demands and responsibilities on management as they combine day to day responsibilities with the pursuit of a restructuring of the Just Energy Entities. In the Monitor's view, seeking adjudication of the Donin/Jordet Claims on the timeline proposed by the Plaintiffs would unduly impede the ability of management and key employees to focus their time and attention on achieving a successful restructuring for the benefit of all stakeholders.

60. Accordingly, the Monitor does not support the proposed adjudication process set forth in the Donin/Jordet Motion.

Information Requests and Recapitalization Plan Discussions

61. With respect to the documents and other information requested by the Plaintiffs, the Monitor intends to work with the Just Energy Entities and the Plaintiffs to facilitate and resolve such outstanding information and document requests as may be reasonable and appropriate in the circumstances.

62. The Plaintiffs have requested to be privy to the Recapitalization Plan discussions. The Monitor understands that only the Just Energy Entities' key stakeholders (which comprise the DIP Lenders, the Credit Facility Lenders, Shell and other key non-contingent creditors including the Term Loan Lenders) are privy to such discussions at this time. Further, the Plaintiffs are contingent uncertified creditors and the Monitor confirms that no contingent litigation creditor is privy to the discussions in respect of the Recapitalization Plan. Rather, the Plaintiffs will have the benefit of reviewing and considering any such Recapitalization Plan when it is put forth to all creditors for consideration. The Monitor notes that it is not a requirement that a debtor in a CCAA proceeding involve all of its creditors when developing a restructuring proposal and does not support the Plaintiffs' request for such involvement.

RECEIPTS AND DISBURSEMENTS FOR THE 13-WEEK PERIOD ENDED JANUARY 29, 2022

63. The Just Energy Entities' actual net cash flow for the 13-week period from October 31, 2021 to January 29, 2022, was approximately $33.9 million worse than the Cash Flow Forecast appended to the Fourth Report (the "**November Cash Flow Forecast**") as summarized below:

(CAD$ in millions)	Forecast	Actuals	Variance
RECEIPTS			
Sales Receipts	$614.2	$599.4	($14.7)
Miscellaneous Receipts	67.6	52.2	(15.3)
Total Receipts	$681.7	$651.7	($30.1)
DISBURSEMENTS			
Operating Disbursements			
Energy and Delivery Costs	($491.3)	($548.3)	($57.0)
ERCOT Resettlements	-	-	-
Payroll	(32.5)	(29.0)	3.5
Taxes	(31.8)	(22.6)	9.2
Commissions	(24.0)	(23.8)	0.3
Selling and Other Costs	(49.9)	(35.4)	14.5
Total Operating Disbursements	($629.5)	($659.1)	($29.6)
OPERATING CASH FLOWS	$52.2	($7.4)	($59.6)
Financing Disbursements			
Credit Facility - Borrowings / (Repayments)	$ -	$ -	$ -
Interest Expense & Fees	(12.8)	(11.0)	1.8
Restructuring Disbursements			
Professional Fees	(10.8)	(14.8)	(4.0)
NET CASH FLOWS	**$28.7**	**($33.2)**	**($61.8)**
CASH			
Beginning Balance	$137.1	$164.7	$27.6
Net Cash Inflows / (Outflows)	28.7	(33.2)	(61.8)
Other (FX)	-	0.4	0.4
ENDING CASH	**$165.8**	**$131.9**	**($33.9)**

64. Explanations for the main variances in actual receipts and disbursements as compared to the November Cash Flow Forecast are as follows:

(a) The unfavourable variance of approximately $14.7 million in Sales Receipts is primarily comprised of the following:

(i) An unfavourable variance of approximately $19.4 million in respect of U.S. residential customers, respectively, related to timing and also related to lower than anticipated energy demand and customer acquisitions;

(ii) A permanent favourable variance of approximately $10.8 million in respect of U.S. commercial customers, primarily driven by the impact of higher market prices on variable rate customer contracts, offset by higher Energy & Delivery Costs; and

(iii) A permanent unfavourable variance of approximately $6.1 million primarily due to lower than forecast Canadian residential and commercial customer billings;

(b) The unfavourable permanent variance of approximately $15.3 million of Miscellaneous Receipts is primarily due to lower than anticipated proceeds from the sale of stock received in the ecobee Transaction due to a decline in the stock price of Generac;

(c) The unfavourable variance of approximately $57 million in respect of Energy and Delivery Costs is primarily driven by the following:

(i) An unfavourable variance of approximately $40.3 million primarily due to higher than forecast commodity and collateral payments related to increased pricing during the period; and

(ii) A permanent unfavourable variance of approximately $16.7 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;

(d) The favourable variance of approximately $3.5 million in respect of Payroll is due to normal course fluctuations for various payroll tax remittances and sale incentive payments;

(e) The favourable variance of approximately $9.2 million in respect of Taxes is primarily due to the timing of estimated tax payments including an estimated sales tax reassessment payment owing by the Just Energy Entities of approximately $7.8 million that was forecast, but not paid, during the period. This payment will be removed from future forecasts since it is now expected to be resolved as part of the Claims Procedure;

(f) The permanent favourable variance of approximately $0.3 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions;

(g) The favourable timing variance of approximately $14.5 million in respect of Selling and Other Costs is primarily due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors;

(h) The favourable variance of $1.8 million in respect of Interest Expense & Fees is primarily due to lower than forecast interest and fees owed on the Just Energy Entities' credit facilities; and

(i) The unfavourable timing variance of $4.0 million in respect of Professional Fees is due to higher than forecast payments of professional fee invoices during the current 13-week period primarily resulting from increased services rendered by professionals with respect to the development and negotiation of the Restructuring Plan and adjudication of Claims pursuant to the Claims Procedure.

Reporting Pursuant to the DIP Term Sheet

65. The variances shown and described herein compare the November Cash Flow Forecast, as appended to the Fourth Report, with the actual performance of the Just Energy Entities over the 13-week period noted.

66. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the "**DIP Variance Reports**"). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of

Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended May 29, 2021; June 26, 2021; July 24, 2021; August 21, 2021; September 18, 2021; October 16, 2021; November 13, 2021; December 11, 2021; and January 8, 2022. All variances reported were within the permitted variances.

67. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the "**DIP Cash Flow Forecasts**"). The Just Energy Entities provided the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week periods beginning May 30, 2021; June 27, 2021; July 25, 2021; August 22, 2021; September 19, 2021; October 17, 2021; November 14, 2021; December 12, 2021; and January 9, 2022.

68. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the November Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the November Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.

69. Since the Fourth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:

(a) Delivery of a Priority Supplier Payables Certificate monthly;

(b) Delivery of an ERCOT Related Settlements update weekly;

(c) Delivery of a Cash Management Charge update monthly;

(d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;

(e) Delivery of a Gross Margin Calculation Certificate update quarterly;

(f) Delivery of Consolidated Financial Statements and related documents update quarterly;

(g) Delivery of a Marked to Market Calculation monthly; and

(h) Delivery of Electricity and Natural Gas Portfolio Reports, Hedging Exposure and Supply/Demand Projections quarterly.

CASH FLOW FORECAST FOR THE PERIOD ENDING MARCH 12, 2022

70. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 6-week period ending March 12, 2022 (the "**February Cash Flow Forecast**"), which encompasses the requested stay extension to March 4, 2022. The February Cash Flow Forecast is attached hereto as **Appendix "B"**, and is summarized below:

(CAD$ in millions)	**6-Week Ending March 12, 2022**
Forecast Week	**Total**
RECEIPTS	
Sales Receipts	$349.1
Miscellaneous Receipts	-
Total Receipts	$349.1
DISBURSEMENTS	
Operating Disbursements	
Energy and Delivery Costs	($257.3)
Payroll	(15.7)
Taxes	(11.2)
Commissions	(12.0)
Selling and Other Costs	(19.1)
Total Operating Disbursements	($315.3)
OPERATING CASH FLOWS	$33.8
Financing Disbursements	
Credit Facility - Borrowings / (Repayments)	$ -
Interest Expense & Fees	(1.9)
Restructuring Disbursements	
Professional Fees	(8.4)
NET CASH FLOWS	**$23.5**
CASH	
Beginning Balance	$131.9
Net Cash Inflows / (Outflows)	23.5
Other (FX)	-
ENDING CASH	**$155.4**

71. The February Cash Flow Forecast indicates that during the 6-week period ending March 12, 2022, the Just Energy Entities will have operating cash inflows of approximately $33.8 million with total receipts of approximately $349.1 million and total disbursements of approximately $315.3 million, before interest expense and fees of approximately $1.9 million and professional fees of approximately $8.4 million, such that net cash inflows are forecast to be approximately $23.5 million.

72. Generally, the underlying assumptions and methodology utilized in the November Cash Flow Forecast have remained the same for this February Cash Flow Forecast; however, the Monitor notes the following:

(a) The forecast period was extended from the week ending February 19, 2022 to the week ending March 12, 2022;

(b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the February Cash Flow Forecast, which include:

(i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;

(ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;

(iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;

(iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;

(v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and

(vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.

73. The February Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to March 4, 2022.

STAY EXTENSION

74. The Stay Period will expire on February 17, 2022, and the Applicants are seeking a short extension to the Stay Period up to and including March 4, 2022.

75. The Monitor supports extending the Stay Period to March 4, 2022 for the following reasons:

    (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to consider and hopefully finalize the Recapitalization Plan in an effort to achieve a going concern solution in consultation with the Financial Advisor, the Monitor and key stakeholders, including potentially seeking an order from the Court approving a creditors' meeting to vote on same;

    (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to give the Just Energy Entities the flexibility and time required in order to develop and commence steps to implement a successful restructuring;

    (c) as indicated by the February Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;

    (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and

    (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

APPROVAL OF THE ACTIVITIES OF THE MONITOR

76. The Proposed Order also seeks approval of the Fifth Report and the actions, conduct, and activities of the Monitor since the date of Fourth Report.

77. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Fourth Report have been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.

CONCLUSION

78. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.

79. Accordingly, the Monitor respectfully supports the requested relief in the Proposed Order and recommends that such Order be granted.

80. Further, the Monitor respectfully does not support the relief requested in the Donin/Jordet Motion and recommends that such motion be dismissed.

The Monitor respectfully submits to the Court this Fifth Report dated this 4th day of February, 2022.

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

Per: ______________________________

Paul Bishop
Senior Managing Director

APPENDIX "A"

Second Amended and Restated Initial Order dated May 26, 2021

APPENDIX "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	WEDNESDAY, THE 26TH
	)	
JUSTICE KOEHNEN	)	DAY OF MAY, 2021

SUPERIOR COURT OF JUSTICE ★ COUR SUPÉRIEURE DE JUSTICE ★ JUSTICIA

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. (each, an "**Applicant**", and collectively, the "**Applicants**")

SECOND AMENDED AND RESTATED INITIAL ORDER

(amending the Initial Order dated March 9, 2021, as amended and restated on March 19, 2021)

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Michael Carter sworn March 9, 2021 and the Exhibits thereto (the "**First Carter Affidavit**"), the affidavit of Michael Carter sworn March 16, 2021 and the Exhibits thereto (the "**Second Carter Affidavit**"), the affidavit of Michael Carter sworn March 18, 2021 and the Exhibits thereto (the "**Third Carter Affidavit**"), the affidavit of Margaret Munnelly sworn March 16, 2021 and the Exhibits thereto (the "**Munnelly Affidavit**"), the affidavit of Michael Carter sworn May 19, 2021 and the Exhibits thereto, the pre-filing report of the proposed monitor, FTI Consulting Canada Inc. ("**FTI**"), dated March 9, 2021, the First Report of FTI in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") dated March 18, 2021, the Second Report of the Monitor dated May 21, 2021, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed in Schedule "A" hereto (the "**JE Partnerships**", and collectively with the Applicants, the "**Just Energy Entities**"), the Monitor, Alter Domus (US) LLC (the "**DIP Agent**"), as administrative agent for the lenders (the "**DIP Lenders**") under the DIP Term Sheet (as defined below), the DIP Lenders and such other counsel who were present, and on reading the consent of FTI to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in Schedule "B" hereto or the First Carter Affidavit, as applicable, if they are not otherwise defined herein.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, the JE Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**")

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Just Energy Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Just Energy Entities shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Just Energy Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, staffing agencies, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that:

(a) the Just Energy Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the First Carter Affidavit or, with the consent of the Monitor, the DIP Agent and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System (a "**Cash Management Bank**") shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Just Energy Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Just Energy Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash

Management System, an unaffected creditor under any Plan with regard to Cash Management Obligations. All present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever to a Cash Management Bank under, in connection with, relating to or with respect to any and all agreements and arrangements evidencing or in respect of treasury facilities and cash management products (including, without limitation, all pre-authorized debit banking services, electronic funds transfer services, overdraft balances, corporate credit cards, merchant services and pre-authorized debits) provided by a Cash Management Bank to any Just Energy Entity, and any unpaid balance thereof, are collectively referred to herein as the "**Cash Management Obligations**";

(b) during the Stay Period (as defined below), no Cash Management Bank shall, without leave of this Court: (i) exercise any sweep remedy under any applicable documentation (provided, for greater certainty, that the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts held by the U.S. Bank Account Holders may continue in the ordinary course); (ii) exercise or claim any right of set-off against any account included in the Cash Management System, other than set-off permitted pursuant to paragraph 8 against applicable Authorized Cash Collateral solely in respect of any Cash Management Obligations; or (iii) subject to paragraph 6(d)(ii), modify the Cash Management System;

(c) any of the Cash Management Banks may rely on the representations of the applicable Just Energy Entities with respect to whether any cheques or other payment order drawn or issued by the applicable Just Energy Entity prior to, on, or subsequent to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for: (i) relying on such representations by the applicable Just Energy Entities as provided for herein; or (ii) honouring any cheque (whether made before, on or after the date hereof) in a good faith belief that the Court has authorized such cheque or item to be honoured;

(d) (i) those certain existing deposit agreements between the Just Energy Entities and the Cash Management Banks shall continue to govern the post-filing cash management relationship between the Just Energy Entities and the Cash Management Banks, and

that all of the provisions of such agreements shall remain in full force and effect; (ii)(A) changes to the Cash Management System in accordance with the Lender Support Agreement shall be permitted; and (B) the Just Energy Entities, with the consent of the Monitor, the DIP Agent, the majority of the DIP Lenders and the Cash Management Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, where such changes are not otherwise implemented pursuant to paragraph 6(d)(ii)(A); (iii) all control agreements in existence prior to the date of this Order shall apply; and (iv) the Cash Management Banks are authorized to debit the Just Energy Entities' accounts in the ordinary course of business in accordance with the Cash Management System arrangements without the need for further order of this Court for all undisputed Cash Management Obligations owing to the Cash Management Banks;

(e) the Cash Management Banks shall be entitled to the benefit of and are hereby granted a charge (the "**Cash Management Charge**") on the Property to secure the Cash Management Obligations due and owing and that have not been paid in accordance with the applicable Cash Management Arrangements (as defined in the Lender Support Agreement). The Cash Management Charge shall have the priority set out in paragraphs 53-55 herein; and

(f) the Just Energy Entities are authorized but not directed to continue to operate under the merchant processing agreements with JPMorgan Chase Bank, N.A., Paymentech, LLC ("**Paymentech**") (collectively and as amended, restated, supplemented, or otherwise modified from time to time, the "**Merchant Processing Agreement**"). The Just Energy Entities are authorized to pay or reimburse Paymentech for fees, charges, refunds, chargebacks, reserves and other amounts due and owing from the Just Energy Entities to Paymentech (the "**Merchant Services Obligations**") whether such obligations are incurred prior to, on or after the date hereof, and Paymentech is authorized to receive or obtain payment for such Merchant Services Obligations, as provided under, and in the manner set forth in, the Merchant Processing Agreement, including, without limitation, by way of recoupment or set-off without further order of the Court.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Just Energy Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Just Energy Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided, however, that the Just Energy Entities, until further order of this Court, are hereby permitted, subject to the terms of the Definitive Documents: (i) with the consent of the Monitor, to provide cash collateral ("**Authorized Cash Collateral**") to third parties (the "**Collateral Recipients**"), including to the Cash Management Banks in accordance with the Lender Support Agreement, with respect to obligations incurred before, on or after the date hereof, and to grant security interests in such Authorized Cash Collateral in favour of the Collateral Recipients, where so doing is necessary to operate the Business in the normal course during these proceedings; (ii) subject to the terms of the Lender Support Agreement, to reimburse the reasonable documented fees and disbursements of one Canadian legal counsel, one U.S. legal counsel, one local counsel in Texas and one financial advisor to the agent (the "**CA Agent**") and the lenders (the "**CA Lenders**") under the Credit Agreement, whether incurred before or after the date of this Order; (iii) subject to the terms of the Lender Support Agreement, to pay all non-default interest and fees to the CA Agent and the CA Lenders in accordance with its terms; and (iv) to repay advances under the Credit Agreement solely for the purpose of creating availability under the Revolving Facilities in order for the Just Energy Entities to request the issuance of Letters of Credit under the Revolving Facilities to continue to operate the Business in the ordinary course during these proceedings, subject to: (A) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit under the Revolving Facilities; and (B) receipt of written confirmation from the applicable CA Lender(s) under the Credit Agreement that such CA Lender(s) will issue a Letter of Credit of equal value within one (1) Business Day thereafter. Capitalized terms used but not otherwise defined in this paragraph shall have the meanings ascribed thereto in the Credit Agreement.

8. **THIS COURT ORDERS** that the holders of cash collateral provided by the Just Energy Entities prior to the date hereof or any Collateral Recipients of Authorized Cash Collateral (the foregoing, collectively, "**Cash Collateral**") shall be authorized to exercise any available rights of

set-off in respect of such Cash Collateral with respect to obligations secured thereby, whether incurred before, on or after the date hereof.

9. **THIS COURT ORDERS** that the Charges (as defined below) shall rank junior in priority to any liens, security interests and charges attached to Cash Collateral in favour of the holders thereof, and shall attach to the Cash Collateral only to the extent of any rights of any Just Energy Entity to the return of such Cash Collateral.

10. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as hereinafter defined), the Just Energy Entities shall be entitled but not required to pay the following amounts whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages (including, without limitation, the Q3 bonus described in the Munnelly Affidavit), salaries, commissions, employee benefits, contributions in respect of retirement or other benefit arrangements, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) all outstanding and future amounts owing to or in respect of other workers providing services in connection with the Business and payable on or after the date of this Order, incurred in the ordinary course of business and consistent with existing arrangements;

(c) the fees and disbursements of any Assistants retained or employed by the Just Energy Entities in respect of these proceedings at their standard rates and charges, which, in the case of the Financial Advisor (as defined below) shall be the amounts payable in accordance with the Financial Advisor Agreement (as defined below);

(d) with the consent of the Monitor in consultation with the agent under the Credit Agreement (or its advisors), amounts owing for goods or services actually provided to any of the Just Energy Entities prior to the date of this Order by third parties, if, in the opinion of the Just Energy Entities, such third party is critical to the Business and ongoing operations of the Just Energy Entities;

(e) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) not covered by paragraph 12 of this Order, and whereby the nonpayment of

which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such nonpayment; and

(f) taxes related to revenue, State income or operations incurred or collected by a Just Energy Entity in the ordinary course of business.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Just Energy Entities shall be entitled but not required to pay all reasonable expenses incurred by the Just Energy Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Just Energy Entities following the date of this Order.

12. **THIS COURT ORDERS** that the Just Energy Entities shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Just Energy Entities in connection with the sale of goods and services by the Just Energy Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Just Energy Entities.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Just Energy Entities shall, subject to such requirements as are imposed by the CCAA and subject to the terms of the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their Business or operations;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

(c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Just Energy Entities to proceed with an orderly restructuring of the Just Energy Entities and/or the Business (the "**Restructuring**").

LEASES

14. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Just Energy Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Just Energy Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. **THIS COURT ORDERS** that the Just Energy Entities shall provide each of the relevant landlords with notice of the relevant Just Energy Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Just Energy Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Just Energy Entity, or by further Order of this Court upon application by the Just Energy Entities on at least two (2) days notice to such landlord and any such secured creditors. If any Just Energy Entity disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

16. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (i) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Just Energy Entity and the Monitor 24 hours' prior written notice, and (ii) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Just Energy Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE JUST ENERGY ENTITIES, THE BUSINESS OR THE PROPERTY

17. **THIS COURT ORDERS** that until and including June 4, 2021 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process before any court, tribunal, agency or other legal or, subject to paragraph 18, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Just Energy Entities or the

Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Just Energy Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Just Energy Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, foreign regulatory body or agency or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Just Energy Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Just Energy Entities to carry on any business which the Just Energy Entities are not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. **THIS COURT ORDERS** that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales against or in respect of the Just Energy Entities or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court on notice to the Service List.

NO INTERFERENCE WITH RIGHTS

20. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Just Energy Entities except with

the written consent of the Just Energy Entities and the Monitor, leave of this Court or as permitted under any Qualified Support Agreement or the Lender Support Agreement.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that during the Stay Period, except as permitted under any Qualified Support Agreement or the Lender Support Agreement, all Persons having oral or written agreements with any Just Energy Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Just Energy Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Just Energy Entities, and that the Just Energy Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Just Energy Entities in accordance with normal payment practices of the Just Energy Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Just Energy Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. **THIS COURT ORDERS** that, subject to paragraph 30 but notwithstanding any other paragraphs of this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Just Energy Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

23. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Second Carter Affidavit and attached as Confidential Appendix "Q" thereto, is

hereby approved and the Just Energy Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

24. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed the aggregate amount of C$2,012,100 for Canadian dollar payments and US$ 3,876,024 for U.S. dollar payments, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 53-55 herein.

LENDER SUPPORT AGREEMENT

25. **THIS COURT ORDERS** that the Lender Support Agreement is hereby ratified and approved and that, upon the occurrence of a termination event under the Lender Support Agreement, the CA Lenders may exercise the rights and remedies available to them under the Lender Support Agreement in accordance with the terms thereof.

PRE-FILING SECURITY INTERESTS

26. **THIS COURT ORDERS** that any obligations secured by a valid, enforceable and perfected security interest upon or in respect of any of the Property pursuant to a security agreement which includes as collateral thereunder any Property acquired after the date of the applicable security agreement ("**After-Acquired Property**"), shall continue to be secured by the Property (including After Acquired Property that may be acquired by the applicable Just Energy Entities after the commencement of these proceedings) notwithstanding the commencement of these proceedings, subject to the priority set out in paragraphs 53-55 herein.

COMMODITY SUPPLIERS

27. **THIS COURT ORDERS** that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the "**Priority Commodity/ISO Charge**") on the Property in an amount equal to the value of the Priority Commodity/ISO Obligations. The value of the Priority Commodity/ISO Obligations shall be determined in accordance with the terms of the existing agreements or arrangements between the applicable Just Energy Entity and the Qualified Commodity/ISO Supplier or, in the event of any dispute, by the

Court. The Priority Commodity/ISO Charge shall have the priority set out in paragraphs 53-55 herein.

28. **THIS COURT ORDERS** that the Commodity/ISO Supplier Support Agreements are hereby ratified, approved and deemed to be Qualified Support Agreements.

29. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver up to eight (8) Qualified Support Agreements.

30. **THIS COURT ORDERS** that upon the occurrence of an event of default under a Qualified Support Agreement, the applicable Qualified Commodity/ISO Supplier may exercise the rights and remedies available to it under its Qualified Support Agreement, or upon five (5) days' notice to the Just Energy Entities, the Monitor and the Service List, may apply to this Court to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to its Commodity Agreement or ISO Agreement and the Priority Commodity/ISO Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities provided that a Qualified Commodity/ISO Supplier may, unless otherwise ordered by the Court, terminate any Commodity Agreements and Qualified Support Agreements entered into after May 26, 2021 without obtaining the Court's authorization in the event that: (i) an Order is granted in these proceedings that authorizes 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 (as defined below); or (ii) these proceedings or the recognition proceedings under Chapter 15 of the United States Bankruptcy Code are dismissed or converted to a liquidation proceeding, including a receivership, bankruptcy, proceeding under Chapter 7 of the United States Bankruptcy Code or otherwise.

31. **THIS COURT ORDERS** that the Monitor shall provide a report on the value of the Priority Commodity/ISO Obligations as of the last day of each calendar month by posting such report on the Monitor's Website (as defined below) within three (3) Business Days of such calendar month end.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

32. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Just Energy Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Just Energy Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Just Energy Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Just Energy Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

33. **THIS COURT ORDERS** that each of the Just Energy Entities shall jointly and severally indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Just Energy Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

34. **THIS COURT ORDERS** that the directors and officers of the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of C$44,100,000, as security for the indemnity provided in paragraph 33 of this Order. The Directors' Charge shall have the priority set out in paragraphs 53-55 herein.

35. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the Just Energy Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 33.

APPOINTMENT OF MONITOR

36. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Just Energy Entities with the powers and obligations set out in the CCAA or set forth herein and that the Just Energy Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Just Energy Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Just Energy Entities' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Just Energy Entities, to the extent required by the Just Energy Entities, in their dissemination to the DIP Agent, the DIP Lenders and their counsel of financial and other information in accordance with the Definitive Documents;

(d) advise the Just Energy Entities in their preparation of the Just Energy Entities' cash flow statements and reporting required by the DIP Agent and DIP Lenders, which information shall be reviewed with the Monitor and delivered to the DIP Agent and DIP Lenders and their counsel in accordance with the Definitive Documents;

(e) advise the Just Energy Entities in their development of a Plan and any amendments to a Plan;

(f) assist the Just Energy Entities, to the extent required by the Just Energy Entities, with the holding and administering of creditors' or shareholders' meeting for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Just Energy Entities, wherever located and to the extent that is necessary to adequately assess the Just Energy Entities' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

38. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Just Energy Entities and the DIP Agent and the DIP Lenders with information provided by the Just Energy Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Just Energy Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

41. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor (including both U.S. and Canadian counsel for all purposes of this Order), and counsel to the Just Energy Entities (including both U.S. and Canadian counsel for all purposes of this Order) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the Just Energy Entities as part of the costs of these proceedings. The Just Energy Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the Just Energy Entities' counsel on a weekly basis.

43. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

44. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of C$3,000,000 as security for their professional fees and disbursements incurred at their standard

rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 53-55 herein.

DIP FINANCING

45. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, pursuant a credit facility from the DIP Agent and the DIP Lenders in order to finance the Just Energy Entities' working capital requirements and other general corporate purposes, all in accordance with the Cash Flow Statements (as defined in the DIP Term Sheet) and Definitive Documents, provided that borrowings under such credit facility shall not exceed US$125,000,000 unless permitted by further Order of this Court.

46. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities, the DIP Agent and the DIP Lenders dated as of March 9, 2021 and attached as Appendix "DD" to the First Carter Affidavit (as may be amended or amended and restated from time to time, the "**DIP Term Sheet**").

47. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet and the Cash Flow Statements, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Just Energy Entities are hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order. Notwithstanding any other provision in this Order, all payments and other expenditures to be made by any of the Just Energy Entities to any Person (except the Monitor and its counsel) shall be in accordance with the terms of the Definitive Documents, including in respect of payments in satisfaction of Priority Commodity/ISO Obligations.

48. **THIS COURT ORDERS** that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lenders' Charge**") on the Property, which DIP Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders' Charge shall have the priority set out in paragraphs 53-55 hereof.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent on behalf of the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lenders' Charge, the DIP Agent or the DIP Lenders, as applicable, may immediately cease making advances or providing any credit to the Just Energy Entities and shall be permitted to set off and/or consolidate any amounts owing by the DIP Agent or the DIP Lenders to the Just Energy Entities against the obligations of the Just Energy Entities to the DIP Agent and the DIP Lenders under the Definitive Documents or the DIP Lenders' Charge, make demand, accelerate payment and give other notices with respect to the obligations of the Just Energy Entities to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Lenders' Charge, or to apply to this Court on five (5) days' notice to the Just Energy Entities, the Monitor and the Service List to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities; and

(c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Just Energy Entities or the Property.

50. **THIS COURT ORDERS AND DECLARES** that the DIP Agent, the DIP Lenders, the Qualified Commodity/ISO Suppliers and the Cash Management Banks shall be treated as

unaffected in any Plan filed by the Applicants or any of them under the CCAA, or any proposal filed by the Applicants or any of them under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents, the Priority Commodity/ISO Obligations or the Cash Management Obligations, as applicable.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

51. **THIS COURT ORDERS** that the agreement dated February 20, 2021 engaging BMO Nesbitt Burns Inc. (the "**Financial Advisor**") as financial advisor to the Just Energy Entities and attached as Confidential Appendix "FF" to the First Carter Affidavit (the "**Financial Advisor Agreement**"), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and the Just Energy Entities are authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

52. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**FA Charge**") on the Property, which charge shall not exceed an aggregate amount of C$8,600,000 as security for the fees and disbursements and other amounts payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 53-55 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

53. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, as among them, shall be as follows:

First – Administration Charge and FA Charge (to the maximum amount of C$3,000,000 and C$8,600,000, respectively), on a *pari passu* basis;

Second – Directors' Charge (to the maximum amount of C$44,100,000);

Third – KERP Charge (to the maximum amounts of C$2,012,100 and US$3,876,024);

Fourth – DIP Lenders' Charge (to the maximum amount of the Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time) and the Priority Commodity/ISO Charge, on a *pari passu* basis; and

Fifth – Cash Management Charge.

54. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge or the Cash Management Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

55. **THIS COURT ORDERS** that, subject to paragraph 9, each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person (including those commodity suppliers listed in Schedule "A" hereto).

56. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Just Energy Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Just Energy Entities also obtain the prior written consent of the Monitor, the DIP Agent on behalf of the DIP Lenders and the beneficiaries of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, or further Order of this Court.

57. **THIS COURT ORDERS** that the Charges, the agreements and other documents governing or otherwise relating to the obligations secured by the Charges, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Agent or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made

pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Just Energy Entities and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any Just Energy Entity of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Just Energy Entities entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of any of the other Definitive Documents; and

(c) the payments made by the Just Energy Entities pursuant to this Order or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Just Energy Entities' interest in such real property leases.

SERVICE AND NOTICE

59. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Just Energy Entities, a notice to every known creditor who has a claim against the Just Energy Entities of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the

prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

60. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall haven no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

61. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL - http://cfcanada.fticonsulting.com/justenergy (the "**Monitor's Website**").

62. **THIS COURT ORDERS** that the Just Energy Entities, the DIP Agent or the DIP Lenders and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal deliver, facsimile or other electronic transmission to the Just Energy Entities' creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

FOREIGN PROCEEDINGS

63. **THIS COURT ORDERS** that the Applicant, Just Energy Group Inc. ("**JEGI**") is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

64. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

65. **THIS COURT ORDERS** that any interested party may apply to this Court to amend or vary this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set out in paragraphs 53-55 hereof, including with respect to any fees, expenses and disbursements incurred and in respect of advances made under the Definitive Documents or pursuant to the Qualified Support Agreement, as applicable, until the date this Order may be amended, varied or stayed. For the avoidance of doubt (i) no payment in respect of any obligations secured by the Priority Commodity/ISO Charge or the Cash Management Charge or made to the CA Lenders pursuant to the Lender Support Agreement, and (ii) none of the Authorized Cash Collateral, shall be subject to the terms of any intercreditor agreement, including any "turnover" or "waterfall" provision(s) therein.

66. **THIS COURT ORDERS** that, notwithstanding paragraph 65 of this Order, the Just Energy Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

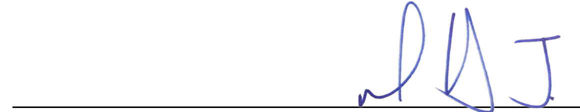
67. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Just Energy Entities, the Business or the Property.

68. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Just Energy Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to JEGI, in any foreign proceeding, or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

69. **THIS COURT ORDERS** that each of the Just Energy Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that JEGI is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

70. **THIS COURT ORDERS** that Confidential Appendices "FF" and "GG" to the First Carter Affidavit and Confidential Appendix "Q" to the Second Carter Affidavit shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

71. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



SCHEDULE "A"

JE Partnerships

Partnerships:

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

Commodity Suppliers:

- EXELON GENERATION COMPANY, LLC
- BRUCE POWER L.P.
- SOCIÉTÉ GÉNÉRALE
- EDF TRADING NORTH AMERICA, LLC
- NEXTERA ENERGY POWER MARKETING, LLC
- MACQUARIE BANK LIMITED
- MACQUARIE ENERGY CANADA LTD.
- MACQUARIE ENERGY LLC
- MORGAN STANLEY CAPITAL GROUP

- BP CANADA ENERGY MARKETING CORP.
- BP ENERGY COMPANY
- BP CORPORATION NORTH AMERICA INC.
- BP CANADA ENERGY GROUP ULC
- SHELL ENERGY NORTH AMERICA (CANADA) INC.
- SHELL ENERGY NORTH AMERICA (US), L.P.

SCHEDULE "B"

DEFINITIONS

"**Commodity Agreement**" means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement.

"**ISO Agreement**" means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

"**Lender Support Agreement**" means that certain Accommodation and Support Agreement dated as of March 18, 2021 and attached as Exhibit "A" to the Third Carter Affidavit, among the CA Agent, the CA Lenders and the Just Energy Entities, which agreement shall not be amended, restated or modified in any manner without the consent of the majority of the DIP Lenders and the Monitor.

"**Priority Commodity/ISO Obligation**" means amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under an ISO Agreement on or before the date of this Order, whether or not yet due).

"**Qualified Commodity/ISO Supplier**" means any counterparty to a Commodity Agreement or ISO Agreement that has executed or executes a Qualified Support Agreement with a Just Energy Entity and refrained from exercising any available termination rights, under the Commodity

Agreement as a result of the commencement of the Proceedings absent an event of default under such Qualified Support Agreement.

"**Qualified Support Agreement**" means a support agreement between a Just Energy Entity and a counterparty to a Commodity Agreement, in form and substance satisfactory to the Just Energy Entities and the DIP Lenders, acting reasonably, which includes, among other things: (i) that such counterparty shall apply to the Court on five (5) days' notice to the Just Energy Entities, the Monitor and the Service List prior to exercising any termination rights under a Qualified Support Agreement, except as expressly provided for herein; (ii) the obligation to supply physical and financial power and natural gas and other related services pursuant to any confirmations or transactions executed pursuant to a Commodity Agreement; and (iii) an agreement to refrain from exercising termination rights as a result of the commencement of these proceedings absent an event of default under such support agreement.

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 (collectively, the "**Applicants**")

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

SECOND AMENDED & RESTATED INITIAL ORDER

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Lawyers for the Applicants

APPENDIX "B"

Cash Flow Forecast for the period ending March 12, 2022

APPENDIX "B"

Cash Flow Forecast for the period ending March 12, 2022

Weeks Ending (Saturday) *(CAD$ in millions)*		2/5/22 Forecast	2/12/22 Forecast	2/19/22 Forecast	2/26/22 Forecast	3/5/22 Forecast	3/12/22 Forecast	Through 3/12/22
Forecast Week		**Wk 1**	**Wk 2**	**Wk 3**	**Wk 4**	**Wk 5**	**Wk 6**	**Total**
RECEIPTS								
Sales Receipts	[1]	$59.9	$64.8	$66.8	$63.6	$49.1	$44.9	$349.1
Miscellaneous Receipts	[2]	-	-	-	-	-	-	-
Total Receipts		$59.9	$64.8	$66.8	$63.6	$49.1	$44.9	$349.1
DISBURSEMENTS								
Operating Disbursements								
Energy and Delivery Costs	[3]	($76.0)	$49.0	($127.2)	($19.4)	($70.9)	($12.9)	($257.3)
Payroll	[4]	(0.0)	(3.6)	-	(4.1)	(4.6)	(3.3)	(15.7)
Taxes	[5]	(4.8)	(0.1)	-	(6.3)	-	(0.0)	(11.2)
Commissions	[6]	(1.4)	(1.1)	(2.7)	(4.3)	(1.4)	(1.0)	(12.0)
Selling and Other Costs	[7]	(3.9)	(3.2)	(3.2)	(3.2)	(2.8)	(2.8)	(19.1)
Total Operating Disbursements		($86.0)	$40.9	($133.1)	($37.3)	($79.8)	($20.0)	($315.3)
OPERATING CASH FLOWS		($26.1)	$105.7	($66.4)	$26.3	($30.6)	$24.9	$33.8
Financing Disbursements								
Credit Facility - Borrowings / (Repayments)	[8]	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Interest Expense & Fees	[9]	(1.0)	-	-	-	(0.9)	-	(1.9)
Restructuring Disbursements								
Professional Fees	[10]	(0.2)	(1.0)	(0.5)	(3.6)	(1.9)	(1.2)	(8.4)
NET CASH FLOWS		**($27.3)**	**$104.7**	**($66.9)**	**$22.8**	**($33.4)**	**$23.7**	**$23.5**
CASH								
Beginning Balance		$131.9	$104.6	$209.3	$142.4	$165.1	$131.7	$131.9
Net Cash Inflows / (Outflows)		(27.3)	104.7	(66.9)	22.8	(33.4)	23.7	23.5
Other (FX)		-	-	-	-	-	-	-
ENDING CASH		**$104.6**	**$209.3**	**$142.4**	**$165.1**	**$131.7**	**$155.4**	**$155.4**
BORROWING SUMMARY								
DIP Facility Credit Limit		$157.5	$157.5	$157.5	$157.5	$157.5	$157.5	
DIP Draws		-	-	-	-	-	-	
DIP Principal Outstanding		157.5	157.5	157.5	157.5	157.5	157.5	
DIP Availability		$ -	$ -	$ -	$ -	$ -	$ -	

1. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.

2. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.

3. Energy & Delivery costs reflect the purchase energy from suppliers and the cost of delivery and transmission to the Company's customers.

4. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of payroll taxes and any payments associated with the Company's bonus programs.

5. Taxes reflect the remittance of applicable state and local taxes.

6. Commissions include fees paid to customer acquisition contractors and suppliers.

7. Selling and Other Costs include selling, general, and administrative payments.

8. The Credit Facility Borrowings / (Repayments) show borrowings and repayments under the Company's credit facilities.

9. Interest expenses & fees include interest and fees on the Company's credit and LC facilities.

10. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, the DIP lenders' professionals, and fees for Lender Support and Certain Commodity Support Agreements.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an "**Applicant**", and collectively, the "**Applicants**")

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

FIFTH REPORT OF THE MONITOR

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
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File 99380

February 4, 2022

VIA EMAIL **WITH PREJUDICE**

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Dear Counsel:

Re: Just Energy Group Inc.
Court File No. CV-21-00658423-00CL

We write further to the Applicants' proposal for a process for the adjudication of the *Donin* and *Jordet* claims together in the *CCAA* proceeding forwarded to us by you on February 1, 2022.

The Applicants' proposal is not accepted. The timelines proposed are not sufficiently expedited to ensure that the Class Claimants can meaningfully participate in the *CCAA* process.

The enclosed table sets forth a counter proposal in respect of the adjudication of the *Donin* and *Jordet* claims (the "**Claims**"), which has the Claims heard together pursuant to the JAMS US Expedited Procedures arbitration rules (the "**Expedited Adjudication Framework**") by a tripartite panel of two US arbitrators and one Canadian arbitrator (the "**Claims Officers**"). The Class Claimants propose that the Honourable Mr. Dennis O'Connor sit as the Canadian arbitrator.

The Expedited Adjudication Framework contemplates that the Claims Officers will have complete jurisdiction and discretion to determine the appropriate process within the JAMS US expedited rules and with consideration to an endorsement from the *CCAA* court that the deadline for the release of a decision on the merits shall be three days prior to the meeting of creditors (implying an outside date of March 27, 2022, as it appears as though the DIP lender is requesting a timeline that would have a vote on March 30, 2022). This deadline may be extended by the *CCAA* court on a motion for directions on notice to the parties and the service list. Any appeal would be to the *CCAA* court.

Class Counsel was prepared to send a proposal for a process that resulted in a decision of the merits in May, 2022, but it has modified its proposed timing according to the information in the Monitor's Fifth Report (which we received at approximately 3:20 pm this afternoon, before we had an opportunity to send the earlier version of our proposed Expedited Adjudication Framework). The report states that the DIP lender has demanded a timeline that would require a vote no later than March 30, 2022.

In order for the Court to accommodate the DIP lenders' request, the Class Claimants require a determination of their Claims pursuant to the Expedited Adjudication Framework on the earlier of three days before the meeting of creditors and March 27, 2022.

Neither the Monitor's Fifth Report nor the other materials filed on this motion disclose a commercial basis for the DIP lenders' timeline, but our clients have nevertheless modified their proposed schedule to consider the DIP lenders' position. If there is information that shows a commercial basis for the DIP lenders' timeline, our clients have not been provided with access to that information.

The Expedited Adjudication Framework establishes a time-sensitive process that addresses and protects the rights and interests of the parties and ensures that all questions about scope, jurisdiction, discovery or any other matter will be dealt with efficiently by the very panel that will hear the case. This process will provide a comprehensive resolution of the Class Claimants' claims in a flexible, expeditious and efficient manner.

The Expedited Adjudication Framework is conditional on the necessary parties supporting the plan confirming that the adoption of this timetable will result in the Claims being adjudicated in the first instance in time for the Class Claimants to participate in the *CCAA* exit plan and vote in accordance with the amount of their Claims determined at the end of the proposed adjudication.

We look forward to the Applicants' response to our proposal. We would like to work together to see if we can come to an agreement before the hearing on February 9, 2022.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Ken Rosenberg
KR:DG

c: Jeff Larry, Danielle Glatt – Paliare Roland LLP
Robert Thornton, Rebecca Kennedy, Puya Fesharaki – TGF LLP
Clients

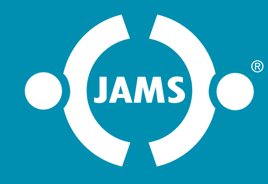
Step	Description	Proposed Schedule
Claims Officers selection and authority	The parties will agree on a tripartite panel of arbitrators to act as the Claims Officers. The chair of the panel shall be the Honourable Mr. Dennis O'Connor (subject to availability). If the chair of the panel is not the Honourable Mr. Dennis O'Connor, the parties will agree to another Canadian arbitrator, with prior CCAA experience Each party will then select one arbitrator from the JAMS (U.S.) pool of neutrals with both: (i) prior arbitration experience; and (ii) experience with class action cases. Pre-hearing discovery and the hearing will be conducted in accordance with the expedited procedures of the JAMS Comprehensive Arbitration Rules and Procedures governing binding Arbitrations of claims. *See* https://www.jamsadr.com/rules-comprehensive-arbitration/ and "Expedited Procedures" -- Rule 16.1 (hereafter the "**Expedited Procedures**" attached hereto).	February 14, 2022
Procedure	Any determinations in respect of the scope of the Class Claimants' claims (for example, what states and customers they cover and what entities it includes) will be determined by the Claims Officers in accordance with the Expedited Procedures -- Rule 16.1 and the endorsement of the Court that the Class Claimants' claims be determined three days prior to the meeting of creditors. All issues related to discovery, including both productions and depositions, and the determination of when and how class certification will be briefed and argued, shall also be determined	

	by the Claims Officers in accordance with the Expedited Procedures and the endorsement of the Court that the Class Claimants' claims be determined three days prior to the meeting of creditors.	
Hearing	Hearing dates shall be determined by the Claims Officers in accordance with the Expedited Rules and the endorsement of the Court that this matter be determined three days prior to the meeting of creditors.	
Decision	The Court will endorse that the Claims Officers shall provide an expedited written ruling, which decision will be binding on all parties for purposes of the *CCAA* proceeding, three days prior to the meeting of creditors (implying an outside date of March 27, 2022, as it appears as though the DIP lender is requesting a timeline that would have a vote on March 30, 2022). This deadline may be extended by the CCAA court on a motion for directions on notice to the parties and the service list	Three days prior to the meeting of creditors (implying an outside date of March 27, 2022)
Appeals	Either party may file an appeal to the *CCAA* court within five (5) days of the written ruling.	Appeal to be filed within five (5) days of judgment.

JAMS Comprehensive Arbitration Rules & Procedures

Effective June 1, 2021

Local Solutions. Global Reach.®



JAMS Comprehensive Arbitration Rules & Procedures

Founded in 1979, JAMS is the largest private provider of alternative dispute resolution (ADR) services worldwide. Our neutrals resolve some of the world's largest, most complex and contentious disputes, utilizing JAMS Rules & Procedures as well as the rules of other domestic and international arbitral institutions.

JAMS mediators and arbitrators are full-time neutrals who come from the ranks of retired state and federal judges and prominent attorneys. These highly trained, experienced ADR professionals are dedicated to the highest ethical standards of conduct. Whether they are conducting in-person, remote or hybrid hearings, JAMS neutrals are adept at managing the resolution process.

Effective June 1, 2021, these updated Rules reflect the latest developments in arbitration. They make explicit the arbitrator's full authority to conduct hearings in person, virtually or in a combined form, and with participants in more than one geographic location. They also update electronic filing processes to coordinate with **JAMS Access**, our secure, online case management platform.

Summary of Revisions to the Comprehensive Rules

Scan this code with your smartphone for a complete list of all changes.

Additional Arbitration Resources

Arbitration Schedule of Fees and Costs

Scan for details on our professional and administrative fees.

Latest JAMS Rules Updates

Scan for links to our updated **Streamlined, Construction, Expedited Construction** and **Employment** rules.

Sample Contract Clauses

Scan for guidance on creating custom commercial contract clauses, including our **Diversity and Inclusion** option.

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RULE 1
Scope of Rules

(a) The JAMS Comprehensive Arbitration Rules and Procedures ("Rules") govern binding Arbitrations of disputes or claims that are administered by JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, any disputed claim or counterclaim that exceeds $250,000, not including interest or attorneys' fees, unless other Rules are prescribed.

(b) The Parties shall be deemed to have made these Rules a part of their Arbitration Agreement ("Agreement") whenever they have provided for Arbitration by JAMS under its Comprehensive Rules or for Arbitration by JAMS without specifying any particular JAMS Rules and the disputes or claims meet the criteria of the first paragraph of this Rule.

(c) The authority and duties of JAMS as prescribed in the Agreement of the Parties and in these Rules shall be carried out by the JAMS National Arbitration Committee ("NAC") or the office of JAMS General Counsel or their designees.

(d) JAMS may, in its discretion, assign the administration of an Arbitration to any of its Resolution Centers.

(e) The term "Party" as used in these Rules includes Parties to the Arbitration and their counsel or representatives.

(f) "Electronic filing" (e-filing) means the electronic transmission of documents to JAMS for the purpose of filing via the Internet. "Electronic service" (e-service) means the electronic transmission of documents to a Party, attorney or representative under these Rules.

RULE 2
Party Self-Determination and Emergency Relief Procedures

(a) The Parties may agree on any procedures not specified herein or in lieu of these Rules that are consistent with the applicable law and JAMS policies (including, without limitation, Rules 15(i), 30 and 31). The Parties shall promptly notify JAMS of any such Party-agreed procedures and shall confirm such procedures in writing. The Party-agreed procedures shall be enforceable as if contained in these Rules.

(b) When an Arbitration Agreement provides that the Arbitration will be non-administered or administered by an entity other than JAMS and/or conducted in accordance with rules other than JAMS Rules, the Parties may agree to modify that Agreement to provide that the Arbitration will be administered by JAMS and/or conducted in accordance with JAMS Rules.

(c) Emergency Relief Procedures. These Emergency Relief Procedures are available in Arbitrations filed and served after July 1, 2014, and where not otherwise prohibited by law. Parties may agree to opt out of these Procedures in their Arbitration Agreement or by subsequent written agreement.

(i) A Party in need of emergency relief prior to the appointment of an Arbitrator may notify JAMS and all other Parties in writing of the relief sought and the basis for an Award of such relief. This Notice shall include an explanation of why such relief is needed on an expedited basis. Such Notice shall be given by email or personal delivery. The Notice must include a statement certifying that all other Parties have been notified. If all other Parties have not been notified, the Notice shall include an explanation of the efforts made to notify such Parties.

(ii) JAMS shall promptly appoint an Emergency Arbitrator to rule on the emergency request. In most cases the appointment of an Emergency Arbitrator will be done within 24 hours of receipt of the request. The Emergency Arbitrator shall promptly disclose any circumstance likely, based on information disclosed in the application, to affect the Arbitrator's ability to be impartial or independent. Any challenge to the appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. JAMS will promptly review and decide any such challenge. JAMS' decision shall be final.

(iii) Within two business days, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency relief. The schedule shall provide a reasonable opportunity for all Parties to be heard taking into account the nature of the relief sought. The Emergency Arbitrator has the authority to rule on his or her own jurisdiction and shall resolve any disputes with respect to the request for emergency relief.

(iv) The Emergency Arbitrator shall determine whether the Party seeking emergency relief has shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting Party is entitled to such relief. The Emergency Arbitrator shall enter an order or Award granting or denying the relief, as the case may be, and stating the reasons therefor.

(v) Any request to modify the Emergency Arbitrator's order or Award must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as an Arbitrator or Arbitrators are appointed in accordance with the Parties' Agreement and JAMS' usual procedures. Thereafter, any request related to the relief granted or denied by the Emergency Arbitrator shall be determined by the Arbitrator(s) appointed in accordance with the Parties' Agreement and JAMS' usual procedures.

(vi) In the Emergency Arbitrator's discretion, any interim Award of emergency relief may be conditioned on the provision of adequate security by the Party seeking such relief.

RULE 3
Amendment of Rules

JAMS may amend these Rules without notice. The Rules in effect on the date of the commencement of an Arbitration (as defined in Rule 5) shall apply to that Arbitration, unless the Parties have agreed upon another version of the Rules.

RULE 4
Conflict with Law

If any of these Rules, or modification of these Rules agreed to by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected.

RULE 5
Commencing an Arbitration

(a) The Arbitration is deemed commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

(i) A post-dispute Arbitration Agreement fully executed by all Parties specifying JAMS administration or use of any JAMS Rules; or

(ii) A pre-dispute written contractual provision requiring the Parties to arbitrate the dispute or claim and specifying JAMS administration or use of any JAMS Rules or that the Parties agree shall be administered by JAMS; or

(iii) A written confirmation of an oral agreement of all Parties to participate in an Arbitration administered by JAMS or conducted pursuant to any JAMS Rules; or

(iv) The Respondent's failure to timely object to JAMS administration, where the Parties' Arbitration Agreement does not specify JAMS administration or JAMS Rules; or

(v) A copy of a court order compelling Arbitration at JAMS.

(b) The issuance of the Commencement Letter confirms that requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the Claimant has provided JAMS with contact information for all Parties together with evidence that the Demand for Arbitration has been served on all Parties.

(c) If a Party that is obligated to arbitrate in accordance with subparagraph (a) of this Rule fails to agree to participate in the Arbitration process, JAMS shall confirm in writing that Party's failure to respond or participate, and, pursuant to Rule 22(j), the Arbitrator, once appointed, shall schedule, and provide appropriate notice of, a Hearing or other opportunity for the Party demanding the Arbitration to demonstrate its entitlement to relief.

(d) The date of commencement of the Arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirement, such as the statute of limitations; any contractual limitations period; or any claims notice requirement. The term "commencement," as used in this Rule, is intended only to pertain to the operation of this and other Rules (such as Rules 3, 13(a), 17(a) and 31(a)).

RULE 6
Preliminary and Administrative Matters

(a) JAMS may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.

(b) If no Arbitrator has yet been appointed, at the request of a Party and in the absence of Party agreement, JAMS may determine the location of the Hearing, subject to Arbitrator review. In determining the location of the Hearing, such factors as the subject matter of the dispute, the convenience of the

Parties and witnesses, and the relative resources of the Parties shall be considered.

(c) If, at any time, any Party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. JAMS may so inform the Parties in order that one of them may advance the required payment. If one Party advances the payment owed by a non-paying Party, the Arbitration shall proceed, and the Arbitrator may allocate the non-paying Party's share of such costs, in accordance with Rules 24(f) and 31(c). An administrative suspension shall toll any other time limits contained in these Rules or the Parties' Agreement.

(d) JAMS does not maintain an official record of documents filed in the Arbitration. If the Parties wish to have any documents returned to them, they must advise JAMS in writing within thirty (30) calendar days of the conclusion of the Arbitration. If special arrangements are required regarding file maintenance or document retention, they must be agreed to in writing, and JAMS reserves the right to impose an additional fee for such special arrangements. Documents that are submitted for e-filing are retained for thirty (30) calendar days following the conclusion of the Arbitration.

(e) Unless the Parties' Agreement or applicable law provides otherwise, JAMS, if it determines that the Arbitrations so filed have common issues of fact or law, may consolidate Arbitrations in the following instances:

(i) If a Party files more than one Arbitration with JAMS, JAMS may consolidate two or more of the Arbitrations into a single Arbitration.

(ii) Where a Demand or Demands for Arbitration is or are submitted naming Parties already involved in another Arbitration or Arbitrations pending under these Rules, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

(iii) Where a Demand or Demands for Arbitration is or are submitted naming Parties that are not identical to the Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.

Unless applicable law provides otherwise, where JAMS decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site of the Arbitration.

(f) Where a third party seeks to participate in an Arbitration already pending under these Rules or where a Party to an Arbitration under these Rules seeks to compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

RULE 7
Number and Neutrality of Arbitrators; Appointment and Authority of Chairperson

(a) The Arbitration shall be conducted by one neutral Arbitrator, unless all Parties agree otherwise. In these Rules, the term "Arbitrator" shall mean, as the context requires, the Arbitrator or the panel of Arbitrators in a tripartite Arbitration.

(b) In cases involving more than one Arbitrator, the Parties shall agree on, or, in the absence of agreement, JAMS shall designate, the Chairperson of the Arbitration Panel. If the Parties and the Arbitrators agree, a single member of the Arbitration Panel may, acting alone, decide discovery and procedural matters, including the conduct of hearings to receive documents and testimony from third parties who have been subpoenaed, in advance of the Arbitration Hearing, to produce documents.

(c) Where the Parties have agreed that each Party is to name one Arbitrator, the Arbitrators so named shall be neutral and independent of the appointing Party, unless the Parties have agreed that they shall be non-neutral.

RULE 8
Service

(a) JAMS or the Arbitrator may at any time require electronic filing and service of documents in an Arbitration, including through the JAMS Electronic Filing System. If JAMS or the Arbitrator requires electronic filing and service, the Parties shall maintain and regularly monitor a valid, usable and live email address for the receipt of documents and notifications. Any document filed via the JAMS Electronic Filing System shall

be considered as filed when the transmission to the JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender's time zone) shall be deemed filed on that date.

(b) Every document filed with the JAMS Electronic Filing System shall be deemed to have been signed by the Arbitrator, Case Manager, attorney or declarant who submits the document to the JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney.

(c) Delivery of e-service documents through the JAMS Electronic Filing System shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through the JAMS Electronic Filing System. E-service shall be deemed complete when the Party initiating e-service or JAMS completes the transmission of the electronic document(s) to the JAMS Electronic Filing System for e-filing and/or e-service.

(d) If an electronic filing and/or service via JAMS Electronic Filing System does not occur due to technical error in the transmission of the document, the Arbitrator or JAMS may, for good cause shown, permit the document to be filed and/or served *nunc pro tunc* to the date it was first attempted to be transmitted electronically. In such cases a Party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(e) For documents that are not filed electronically, service by a Party under these Rules is effected by providing one signed copy of the document to each Party and two copies in the case of a sole Arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by hand-delivery, overnight delivery service or U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document.

(f) In computing any period of time prescribed or allowed by these Rules for a Party to do some act within a prescribed period after the service of a notice or other paper on the Party and the notice or paper is served on the Party only by U.S. mail, three (3) calendar days shall be added to the prescribed period. If the last day for the performance of any act that is required by these Rules to be performed within a specific time falls on a Saturday, Sunday or other legal holiday, the period is extended to and includes the next day that is not a holiday.

RULE 9
Notice of Claims

(a) Each Party shall afford all other Parties reasonable and timely notice of its claims, affirmative defenses or counterclaims. Any such notice shall include a short statement of its factual basis. No claim, remedy, counterclaim or affirmative defense will be considered by the Arbitrator in the absence of such prior notice to the other Parties, unless the Arbitrator determines that no Party has been unfairly prejudiced by such lack of formal notice or all Parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

(b) Claimant's notice of claims is the Demand for Arbitration referenced in Rule 5. It shall include a statement of the remedies sought. The Demand for Arbitration may attach and incorporate a copy of a Complaint previously filed with a court. In the latter case, Claimant may accompany the Complaint with a copy of any Answer to that Complaint filed by any Respondent.

(c) Within fourteen (14) calendar days of service of the notice of claim, a Respondent may submit to JAMS and serve on other Parties a response and a statement of any affirmative defenses, including jurisdictional challenges, or counterclaims it may have. JAMS may grant reasonable extensions of time to file a response or counterclaim prior to the appointment of the Arbitrator.

(d) Within fourteen (14) calendar days of service of a counterclaim, a Claimant may submit to JAMS and serve on other Parties a response to such counterclaim and any affirmative defenses, including jurisdictional challenges, it may have.

(e) Any claim or counterclaim to which no response has been served will be deemed denied.

(f) Jurisdictional challenges under Rule 11 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability.

RULE 10
Changes of Claims

After the filing of a claim and before the Arbitrator is appointed, any Party may make a new or different claim against a Party or any third party that is subject to Arbitration in the proceeding. Such claim shall be made in writing, filed with JAMS and served

on the other Parties. Any response to the new claim shall be made within fourteen (14) calendar days after service of such claim. After the Arbitrator is appointed, no new or different claim may be submitted, except with the Arbitrator's approval. A Party may request a hearing on this issue. Each Party has the right to respond to any new or amended claim in accordance with Rule 9(c) or (d).

RULE 11
Interpretation of Rules and Jurisdictional Challenges

(a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

(c) Disputes concerning the appointment of the Arbitrator shall be resolved by JAMS.

(d) The Arbitrator may, upon a showing of good cause or *sua sponte*, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may be altered only in accordance with Rules 22(i) or 24.

RULE 12
Representation

(a) The Parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by counsel or any other person of the Party's choice. Each Party shall give prompt written notice to the Case Manager and the other Parties of the name, address, telephone number and email address of its representative. The representative of a Party may act on the Party's behalf in complying with these Rules.

(b) Changes in Representation. A Party shall give prompt written notice to the Case Manager and the other Parties of any change in its representation, including the name, address, telephone number and email address of the new representative. Such notice shall state that the written consent of the former representative, if any, and of the new representative, has been obtained and shall state the effective date of the new representation.

(c) The Arbitrator may withhold approval of any intended change or addition to a Party's legal representative(s) where such change or addition could compromise the ability of the Arbitrator to continue to serve, the composition of the Panel in the case of a tripartite Arbitration or the finality of any Award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Arbitrator shall have regard to the circumstances, including the general principle that a Party may be represented by a legal representative chosen by that Party, the stage that the Arbitration has reached, the potential prejudice resulting from the possible disqualification of the Arbitrator, the efficiency resulting from maintaining the composition of the Panel (as constituted throughout the Arbitration), the views of the other Party or Parties to the Arbitration and any likely wasted costs or loss of time resulting from such change or addition.

RULE 13
Withdrawal from Arbitration

(a) No Party may terminate or withdraw from an Arbitration after the issuance of the Commencement Letter (see Rule 5), except by written agreement of all Parties to the Arbitration.

(b) A Party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other Parties and the Arbitrator. However, the opposing Parties may, within seven (7) calendar days of service of such notice, request that the Arbitrator condition the withdrawal upon such terms as he or she may direct.

RULE 14
Ex Parte Communications

(a) No Party may have any *ex parte* communication with a neutral Arbitrator, except as provided in section (b) of this Rule. The Arbitrator(s) may authorize any Party to communicate directly with the Arbitrator(s) by email or other written means as long as copies are simultaneously forwarded to the JAMS Case Manager and the other Parties.

(b) A Party may have *ex parte* communication with its appointed neutral or non-neutral Arbitrator as necessary to secure the Arbitrator's services and to assure the absence of conflicts, as well as in connection with the selection of the Chairperson of the arbitral panel.

(c) The Parties may agree to permit more extensive *ex parte* communication between a Party and a non-neutral Arbitrator. More extensive communication with a non-neutral Arbitrator may also be permitted by applicable law and rules of ethics.

RULE 15
Arbitrator Selection, Disclosures and Replacement

(a) Unless the Arbitrator has been previously selected by agreement of the Parties, JAMS may attempt to facilitate agreement among the Parties regarding selection of the Arbitrator.

(b) If the Parties do not agree on an Arbitrator, JAMS shall send the Parties a list of at least five (5) Arbitrator candidates in the case of a sole Arbitrator and at least ten (10) Arbitrator candidates in the case of a tripartite panel. JAMS shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. JAMS may add names to or replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice pursuant to subparagraph (c) below.

(c) Within seven (7) calendar days of service upon the Parties of the list of names, each Party may strike two (2) names in the case of a sole Arbitrator and three (3) names in the case of a tripartite panel, and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking shall be appointed the Arbitrator. JAMS may grant a reasonable extension of the time to strike and rank the Arbitrator candidates to any Party without the consent of the other Parties.

(d) If this process does not yield an Arbitrator or a complete panel, JAMS shall designate the sole Arbitrator or as many members of the tripartite panel as are necessary to complete the panel.

(e) If a Party fails to respond to a list of Arbitrator candidates within seven (7) calendar days after its service, or fails to respond according to the instructions provided by JAMS, JAMS shall deem that Party to have accepted all of the Arbitrator candidates.

(f) Entities or individuals whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of the Arbitrator selection process. JAMS shall determine whether the interests between entities or individuals are adverse for purposes of Arbitrator selection, considering such factors as whether they are represented by the same attorney and whether they are presenting joint or separate positions at the Arbitration.

(g) If, for any reason, the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator shall be chosen in accordance with this Rule. If a member of a panel of Arbitrators becomes unable to fulfill his or her duties after the beginning of a Hearing but before the issuance of an Award, a new Arbitrator will be chosen in accordance with this Rule, unless, in the case of a tripartite panel, the Parties agree to proceed with the remaining two Arbitrators. JAMS will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties, and that decision shall be final.

(h) Any disclosures regarding the selected Arbitrator shall be made as required by law or within ten (10) calendar days from the date of appointment. Such disclosures may be provided in electronic format, provided that JAMS will produce a hard copy to any Party that requests it. The Parties and their representatives shall disclose to JAMS any circumstance likely to give rise to justifiable doubt as to the Arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the Parties or their representatives. The obligation of the Arbitrator, the Parties and their representatives to make all required disclosures continues throughout the Arbitration process.

(i) At any time during the Arbitration process, a Party may challenge the continued service of an Arbitrator for cause. The challenge must be based upon information that was not available to the Parties at the time the Arbitrator was selected. A challenge for cause must be in writing and exchanged with opposing Parties, who may respond within seven (7) calendar days of service of the challenge. JAMS shall make the final determination as to such challenge. Such determination shall take into account the materiality of the facts and any prejudice to the Parties. That decision will be final.

(j) Where the Parties have agreed that a Party-appointed Arbitrator is to be non-neutral, that Party-appointed Arbitrator is not obliged to withdraw if requested to do so only by the Party that did not appoint that Arbitrator.

RULE 16
Preliminary Conference

At the request of any Party or at the direction of the Arbitrator, a Preliminary Conference shall be conducted with the Parties or their counsel or representatives. The Preliminary Conference may address any or all of the following subjects:

(a) The exchange of information in accordance with Rule 17 or otherwise;

(b) The schedule for discovery as permitted by the Rules, as agreed by the Parties or as required or authorized by applicable law;

(c) The pleadings of the Parties and any agreement to clarify or narrow the issues or structure the Arbitration Hearing;

(d) The scheduling of the Hearing and any pre-Hearing exchanges of information, exhibits, motions or briefs;

(e) The attendance of witnesses as contemplated by Rule 21;

(f) The scheduling of any dispositive motion pursuant to Rule 18;

(g) The premarking of exhibits, the preparation of joint exhibit lists and the resolution of the admissibility of exhibits;

(h) The form of the Award; and

(i) Such other matters as may be suggested by the Parties or the Arbitrator.

The Preliminary Conference may be conducted telephonically and may be resumed from time to time as warranted.

RULE 16.1
Application of Expedited Procedures

(a) If these Expedited Procedures are referenced in the Parties' Agreement to arbitrate or are later agreed to by all Parties, they shall be applied by the Arbitrator.

(b) The Claimant or Respondent may opt into the Expedited Procedures. The Claimant may do so by indicating the election in the Demand for Arbitration. The Respondent may opt into the Expedited Procedures by so indicating in writing to JAMS with a copy to the Claimant served within fourteen (14) days of receipt of the Demand for Arbitration. If a Party opts into the Expedited Procedures, the other side shall indicate within seven (7) calendar days of notice thereof whether it agrees to the Expedited Procedures.

(c) If one Party elects the Expedited Procedures and any other Party declines to agree to the Expedited Procedures, each Party shall have a client or client representative present at the first Preliminary Conference (which should, if feasible, be an in-person conference), unless excused by the Arbitrator for good cause.

RULE 16.2
Where Expedited Procedures Are Applicable

(a) The Arbitrator shall require compliance with Rule 17(a) prior to conducting the first Preliminary Conference. Each Party shall confirm in writing to the Arbitrator that it has so complied or shall indicate any limitations on full compliance and the reasons therefor.

(b) Document requests shall (1) be limited to documents that are directly relevant to the matters in dispute or to its outcome; (2) be reasonably restricted in terms of time frame, subject matter and persons or entities to which the requests pertain; and (3) not include broad phraseology such as "all documents directly or indirectly related to." The Requests shall not be encumbered with extensive "definitions" or "instructions." The Arbitrator may edit or limit the number of requests.

(c) E-discovery shall be limited as follows:

(i) There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from backup servers, tapes or other media.

(ii) Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format that is usable by the requesting Party and convenient and economical for the producing Party. Absent a showing of compelling need, the Parties need not produce metadata, with the exception of header fields for email correspondence.

(iii) The description of custodians from whom electronic documents may be collected should be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute.

(iv) Where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the Arbitrator may either deny such requests or order disclosure on the condition that the requesting Party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final Award.

(v) The Arbitrator may vary these Rules after discussion with the Parties at the Preliminary Conference.

(d) Depositions of percipient witnesses shall be limited as follows:

(i) The limitation of one discovery deposition per side (Rule 17(b)) shall be applied by the Arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The Arbitrator shall consider the amount in controversy, the complexity of the factual issues, the number of Parties and the diversity of their interests, and whether any or all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery.

(ii) The Arbitrator shall also consider the additional factors listed in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases.

(e) Expert depositions, if any, shall be limited as follows: Where written expert reports are produced to the other side in advance of the Hearing, expert depositions may be conducted only by agreement of the Parties or by order of the Arbitrator for good cause shown.

(f) Discovery disputes shall be resolved on an expedited basis.

(i) Where there is a panel of three Arbitrators, the Parties are encouraged to agree, by rule or otherwise, that the Chair or another member of the panel be authorized to resolve discovery issues, acting alone.

(ii) Lengthy briefs on discovery matters should be avoided. In most cases, the submission of brief letters will sufficiently inform the Arbitrator with regard to the issues to be decided.

(iii) The Parties should meet and confer in good faith prior to presenting any issues for the Arbitrator's decision.

(iv) If disputes exist with respect to some issues, that should not delay the Parties' discovery on remaining issues.

(g) The Arbitrator shall set a discovery cutoff not to exceed seventy-five (75) calendar days after the Preliminary Conference for percipient discovery and not to exceed one hundred five (105) calendar days for expert discovery (if any). These dates may be extended by the Arbitrator for good cause shown.

(h) Dispositive motions (Rule 18) shall not be permitted, except as set forth in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases or unless the Parties agree to that procedure.

(i) The Hearing shall commence within sixty (60) calendar days after the cutoff for percipient discovery. Consecutive Hearing days shall be established unless otherwise agreed by the Parties or ordered by the Arbitrator. These dates may be extended by the Arbitrator for good cause shown.

(j) The Arbitrator may alter any of these Procedures for good cause.

RULE 17
Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information ("ESI")) relevant to the dispute or claim immediately after commencement of the Arbitration. They shall complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, and names of individuals whom they may call as witnesses at the Arbitration Hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. The Arbitrator may modify these obligations at the Preliminary Conference.

(b) Each Party may take one deposition of an opposing Party or of one individual under the control of the opposing Party. The Parties shall attempt to agree on the time, location and duration of the deposition. If the Parties do not agree, these issues shall be determined by the Arbitrator. The necessity of additional depositions shall be determined by the

Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(d) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute. With the written consent of all Parties, and in accordance with an agreed written procedure, the Arbitrator may appoint a special master to assist in resolving a discovery dispute.

(e) In a consumer or employment case, the Parties may take discovery of third parties with the approval of the Arbitrator.

RULE 18
Summary Disposition of a Claim or Issue

The Arbitrator may permit any Party to file a Motion for Summary Disposition of a particular claim or issue, either by agreement of all interested Parties or at the request of one Party, provided other interested Parties have reasonable notice to respond to the request. The Request may be granted only if the Arbitrator determines that the requesting Party has shown that the proposed motion is likely to succeed and dispose of or narrow the issues in the case.

RULE 19
Scheduling and Location of Hearing

(a) The Arbitrator, after consulting with the Parties that have appeared, shall determine the date, time and location of the Hearing. The Arbitrator and the Parties shall attempt to schedule consecutive Hearing days if more than one day is necessary.

(b) If a Party has failed to participate in the Arbitration process, and the Arbitrator reasonably believes that the Party will not participate in the Hearing, the Arbitrator may set the Hearing without consulting with that Party. The non-participating Party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date, unless the law of the relevant jurisdiction allows for, or the Parties have agreed to, shorter notice.

(c) The Arbitrator, in order to hear a third-party witness, or for the convenience of the Parties or the witnesses, may conduct the Hearing at any location. Any JAMS Resolution Center may be designated a Hearing location for purposes of the issuance of a subpoena or subpoena *duces tecum* to a third-party witness.

RULE 20
Pre-Hearing Submissions

(a) Except as set forth in any scheduling order that may be adopted, at least fourteen (14) calendar days before the Arbitration Hearing, the Parties shall file with JAMS and serve and exchange (1) a list of the witnesses they intend to call, including any experts; (2) a short description of the anticipated testimony of each such witness and an estimate of the length of the witness' direct testimony; (3) any written expert reports that may be introduced at the Arbitration Hearing; and (4) a list of all exhibits intended to be used at the Hearing. The Parties should exchange with each other copies of any such exhibits to the extent that they have not been previously exchanged. The Parties should pre-mark exhibits and shall attempt to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(b) The Arbitrator may require that each Party submit a concise written statement of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The statements, which may be in the form of a letter, shall be filed with JAMS and served upon the other Parties at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator.

RULE 21
Securing Witnesses and Documents for the Arbitration Hearing

At the written request of a Party, all other Parties shall produce for the Arbitration Hearing all specified witnesses in their employ or under their control without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the Hearing pursuant to this Rule or Rule 19(c). The subpoena or subpoena *duces tecum* shall be issued in accordance with the applicable law. Pre-issued subpoenas may be used in jurisdictions that permit them. In the event a Party or a subpoenaed person objects to the production of a witness or other evidence, the Party or subpoenaed person may file an objection with the Arbitrator, who shall promptly rule on the objection, weighing both the burden on the producing Party and witness and the need of the proponent for the witness or other evidence.

RULE 22
The Arbitration Hearing

(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so.

(b) The Arbitrator shall determine the order of proof, which will generally be similar to that of a court trial.

(c) The Arbitrator shall require witnesses to testify under oath if requested by any Party, or otherwise at the discretion of the Arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the Arbitrator shall apply applicable law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

(e) The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony even if the other Parties have not had the opportunity to cross-examine, but will give that evidence only such weight as he or she deems appropriate.

(f) The Parties will not offer as evidence, and the Arbitrator shall neither admit into the record nor consider, prior settlement offers by the Parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The Arbitrator has full authority to determine that the Hearing, or any portion thereof, be conducted in person or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places, or in a combined form. If some or all of the witnesses or other participants are located remotely, the Arbitrator may make such orders and set such procedures as the Arbitrator deems necessary or advisable.

(h) When the Arbitrator determines that all relevant and material evidence and arguments have been presented, and any interim or partial Awards have been issued, the Arbitrator shall declare the Hearing closed. The Arbitrator may defer the closing of the Hearing until a date determined by the Arbitrator in order to permit the Parties to submit post-Hearing briefs, which may be in the form of a letter, and/or to make closing arguments. If post-Hearing briefs are to be submitted or closing arguments are to be made, the Hearing shall be deemed closed upon receipt by the Arbitrator of such briefs or at the conclusion of such closing arguments, whichever is later.

(i) At any time before the Award is rendered, the Arbitrator may, *sua sponte* or on application of a Party for good cause shown, reopen the Hearing. If the Hearing is reopened, the time to render the Award shall be calculated from the date the reopened Hearing is declared closed by the Arbitrator.

(j) The Arbitrator may proceed with the Hearing in the absence of a Party that, after receiving notice of the Hearing pursuant to Rule 19, fails to attend. The Arbitrator may not render an Award solely on the basis of the default or absence of the Party, but shall require any Party seeking relief to submit such evidence as the Arbitrator may require for the rendering of an Award. If the Arbitrator reasonably believes that a Party will not attend the Hearing, the Arbitrator may schedule the Hearing as a telephonic Hearing and may receive the evidence

necessary to render an Award by affidavit. The notice of Hearing shall specify if it will be in person or telephonic.

(k) Any Party may arrange for a stenographic record to be made of the Hearing and shall inform the other Parties in advance of the Hearing. No other means of recording the proceedings shall be permitted absent agreement of the Parties or by direction of the Arbitrator.

(i) The requesting Party shall bear the cost of such stenographic record. If all other Parties agree to share the cost of the stenographic record, it shall be made available to the Arbitrator and may be used in the proceeding.

(ii) If there is no agreement to share the cost of the stenographic record, it may not be provided to the Arbitrator and may not be used in the proceeding, unless the Party arranging for the stenographic record agrees to provide access to the stenographic record either at no charge or on terms that are acceptable to the Parties and the reporting service.

(iii) If the Parties agree to the Optional Arbitration Appeal Procedure (Rule 34), they shall, if possible, ensure that a stenographic or other record is made of the Hearing and shall share the cost of that record.

(iv) The Parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator in the Award.

RULE 23
Waiver of Hearing

The Parties may agree to waive the oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree.

RULE 24
Awards

(a) The Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing, as defined in Rule 22(h) or (i), or, if a Hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the Parties, except (1) by the agreement of the Parties; (2) upon good cause for an extension of time to render the Award; or (3) as provided in Rule 22(i). The Arbitrator shall provide the Final Award or the Partial Final Award to JAMS for issuance in accordance with this Rule.

(b) Where a panel of Arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the Arbitration Award.

(c) In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that he or she deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' Agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy.

(d) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

(e) Interim Measures. The Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim or Partial Final Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a Party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(f) The Award of the Arbitrator may allocate Arbitration fees and Arbitrator compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement. (Such a prohibition may not limit the power of the Arbitrator to allocate Arbitration fees and Arbitrator compensation and expenses pursuant to Rule 31(c).)

(g) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

(h) The Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all Parties agree otherwise, the Award shall also contain a concise written statement of the reasons for the Award.

(i) After the Award has been rendered, and provided the Parties have complied with Rule 31, the Award shall be issued by serving copies on the Parties. Service may be made by U.S. mail. It need not be sent certified or registered.

(j) Within seven (7) calendar days after service of a Partial Final Award or Final Award by JAMS, any Party may serve upon the other Parties and file with JAMS a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of fees pursuant to Rule 31(c) or on account of the effect of an offer to allow judgment), or the Arbitrator may *sua sponte* propose to correct such errors in an Award. A Party opposing such correction shall have seven (7) calendar days thereafter in which to file and serve any objection. The Arbitrator may make any necessary and appropriate corrections to the Award within twenty-one (21) calendar days of receiving a request or fourteen (14) calendar days after his or her proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

(k) The Award is considered final, for purposes of either the Optional Arbitration Appeal Procedure pursuant to Rule 34 or a judicial proceeding to enforce, modify or vacate the Award pursuant to Rule 25, fourteen (14) calendar days after service if no request for a correction is made, or as of the effective date of service of a corrected Award.

RULE 25
Enforcement of the Award

Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1, *et seq.*, or applicable state law. The Parties to an Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.

RULE 26
Confidentiality and Privacy

(a) JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(b) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

(c) Subject to the discretion of the Arbitrator or agreement of the Parties, any person having a direct interest in the Arbitration may attend the Arbitration Hearing. The Arbitrator may exclude any non-Party from any part of a Hearing.

RULE 27
Waiver

(a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

(b) If any Party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing, to the Arbitrator or JAMS. Failure to do so shall constitute a waiver of any objection to continued service by the Arbitrator.

RULE 28
Settlement and Consent Award

(a) The Parties may agree, at any stage of the Arbitration process, to submit the case to JAMS for mediation. The JAMS mediator assigned to the case may not be the Arbitrator or a member of the Appeal Panel, unless the Parties so agree, pursuant to Rule 28(b).

(b) The Parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the Parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing to serve as Arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(c) If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request, unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed

Consent Award, he or she shall inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

RULE 29
Sanctions

The Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the Party that has failed to comply.

RULE 30
Disqualification of the Arbitrator as a Witness or Party and Exclusion of Liability

(a) The Parties may not call the Arbitrator, the Case Manager or any other JAMS employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating to the dispute that is the subject of the Arbitration. The Arbitrator, Case Manager and other JAMS employees and agents are also incompetent to testify as witnesses or experts in any such proceeding.

(b) The Parties shall defend and/or pay the cost (including any attorneys' fees) of defending the Arbitrator, Case Manager and/or JAMS from any subpoenas from outside parties arising from the Arbitration.

(c) The Parties agree that neither the Arbitrator, nor the Case Manager, nor JAMS is a necessary Party in any litigation or other proceeding relating to the Arbitration or the subject matter of the Arbitration, and neither the Arbitrator, nor the Case Manager, nor JAMS, including its employees or agents, shall be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules, including, but not limited to, any disqualification of or recusal by the Arbitrator.

RULE 31
Fees

(a) Each Party shall pay its *pro rata* share of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the Arbitration, unless the Parties agree on a different allocation of fees and expenses. JAMS' agreement to render services is jointly with the Party and the attorney or other representative of the Party in the Arbitration. The non-payment of fees may result in an administrative suspension of the case in accordance with Rule 6(c).

(b) JAMS requires that the Parties deposit the fees and expenses for the Arbitration from time to time during the course of the proceedings and prior to the Hearing. The Arbitrator may preclude a Party that has failed to deposit its *pro rata* or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing.

(c) The Parties are jointly and severally liable for the payment of JAMS Arbitration fees and Arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the Arbitrator may award against any other Party any such fees, compensation and expenses that such Party owes with respect to the Arbitration.

(d) Entities or individuals whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of JAMS' assessment of fees. JAMS shall determine whether the interests between entities or individuals are adverse for purpose of fees, considering such factors as whether the entities or individuals are represented by the same attorney and whether the entities or individuals are presenting joint or separate positions at the Arbitration.

RULE 32
Bracketed (or High-Low) Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The Parties shall promptly notify JAMS and provide to JAMS a copy of their written agreement setting forth the agreed-upon minimum and maximum amounts.

(b) JAMS shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties.

(c) The Arbitrator shall render the Award in accordance with Rule 24.

(d) In the event that the Award of the Arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

RULE 33
Final Offer (or Baseball) Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to JAMS written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 24(c). JAMS shall promptly provide copies of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator. At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to JAMS, which shall promptly provide them to the Arbitrator, unless the Parties agree otherwise.

(b) If the Arbitrator has been informed of the written proposals, in rendering the Award, the Arbitrator shall choose between the Parties' last proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 24(c). This provision modifies Rule 24(h) in that no written statement of reasons shall accompany the Award.

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 24, except that the Award shall thereafter be corrected to conform to the closest of the last proposals and the closest of the last proposals will become the Award.

(d) Other than as provided herein, the provisions of Rule 24 shall be applicable.

RULE 34
Optional Arbitration Appeal Procedure

The Parties may agree at any time to the JAMS Optional Arbitration Appeal Procedure. All Parties must agree in writing for such procedure to be effective. Once a Party has agreed to the Optional Arbitration Appeal Procedure, it cannot unilaterally withdraw from it, unless it withdraws, pursuant to Rule 13, from the Arbitration.

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

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 DIP LENDERS

MOTION AND CROSS-MOTION FOR ADVICE AND DIRECTIONS
RETURNABLE FEBRUARY 9, 2022

February 7, 2022

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

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 DIP LENDERS

MOTION AND CROSS-MOTION FOR ADVICE AND DIRECTIONS RETURNABLE FEBRUARY 9, 2022

PART I - OVERVIEW

1. The Applicants have been operating under CCAA protection for almost a year. They are now on the verge of presenting a restructuring plan, sponsored by the DIP Lenders, which would allow them to exit this proceeding, as a viable operating business.

2. Donin and Jordet have a different plan.[1] In the wake of significant stakeholder support for the Applicants, they have emerged with grossly inflated contingent claims with a view to hijack

[1] These are the individual plaintiffs in the uncertified class actions: *Donin v. Just Energy Group Inc. et al.* and *Trevor Jordet v. Just Energy Solutions, Inc.*

the restructuring. They seek relief designed to secure an outcome for themselves far better than any legal entitlement they may have, to the detriment of the Applicants and their stakeholders, including the DIP Lenders.

3. After filing proofs of claim pursuant to the Court-ordered claims process – which were then disallowed – Donin and Jordet *now* ask the Court to permit them to avoid the implications of this restructuring altogether by declaring that they will be "unaffected" creditors. That relief contradicts the very purpose of the CCAA: compromise and a fresh start.

4. If that relief is granted, the DIP Lenders will have no interest in providing the necessary financing to support a plan and it is unlikely that any plan will emerge at all. No debtor could attract new investment without addressing contingent claims of that nature.

5. Donin and Jordet seek, in the alternative, to hold the restructuring process hostage by enjoining the Applicants and creditors from pursuing and voting on a plan until their speculative years-old claims (on behalf of an uncertified class) are fully and finally resolved. That relief is equally egregious and ignores the serious prejudice to the Applicants and their stakeholders, including the DIP Lenders.

6. The adjudication schedule Donin and Jordet seek to impose, including direction by this Court of a fixed outside date by which their claims must be finally decided, is an end-run around this Court's claims procedure order and entirely unrealistic. That order vests a claims officer with authority to determine a procedurally fair process and timetable for adjudication. The contingent claimants' effort to handcuff the claims officer from making those critical determinations based on complete information and argument by the parties should be rejected.

7. Donin and Jordet also ignore that final adjudication of their claims will very likely involve appeals. The Applicants' ability to restructure cannot be tied to an adjudication process designed for the sole benefit of contingent creditors with speculative claims.

8. The fairness issues raised by Donin and Jordet, if legitimate, are appropriately dealt with at the sanction hearing. They cannot be tactically deployed now to block the Applicants' path to that hearing. This motion should be dismissed.

PART II - THE FACTS

A. The DIP Lenders Provided Substantial Support to Facilitate the Restructuring

9. The DIP Lenders have been longstanding stakeholders and supporters of the Applicants' business. They hold significant secured claims, a majority of the obligations under the pre-filing senior unsecured term loan and a material portion of the Applicants' existing equity.[2]

10. When the Applicants needed emergency DIP financing, the DIP Lenders stepped up in short order and provided USD$125 million. The Court agreed that the DIP facility was necessary for the Applicants to make time-sensitive payments to stabilize their business.[3] The DIP facility is now fully drawn.[4]

11. The DIP facility was advanced on the basis of a restructuring timetable acceptable to the DIP Lenders. This was a key term of the loan.

12. The early stages of this proceeding were mired in potential litigation of a serious intercreditor dispute among the Applicants' lenders and certain of its significant secured creditors.

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[2] Affidavit of Michael Carter, sworn February 2, 2022 ("**Carter Affidavit**"), para 11, Motion Record of the Applicants dated February 2, 2022 ("**Applicants' MR**"), p 12, Compendium of the Applicants and DIP Lenders dated February 7, 2022 ("**Compendium**"), Tab 14, p 246.
[3] Endorsement of Justice Koehnen, issued March 9, 2021, paras 6-7 and 63, Book of Authorities of the DIP Lenders dated February 7, 2022 ("**BOA**"), Tab 5.
[4] Carter Affidavit, Exhibit J, Applicants' MR, p 302 (paragraph (c)); Second Report of the Monitor, dated May 21, 2021, para 40, Compendium, Tab 12, p 234.

That litigation threatened to seriously delay or prevent the Applicants' successful restructuring. In response, the DIP Lenders' acquired over USD$200 million of that secured debt, which allowed the Applicants to turn their focus to completing a successful restructuring.[5]

13. The DIP Lenders are now working with the Applicants and key creditors to finalize a restructuring plan where the DIP Lenders will provide exit financing to sufficiently capitalize the business.[6] The plan will provide that all contingent litigation creditors are "affected creditors".

B. Claims by Donin and Jordet Have Been Disallowed

14. On September 15, 2021, this Court issued a claims procedure order to identify and determine all claims against the Applicants.[7]

15. On November 1, 2021, Donin and Jordet filed proofs of claim based on years-old uncertified US class actions.[8] Those claims were far broader than the existing actions that were permitted by the US Courts to proceed past pleadings. The only claims that survived summary dismissal were limited claims of breach of contract and the implied duty of good faith;[9] other claims – including statutory claims relating to alleged deceptive practices, fraud-based claims, and unjust enrichment – were dismissed.

16. It is clear on the face of the claims themselves, regardless of their dubious merits, that the potential class is actually composed of a tiny fraction of the millions of customers repeatedly cited, without any evidence whatsoever, by their US counsel, Mr. Wittels.[10]

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[5] Carter Affidavit, paras 11 and 62, Applicants' MR, pp 12 and 36, Compendium, Tab 14, pp 246 and 270; Third Report of the Monitor, dated September 8, 2021, paras 34 and 37, Compendium, Tab 13, pp 238-239.
[6] Carter Affidavit, para 11, Applicants' MR, p 12, Compendium, Tab 14, p 246.
[7] Carter Affidavit, para 9 and Exhibit A, Applicants' MR, pp 11 and 39-112, Compendium, Tab 14, p 245 and Tab 1, p 3.
[8] Carter Affidavit, para 31, Applicants' MR, p 20, Compendium, Tab 14, 254; Affidavit of Robert Tannor sworn January 17, 2022 (the "**Tannor Affidavit**") Exhibits F, G, and H, Motion Record of the Moving Parties dated January 19, 2022 ("**Moving MR**"), pp 196-253, Compendium, Tab 6, pp 101-146.
[9] Fifth Report of the Monitor dated February 4, 2022, para 49, Compendium, Tab 11, pp 188-189.
[10] Tannor Affidavit, Exhibit I, Moving MR, p 254. Moreover, the Applicants' total current customer base under any form of contract is 950,000: Carter Affidavit, para 12, Applicants' MR, p 12, Compendium, Tab 14, pp 246.

17. Pursuant to paragraph 36 of the claims procedure order, the claims were disallowed on the basis that the proposed class actions:

(a) are contingent, uncertified, speculative, and remote;

(b) attempt to impermissibly expand the scope of the actual claims to add new defendants, new customer groups, and extended class periods; and

(c) inflate damages calculations based on flawed assumptions, including by assuming that 50% of natural gas and electricity usage of the Applicants' customer base is attributable to customers that are parties to variable rate contracts when 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 Applicants.[11]

18. Disallowance of those claims has not yet been contested. As a result, the adjudication process provided for by the claims procedure order has not been triggered.[12]

19. Under the claims procedure order, following receipt of a dispute, the Applicants and the Monitor may seek the appointment of a claims officer who determines their own procedure and timetable for adjudication.[13] That is what should happen here.

20. These two contingent claimants should not receive special treatment simply because they assert a grossly inflated claim.[14] That would open the door to any contingent claimant abusing the claims process for leverage in any restructuring.

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[11] Carter Affidavit, paras 32-33 and 37(c), Applicants' MR, pp 21 and 24, Compendium, Tab 14, pp 255, 257-258; Tannor Affidavit, Exhibits Q and R, Moving MR, pp 303-312, Compendium, Tabs 8 and 9, pp 149-168.
[12] Carter Affidavit, Exhibit A, para 37, Applicants' MR, p 67, Compendium, Tab 1, p 5.
[13] Carter Affidavit, Exhibit A, para 39, Applicants' MR, pp 67-68, Compendium, Tab 1, pp 5-6.
[14] Fifth Report of the Monitor, dated February 4, 2022, paras 37 and 46, Compendium, Tab 11, pp 188 and 190.

C. Donin and Jordet Seek Special Treatment

21. Donin and Jordet initially demanded final adjudication of the proposed class actions *this month*.[15] Now, recognizing the illusory nature of that proposal, they have shifted to a slightly extended timetable, which remains entirely unrealistic.

22. Their latest proposal continues to completely disregard that, before adjudication, the proposed class actions require: (i) discovery in the case of one of the claims; (ii) the exchange of expert reports; (iii) a judicial determination on summary judgement; and (iv) a judicial determination on certification.[16] It also completely ignores judicial appeals, which are all but certain, after a claims officer's decision.

23. Under any realistic adjudication schedule, the parties would not reach final determination of the claims for a lengthy period of time. It would be highly prejudicial to the Applicants and their stakeholders if the restructuring process were held in abeyance for that entire duration. As noted by the Monitor in its fifth report, "it is unreasonable to delay the entire restructuring process of the Just Energy Entities to resolve one outstanding contingent litigation claim".[17]

24. Timely exit from CCAA protection is critical to the Applicants and their stakeholders given the length of time the Applicants have already spent in this CCAA proceeding, the volatility of the energy market, the threat of additional weather events, the need for additional liquidity, and the risk that the Applicants will lose the support of their key creditors.[18]

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[15] Notice of Motion and Cross-Motion dated January 19, 2022, para 3(a), Moving MR, p 3, Compendium, Tab 2, p 9; Tannor Affidavit, Exhibit S, Moving MR, pp 325-326, Compendium, Tab 10, pp 169-171.
[16] Carter Affidavit, paras 56-57 and Exhibit M, Applicants' MR, pp 34 and 367-368; Compendium, Tabs 14 and 15, pp 267-268, 272-274.
[17] Fifth Report of the Monitor dated February 4, 2022, para 58, Compendium, Tab 11, p 193.
[18] Carter Affidavit, para 14, Applicants' MR, p 13, Compendium, Tab 14, p 247.

PART III - LAW & ARGUMENT

25. The DIP Lenders focus on and emphasize the following:

(a) Donin and Jordet (and the uncertified classes) cannot, on their own motion, be declared "unaffected" by a future plan; and

(b) Donin and Jordet cannot sidestep the Court-approved claims process or use their speculative and contingent claims to prevent a timely creditor vote and obstruct the Applicants' restructuring.

A. No Basis to Declare the Claimants Unaffected Creditors

26. This Court should not permit uncertified unsecured contingent creditors to avoid the implications of this restructuring by declaring that they will be unaffected by this CCAA proceeding. The fundamental purpose of the CCAA is the compromise of claims to permit debtors a fresh start, unencumbered by prior obligations.[19] It is well-settled law and practice that the debtor, not a contingent claimant, has discretion to determine how to deal with creditors in a proposed plan, which is then subject to a creditor vote.[20]

27. From a practical perspective, if Donin and Jordet (and their ostensible classes) are allowed to evade compromise as they propose, neither the DIP Lenders nor likely anyone else will have any interest in funding a plan. Without a plan sponsor, the Applicants' restructuring – the very purpose of this proceeding – will fail.

B. No Special Treatment or Delay to Creditor Vote

28. The Court has already issued a claims procedure order.[21] That order mandates how claims are to be addressed. It is a final order that was not appealed. In the absence of fraud or

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[19] *North American Tungsten Corp. v Global Tungsten and Powders Corp.,* 2015 BCCA 426, para 37, BOA Tab 8.
[20] See for example: *Campeau v Olympia & York Developments Ltd.,* [1992] OJ No 1946 (SC), para 25(2), BOA Tab 3.
[21] Carter Affidavit, Exhibit A, Applicants' MR, pp 39-112, Compendium, Tab 1, p 3.

facts discovered after the claims procedure order was issued, there is no legal justification to vary that order now.[22]

29. Donin and Jordet have conceded the obvious in their factum: that their claims should be determined by claims officers, who should set their own schedule. They have yet to explain – because they cannot – their demand to select their own claims officers or how such claims officers can control their own (procedurally fair) process if a fixed outside date for their decision is directed by this Court.

30. Donin and Jordet also insist that an "expedited" adjudication framework is "consistent with orders made by the Court in other cases". Obviously, this Court can expedite litigation generally – the relevant question is whether doing so is appropriate and fair.

31. The claims procedure order confers jurisdiction on the claims officer to set and manage the process and schedule for adjudication of claims referred to him or her. It is unlikely that Donin's and Jordet's claims, including completion of all appeals, can be adjudicated before a creditor vote without abrogating substantive rights and defenses. Abrogation of those rights and defenses is not what the CCAA calls for, as observed by Justice Farley:

> A determination on a timely basis does not mean that matters be dealt with at breakneck speed with all manner of corners cut. Nor does it mean the glacial pace to a secondary starting point, after which there will be a further hearing/case conference to decide where to go from there on.[23]

32. After four years, the contingent claimants have not taken the most fundamental procedural step in a class proceeding: certification.[24] According to Justice Farley in *Re Air Canada*:

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[22] *Rules of Civil Procedure,* RRO 1990, Reg 194, r 59.06(2)(a).
[23] *Stelco Inc., Re,* 2006 CanLII 7526 (ONSC), para 3, BOA Tab 12.
[24] Carter Affidavit, para 56, Applicants' MR, p 33, Compendium, Tab 14, pp 267-268.

> The certification aspect of the plaintiffs' suit will be of substantial significance as to their claim, a claim as discussed above being of material magnitude (if substantiated). If the plaintiffs lose the certification aspect, then their claim will be restricted to themselves and so be of a much, much lower amount (if substantiated); other travel agents may of course proceed to file individual claims in the claims process while some may not participate at all. In my view the amount of resources involved in terms of money and executive, operation and legal staff time will not be that substantial in relation to the overall context of these CCAA proceedings, but perhaps more importantly, the claims process itself will require that the certification aspect be dealt with in some way — either by negotiation or adjudication.[25]

33. The two authorities offered by Donin and Jordet do not support the proposition that a creditor vote and therefore a timely restructuring should effectively be delayed until their claims are finally resolved.

34. In the *Essar* decisions, the debtor could not effectively undertake the SISP needed for its restructuring without resolving the ownership of the assets involved in the oppression dispute, or the labour disputes at issue in the grievance procedures. Accordingly, directing the debtor and courts resources to rapid adjudication ***facilitated*** the restructuring. The opposite is the case here.

35. In *Covia Canada Partnership* (which was not even a CCAA proceeding) it was only the initial liability stage of the litigation, on consent and without regard to appeals, that took place within six months – the proceedings had been bifurcated.

36. Success in the proposed class actions is, put generously, far from certain. As will be addressed – in context – at the meeting order hearing, the appropriate approach to deal with these claims is to value or disallow them for voting purposes, record the disputed portion, and consider the fairness of that treatment at the sanction hearing.

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[25] *Air Canada, Re,* 2003 CarswellOnt 9106 (SC), para 11, BOA Tab 1.

37. The Court is not being asked to grant that relief today. However, that is the approach consistently adopted in CCAA proceedings at the meeting order and sanction order stage, and makes clear that Donin's and Jordet's motion is ill-founded. For example, in *Re Target Co.*, Justice Morawetz ordered:

> [T]hat the Canada Revenue Agency shall have one vote in respect of its Disputed Claims, the dollar value of which shall be equal to $1, without prejudice to the determination of the dollar value of such Disputed Claims for distribution purposes in accordance with the Claims Procedure Order.[26]

38. In the context of an order sanctioning a CCAA plan in *Re Clover on Yonge Inc.*, Justice Hainey was confronted with similar circumstances. Notwithstanding the prior disallowance for voting purposes of a material contingent claim, Justice Hainey sanctioned a plan as fair and reasonable. In doing so, consistent with section 20(1)(a)(iii) of the CCAA,[27] the Court adopted "strikingly similar" law from *Nalcor Energy v Grant Thornton* in the proposal context of the *BIA*.[28]

39. In *Nalcor Energy*, the New Brunswick Court of Queen's Bench rejected a claim for voting purposes on the basis that the validity of the claim, as well as the assessment of damages, was completely dependent on the outcome of the litigation.[29] In *Re Port Chevrolet Oldsmobile Ltd.*, the Court upheld the disallowance for voting purposes of a contingent and unproven claim, which was based on an unresolved appeal of the *Excise Tax Act*.[30] In *Re Canadian Triton International Ltd.,* Justice Farley determined that a claimant could not vote on a proposal as a result of the

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[26] *Target Canada Co., Re*, 2016 CarswellOnt 8815 (SC), Schedule "C", s 30, BOA Tab 14. See also *T. Eaton Company Limited, Amended and Restated Plan of Compromise*, (I.I.C. Ct. Filing 44993447021) (WL), Schedule "A" – Claims Procedure for Voting and Distribution Purposes, s 3 and Order of Justice Farley dated November 23, 1999 (I.I.C. Ct. Filing 44993495001), BOA Tab 15; *Sem Canada Crude Company*, (Action No. 0801-008510) (WL), Schedule "A" – Canadian Creditors' Meetings Order, para 35(b) and Reasons for Decision of the Honourable Madam Justice B.E. Romaine dated August 24, 2009 (Filing 341079516004), BOA Tab 13.
[27] *Re Clover on Yonge Inc.* (CV-20-00642928-00CL), Endorsement of Justice Hainey dated January 8, 2021 (unreported), BOA Tab 10.
[28] Section 20(1)(a)(iii) of the CCAA prescribes that the amount of an unsecured claim is the amount of the claim which might be proven under the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3.
[29] *Nalcor Energy v Grant Thornton*, 2015 NBQB 20, paras 45-46 and 51-52, BOA Tab 7.
[30] *Re Port Chevrolet Oldsmobile Ltd.*, 2002 BCSC 1874, paras 41 and 45-46; 2004 BCCA 37 (appeal denied), BOA Tab 11.

contingent nature of its claim, which was disputed by the insolvent entity with respect to liability and damages.[31]

40. There is no compelling rationale to treat contingent claimants in this case differently. A claimant's concerns regarding the classification of creditors for the purposes of voting at the meeting order stage are appropriately considered as part of the assessment of the overall fairness of the plan at the sanction hearing:

> even if the plan is accepted by the various classes of creditors, it must still come to the court for approval. The court is clearly entitled to reject the plan and if necessary the court can and will deal with any alleged unfairness or inequity at that time. At the application to approve the plan, the court will determine whether the appropriate majority approved the plan at a meeting held in accordance with the Act and the court's orders and whether the plan is fair and reasonable.[32]

41. Similarly, concerns regarding the allocation of votes to contingent creditors are appropriately addressed at the sanction hearing. Consistent with *Clover on Yonge*, Justice Farley's reasons in *Algoma Steel Corp. v Royal Bank* – in the context of a motion for a declaration that a debt guaranteed by the CCAA debtor was not subject to compromise as part of a plan on the basis that the claimant was not a "creditor" within the meaning of the CCAA – are also instructive:

> Whether a plan is fair and reasonable must take into consideration the impact of same upon all interested parties (in this situation all creditors and shareholders). What might appear on the surface to be unfair to one party when viewed in relation to all other parties may be considered to be quite appropriate, particularly in light of the wholly owned subsidiary scenario. The whole scheme of C.C.A.A. proceedings is to see whether a compromise or arrangement can be effected among the creditors and shareholders of a company with a view to see if the company can be made viable,

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[31] *Re Canadian Triton International Ltd.,* 1997 CanLII 12412 (ONSC), para 9, BOA Tab 9.
[32] *Fairview Industries Ltd. et al. (Re)*, 1991 CanLII 4266 (NSSC), BOA Tab 6.

> assuming certain changes are made. See Doherty J.A.'s comments, supra, in *Nova Metal Products Inc.* […]
>
> (c) it would be premature and inappropriate to rule on whether the write-down of the C.I.O.C. receivable to one dollar was fair and reasonable; such should be determined in the context of considering the sanction of the plan as it affects all interested parties.[33]

42. The relief sought by Donin and Jordet is highly prejudicial to the Applicants and their stakeholders. It threatens timely completion of a restructuring and could jeopardize the Applicants' ability to emerge from CCAA at all – indeed, it could frustrate a timely restructuring in any case featuring disputed claims asserted to be in material amounts. As demonstrated by the jurisprudence on voter classification, no creditor should have an illegitimate veto.[34]

43. These contingent claimants will be fairly and appropriately dealt with pursuant to the claims procedures already approved by this Court. No substantive rights will be lost.

44. The Court can consider and address any actual fairness issues at the appropriate time and forum – the sanction hearing.

PART IV - ORDER REQUESTED

45. The DIP Lenders respectfully request that the motion be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of February, 2022.

Cassels

CASSELS BROCK & BLACKWELL LLP

[33] *Algoma Steel Corp. v Royal Bank,* 1992 CarswellOnt 162 (SC), paras 30 and 34, BOA Tab 2.
[34] *Canadian Airlines Corp. (Re),* 2000 ABQB 442, paras 31 and 38-41, BOA Tab 4.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Air Canada, Re,* 2003 CarswellOnt 9106 (SC)

2. *Algoma Steel Corp. v Royal Bank,* 1992 CarswellOnt 162 (SC)

3. *Campeau v Olympia & York Developments Ltd.,* [1992] OJ No 1946 (SC)

4. *Canadian Airlines Corp. (Re)*, 2000 CanLII 28185 (ABQB)

5. Endorsement of Justice Koehnen, issued March 9, 2021

6. *Fairview Industries Ltd. et al. (Re)*, 1991 CanLII 4266 (NSSC)

7. *Nalcor Energy v Grant Thornton*, 2015 NBQB 20

8. *North American Tungsten Corp. v Global Tungsten and Powders Corp.,* 2015 BCCA 426

9. *Re Canadian Triton International Ltd.,* 1997 CanLII 12412 (ONSC)

10. *Re Clover on Yonge Inc.* (CV-20-00642928-00CL), Endorsement of Justice Hainey dated January 8, 2021 (unreported)

11. *Re Port Chevrolet Oldsmobile Ltd*., 2002 BCSC 1874; 2004 BCCA 37

12. *Stelco Inc., Re,* 2006 CanLII 7526 (SC)

13. *Sem Canada Crude Company*, (Action No. 0801-008510) (WL)

14. *Target Canada Co., Re*, 2016 CarswellOnt 8815 (SC)

15. *T. Eaton Company Limited, Amended and Restated Plan of Compromise*, (I.I.C. Ct. Filing 44993447021) (WL)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Companies' Creditors Arrangement Act,* RSC 1985, c C-36**

Determination of amount of claims

20 (1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim is the amount, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

Admission of claims

(2) Despite subsection (1), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted. R.S., 1985, c. C-36, s. 20 2005, c. 47, s. 131 2007, c. 36, s. 70

Rules of Civil Procedure, RRO 1990, Reg 194

Amending, Setting Aside or Varying Order

Amending

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding. R.R.O. 1990, Reg. 194, r. 59.06 (1).

Setting Aside or Varying

(2) A party who seeks to,

(a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;

(b) suspend the operation of an order;

(c) carry an order into operation; or

(d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed. R.R.O. 1990, Reg. 194, r. 59.06 (2).

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.*

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE DIP LENDERS
MOTION AND CROSS-MOTION FOR ADVICE AND DIRECTIONS RETURNABLE FEBRUARY 9, 2022

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Court of Appeal File No. M53250
Court File No. CV-21-00658423-00CL

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 JUSTENERGY GROUP INC. ET AL.
Applicant

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD OF THE MOVING PARTIES

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