

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**”)

REPLY FACTUM OF THE MOVING PARTIES

May 9, 2022

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REPLY FACTUM OF THE MOVING PARTIES

1. This reply factum responds to one discrete issue raised by the Just Energy Respondents in their responding factum.
2. At paragraphs 7 and 50 of their responding factum, the Just Energy Respondents submit that the proposed appeal would interfere with the CCAA proceeding or create

uncertainty because a non-expedited claims process is now underway in respect of adjudicating the U.S. Customer Claims.

3. First, the facts that the Just Energy Respondents rely upon at paragraphs 7 and 50 of their factum are not in the record before this Court. If the Just Energy Respondents wanted to rely on post-hearing facts in their submissions, they were required to seek leave to place that evidence before the panel hearing the motion for leave to appeal, according to the usual rules governing the admission of fresh evidence on appeals to this court.¹ They have not done so. Accordingly, none of the facts that they rely upon are admissible on this motion.

4. Second, the U.S. Customers do not agree with the Just Energy Respondents' characterization of those facts and/or that they are relevant to this motion for leave to appeal.

5. The fact that a non-expedited claims process is underway in respect of adjudicating the U.S. Customers' claims does not assist the Court in its task of assessing whether leave to appeal from the February Order should be granted. The question on appeal is whether the Motion Judge should have used the time that was (and still is)² available to order an expedited process for the adjudication of the U.S. Customer Claims so as to allow for the determination of the claims for voting purposes prior to the meeting

¹ See *Nortel Networks Corporation (Re)*, 2013 ONCA 518 at paras. 6-7, Reply Brief of Authorities of the Moving Parties ("**Reply BOA**") Tab 1, citing *Iness v. Canada Mortgage and Housing Corp.*, 2002 CanLII 15707 (ON CA) at para. 15, Reply BOA, Tab 2; and see generally *Gain v. Ideal Milk Haulage Ltd.*, 2003 CanLII 36977, at [para 17](#) (ONCA), Reply BOA, Tab 3 in the context of a mootness argument.

² Stay Extension Order of Justice McEwen dated April 21, 2022, Reply BOA, Tab 4.

of creditors. The stay period has been extended yet again to the end of May and no plan is in sight.

6. The claims process that is currently unfolding has very little to no chance of determining the U.S. Customer Claims prior to the meeting of creditors and, as a result, does not change the importance of the point on appeal to the proceeding or the practice more generally.

7. For the reasons set out in the U.S. Customer's main factum, all of which are maintained, and this factum, leave to appeal should be granted and heard on an expedited basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of May, 2022.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Nortel Networks Corporation (Re)*, [2013 ONCA 518](#)
2. *Iness v. Canada Mortgage and Housing Corp.*, [2002 CanLII 15707](#) (ONCA)
3. *Gain v. Ideal Haulage Ltd.*, [2003 CanLII 36977](#) (ONCA)
2. Stay Extension Order of Justice McEwen dated April 21, 2022

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PROCEEDING COMMENCED AT
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