

**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

**MOTION RECORD OF THE APPLICANTS**  
**(Motion for Approval of SISP, SISP Support Agreement, Stay Extension, and other relief)**

August 4, 2022

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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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**”)

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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

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# **TAB 1**

**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

**NOTICE OF MOTION**

**(Motion for Approval of SISP, SISP Support Agreement, Stay Extension, and other relief)**

The Applicants will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on August 17, 2022 at 10:00 a.m., or as soon after that time as the motion may be heard by judicial videoconference via Zoom at Toronto, Ontario. The videoconference details will be circulated when provided by the Court.

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

**THE MOTION IS FOR:**

1. An Order substantially in the form included at **Tab 3** of the Motion Record:
  - (a) authorizing and empowering Just Energy to enter into the definitive purchase agreement (the “**Stalking Horse Transaction Agreement**”) dated as of August 4, 2022, between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT Energy I LLC<sup>1</sup> (collectively, the “**Sponsor**” and the transactions detailed therein, the “**Stalking Horse Transaction**”), *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto, with the approval of FTI Consulting Canada Inc., as monitor (the “**Monitor**”) and subject to the terms of the SISP Support Agreement (as defined below);
  - (b) approving the Break-Up Fee (as defined below) and authorizing the Just Energy Entities to pay the Break-Up Fee to the Sponsor (or as it may direct) in the circumstances and manner described in the Stalking Horse Transaction Agreement;
  - (c) granting a Court-ordered charge (the “**Bid Protections Charge**”) in favour of the Sponsor as security for payment of the Break-Up Fee, with the priority set out in the proposed SISP Order;
  - (d) approving the Support Agreement, dated August 4, 2022 among the Just Energy Entities, the Sponsor, Shell, and the Supporting Secured CF Lenders (the “**SISP Support Agreement**”), and authorizing and empowering the Just Energy Entities to enter into the SISP Support Agreement, *nunc pro tunc*, subject to such minor amendments as may be consented to by the Monitor and as may be acceptable to each of the parties thereto, and authorizing, empowering and directing the Just

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<sup>1</sup> The Sponsor is comprised of (i) the investment funds that are DIP Lenders and together with a related limited partner, the holders of substantially all of the Term Loan Claim, and (ii) CBHT Energy I LLC, as the holder of the BP Commodity/ISO Services Claim.

Energy Entities to take all steps and actions in respect of the SISP Support Agreement;

- (e) declaring that notwithstanding the stay of proceedings imposed by the Second Amended and Restated Initial Order, granted May 26, 2021 (the “**Second ARIO**”), a counterparty to the SISP Support Agreement may exercise any termination right that may become available to it pursuant to the SISP Support Agreement, provided that such termination right is exercised in accordance with the SISP Support Agreement;
- (f) approving the Sale and Investment Solicitation Process (the “**SISP**”) and authorizing the Just Energy Entities to implement the SISP pursuant to the terms thereof;
- (g) authorizing and directing the Just Energy Entities, BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the “**Financial Advisor**”), and the Monitor to perform their respective obligations and do all things reasonably necessary to perform their obligations under the SISP;
- (h) declaring that the Financial Advisor and the Monitor, and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor or Financial Advisor, as applicable, in performing their obligations under the SISP, as determined by the CCAA Court;
- (i) extending the Stay Period (as defined in the Second ARIO) to October 31, 2022;
- (j) approving a third key employee retention plan (the “**Third KERP**”) for key non-executive employees of the Just Energy Entities considered critical to the continued operation and stability of the Just Energy Entities as a going concern and to the Just Energy Entities’ efforts to restructure for the benefit of all stakeholders, in the maximum aggregate amount of C\$405,280 and US\$633,910;

- (k) approving the Monitor’s Tenth Report to the Court dated May 18, 2022, the Supplement to the Tenth Report dated June 1, 2022, and the Eleventh Report to the Court, to be filed, and the activities, conduct and decisions described therein; and
- (l) directing that the unredacted copy of the SISP Support Agreement (attached as **Confidential Exhibit “J”** to the Affidavit of Michael Carter, August 4, 2022 (the **“Twelfth Carter Affidavit”**) and the summary of the Third KERP (attached as **Confidential Exhibit “L”** to the Twelfth Carter Affidavit) be treated as confidential and sealed, and not form part of the public record, pending further order of this Court.

2. The Just Energy Entities are also seeking the advice and direction of the CCAA Court regarding the suspension of all ongoing claims review, claims determination, and dispute resolution processes under (i) the Claims Procedure Order, granted September 15, 2021 (the **“Claims Procedure Order”**), (ii) the Order of the CCAA Court, granted March 3, 2022 appointing the Honourable Justice Dennis O’Connor as Claims Officer for purposes of adjudicating the issues raised in the Putative Class Actions (the **“Appointment Order”**), and (iii) the First Endorsement, pending further order of the CCAA Court, unless the adjudication of such Claim is necessary for determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered into pursuant to the SISP.

3. Capitalized terms used but not defined in this Notice of Motion shall have the meanings given to them in the Twelfth Carter Affidavit.

**THE GROUNDS FOR THE MOTION ARE:**

***Overview***

4. On March 9, 2021, the Applicants obtained protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the **“CCAA”**) pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the **“CCAA Court”**). The CCAA Court granted an Amended and Restated Initial Order on March 19, 2021 (the **“ARIO”**), and the Second ARIO on May 26, 2021.

5. The U.S. Bankruptcy Court granted the ARIIO full force and effect on a final basis under Chapter 15 of the U.S. Bankruptcy Code on April 2, 2021.

6. On May 12, 2022, the Just Energy Entities filed and served a Notice of Motion seeking orders, *inter alia*, accepting the filing of a Plan of Compromise and Arrangement, dated May 26, 2022 (the “**Plan**”) and authorizing the Just Energy Entities to call, hold and conduct virtual meetings of the established creditor classes to consider and vote on resolutions to approve the Plan (the “**Meetings Order Motion**”).

7. On June 10, 2022, this Court released the First Endorsement granting the vast majority of the relief sought by the Just Energy Entities in the Meetings Order Motion but directing that summary proceedings be undertaken by the Just Energy Entities on an expedited basis to determine the validity and value of the claims held by the Contingent Litigation Claimants and Pariveda.

8. Following release of the First Endorsement, the Plan Sponsor advised the Court and stakeholders that the Plan Sponsor intended to withdraw its support for the Plan, indicating that in their view the Plan was no longer feasible. In addition, given the objections to the Plan, the appeals brought, the absence of a resolution with objecting creditors and the degree of uncertainty regarding the approval of the Plan and its implementation, the Supporting Secured CF Lenders questioned the feasibility of the Plan and indicated a desire for a different process to try and achieve a going concern solution.

9. In an effort to preserve the viability of the Plan and a going concern solution, the Just Energy Entities undertook both bilateral and multilateral discussions with certain of the Contingent Litigation Claimants, Pariveda and the Plan Sponsor, however, no resolution was reached.

10. Since no resolution was achieved that would enable the Plan to move forward with key stakeholder support, the Just Energy Entities were in a very difficult position with respect to their ongoing efforts to restructure. Accordingly, since the release of the First Endorsement, the Just Energy Entities engaged in extensive discussions with the Plan Sponsor/DIP Lenders, the Supporting Secured CF Lenders, and Shell regarding the terms on which they would continue to support the Just Energy Entities’ efforts to restructure and emerge as a going concern, without a resolution in respect of the Plan. Each of the Plan Sponsor/DIP Lenders, Supporting Secured CF

Lenders and Shell ultimately agreed to terminate the Plan Support Agreement and support a going concern solution for the Just Energy Entities pursuant to the terms of the SISP Support Agreement that includes, among other things, the implementation of the SISP supported by the Stalking Horse Transaction. The Plan Support Agreement was then terminated by the execution of the SISP Support Agreement.

11. The SISP is the only viable going concern exit strategy available to the Just Energy Entities following the loss of stakeholder support for the Plan. It is necessary and urgent for the preservation of the value of the Just Energy Entities' business and the maintenance of its key relationships with employees, Commodity Suppliers, Regulators and other business-critical stakeholders, that the Just Energy Entities complete a going concern solution and conclude these lengthy and costly CCAA and Chapter 15 proceedings.

***SISP Support Agreement and Stalking Horse Transaction***

12. On August 4, 2022, the Just Energy Entities, the Sponsor, the Supporting Secured CF Lenders and Shell executed the SISP Support Agreement, subject to CCAA Court approval, pursuant to which they agreed to, among other things, to cooperate with each other and use commercially reasonable efforts to consummate the Stalking Horse Transaction.

13. The Stalking Horse Transaction is necessary in addition to the SISP because the existence of the SISP Support Agreement and Stalking Horse Transaction provides stability for employees and counterparties, while providing a floor for bidding.

14. The Stalking Horse Transaction is structured in a manner that generally replicates the restructuring terms previously set out in the Plan, although it does not provide any recoveries to General Unsecured Creditors, including the Term Loan Lenders. The consideration payable under the Stalking Horse Transaction provides the funds necessary (either by cash or credit bid) to satisfy all Charges, secured Claims and other priority payables in full (apart from the Credit Facility Remaining Debt). Accordingly, absent a superior bid to the Stalking Horse Transaction being received in the SISP that generates proceeds in excess of the Just Energy Entities' secured debt and priority payables, no amounts will be available for distribution to the Just Energy Entities' General Unsecured Creditors, including the Term Loan Lenders.



15. The Stalking Horse Transaction provides that:
- (a) the Sponsor will acquire all of the newly issued common and preferred shares of Just Energy (U.S.) Corp. (“**JEUS**”) which, in turn, will acquire all of the newly issued equity of Just Energy Group Inc. (“**Just Energy**”). All of the currently existing equity interests of JEUS and Just Energy will be cancelled, terminated or redeemed for no consideration and Just Energy will be delisted as a reporting issuer under applicable securities laws;
  - (b) all Excluded Assets and Excluded Liabilities of the Just Energy Entities will be assigned to, and vested in, entities to be organized by Just Energy prior to Closing in Canada and the United States (each, a “**Residual Co.**”), following which:
    - (i) the Sponsor will own directly or indirectly all of the equity interests of the Just Energy Entities (except to the extent such equity interests are included in the definition of “Excluded Assets”) free and clear of all Encumbrances other than Permitted Encumbrances and such Just Energy Entities will be discharged from the CCAA proceedings;
    - (ii) each Residual Co. will hold all Excluded Assets and Excluded Liabilities of the Just Energy Entities and each Residual Co. will become an Applicant in the CCAA proceedings;
  - (c) all Priority Payments will be made by Just Energy on the Closing Date from the cash portion of the Purchase Price and the Just Energy Entities’ cash on hand; and
  - (d) \$1.9 million (the “**Administrative Expense Amount**”) will be used by the Monitor to administer the Excluded Assets, Excluded Liabilities and each Residual Co., including the wind up of each Residual Co. Any unused portion of the Administrative Expense Amount will be transferred by the Monitor to Just Energy.
16. The Stalking Horse Transaction is structured on the basis that it will be implemented pursuant to a reverse vesting order. The nature of the Just Energy Entities’ business requires numerous regulatory licenses and permits in the various jurisdictions in which the Just Energy

Entities operate. In addition, the Just Energy Entities have tax attributes and hedging contracts which, together with the multi-jurisdictional permits and licenses held by the Just Energy Entities, make the going concern value of the business more difficult to preserve through a traditional asset sale vesting order.

17. In consideration of the Sponsor executing the SISP Support Agreement and agreeing to act as stalking horse purchaser under the Stalking Horse Transaction Agreement, a Just Energy Entity organized in the United States agreed to pay the Sponsor a break-up fee of US\$14.66 million (the “**Break-Up Fee**”) following (a) the CCAA Court approving an Alternative Restructuring Proposal that is not provided by the Sponsor or any of its affiliates, or (b) Just Energy terminating the SISP Support Agreement following the Just Energy Board determining, upon the advice of outside counsel and financial advisors, that proceeding with the Stalking Horse Transaction would be inconsistent with the exercise of its fiduciary duties or applicable law.

18. The Break-Up Fee is proposed to be secured in favour of the Sponsor by a Court-ordered charge (the “**Bid Protections Charge**”) which will have priority over all other security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings. The Financial Advisor has confirmed that the Break-Up Fee is in line with market terms and is reasonable in the circumstances.

19. The Stalking Horse Transaction will, together with the SISP Support Agreement and the SISP, benefit the Just Energy Entities’ efforts to maximize value for the benefit of all stakeholders by: (a) setting a "floor price" and commercial terms for a transaction involving the shares and/or the business and assets of the Just Energy Entities; (b) helping to generate interest in the Just Energy Entities among potential purchasers; and (c) providing a level of certainty, stability and efficiency during the SISP, both in terms of setting a baseline price and documentation for the SISP and assuring stakeholder groups that there will be a going concern sale of the Just Energy Entities’ business.

### ***Proposed SISP***

20. The Just Energy Entities have developed the proposed SISP in consultation with the Financial Advisor, the Monitor, the Sponsor, the Credit Facility Lenders and Shell. The SISP will

govern the solicitation of interest in executable transaction alternatives that are superior to the sale transaction provided for in the Stalking Horse Transaction Agreement and provide an appropriate test for whether the Stalking Horse Transaction delivers the best possible result for all stakeholders. Solicitation of potentially interested parties by the Financial Advisor with respect to the SISP will commence forthwith following service of this Motion and release of a press release announcing the filing of this Motion.

21. Pursuant to the SISP, interested parties will have an opportunity to complete due diligence and submit a notice of intent to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Just Energy Entities that would be the subject of the bid (each, an **NOI**) and, later in the SISP, a binding offer meeting the requirements enumerated in the SISP (each, a **“Qualified Bid”**). If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, Just Energy will proceed with an auction process to determine the successful bid(s).

22. In the event no NOIs or Qualified Bids are received by the Just Energy Entities by the applicable dates defined in the SISP, the SISP will terminate and the Just Energy Entities will apply to the CCAA Court for a Vesting Order approving the Stalking Horse Transaction.

23. The implementation of the SISP will result in a fair and reasonable process that will adequately canvass the market in order to maximize value for the Just Energy Entities’ assets and/or businesses for the benefit of all stakeholders.

24. As the SISP is the only viable going concern option available to the Just Energy Entities to facilitate their exit from these CCAA and Chapter 15 proceedings for the benefit of all stakeholders, it is critical that the SISP be approved and undertaken expeditiously and without delay. The SISP is necessary to protect against further erosion of the Just Energy Entities’ value, and loss of the Just Energy Entities’ business critical relations with its employees, Commodity Suppliers, and Regulators, among others.

### ***Third KERP***

25. The CCAA Court has previously approved two KERPs in the CCAA proceedings for executive and non-executive key employees. All payments to non-executive key employees under

the original KERP were exhausted in June 2022, and the final payment to non-executive key employees under the Second KERP will be made on September 9, 2022.

26. Executive management of the Just Energy Entities are very concerned that absent additional KERP funds being made available for non-executive key employees to account for the significantly longer-than-expected length of the CCAA and Chapter 15 proceedings, the uncertainty created by the failure of the Plan to move forward and the introduction of a marketing process under the SISP, non-executive key employees may resign at this critical juncture of the Just Energy Entities' restructuring efforts.

27. The loss of such non-executive key employees could be exceedingly detrimental to the ongoing, normal course operation of the Just Energy Entities' highly specialized and expertise-dependent business. The Stalking Horse Transaction is based on, and requires, the Just Energy Entities to continue operating as going concerns through the Closing Date which, in turn, relies on the continued retention of the Just Energy Entities' key employees.

28. The Just Energy Entities are accordingly seeking approval of a Third KERP in the amount of C\$405,280 and US\$633,910 to be paid to non-executive KERP recipients at emergence from the CCAA and Chapter 15 proceedings or within 30 days thereof.

29. No payments under the Third KERP are proposed to be made to executive-level employees and no increase to the KERP Charge is required.

30. The Monitor is supportive of the Third KERP.

***Advice and Direction on Claims Process***

31. Under the Stalking Horse Transaction, the proceeds payable by the Sponsor will not result in any recoveries to the Just Energy Entities' General Unsecured Creditors. Accordingly, in the absence of a Successful Bid being accepted within the SISP which provides sufficient value to allow for recoveries to unsecured creditors, these Claims will not need to be resolved. As such, except for Claims which must be adjudicated for purposes of determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered

into pursuant to the SISP, the Just Energy Entities and the Monitor are of the view that it is unnecessary to determine the validity and value of unresolved Claims in the Claims Process.

32. The Just Energy Entities are accordingly seeking the advice and direction of the CCAA Court regarding the suspension of all ongoing claims review, claims determination, and dispute resolution processes under the Claims Procedure Order, the Appointment Order, and the First Endorsement, pending further order of the CCAA Court, unless the adjudication of such Claim is necessary for purposes of determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered into pursuant to the SISP.

***Extension of Stay Period***

33. The current stay of proceedings granted in these CCAA proceedings expires on August 19, 2022, or such later date as the Court may order (the “**Stay Period**”).

34. The Just Energy Entities are seeking to extend the Stay Period until October 31, 2022, which will allow them to implement the SISP, finalize all Definitive Documents with respect to a Successful Bid, and seek the Vesting Order or one or more Implementation Orders from this Court and an enforcement and recognition order from the U.S. Bankruptcy Court.

35. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings.

36. It is just and convenient and in the interests of the Just Energy Entities and their stakeholders that the Stay Period be extended to October 31, 2022.

***Other Grounds***

37. In addition to the other grounds discussed in this Notice of Motion, the Applicants rely on:

- (a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

- (b) Rules 1.04, 1.05, 2.03, 16, 37, and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) changes to Commercial List operations in light of COVID-19 dated March 16, 2020; and
- (d) 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 Michel Carter, sworn May 12, 2022;
2. The Affidavit of Michael Carter, sworn August 4, 2022;
3. The Eleventh Report of the Monitor, to be filed; and
4. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

August 4, 2022

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Lawyers to the Applicants

**TO: THE SERVICE LIST**

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

**NOTICE OF MOTION  
(Motion for Approval of SISP, SISP Support Agreement,  
Stay Extension, and other relief)**

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Counsel to the Applicants

## **TAB 2**



**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 ("**Just Energy**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of Just Energy and its subsidiaries in these CCAA proceedings (collectively, 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, including the business and financial affairs of the Just Energy Entities. 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 Applicants' senior management team and their financial and legal advisors.

2. I make this affidavit in support of a motion by the Applicants (the "**SISP Motion**") for an Order substantially in the form of the draft order attached at **Tab 3** of the Applicants' Motion Record (the "**SISP Order**"), *inter alia*:

- (a) authorizing and empowering Just Energy to enter into the definitive purchase agreement (the "**Stalking Horse Transaction Agreement**") dated as of August 4, 2022, between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT Energy I LLC<sup>1</sup> (collectively, the "**Sponsor**" and the transactions detailed therein, the "**Stalking Horse Transaction**"), a copy of which is attached hereto as **Exhibit "A"**, *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto, with the approval of FTI Consulting Canada Inc., as monitor (the "**Monitor**") and subject to the terms of the SISP Support Agreement (as defined below);
- (b) approving the Break-Up Fee (as defined below) and authorizing the Just Energy Entities to pay the Break-Up Fee to the Sponsor (or as it may direct) in the

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<sup>1</sup> The Sponsor is comprised of (i) the investment funds that are DIP Lenders and together with a related limited partner, the holders of substantially all of the Term Loan Claim, and (ii) CBHT Energy I LLC ("**CBHT**"), as the holder of the BP Commodity/ISO Services Claim.

circumstances and manner described in the Stalking Horse Transaction Agreement;

- (c) granting a Court-ordered charge (the “**Bid Protections Charge**”) in favour of the Sponsor as security for payment of the Break-Up Fee, with the priority set out in the proposed SISP Order;
- (d) approving the Support Agreement, dated August 4, 2022 among the Just Energy Entities, the Sponsor, Shell, and the Supporting Secured CF Lenders (as each of those terms is defined below) (the “**SISP Support Agreement**”) and authorizing and empowering the Just Energy Entities to enter into the SISP Support Agreement, *nunc pro tunc*, subject to such minor amendments as may be consented to by the Monitor and as may be acceptable to each of the parties thereto, and authorizing, empowering and directing the Just Energy Entities to take all steps and actions in respect of the SISP Support Agreement;
- (e) declaring that notwithstanding the stay of proceedings imposed by the Second Amended and Restated Initial Order, granted May 26, 2021 (the “**Second ARIO**”), a counterparty to the SISP Support Agreement may exercise any termination right that may become available to it pursuant to the SISP Support Agreement, provided that such termination right is exercised in accordance with the SISP Support Agreement;
- (f) approving the Sale and Investment Solicitation Process (the “**SISP**”) in the form attached hereto as **Exhibit “B”** and authorizing the Just Energy Entities to implement the SISP pursuant to the terms thereof;

- (g) authorizing and directing the Just Energy Entities, BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the “**Financial Advisor**”), and the Monitor to perform their respective obligations and do all things reasonably necessary to perform their obligations under the SISP;
- (h) declaring that the Financial Advisor and the Monitor, and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor or Financial Advisor, as applicable, in performing their obligations under the SISP, as determined by the CCAA Court;
- (i) extending the Stay Period (as defined in the Second ARIO) to October 31, 2022;
- (j) approving a third key employee retention plan (the “**Third KERP**”) for key non-executive employees of the Just Energy Entities considered critical to the continued operation and stability of the Just Energy Entities as a going concern and to the Just Energy Entities’ efforts to restructure for the benefit of all stakeholders, in the maximum aggregate amount of C\$405,280 and US\$633,910;
- (k) approving the Monitor’s Tenth Report to the Court dated May 18, 2022, the Supplement to the Tenth Report dated June 1, 2022, and the Eleventh Report to the Court, to be filed, and the activities, conduct and decisions described therein;  
and

- (1) directing that the unredacted copy of the SISP Support Agreement (attached hereto as **Confidential Exhibit “J”**) and the summary of the Third KERP (attached hereto as **Confidential Exhibit “L”**) be treated as confidential and sealed, and not form part of the public record, pending further order of this Court.

3. The Just Energy Entities are also seeking the advice and direction of the CCAA Court regarding the suspension of all ongoing claims review, claims determination, and dispute resolution processes under (i) the Claims Procedure Order, granted September 15, 2021 (the **“Claims Procedure Order”**), (ii) the Order of the CCAA Court, granted March 3, 2022 appointing the Honourable Justice Dennis O’Connor as Claims Officer for purposes of adjudicating the issues raised in the Putative Class Actions (as defined below) (the **“Appointment Order”**), and (iii) the First Endorsement (as defined below), pending further order of the CCAA Court, unless the adjudication of such Claim is necessary for determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered into pursuant to the SISP.

4. Capitalized terms used in this affidavit but not defined have the meaning given to them in the SISP, the SISP Support Agreement, or the Stalking Horse Transaction Agreement, as applicable. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

**A. HISTORY OF THE CCAA PROCEEDINGS**

5. 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 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 February 2021 in Texas and the Texas regulators' response to same.

6. On the Filing Date, the Ontario Superior Court of Justice Commercial List (the "**CCAA Court**") approved the CCAA Interim Debtor-in-Possession Financing Term Sheet (the "**DIP Term Sheet**") pursuant to which the DIP Lenders<sup>2</sup> provided access to emergency financing of US\$125 million (the "**DIP Facility**") to the Just Energy Entities. The DIP Facility has been fully drawn.

7. The Initial Order has twice been amended and restated. The CCAA Court granted an Amended and Restated Initial Order (the "**ARIO**") on March 19, 2021, and the Second ARIO on May 26, 2021.

8. On April 2, 2021, the United States Bankruptcy Court for the Southern District of Texas ("**U.S. Bankruptcy Court**") granted a Final Recognition Order under Chapter 15 of the U.S. Bankruptcy Code 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, full force and effect on a final basis with respect to the Just Energy Entities' property located within the United States.

9. On September 15, 2021, the CCAA Court granted the Claims Procedure Order establishing a 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

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<sup>2</sup> The DIP Lenders are: LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC and OC II LVS XIV LP (the "**DIP Lenders**").

established a Claims Bar Date of November 1, 2021. Since the Claims Bar Date, the Just Energy Entities have been working in consultation 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 February 9, 2022, the CCAA Court heard a Motion for Advice and Directions filed by U.S. counsel to the proposed representative plaintiffs in *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB (PC-11175-1) and in *Fira Donin and Inna Golovan v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB (PC-11177-1) (together, the “**Putative Class Actions**”). At the conclusion of the February 9<sup>th</sup> hearing, the CCAA Court dismissed the Motion for Advice and Directions (the “**Dismissal Order**”).

11. While U.S. counsel to the proposed representative plaintiffs in the Putative Class Actions filed a Notice of Motion for Leave to Appeal the Dismissal Order, such motion was dismissed in full by the Ontario Court of Appeal on June 28, 2022, with costs payable to Just Energy and the DIP Lenders. A copy of the Ontario Court of Appeal’s Reasons for Decision are attached hereto as **Exhibit “C”**.

12. On May 12, 2022, the Just Energy Entities filed and served a Notice of Motion seeking orders, *inter alia*, (i) accepting the filing of a Plan of Compromise and Arrangement, dated May 26, 2022 (the “**Plan**”), (ii) approving a Plan Support Agreement, dated May 12, 2022 (the “**Plan Support Agreement**”) and a Backstop Commitment Letter, dated May 12, 2022 (the “**Backstop Commitment Letter**”), and (iii) authorizing the Just Energy Entities to call, hold and conduct virtual meetings of the established creditor classes to consider and vote on resolutions to approve the Plan (the “**Meetings Order Motion**”). The Meetings Order Motion was the culmination of

ongoing efforts by the Just Energy Entities over an approximately one-year period to reach consensus with certain of their significant secured and unsecured creditors regarding the terms and structure of a restructuring plan to facilitate the Just Energy Entities' emergence from the current CCAA and Chapter 15 proceedings in a manner that, among other things, was intended to:

- (a) recapitalize the Just Energy Entities and in so doing preserve the going concern value of the businesses for the benefit of all stakeholders;
- (b) maintain relations with Commodity Suppliers to ensure uninterrupted supply of energy to the Just Energy Entities' customers;
- (c) preserve the ongoing employment of most of the Just Energy Entities' more than 1000 employees;
- (d) maintain critical regulatory and licensing relationships between the Just Energy Entities and its market regulators across Canada and the United States; and
- (e) sustain relationships with the hundreds of other vendors with whom the Just Energy Entities transact for goods and services, and other business-critical stakeholders.

13. On June 7, 2022, the Meetings Order Motion was heard by the CCAA Court. The Meetings Order Motion was opposed by the following contingent creditors:

- (a) counsel for the plaintiffs in the Putative Class Actions;



- (b) the representative plaintiff in the certified class action proceeding filed in *Haidar Omarali v. Just Energy Group Inc. et al*, Ontario Superior Court of Justice Court File No. CV-15-527493-00CP (the “**Omarali Class Action**”);
- (c) the approximately 250 alleged claimants pursuing claims for alleged loss of business, personal injury and/or property damage arising out of the winter storm in Texas in February 2021 (the “**Mass Tort Claimants**” and collectively with the plaintiffs in the Putative Class Actions and the Omarali Class Action, the “**Contingent Litigation Claimants**”); and
- (d) Pariveda Solutions Inc. (“**Pariveda**”).

14. On June 10, 2022, the CCAA Court released a brief endorsement addressing the majority of the issues raised both in the Meetings Order Motion and in the various objections filed by the Contingent Litigation Claimants in response to the Meetings Order Motion, with reasons to follow (the “**First Endorsement**”). In the First Endorsement, the CCAA Court:

- (a) granted the vast majority of the relief sought by the Applicants in the Meetings Order Motion, including approval of the Plan Support Agreement, the Backstop Commitment Letter and the Termination Fee (as defined in the Meetings Order Motion), the establishment of two classes of creditors (the Unsecured Creditor Class and the Secured Creditor Class) for purposes of considering and voting on the Plan and the provision of one vote to each of the Putative Class Actions and the Omarali Class Action and four votes to the Mass Tort Claimants;

- (b) denied the Applicants' request that each of the claims held by the Contingent Litigation Claimants be valued at \$1 for purposes of voting on the Plan, and directed that summary proceedings be undertaken by the Applicants on an expedited basis as soon as reasonably possible to determine the validity and value of the claims held by the Contingent Litigation Claimants and Pariveda;
- (c) directed the Monitor to liaise with the relevant parties to determine a process to conduct the claim determinations and valuations (which process the CCAA Court later clarified in a case conference was to be undertaken prior to the Creditors' Meetings); and
- (d) requested supplementary submissions from the Applicants, the Plan Sponsor and the Contingent Litigation Claimants regarding the appropriateness of the terms of the proposed differential consideration being offered to unsecured creditors in the Plan.

A copy of the First Endorsement and supporting reasons released by the CCAA Court on June 21, 2022 are attached hereto as **Exhibit "D"**.

15. After the release of the First Endorsement the Plan Sponsor/DIP Lenders advised the Court and stakeholders that the Plan Sponsor/DIP Lenders intended to withdraw their support for the Plan, indicating that in their view the Plan was no longer feasible.

16. On June 23, 2022, the CCAA Court released its second endorsement addressing the issue of the different consideration being offered to unsecured creditors in the Plan (the "**Second Endorsement**"). The CCAA Court determined in the Second Endorsement that given the

complicated nature of the proposed differential consideration and the conflicting evidence on the issue, it was preferrable to wait until the Sanction Hearing to determine the fairness of this aspect of the Plan. The CCAA Court accordingly rejected the Contingent Litigation Claimants' submission that it was clear that the Plan cannot be sanctioned and is doomed to fail. A copy of the Second Endorsement is attached hereto as **Exhibit "E"**.

17. On July 4, 2022:

- (a) the representative plaintiff in the Omarali Class Action filed a Notice of Motion for Leave to Appeal the First Endorsement and, in particular, the CCAA Court's determination that the class is entitled to only one vote, rather than one vote for each member of the class, in respect of the Plan; and
- (b) U.S. counsel in the Putative Class Actions filed a Notice of Motion for Leave to Appeal the First Endorsement and, in particular, the CCAA Court's allocation of one vote to each of the Putative Class Actions and the classification of the Term Loan Lenders in the same class as the claimants in the Putative Class Actions and other general unsecured creditors.

Copies of the two Notices of Motion for Leave to Appeal are attached hereto as **Exhibit "F"**.

**B. A SISP IS NEEDED TO PRESERVE VALUE**

18. Since the release of the First Endorsement, and in an effort to preserve the viability of the Plan and a going concern solution, the Just Energy Entities undertook both bilateral and multilateral discussions with certain of the Contingent Litigation Claimants, Pariveda and the Plan Sponsor to canvass whether a resolution could be achieved in a manner that would permit

the Plan to move forward.<sup>3</sup> The DIP Lenders/Plan Sponsor participated in certain of those discussions. At all relevant times, the Monitor was involved in, or kept apprised of, the status of such ongoing discussions, and actively worked to assist in advancing those discussions in a constructive and open manner. Notwithstanding the best efforts of the Just Energy Entities, no resolution was reached with either the Contingent Litigation Claimants or Pariveda.

19. Given the objections to the Plan, the appeals brought, the absence of a resolution with objecting creditors and the degree of uncertainty regarding the approval of the Plan and its implementation, the Supporting Secured CF Lenders questioned the feasibility of the Plan and indicated a desire for a different process to try and achieve a going concern solution.

20. Since no resolution was achieved that would enable the Plan to move forward with key stakeholder support, the Just Energy Entities were in a very difficult position with respect to their ongoing efforts to restructure. Accordingly, since the release of the First Endorsement, and in addition to their discussions with the Contingent Litigation Claimants, the Just Energy Entities, with the assistance of the Monitor, engaged in extensive discussions with the Plan Sponsor/DIP Lenders, the Supporting Secured CF Lenders, and Shell regarding the terms on which they would continue to support the Just Energy Entities' efforts to restructure and emerge as a going concern, without a resolution in respect of the Plan. Each of the Plan Sponsor/DIP Lenders, the Supporting Secured CF Lenders and Shell ultimately agreed to terminate the Plan Support Agreement and support a going concern solution for the Just Energy Entities pursuant to the terms of the SISP Support Agreement that includes, among other things, the implementation of

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<sup>3</sup> Despite being contacted by counsel for the Just Energy Entities multiple times for this purpose, counsel for the Mass Tort Claimants did not respond.

the SISP supported by the Stalking Horse Transaction. The Plan Support Agreement was then terminated by the execution of the SISP Support Agreement.

21. The SISP is the only viable going concern exit strategy available to the Just Energy Entities following the loss of stakeholder support for the Plan. The CCAA and Chapter 15 proceedings have been ongoing for more than 16 months. The Just Energy Entities cannot remain in the CCAA and Chapter 15 proceedings indefinitely. It is necessary and urgent for the preservation of the value of the Just Energy Entities' business and the maintenance of its key relationships with employees, Commodity Suppliers, Regulators and other business-critical stakeholders that the Just Energy Entities complete a going concern solution and conclude these lengthy and costly CCAA and Chapter 15 proceedings. The SISP, along with the Stalking Horse Transaction, is the only viable avenue to effect such outcome.

22. The SISP, supported by the Stalking Horse Transaction, was developed by the Just Energy Entities in consultation with the Financial Advisor, the Monitor, the Sponsor, the Supporting Secured CF Lenders and Shell to provide a fair and reasonable process to canvass the market to confirm whether the Stalking Horse Transaction delivers the best possible result for all stakeholders. To the extent that another party is willing to offer a higher value that could provide recovery to the unsecured creditors of the Just Energy Entities (the "**General Unsecured Creditors**"), the SISP is designed to solicit and identify such a proposal while providing the certainty of the Stalking Horse Transaction in the event no such alternative proposal can be achieved.

23. The Stalking Horse Transaction is structured to achieve comparable benefits for the Just Energy Entities and their stakeholders as are discussed in paragraph 12 above. The terms of the

Stalking Horse Transaction generally replicate the restructuring terms previously set out in the Plan with respect to stakeholder treatment, with one notable difference – the Stalking Horse Transaction does not provide any recoveries to General Unsecured Creditors, including the Term Loan Lenders.

24. It is imperative that the SISP be undertaken expeditiously. As has been well publicized, in the past year and particularly since spring 2022, the global price of natural gas and electricity have been extremely volatile and significant price increases have occurred. At the time the Plan was negotiated and finalized, neither the Just Energy Entities nor the Plan Sponsor expected that natural gas prices would exceed US\$9 per million Btu in June 2022, an increase of more than 60% since late March. The price of natural gas has not approximated the peak price of more than US\$9 per million Btu reached in June 2022 since before the stock market crash and financial crisis of 2008. The significant increase in natural gas prices has resulted in a corresponding increase in electricity prices in many markets in which the Just Energy Entities operate. Since reaching more than US\$9 per million Btu in June, natural gas prices have remained extremely volatile, with prices ranging from as low as mid-US\$5 to currently approximately US\$8 per million Btu.

25. In addition to highly volatile commodity prices, since May 2022, Texas (the Just Energy Entities' largest market) has experienced unseasonably hot temperatures, reporting the 2<sup>nd</sup> hottest May and 5<sup>th</sup> hottest June on record for the State. Such unseasonably hot temperatures have continued through July 2022, resulting in soaring energy demand across the State. On July 13,

2022, the real time price of electricity in Texas reached US\$5,000 per MWh for approximately 4 hours in response to soaring demand and limited electricity generation in ERCOT.<sup>4</sup>

26. Collectively, these market and operating conditions resulted in a significant increase to the Just Energy Entities' working capital requirements with respect to both energy supply costs and collateral posting requirements, and impact both the short-term and long-term profitability of the Just Energy Entities. While the Just Energy Entities were required to post short-term collateral of approximately US\$10 million with ERCOT at the beginning of May 2022 in order to participate in the day ahead and real time energy markets, such collateral posting requirements peaked at approximately US\$65 million in late May 2022. As a result, the Just Energy Entities were forced to request a waiver from the DIP Lenders of the Energy and Delivery Costs line-item variance for the DIP Budget dated May 5<sup>th</sup> to accommodate the enhanced collateral requirements. On May 27, 2022, the DIP Lenders approved the waiver (without any fee or compensation) and allowed the Just Energy Entities to amend the DIP Budget, as requested. As of August 3, 2022, the Just Energy Entities have posted short-term collateral of US\$47.5 million with ERCOT.

27. The increase in operating and collateral posting costs have also resulted in a tightening of the Just Energy Entities' available cash on hand to pay their secured creditors and priority payables as part of a going concern transaction, thereby further complicating the Just Energy Entities' restructuring efforts. While the Just Energy Entities' "sources and uses" under the Plan was tight, the additional demands on the Just Energy Entities' available cash caused by ongoing market volatility has further constrained available funds. The Just Energy Entities, the Sponsor

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<sup>4</sup> ERCOT caps the real time electricity price at US\$5,000 per MWh.

and the Supporting Secured CF Lenders amended the New Credit Facility Term Sheet and the Sponsor agreed to contribute up to an additional \$10 million under the Stalking Horse Transaction, as described further below, to cover any shortfall in the Just Energy Entities' payment of their secured obligations and priority payables under the Stalking Horse Transaction. In light of the ongoing market volatility, increasing demands on the Just Energy Entities' available funds, and resulting business uncertainty, a going concern restructuring of the Just Energy Entities is becoming increasingly difficult to achieve.<sup>5</sup>

28. In addition to difficult external market conditions, employee retention and morale is becoming increasingly problematic for the Just Energy Entities as the CCAA and Chapter 15 proceedings have been ongoing for more than 16 months. Continuing uncertainty regarding the future of the Just Energy Entities, coupled with the increased workloads being undertaken by many employees to both advance the Just Energy Entities' restructuring efforts while continuing to run the day-to-day operations of the business, is causing employee fatigue and burn out. Just Energy recently lost two key employees. Further, the competitive landscape for employee retention in the United States and Canada (as discussed further in my Affidavit sworn November 3, 2021) has exacerbated the issue by causing higher-than-normal rates of employee resignations in 2022.

29. In light of the foregoing, it is critical that the SISP be approved and undertaken expeditiously and without delay to protect against further erosion of the Just Energy Entities' value, and the potential loss of the Just Energy Entities' critical business relationships with its

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<sup>5</sup> In light of the increasing demands on the Just Energy Entities' available funds and the lack of any current need to resolve Claims (as discussed further below), the Just Energy Entities are seeking the advice and direction of the CCAA Court regarding a suspension of the claims process unless and until a Successful Bid is received within the SISP that provides value in excess of the Stalking Horse Transaction and that results in funds being available for distribution to General Unsecured Creditors.



employees, Commodity Suppliers, and Regulators, among others. The SISP is the only viable going concern option available to the Just Energy Entities to facilitate their exit from these CCAA and Chapter 15 proceedings in the near term for the benefit of all stakeholders.

30. The terms of the Stalking Horse Transaction generally replicate the restructuring terms previously set out in the Plan. Notwithstanding that the Plan Support Agreement provided the Just Energy Entities with a broad and robust “fiduciary out” in the event a superior proposal to the Plan was received and, notwithstanding that more than 2 months have passed since the Plan was served and interested parties were notified of the opportunity by press release, no meaningful inquiries and no proposals have been received by either the Financial Advisor or the Just Energy Entities.

31. Within the course of the discussions with certain of the Contingent Litigation Claimants, counsel in the Putative Class Actions advised the Just Energy Entities that, absent a consensual arrangement, their clients anticipated filing their own restructuring plan for consideration by the Just Energy Entities’ creditors. They also indicated that they had a financier who may be prepared to provide a replacement DIP facility. Counsel in the Putative Class Actions accordingly requested, among other things, that they, their financial advisor and their financier be provided access to the Just Energy Entities’ dataroom and financial information.<sup>6</sup>

32. I am advised by counsel to the Just Energy Entities, Osler Hoskin & Harcourt (“**Osler**”), that a call was immediately organized amongst counsel to discuss process and:

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<sup>6</sup> In addition to receiving access to such information, since December 2021, counsel to the Putative Class Actions and their financial advisor have previously received from the Just Energy Entities and/or the Monitor a significant amount of information in response to various information requests, which information was provided pursuant to their confidentiality agreements with Just Energy.

- (a) counsel in the Putative Class Actions and their financial advisor were provided access on July 20, 2022 to the dataroom created for the SISP, notwithstanding that the SISP had not yet commenced, in order to give them as much time as possible with the information and maximize their opportunity to submit an alternative restructuring proposal for the benefit of all stakeholders;
- (b) representatives of the financier with respect to an alternative DIP were provided with a draft non-disclosure agreement. Less than a day later, counsel in the Putative Class Actions advised that the proposed alternative DIP financier was no longer interested in exploring the opportunity and declined to participate further. No non-disclosure agreement was accordingly signed with such financier; and
- (c) through counsel in the Putative Class Actions, proposed financier(s) with respect to the alternative restructuring plan were invited to execute a non-disclosure agreement and gain access to the dataroom. Various drafts of a non-disclosure agreement were circulated between Osler and counsel in the Putative Class Actions, and I am advised by Osler that they attended a call with counsel on August 1, 2022 to discuss the non-disclosure agreement. Subsequently, on August 4, 2022, the proposed financier executed a non-disclosure agreement with Just Energy and was granted access to the dataroom.

33. Counsel in the Putative Class Actions has been invited to submit an alternative restructuring plan (which could take the form of a plan of arrangement) to the Just Energy Entities at any time, or to submit a NOI and Qualified Bid (as defined below) in the SISP, if approved, to restructure the Just Energy Entities in the manner proposed in their alternative

restructuring plan should they wish to do so. The Just Energy Entities continue to facilitate diligence by counsel in the Putative Class Actions and their financial advisor on financial, operational, commercial, and other matters relevant to their formulation of an alternative restructuring plan.

34. In addition, counsel in the Putative Class Actions was provided with an advance copy of the SISP on July 30, 2022. The Just Energy Entities intend to continue to discuss the SISP with counsel in the Putative Class Actions between now and the hearing of the SISP Motion on August 17th.

35. On August 4, 2022, counsel in the Putative Class Actions provided the letter attached as **Exhibit “G”** seeking an estimation of the Putative Class Actions by August 31, 2022. For the reasons set out below with respect to the Applicants’ motion for advice and direction regarding a suspension of the Claims Process, and in the attached responding letter dated August 4, 2022 attached as **Exhibit “H”** hereto, the Just Energy Entities object to an estimation of these claims in the current circumstances of the CCAA proceedings. The Just Energy Entities’ responding letter also provides further information concerning their engagement with counsel in the Putative Class Actions in the weeks prior to service of the SISP Motion scheduled for August 17, 2022.

36. The Just Energy Entities are accordingly seeking, among other things: (a) authorization to enter into the Stalking Horse Transaction Agreement, *nunc pro tunc*, subject to such minor amendments as may be consented to by the Monitor and as may be acceptable to each of the parties thereto; (b) approval of the SISP Support Agreement; and (c) approval of the SISP. A summary of the SISP Support Agreement, the Stalking Horse Transaction Agreement, and the terms, timelines, and details of the proposed SISP is provided below.

C. **PROPOSED SALE AND INVESTMENT SOLICITATION PROCESS**

(a) **SISP Support Agreement**

37. On August 4, 2022, the Just Energy Entities, the Sponsor, Shell, and the Supporting Secured CF Lenders entered into the SISP Support Agreement, subject to Court approval. The SISP Support Agreement provides that upon execution and delivery thereof by the Just Energy Entities and the Sponsor (the “**Effective Date**”), the Plan Support Agreement and Backstop Commitment Letter were terminated without further notice or action by the parties thereto.

38. In many respects, the SISP Support Agreement is similar in form and substance to the Plan Support Agreement. Under the SISP Support Agreement, each of the Just Energy Entities, the Sponsor, Shell, and the Supporting Secured CF Lenders agreed to cooperate with each other in good faith and use commercially reasonable efforts with respect to the pursuit, approval, implementation, and consummation of the transactions contemplated in the SISP Support Agreement, as well as the negotiation, drafting, execution, and delivery of the Definitive Documents (as defined in the SISP Support Agreement). A redacted copy of the SISP Support Agreement is attached hereto as **Exhibit “I”**.

39. Under the SISP Support Agreement, and unless inconsistent with the DIP Lenders’ obligations or rights under the DIP Term Sheet and subject to the SISP Order and the carrying out of the SISP thereunder, the Sponsor agreed and committed, among other things, to:

- (a) support the Stalking Horse Transaction and exercise any powers or rights available to it in favour of any matter requiring approval to the extent necessary to implement the Stalking Horse Transaction;

- (b) act in good faith and take all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the U.S. Bankruptcy Court, to support and achieve the consummation of the Stalking Horse Transaction and implementation of the steps provided for in the Stalking Horse Transaction;
- (c) not object to, delay, impede, or take any other action to interfere with consummation or implementation of the Stalking Horse Transaction;
- (d) not file any motion, pleading, or other document with the CCAA Court, the U.S. Bankruptcy Court or any other court that, in whole or in part, is not materially consistent with the Stalking Horse Transaction; and
- (e) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims against the Just Energy Entities.

40. Similar support and good faith commitments and agreements are provided by each of the Supporting Secured CF Lenders and Shell under the SISP Support Agreement. In addition, similar to the Plan Support Agreement, the Supporting Secured CF Lenders agreed to participate in a New Credit Facility (subject to the terms and conditions of the New Credit Agreement) and enter into the New Intercreditor Agreement (as each of those terms is defined below), subject to the implementation of the Stalking Horse Transaction and closing occurring in accordance with the Stalking Horse Transaction Agreement. Shell agreed to continue to provide commodity supply in accordance with the existing Shell agreements and to enter into the New Intercreditor Agreement.

41. In turn, subject to the terms of the SISP Support Agreement, the SISP and the SISP Order, the Just Energy Entities agreed and committed that they would, among other things:

- (a) support and use commercially reasonable efforts to complete the Stalking Horse Transaction, including making commercially reasonable efforts to complete the Stalking Horse Transaction in accordance with each Milestone (as defined below);
- (b) not file any motion, pleading, or Definitive Documents with the CCAA Court, the U.S. Bankruptcy Court, or any other court that is inconsistent with the SISP Support Agreement or undertake any action that is inconsistent with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Stalking Horse Transaction;
- (c) take commercially reasonable efforts to ensure that all consents and approvals necessary for the implementation of the Stalking Horse Transaction have been obtained to the satisfaction of the Sponsor, National Bank of Canada, as administrative agent under the Credit Agreement (the “**Credit Facility Agent**”), and the Just Energy Entities prior to the Closing Date;
- (d) apply for and obtain orders from the applicable Canadian Securities Regulatory Authorities which provide that, at Closing, all Just Energy Entities will have ceased to be reporting issuers under Canadian securities laws and no Just Energy Entity will become a reporting issuer (or equivalent) as a result of the completion of the Stalking Horse Transaction;

- (e) pay the reasonable and documented fees and expenses of all parties to the SISP Support Agreement incurred in connection with the Stalking Horse Transaction and the CCAA and Chapter 15 proceedings, including as set forth in the DIP Term Sheet or, with respect to any additional fees and expenses, as otherwise agreed to by the Sponsor;
- (f) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with the SISP Support Agreement, and use commercially reasonable efforts to preserve intact the Just Energy Entities' business, organization and relationships with third parties and employees; and
- (g) keep the Sponsor, the Supporting Secured CF Lenders, and the Credit Facility Agent informed about the operations of the Just Energy Entities and provide each of the parties to the SISP Support Agreement with any material information reasonably requested regarding the Just Energy Entities (in accordance with the terms therein, including on a confidential basis).

42. In addition, under the SISP Support Agreement, the Just Energy Entities agreed to provide copies of any Alternative Restructuring Proposal<sup>7</sup> to legal counsel and the financial advisors to the Sponsor and Supporting Secured CF Lenders, including information regarding the

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<sup>7</sup> Any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity's material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the Transaction and is with a counterparty other than the Sponsor or an affiliate of the Sponsor.

status and substance of discussions relating thereto, and such other information as may be reasonably requested by legal counsel or the financial advisors.

43. Importantly, unlike the previous Plan Support Agreement, the SISP Support Agreement does not contain any provisions restricting the ability of the Just Energy Entities or the Financial Advisor to solicit superior offers to the Stalking Horse Transaction. As such limitations would be wholly inconsistent with the canvassing of the market for superior bids under the SISP, any and all previous restrictions and limitations have now been excluded from the SISP Support Agreement.

44. The SISP Support Agreement establishes the following milestones for the remainder of the CCAA and Chapter 15 proceedings (as may be extended in accordance with the SISP Support Agreement, the “**Milestones**”):

<b>Milestone</b>	<b>Date</b>
Motion for SISP Order served	August 4, 2022
SISP Order granted	August 17, 2022
Motion filed for an Order of the U.S. Bankruptcy Court recognizing and enforcing the Claims Procedure Order (“ <b>Claims Procedure Recognition Order</b> ”) and SISP Order (“ <b>SISP Recognition Order</b> ”)	August 19, 2022
Claims Procedure Recognition Order and SISP Recognition Order granted by U.S. Bankruptcy Court	September 9, 2022
Motion for Vesting Order (as defined below) served	October 13, 2022
Vesting Order granted	October 21, 2022
Motion filed for an Order of the U.S. Bankruptcy Court recognizing and enforcing the Vesting Order (“ <b>Vesting Recognition Order</b> ”)	October 24, 2022
A hearing shall be set by the U.S. Bankruptcy Court on the motion for the Vesting Recognition Order	November 14, 2022
Vesting Recognition Order granted by U.S. Bankruptcy Court	November 16, 2022
Outside date for the closing of the Stalking Horse Transaction, unless extended by the Sponsor (or, if the only outstanding condition is receipt of regulatory approval(s), as automatically extended by an additional 60 days) (the “ <b>Outside Date</b> ”)	November 30, 2022



45. The previous milestones under the DIP Term Sheet have been amended by the DIP Lenders and the Just Energy Entities to align with the aforementioned Milestones under the SISP Support Agreement.

46. The SISP Support Agreement may be terminated by the Sponsor, the Just Energy Entities, or any of the parties thereto upon the occurrence of certain specified events unless waived or cured by the applicable party in accordance with the terms of the SISP Support Agreement. The SISP Support Agreement preserves the right of the Just Energy Entities to terminate the SISP Support Agreement if the Just Energy Board determines, upon the advice of outside legal counsel and financial advisors, that proceeding with the Stalking Horse Transaction would be inconsistent with the exercise of its fiduciary duties or applicable law, provided, however, that such termination right will cease to apply in situations where either no Qualified Bids other than the Stalking Horse Transaction are received by the Qualified Bid Deadline, or the Stalking Horse Transaction is declared the Successful Bid (as each of those terms is defined below).

47. In the case of the Sponsor, such termination events include, among other things: (a) any failure by the Just Energy Entities to meet any of the Milestones, unless such failure is the result of any act, omission, or delay on the part of the Sponsor; (b) if the Just Energy Entities request, or the CCAA Court approves, any amendments or modifications to the SISP Order that are not acceptable to the Sponsor, acting reasonably; (c) any of the key milestone dates set out in the SISP are not met, unless extended with the consent of the Sponsor; (d) the Just Energy Entities file, propose or support a restructuring, sale or liquidation transaction other than as contemplated in the SISP Support Agreement or in accordance with the SISP Order; or (e) subject to the terms of the SISP, the Sponsor is not the successful bidder under the SISP.

48. In the case of Shell and the Supporting Secured CF Lenders, such termination events include if the Stalking Horse Transaction has not closed by:

- (a) November 30, 2022 with respect to the Supporting Secured CF Lenders, provided that if Closing will not occur by such date solely because the receipt of a Regulatory Approval remains outstanding, then such date will automatically be extended for 60 days upon written notice to the Credit Facility Agent that there is a reasonable expectation that the condition will be satisfied by such extended date; and
- (b) January 31, 2023 with respect to Shell, unless further extended by Shell.

49. The Just Energy Entities seek approval of the SISP Support Agreement and authorization to perform their obligations thereunder. In the Just Energy Entities' view, the SISP Support Agreement represents a critical component of the Just Energy Entities' going concern efforts as it achieves comparable benefits for the Just Energy Entities and their stakeholders as discussed in paragraph 12 above, facilitates consensus amongst all of the Just Energy Entities' significant secured creditors, and ensures continued access to commodity supply, letters of credit, and a credit facility – all critical to the ability of the Just Energy Entities to operate in the normal course upon closing of any going concern transaction.

50. Absent the continuing support of such parties, the Just Energy Entities would be wholly exposed to the vagaries of the market in navigating a sale process without any assurance of success or an ability to continue operations – a risk that is only exacerbated in today's challenging market conditions. The SISP Support Agreement forecloses such risk by permitting the Just Energy Entities to broadly market their assets and business in order to confirm that the

best possible value is received for the benefit of all stakeholders, while simultaneously minimizing any downside otherwise faced by the Just Energy Entities in undertaking a sales process in the absence of a stalking horse. The continuing support of the Sponsor, the Supporting Secured CF Lenders, and Shell are critical to the Just Energy Entities' ability to restructure for the benefit of all stakeholders.

51. Since the commencement of the CCAA proceedings, the Just Energy Board has been kept apprised of the status of all restructuring efforts including, more recently, all ongoing discussions between the Just Energy Entities and the Contingent Litigation Claimants, the DIP Lenders/Plan Sponsor, the Supporting Secured CF Lenders and Shell, and the negotiation of the SISP Support Agreement, the Stalking Horse Transaction Agreement and the SISP. The Just Energy Board has met to receive financial and legal advice regarding the Stalking Horse Transaction, and to review and evaluate the terms of the SISP Support Agreement. The Just Energy Board approved of the Just Energy Entities entering into the SISP Support Agreement and, subject to the approval of the CCAA Court, performing their obligations thereunder, including the negotiation, documentation and execution of all documents and the taking of all actions contemplated by the Stalking Horse Transaction.

52. An unredacted copy of the SISP Support Agreement is attached hereto as **Confidential Exhibit "J"**. The SISP Support Agreement contains confidential, commercially sensitive information relating to the Sponsors' contact information and the holding percentages of the various entities comprising the Sponsor in the DIP Lenders' Claim. The Just Energy Entities therefore seek an order that Confidential Exhibit "J" be sealed and not form part of the court record pending further order of the CCAA Court.

**(b) Stalking Horse Transaction Agreement**

53. The Stalking Horse Transaction is necessary in addition to the SISP because the existence of the SISP Support Agreement and the Stalking Horse Transaction provides stability for employees and counterparties, while providing a floor for bidding, as described further below.

54. The Stalking Horse Transaction is structured in a manner that generally replicates the restructuring terms previously set out in the Plan, although it does not provide the \$10 million General Unsecured Creditor Cash Pool or any share issuance or other compensation for the Term Loan Lenders, both of which were previously offered under the Plan. The cash consideration payable under the Stalking Horse Transaction provides the funds necessary to satisfy all Charges, secured Claims and other priority payables in full (apart from the BP Commodity/ISO Services Claim and the Credit Facility Remaining Debt, each discussed below). Accordingly, absent a superior bid to the Stalking Horse Transaction being received in the SISP that generates proceeds in excess of the Just Energy Entities' secured debt and priority payables<sup>8</sup>, no amounts will be available for distribution to the Just Energy Entities' General Unsecured Creditors, including the Term Loan Lenders.

55. The Stalking Horse Transaction, together with the SISP Support Agreement and the SISP, is the culmination of discussions and negotiations between the Sponsor, the Just Energy Entities, the Supporting Secured CF Lenders and Shell since release of the First Endorsement on June 10, 2022. The Stalking Horse Transaction involves the direct or indirect acquisition by the Sponsor of all of the equity interests of the Just Energy Entities<sup>9</sup> and certain other assumed

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<sup>8</sup> Including the BP Commodity/ ISO Services Claim and the Credit Facility Claims.

<sup>9</sup> Except to the extent such equity interests constitute Excluded Assets (as defined below).

liabilities, subject to certain terms and conditions. A copy of the Stalking Horse Transaction Agreement is attached hereto as **Exhibit “A”**.

56. The Stalking Horse Transaction provides that:

- (a) the Sponsor will acquire all of the newly issued common and preferred shares of Just Energy (U.S.) Corp. (“**JEUS**”) which, in turn, will acquire all of the newly issued equity of Just Energy. All of the currently existing equity interests of JEUS and Just Energy will be cancelled, terminated or redeemed for no consideration and Just Energy will be delisted as a reporting issuer under applicable securities laws;
- (b) all Excluded Assets and Excluded Liabilities will be assigned to, and vested in, entities to be organized by Just Energy prior to Closing in Canada and the United States (each, a “**Residual Co.**”), following which:
  - (i) the Sponsor will own directly or indirectly all of the equity interests of the Just Energy Entities (except to the extent such equity interests are included in the definition of “Excluded Assets”) free and clear of all Encumbrances other than Permitted Encumbrances and such Just Energy Entities will be discharged from the CCAA proceedings;
  - (ii) each Residual Co. will hold all Excluded Assets and Excluded Liabilities of the Just Energy Entities and will become Applicants in the CCAA proceedings;

- (c) all Priority Payments (as defined below) will be made by Just Energy on the Closing Date from the cash portion of the Purchase Price and the Just Energy Entities' cash on hand; and
- (d) the Administrative Expense Amount of \$1.9 million will be used by the Monitor to administer the Excluded Assets, Excluded Liabilities and each Residual Co., including the wind up of each Residual Co. Any unused portion of the Administrative Expense Amount will be transferred by the Monitor to Just Energy.

57. The Stalking Horse Transaction is structured on the basis that it will be implemented pursuant to a reverse vesting order. The nature of the Just Energy Entities' business requires numerous regulatory licenses and permits in the various jurisdictions in which the Just Energy Entities operate. In addition, the Just Energy Entities have tax attributes and hedging contracts which, together with the multi-jurisdictional permits and licenses held by the Just Energy Entities, make the going concern value of the business more difficult to preserve through a traditional asset sale vesting order. Accordingly, the Stalking Horse Transaction requires a reverse vesting order as a condition of its implementation.

58. Further details regarding the Stalking Horse Transaction are as follows:

<b>Term</b>	<b>Details</b>
Seller	Just Energy Group Inc.
Purchaser	The Sponsor
Purchase Price	(i) US\$184.9 million in cash, plus up to an additional \$10 million in the event and to the extent additional funds are required to pay all amounts to be paid by the Just Energy Entities pursuant to the Stalking Horse Transaction Agreement and the

Term	Details
	<p>Vesting Order;</p> <p>(ii) a credit bid of the BP Commodity/ISO Services Claim (US\$252.7 million, including accrued interest to November 30, 2022), in return for the issuance of the newly issued preferred shares of JEUS; and</p> <p>(iii) the retention of the Assumed Liabilities (as defined below)</p> <p>(collectively, the “<b>Purchase Price</b>”).</p> <p>The Sponsor has provided limited guarantees from certain Affiliates of the Sponsor guaranteeing the cash portion of the Purchase Price (subject to the terms and conditions therein).</p>
Transaction Structure	<p>On or prior to the Closing Date, the Just Energy Entities will effect specific transaction and pre-closing reorganization steps (collectively, the “<b>Implementation Steps</b>”) in order to permit the Stalking Horse Transaction to proceed in a tax efficient manner, which Implementation Steps will be set out in a schedule to be agreed upon by the Just Energy Entities, the Credit Facility Lenders and the Sponsor, each acting reasonably.</p> <p>On the Closing Date pursuant to the terms of a reverse vesting order (the “<b>Vesting Order</b>”) substantially in the form attached as <u>Exhibit 3</u> to the Stalking Horse Term Sheet (as attached as Exhibit C to the SISP Support Agreement, the “<b>Stalking Horse Term Sheet</b>”):</p> <p>(i) the Sponsor will acquire newly issued common and preferred shares of JEUS free and clear of all Encumbrances, other than Permitted Encumbrances (collectively, the “<b>Purchased Interests</b>”). The terms of the new preferred equity will be consistent with Exhibit A to the Stalking Horse Transaction Agreement;</p> <p>(ii) in accordance with the Implementation Steps, all equity interests of JEUS outstanding prior to the issuance of the Purchased Interests will be cancelled and the Purchased Interests will represent 100% of the outstanding equity interests of JEUS;</p> <p>(iii) in accordance with the Implementation Steps, JEUS will subscribe for and Just Energy will issue to JEUS newly issued common equity of Just Energy pursuant to the Vesting Order and Articles of Reorganization, following which all other equity interests of Just Energy will be cancelled or redeemed and JEUS will hold 100% of the outstanding equity interests in Just Energy;</p> <p>(iv) at Closing, no Just Energy Entity will be a reporting issuer (or equivalent);</p> <p>(v) at Closing, the Just Energy Entities will retain all of their assets as of the Closing Date other than the Excluded Assets and the Excluded Liabilities;</p> <p>(vi) from and after Closing, each Just Energy Entity will continue to be liable for its Assumed Liabilities;</p> <p>(vii) the Just Energy Entities will assign and transfer the Excluded Liabilities and Excluded Assets to the applicable Residual Co. and such Excluded Liabilities and Excluded Assets will be vested in the applicable Residual Co. as of Closing and none of the Sponsor or any of the Just Energy Entities shall have any liabilities with respect to such Excluded Liabilities or Excluded Assets from and after Closing;</p> <p>(viii) each Residual Co. will become an applicant in these CCAA proceedings; and</p>

Term	Details
	(ix) the Just Energy Entities will cease to be Applicants in the CCAA proceedings and shall be released from the purview of the Second ARIO and all Orders of the CCAA Court granted in the CCAA proceedings (other than the Vesting Order).
Assumed Liabilities	<p>(i) all Post-Filing Claims;<sup>10</sup></p> <p>(ii) liabilities of each Just Energy Entity arising from and after the Closing Date;</p> <p>(iii) all Claims of any Credit Facility Lender relating to any letter of credit issued but undrawn under the Credit Facility Documents immediately prior to Closing and the Credit Facility Remaining Debt (as defined below), if any;</p> <p>(iv) all Cash Management Obligations (as defined in the Second ARIO);</p> <p>(v) Energy Regulator Claims relating to the Just Energy Entities;</p> <p>(vi) tax liabilities of the Just Energy Entities for any tax period or the portion thereof beginning on or after the Filing Date (subject to the various exclusions noted in the Stalking Horse Transaction Agreement);</p> <p>(vii) any other Taxes, including sales or use taxes, payable to a Taxing Authority for any period 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 non-payment;</p> <p>(viii) Intercompany Claims between Just Energy Entities to the extent that the Implementation Steps contemplate such claims continuing as Assumed Liabilities;</p> <p>(ix) any and all indemnification obligations of Just Energy to current and former directors, officers, and/or other persons employed or previously employed by the Just Energy Entities (excluding, for the avoidance of doubt, Residual Co.);</p> <p>(x) Employee Priority Claims;<sup>11</sup></p> <p>(xi) all obligations and liabilities of the direct and indirect subsidiaries of Just Energy that are not Just Energy Entities, excluding those set forth on Schedule 2.2(f) of the Stalking Horse Transaction Agreement; and</p> <p>(xii) all Claims of the Texas Comptroller of Public Accounts that have been accepted pursuant to the Claims Procedure Order</p> <p>(collectively, the “<b>Assumed Liabilities</b>”).</p> <p>Each of the Assumed Liabilities of any Just Energy Entity shall continue to be liabilities of the applicable Just Energy Entity as of Closing, provided, however, that each Just Energy Entity agrees to take such steps as are necessary to ensure that any claim that could give rise to responsible person liability is satisfied if the applicable</p>

<sup>10</sup> Any or all indebtedness, liability, or obligation of the Just Energy Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Effective Date in respect of services rendered or supplies provided to the Just Energy Entities during such period or under or in accordance with any Continuing Contract; provided that, for certainty, such amounts are not a Restructuring Period Claim or a Restructuring Period D&O Claim.

<sup>11</sup> Any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of any of the Just Energy Entities whose employment was terminated between the Filing Date and the Effective Date; and (b) unpaid amounts provided for in section 6(5)(a) of the CCAA.



Term	Details
	Just Energy Entity is, for any reason, unable to satisfy such claim.
Excluded Assets	<p>(i) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities;</p> <p>(ii) cash in an amount equal to the value of the Priority Payments (as defined below) less the value of the cash portion of the Purchase Price (the “<b>Priority Payments Amount</b>”);</p> <p>(iii) cash in an amount of \$1.9 million (the “<b>Administrative Expense Amount</b>”);</p> <p>(iv) Excluded Contracts (contracts of the Just Energy Entities as specified on Schedule 2.2(c) to the disclosure letter regarding the Stalking Horse Transaction Agreement, the “<b>Disclosure Letter</b>”);</p> <p>(v) all communications, information or records, written or oral, that are in any way related to the transactions contemplated by the Stalking Horse Transaction Agreement, the sale of the Purchased Interests, any Excluded Asset, or any Excluded Liability;</p> <p>(vi) any rights which accrue to Residual Co. under the transaction documents;</p> <p>(vii) the equity interests of each entity set forth on Schedule 2.2(f) to the Disclosure Letter (which schedule may be modified by Just Energy and the Sponsor at least 7 days prior to the hearing of the Just Energy Entities’ motion for the Vesting Order); and</p> <p>(viii) any other assets listed on Schedule 2.2 to the Disclosure Letter (collectively, the “<b>Excluded Assets</b>”).</p>
Excluded Liabilities	All Claims, debts, obligations and liabilities of the Just Energy Entities or any predecessor of the Just Energy Entities except as expressly assumed as Assumed Liabilities under the Stalking Horse Transaction Agreement (the “ <b>Excluded Liabilities</b> ”).
Priority Payments	<p>On the Closing Date, upon payment of the cash portion of the Purchase Price and from the Just Energy Entities’ cash on hand, Just Energy shall pay, on behalf of the Just Energy Entities:</p> <p>(i) to the beneficiaries of the Administration Charge and the FA Charge, amounts necessary to satisfy the Just Energy Entities’ obligations secured by such Charges (up to the maximum respective amounts secured by such Charges);</p> <p>(ii) to the beneficiaries of the KERP Charge, all amounts necessary to satisfy the Just Energy Entities’ obligations secured by the KERP Charge;</p> <p>(iii) to the DIP Agent, for the beneficiaries of the DIP Lenders’ Charge, an amount</p>

Term	Details
	<p>necessary to satisfy the Just Energy Entities’ obligations secured by the DIP Charge;</p> <p>(iv) to each Commodity Supplier, an amount necessary to satisfy such Commodity Supplier’s Commodity Supplier Claim<sup>12</sup> that is an Accepted Claim (as defined in the Claims Procedure Order);</p> <p>(v) to each Governmental Entity, an amount necessary to satisfy such Governmental Entity’s Government Priority Claim;<sup>13</sup> and</p> <p>(vi) to the Credit Facility Agent, an amount equal to the Credit Facility Claim<sup>14</sup>, less the Credit Facility Remaining Debt (as defined below), if any</p> <p>(collectively, the “<b>Priority Payments</b>”).</p>
<p>Payment of Administrative Expense Amount</p>	<p>On the Closing Date, the Just Energy Entities will pay the Administrative Expense Amount (\$1.9 million) in trust to the Monitor for payment of the reasonable and documented fees and costs of the Monitor and its professional advisors and the professional advisors of the Just Energy Entities for services performed prior to and, other than in respect of the Just Energy Entities, after the Closing Date, in each case, relating directly or indirectly to the CCAA proceeding, the Chapter 15 proceedings and the Stalking Horse Transaction Agreement, including: (i) costs required to wind down and/or dissolve and/or bankrupt each Residual Co., and (ii) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and each Residual Co. (collectively, the “<b>Administrative Expense Costs</b>”).</p> <p>Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs will be transferred by the Monitor to Just Energy.</p>
<p>New Credit Agreement</p>	<p>On the Closing Date, the Credit Facility Lenders, JEUS and Just Energy Ontario L.P. will enter into an amended and restated credit agreement (the “<b>New Credit Agreement</b>”) with the terms set forth in the New Credit Facility Term Sheet attached as <u>Exhibit 1</u> to the Stalking Horse Term Sheet, and pursuant to which a first lien revolving credit facility in the amount of \$250 million (the “<b>New Credit Facility</b>”) will be made available to the Just Energy Entities and:</p> <p>(i) the principal amount of up to \$10 million of the Credit Facility Claim (the “<b>Credit Facility Remaining Debt</b>”), if any, may remain outstanding as an initial outstanding principal amount under the New Credit Agreement, and</p> <p>(ii) the letters of credit issued by the Credit Facility Lenders but which remain undrawn under the current Credit Agreement immediately prior to Closing will continue under the New Credit Facility or be replaced with new or replacement</p>

<sup>12</sup> Any Pre-Filing Claim or Restructuring Period Claim of any Commodity Supplier that is party to the Intercreditor Agreement in respect of a Commodity Agreement, plus any interest thereon to the Closing Date. But excluding the BP Commodity / ISO Services Claim.

<sup>13</sup> Any Claim of any Governmental Entity against any Just Energy Entity in respect of amounts that are outstanding, if any, provided for in section 6(3) of the CCAA.

<sup>14</sup> Any amounts owing by the Just Energy Entities to the Credit Facility Lenders as of the Closing Date under the Credit Facility Documents.

Term	Details
	letters of credit issued under the New Credit Facility.
Shell	Shell will have confirmed, in writing, to Just Energy and the Sponsor that: (i) it will not exercise any termination rights under its Continuing Contracts solely as a result of the Stalking Horse Transaction, and (ii) all existing and potential future trades will be transacted in accordance with the Continuing Contracts (as may be amended, restated, supplemented and/or replaced) or new arrangements, in each case in accordance with the terms thereof and subject to the terms of the New Intercreditor Agreement.
New Intercreditor Agreement	A seventh amended and restated intercreditor agreement (the “ <b>New Intercreditor Agreement</b> ”) by, among others, the Just Energy Entities, the Credit Facility Agent, and the applicable Commodity Suppliers, will be entered into, in accordance with the terms set forth in the New Intercreditor Agreement Term Sheet attached as <u>Exhibit 4</u> to the Stalking Horse Term Sheet.
Employees	Unless otherwise provided in the Management Incentive Plan (“ <b>MIP</b> ”) or agreed to in writing by and among the Just Energy Entities, the Sponsor, and the applicable employee (or employees) affected by any change or modification, each of the Employment Agreements will not be disclaimed and will remain in place as of, and as a condition to the occurrence of, Closing.
Management Incentive Plan	On Closing, a MIP will be executed on terms consistent in all respects with the MIP Term Sheet attached as <u>Exhibit 5</u> to the Stalking Horse Term Sheet.
Releases	<p>The Stalking Horse Purchase Agreement includes the following releases:</p> <p>Effective as of the Closing Date, and except in connection with any obligations contained in the Stalking Horse Transaction Agreement and the Closing Documents:</p> <p>(i) the Sponsor releases and discharges Just Energy, the Monitor, and their respective affiliates, and each of their respective successors and assigns, officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors from any and all actual or potential Released Claims<sup>15</sup> to the extent relating to the Purchased Interests or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such person believed in good faith that its conduct was legal);</p> <p>(ii) the Sponsor will cause the Just Energy Entities to release and discharge all officers, directors, partners, limited partners, employees, agents, financial and legal advisors of each of the Just Energy Entities and their respective successors and assigns from any and all potential Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have</p>

<sup>15</sup> All claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “claims” as defined in the CCAA or the U.S. Bankruptcy Code and including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

Term	Details
	<p>constituted actual fraud, willful misconduct, or gross negligence; and</p> <p>(iii) Just Energy releases and discharges the Sponsor, the Monitor, and their respective affiliates, and each of their respective successors and assigns, officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors from any and all actual or potential Released Claims to the extent relating to the Purchased Interests, the Assumed Liabilities, the Excluded Assets or the Excluded Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such person believed in good faith that its conduct was legal).</p> <p>In addition to the foregoing releases, the Vesting Order includes similar third-party releases, debtor releases, and exculpations to those previously included in the Plan (including releases of the Monitor, the Sponsor, the Credit Facility Agent and the Credit Facility Lenders). In the event the Stalking Horse Transaction is the Successful Bid, the Just Energy Entities will seek approval of such releases and exculpations by the CCAA Court as part of the Vesting Order.</p>

59. I have been advised by Osler that (i) the provisions of Multilateral Instrument 61 -101 “Protection of Minority Securityholders in Special Transactions”, that require “minority” shareholder approval in respect of certain “related party transactions” or “business combinations” may be triggered by the Stalking Horse Transaction, and (ii) the CCAA provides that shareholders are not required to vote on the Stalking Horse Transaction unless specifically ordered by the Court.

60. The Stalking Horse Transaction Agreement also provides that a Just Energy Entity organized in the United States will pay the Sponsor a break-up fee in cash equal to US\$14.66 million (the “**Break-Up Fee**”) concurrently with the consummation of an Alternative Restructuring Proposal, following: (a) the CCAA Court approving an Alternative Restructuring Proposal that is not provided by the Sponsor or any of its affiliates in accordance with the terms of the SISP Order, or (b) Just Energy terminating the SISP Support Agreement following the Just Energy Board determining, upon the advice of outside counsel and financial advisors, that

proceeding with the Stalking Horse Transaction would be inconsistent with the exercise of its fiduciary duties or applicable law.

61. The quantum of the Break-Up Fee was derived taking into account the same factors on which the Termination Fee was derived in the Backstop Commitment Letter – the new value contribution of the Sponsor by payment of the Purchase Price (previously the new value contribution by the Plan Sponsor and CBHT to the Restructuring under the Plan Support Agreement and Plan). The Break-Up Fee reflects a slightly reduced amount from the Termination Fee that was previously approved by the CCAA Court in the First Endorsement to reflect the reduced amount of the cash contribution of the Sponsor, excluding, for the sake of simplicity, (i) the additional \$10 million commitment which may be made by the Sponsor to the extent additional funds are required to pay all required amounts pursuant to the Stalking Horse Transaction Agreement and the Vesting Order, and (ii) the Assumed Liabilities.

62. Under the Stalking Horse Transaction Agreement, the Sponsor is required to pay US\$184.9 million in cash and credit bid the BP Commodity/ISO Services Claim (US\$252.7 million, including accrued interest to November 30, 2022). Accordingly, in the event the Stalking Horse Transaction is not the Successful Bid or the SISP Support Agreement is terminated and the Break-Up Fee is to be paid in accordance with the terms thereof, the Break-Up Fee can be analyzed as a percentage of the foregoing Purchase Price. The US\$14.66 million Break-Up Fee equates to 3.4% of the Purchase Price payable by the Sponsor under the Stalking Horse Transaction, exclusive of the Assumed Liabilities.<sup>16</sup>

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<sup>16</sup> US\$14.66 million Break-Up Fee / (US\$184.9 million (cash consideration) + US\$252.7 million (the BP Commodity/ISO Services Claim including all accrued and unpaid interest calculated up to November 30, 2022, the CAD portion of which is converted at a rate of C\$1.30 per US\$1.00)) = 3.4%.

63. While each of the additional equity commitment and the Assumed Liabilities represent additional value to the benefit of the Just Energy Entities under the Stalking Horse Transaction, for ease of the analysis and the sake of simplicity, such amounts have been excluded from the foregoing calculations. If such value was included in the analysis, the Break-Up Fee as a percentage of new value contributed by the Sponsor would be lower than the 3.4% discussed above.

64. I am advised by Mr. Mark Caiger, Managing Director, Mergers & Acquisitions at the Financial Advisor, that the quantum of the Break-Up Fee is in line with market terms, is consistent with market practice and is reasonable in all of the circumstances.

65. Similar to the Termination Fee Charge securing the Termination Fee which was approved by the CCAA Court in the First Endorsement, the Break-Up Fee is proposed to be secured in favour of the Sponsor by the Bid Protections Charge on all of the Property (as defined in the Second ARIO) of the Just Energy Entities. The Bid Protections Charge will have priority over all other security interests, charges, and liens, but will rank subordinate to all other Charges granted to date within the CCAA proceedings, which is consistent with the ranking of the Termination Fee Charge.

66. The Just Energy Entities are of the view that the inclusion of the Stalking Horse Transaction as part of the SISF will benefit the Just Energy Entities' efforts to maximize value for the benefit of all stakeholders by, among other things: (a) setting a "floor price" and commercial terms for a transaction involving the shares and/or the business and assets of the Just Energy Entities; (b) helping to generate interest in the Just Energy Entities among potential purchasers; and (c) providing a level of certainty, stability and efficiency during the SISF, both

in terms of setting a baseline price and documentation for the SISP and assuring stakeholder groups that there will be a going concern sale of the Just Energy Entities' business.

67. The stability provided by the Stalking Horse Transaction is particularly important in light of the very challenging market conditions currently existing in Canada and the United States. Companies operating in the energy retail space have, to the best of my knowledge, had very little recent involvement in the acquisition market and have instead been aggressively conserving capital. The energy markets in which the Just Energy Entities operate continue to be extremely volatile and difficult for energy retailers like the Just Energy Entities to navigate and, as such, the Stalking Horse Transaction provides a critical level of stability to the process that would not otherwise exist.

68. In addition to difficult energy markets, the CCAA and Chapter 15 proceedings have been ongoing for more than 16 months, and despite the relative stability created by the process, continue to generate uncertainty for employees, suppliers, regulators and other business-critical stakeholders necessary for the long-term viability of the Just Energy Entities. Fatigue by such critical stakeholder groups has only worsened in light of the inability of the Plan to move forward as originally anticipated and the fact that, notwithstanding the passage of more than 2 months since potentially interested parties were notified of the ability to submit superior proposals to the Plan, no meaningful inquiries and no proposals have been received by either the Financial Advisor or the Just Energy Entities. I am particularly concerned about the loss of key employees as the restructuring continues and I believe that the certainty that a going concern transaction will be implemented through the Stalking Horse Transaction or a superior offer obtained through the SISP is crucial to employee retention and the maintenance of employee morale.

69. As such, it is critical that a process to facilitate the Just Energy Entities' exit from the CCAA and Chapter 15 proceedings be put in place without delay. In light of the loss of stakeholder support for the Plan, the SISP (discussed below) supported by the Stalking Horse Transaction is the only currently viable going concern option available to the Just Energy Entities in the context of these CCAA proceedings.

**(c) Proposed SISP**

70. The approval by the CCAA Court of the SISP in the form attached hereto as **Exhibit "B"** (or as otherwise acceptable to the Sponsor, acting reasonably) and entry by the U.S. Bankruptcy Court of the SISP Recognition Order are each Milestones under the SISP Support Agreement.

71. The Just Energy Entities have developed the proposed SISP in consultation with the Financial Advisor, the Monitor, the Sponsor, the Supporting Secured CF Lenders and Shell. The SISP sets out the parameters by which the Just Energy Entities, under the oversight of the Monitor and with the assistance of the Financial Advisor, have or will:

- (a) prepare marketing materials, a process letter, and a data room, access to which will be provided to applicable parties that execute a non-disclosure agreement in form and substance satisfactory to Just Energy;
- (b) solicit interest in executable transaction alternatives that are superior to the sale transaction provided for in the Stalking Horse Transaction Agreement involving the shares and/or the business and assets of the Just Energy Entities. Such transaction alternatives may include, among other things, a sale of some or all of Just Energy's shares, assets or business, and/or an investment in Just Energy;



- (c) negotiate any bids received within the SISP;
- (d) select one or more Successful Bids (as defined below); and
- (e) seek the approval of the CCAA Court of any Successful Bid.

72. Solicitation of potentially interested parties by the Financial Advisor with respect to the SISP will commence forthwith following service of the Just Energy Entities' SISP Motion and release of a press release announcing the filing of the SISP Motion. A copy of Just Energy's press release is attached hereto as **Exhibit "K"**.

73. Pursuant to the SISP, interested parties must enter into a non-disclosure agreement in form and substance satisfactory to Just Energy and submit a notice of intent to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Just Energy Entities that would be the subject of the bid and that reflects a reasonably likely prospect of culminating in a binding offer meeting the requirements enumerated in the SISP (a "**Qualified Bid**"), as determined by the Just Energy Entities in consultation with the Monitor and the Credit Facility Agent (each, a "**NOI**") by August 25, 2022 (the "**NOI Deadline**"). If, by the NOI Deadline, no NOI has been received, the SISP will be terminated and the Stalking Horse Transaction will be the Successful Bid (as defined below) and, subject to the Court issuing the Vesting Order, will be consummated in accordance with the SISP Support Agreement and the Stalking Horse Transaction Agreement.

74. In order to constitute a Qualified Bid, each bid must:

- (a) provide for (i) the payment in full in cash on closing of the BP Commodity/ISO Services Claim, unless otherwise agreed to by the holder of such claim in its sole

discretion; (ii) the payment in full in cash on closing of the Credit Facility Claims, unless otherwise agreed to by the Credit Facility Agent in its sole discretion; (iii) the payment in full in cash on closing of any claims ranking in priority to the BP Commodity/ISO Services Claim, including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion (iv) the return of all outstanding letters of credit and release of all Credit Facility LC Claims or arrangements satisfactory to the applicable Credit Facility Lenders in their discretion to secure with cash collateral or otherwise any Credit Facility LC Claims not released, and (v) the payment in full in cash on closing of any outstanding Cash Management Obligations or arrangements satisfactory to the applicable Credit Facility Lenders or their affiliates to secure with cash collateral or otherwise any outstanding Cash Management Obligations;

- (b) provide a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus Just Energy’s cash on hand must be sufficient for payment in full of the BP Commodity/ISO Services Claim, the Credit Facility Claims, the Priority Payments and the Break-Up Fee, plus US\$1 million, on closing, which Cash Consideration Value is estimated to be US\$460 million as of December 31, 2022;
- (c) be reasonably capable of being consummated by 90 days after completion of the Auction if selected as the Successful Bid;

- (d) contain duly executed binding transaction documents, the identity and contact information of the bidder, full disclosure of the bidder's direct and indirect principals and the names of its controlling equity holders, and evidence of authorization and approval from the bidder's board of directors;
- (e) include a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid;
- (f) provide written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents;
- (g) include an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (h) specify any regulatory or other third-party approvals the party anticipates would be required to complete the transaction and specify whether the bidder or any of its affiliates is involved in any part of the energy sector, including an electric utility, retail service provider, a company with a tariff on file with the Federal Energy Regulatory Commission, or any intermediate holding company;
- (i) include full details of the bidder's intended treatment of Just Energy's employees under the proposed bid;
- (j) be accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value;

- (k) include a statement that the bidder will bear its own costs and expenses in connection with the proposed transaction and agrees to refrain from and waive any assertion or request for reimbursement on any basis; and
- (l) be received by September 29, 2022 (as may be extended by Just Energy for up to seven days with the consent of the Monitor, the Credit Facility Agent and the Sponsor, acting reasonably, or by further order of the CCAA Court, the **“Qualified Bid Deadline”**).

75. In no case is a Qualified Bid permitted to include any request for or entitlement to any break fee, expense reimbursement or similar type of payment, or be conditional upon the outcome of unperformed due diligence and/or the securing of financing.

76. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, Just Energy will proceed with an auction process to determine the successful bid(s) (the **“Auction”**). The Auction will be conducted in accordance with the requirements and process appended at Schedule “A” to the SISP which includes, but is not limited to, the following:

- (a) only parties that submitted a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction, are eligible to participate in the Auction;
- (b) the Auction will begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by Just Energy, in consultation with

the Monitor, and any overbids submitted by a Qualified Bidder must be in minimum additional cash increments of US\$1 million;

- (c) the Auction shall continue in one or more rounds and will conclude after each participating party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
- (d) before the conclusion of the Auction, Just Energy, in consultation with the Monitor, will:
  - (i) review each Qualified Bid considering, among other things, (i) the amount of consideration being offered, (ii) the value of any assumption of liabilities or waiver of liabilities, (iii) the likelihood of the party's ability to close a transaction by 90 days after completion of the Auction, (iv) the likelihood of the CCAA Court's approval of the Successful Bid, (v) the net benefit to Just Energy, and (vi) and other factors Just Energy may, consistent with its fiduciary duties, reasonably deem relevant; and
  - (ii) identify the highest or otherwise best bid received at the Auction (the **"Successful Bid"**).

77. Following selection of the Successful Bid and finalization of all definitive agreements, the Just Energy Entities will apply to the CCAA Court for an order or orders approving such further or other Successful Bid and/or the mechanics to authorize Just Energy to complete the transactions contemplated thereby, as applicable, and authorizing Just Energy to (a) enter into all necessary agreements and related documentation with respect to the Successful Bid, (b)

undertake such other actions as may be necessary to give effect to such Successful Bid, and (c) implement the transaction(s) contemplated in the Successful Bid (each, an “**Implementation Order**”).

78. All Deposits paid in accordance with the SISP will be retained by the Monitor in a non-interest-bearing trust account. If a Successful Bid is selected and either the Vesting Order or an Implementation Order is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and applied to the cash consideration to be paid in connection with the Successful Bid (or be dealt with as otherwise set out in the definitive agreements(s)). Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid, will be returned to the applicable bidder as soon as reasonably practicable after the Successful Bid is approved by Vesting Order or Implementation Order, as applicable, or such earlier date as may be determined by Just Energy, in consultation with the Monitor.

79. The proposed SISP requires Just Energy to provide information in respect of the SISP to the DIP Lenders, CBHT and the Supporting Secured CF Lenders on a confidential basis, including copies of any NOIs or bids received and any other information necessary to keep the DIP Lenders, CBHT and the Supporting Secured CF Lenders informed. The SISP also authorizes Just Energy to provide general updates and information in respect of the SISP to counsel to any General Unsecured Creditor on a confidential basis if such counsel confirms in writing that the applicable General Unsecured Creditor will not submit an NOI or bid in the SISP and counsel executes a confidentiality agreement with Just Energy.

80. A summary of the significant dates and processes within the proposed SISP is as follows:

<b>SISP Process</b>	<b>Deadline<sup>17</sup></b>
Just Energy to commence solicitation process on the date of service of the motion for approval of the SISP	August 4, 2022
CCAA Court approval of SISP and authorizing Just Energy to enter into the Stalking Horse Transaction Agreement	August 17, 2022
NOI Deadline	August 25, 2022
Qualified Bid Deadline (if applicable)	September 29, 2022
Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction	October 6, 2022
Auction	October 8, 2022
Just Energy Entities to obtain Vesting Order or Implementation Order(s), as applicable <ul style="list-style-type: none"><li>• If no NOI is submitted, subject to CCAA Court availability</li><li>• In no Auction is conducted, subject to CCAA Court availability</li><li>• If Auction is conducted, subject to CCAA Court availability</li></ul>	September 2, 2022 October 15, 2022 ~ October 27, 2022 (12 days after completion of Auction)

81. In developing the timelines and multi-stage process for the SISP, the Just Energy Entities, in consultation with the Monitor and the Financial Advisor, considered a number of factors, including:

(a) as discussed further in my Affidavit sworn May 12, 2022 (and filed in support of the Meetings Order Motion):

(i) over the past approximately 2.5 years, the business of the Just Energy Entities has been marketed broadly and extensively. While certain interest has been expressed by third parties in a potential acquisition transaction

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<sup>17</sup> To the extent any dates fall on a non-business day, the Milestone is deemed to be the first business day thereafter.

both within, and prior to commencement of, the CCAA proceedings, no binding or executable offers have been received;

(ii) within the CCAA proceedings, three third parties have undertaken significant due diligence, including multiple rounds of non-public information disclosure, and discussions with the Just Energy Entities' finance, operations, tax, risk management and other groups, however no binding or executable offers have been received;

(b) the Plan Support Agreement incorporated a 62-day period between the milestone for mailing of the Meeting Materials to Creditors (June 1, 2022) and the deadline for the Creditors' Meetings (August 2, 2022) (the "**Voting Period**"). The Voting Period permitted any interested parties that may wish to propose a restructuring transaction more favourable than the Plan (which is substantially similar to the Stalking Horse Transaction, as more particularly described above) or otherwise to submit a bid for all or some of the Just Energy Entities' property to complete due diligence and submit their proposal. All potentially interested parties were notified of the Voting Period by press release issued by the Just Energy Entities on May 12, 2022. In addition, prior to the Just Energy Entities entering into the Plan Support Agreement, the Financial Advisor contacted each third party who had expressed interest in potential acquisition opportunities to advise them of the expected filing of the Plan and the issuance of the press release. Notwithstanding the passage of over 2 months, no meaningful inquiries and no proposals have been received by either the Financial Advisor or the Just Energy Entities; and



- (c) the pool of likely potential purchasers for the Just Energy Entities is limited based on the capital-intensive and highly specialized nature of the Just Energy Entities' business.

82. In light of the foregoing, the Just Energy Entities are of the view that the timelines set out in the SISP are appropriate, will allow interested parties to participate in the SISP, and will provide an appropriate test for whether the Stalking Horse Transaction delivers the best possible result for all stakeholders. The Just Energy Entities are also of the view that the proposed SISP provides a fair and reasonable process that will adequately canvass the market, while simultaneously protecting against the significant risk of further market decline by providing for automatic termination of the SISP and, if approved by the CCAA Court by the granting of the Vesting Order, consummation of the Stalking Horse Transaction if no NOIs or Qualified Bids are received.

83. I am advised by Mr. Caiger that in his experience and based on his knowledge of the Just Energy Entities' business and discussions with management, he is of the view that the timelines and terms in the proposed SISP are fair, reasonable and appropriate in the circumstances, and provide sufficient time to allow interested parties to fully participate in the SISP (to the extent desired).

84. As the SISP is the only viable going concern option available to the Just Energy Entities to facilitate their exit from these CCAA and Chapter 15 proceedings for the benefit of all stakeholders, it is critical that the SISP be approved and undertaken expeditiously and without delay. The Just Energy Entities are of the view that such relief is necessary to protect against

further erosion of the Just Energy Entities' value, and loss of the Just Energy Entities' business critical relationships with its employees, Commodity Suppliers, and Regulators, among others.

**D. THIRD KERP**

85. On March 19, 2021, the CCAA Court approved a key employee retention plan (the "KERP") and granted a Court-ordered charge (the "KERP Charge") as security for payments under the KERP. Under the KERP:

- (a) non-executive KERP recipients received: (i) 40% of their total KERP on the 180<sup>th</sup> day after the Filing Date (September 5, 2021); (ii) 40% of their total KERP on the 270<sup>th</sup> day after the Filing Date (December 4, 2021); and (iii) 20% of their total KERP on the date that was the earlier of 15 months after the Filing Date (June 9, 2022) or the completion of a Successful Restructuring (as defined in my Affidavit, sworn March 16, 2021); and
- (b) executive KERP recipients received/will receive: (i) 25% of their total KERP on the 180<sup>th</sup> day after the Filing Date (September 5, 2021), (ii) 25% of their total KERP on the 270<sup>th</sup> day after the Filing Date (December 4, 2021), and (iii) 50% of their total KERP only upon the completion of a Successful Restructuring.

86. The original KERP was developed by the Just Energy Entities on the expectation that the Just Energy Entities' restructuring would largely be concluded (apart from potential regulatory approvals) by the end of 2021. However, by November 2021, discussions regarding the terms of the Just Energy Entities' proposed restructuring were continuing with key stakeholders and it became apparent to the Just Energy Entities that, because of the sheer size and complexity of the

Just Energy Entities' business, additional time would be required for the Just Energy Entities to complete a going concern solution and exit from the CCAA and Chapter 15 proceedings.

87. Accordingly, on November 10, 2021, the Just Energy Entities sought, and the CCAA Court granted a second KERP (the "**Second KERP**"). Under the Second KERP:

- (a) non-executive KERP recipients received an installment payment in March 2022 and will receive an installment payment in September 2022; and
- (b) executive KERP recipients received one installment payment in March 2022 and will receive one success-based payment upon the completion of a Successful Restructuring.

88. While the payments made by the Just Energy Entities under the Second KERP were incremental to all payments approved by the CCAA Court under the original KERP, no increase to the KERP Charge was required since the payments generally replicated those already made under the original KERP.

89. The Just Energy Entities are now requesting CCAA Court approval for a Third KERP for non-executive, key employees. All payments to non-executive key employees under the original KERP were exhausted in June 2022. The final payment to non-executive key employees under the Second KERP will be made on September 9, 2022. Executive management of the Just Energy Entities are very concerned that absent additional KERP funds being made available for non-executive key employees to account for the significantly longer-than-expected length of the CCAA and Chapter 15 proceedings and the uncertainty created by the failure of the Plan to move

forward and the introduction of a marketing process under the SISP, non-executive key employees may resign at this critical juncture of the Just Energy Entities' restructuring efforts.

90. The loss of such non-executive key employees could be exceedingly detrimental to the ongoing, normal course operation of the Just Energy Entities' highly specialized and expertise-dependent business. The Stalking Horse Transaction is based on, and requires, the Just Energy Entities to continue operating as going concerns through the Closing Date which, in turn, relies on the continued retention of the Just Energy Entities' key employees. As such non-executive key employees have been required to accept increased workloads since March 2021 (the Filing Date) managing all aspects of the restructuring while continuing to run the day-to-day operations of the business, while simultaneously dealing with the continuing uncertainty created by the ongoing CCAA and Chapter 15 proceedings, employee burnout and fatigue are becoming increasingly apparent and problematic. Two key employees have recently resigned from the Just Energy Entities and, without additional compensation in the form of the Third KERP, the Just Energy Entities are very concerned that others may follow.

91. Accordingly, the Just Energy Entities are seeking approval of a Third KERP in the amount of C\$405,280 and US\$633,910 to be paid to non-executive KERP recipients at emergence from the CCAA and Chapter 15 proceedings or within 30 days thereof. No payments under the Third KERP are proposed to be made to executive-level employees as such executives are entitled to receive both success-based payments under the original KERP and the Second KERP upon completion of a Successful Restructuring.

92. The timing of the payment to non-executive KERP recipients under the Third KERP is intended to provide financial motivation for key employees to continue their employment with

the Just Energy Entities until conclusion of the restructuring proceedings, all for the benefit of the Just Energy Entities and their stakeholders. I understand that the Monitor is supportive of the Third KERP.

93. The payments proposed to be made by the Just Energy Entities under the Third KERP are incremental to all payments approved by the CCAA Court under the original KERP and the Second KERP. However, no increase to the KERP Charge is required as the proposed payment falls within the approved quantum of the KERP Charge.

94. The Third KERP was approved by the Just Energy Board on July 26, 2022, in accordance with the recommendation of all of the members of Just Energy's Human Resources, Environmental, Health & Safety Committee, following a discussion of the Third KERP. For all the reasons discussed above, the Just Energy Entities are of the view that the Third KERP is critical to their ongoing stability, retention of key employees, and efforts to restructure for the benefit of all stakeholders.

95. A summary of the Third KERP is attached as **Confidential Exhibit "L"**. The Third KERP summary contains commercially sensitive information as well as personal information relating to certain of the Just Energy Entities' employees. The Just Energy Entities therefore seek an order that Confidential Exhibit "L" be sealed and not form part of the court record pending further order of the Court.

**E. AMENDING CLAIMS PROCESS REQUIREMENTS**

96. As discussed above, on September 15, 2021, the CCAA Court granted the Claims Procedure Order establishing a process to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their respective Directors and Officers.

97. In accordance with the Claims Procedure Order, on March 3, 2022, the CCAA Court granted the Appointment Order appointing the Honourable Justice Dennis O'Connor as Claims Officer for purposes of adjudicating the issues raised in the Putative Class Actions. Since his appointment as Claims Officer, Justice O'Connor has, among other things, heard and determined various procedural disputes relating to the appointment of additional Claims Officers and the sequencing and scope of various discovery requests. He has also heard and determined a motion by counsel for the Putative Class Actions to compel further discovery by the Just Energy Entities. Certain documentary production has recently been completed in the matter.

98. In the First Endorsement, the CCAA Court made the following orders with respect to the adjudication and determination of the Contingent Litigation Claims and the claim of Pariveda:

(vi) Summary proceedings will be conducted on an expedited basis as soon as reasonably possible, in an effort to determine the validity and value of the claims of the plaintiff class in the U.S. class actions, the Omarali class action, the Texas Power Interruption Claimants and Pariveda Solutions Inc.

(vii) The Monitor shall, forthwith, liaise with the relevant parties to determine a process to conduct the claim determinations and valuations. In this regard, the Monitor shall contact the Honourable Dennis O'Connor, the Claims Officer currently adjudicating claims submitted in the U.S. Class Actions to determine if he is prepared to provide assistance with respect to the valuations.

(viii) I will conduct a further hearing in the very near future to determine the process to be followed in determining and valuing the relevant claims and any matters arising out of the Claim Procedure Order made in this proceeding dated September 15, 2021.

99. By letter dated June 17, 2022, the Monitor advised the CCAA Court and the Service List that, among other things, all parties had agreed that the directed process should be temporarily postponed given the ongoing discussions between the Just Energy Entities, certain of the Contingent Litigation Claimants and Pariveda regarding the Just Energy Entities' restructuring. The Monitor accordingly requested the CCAA Court's indulgence that compliance with the directed process set out in the First Endorsement be put in abeyance pending further developments in the CCAA proceedings. A copy of the Monitor's correspondence is attached hereto as **Exhibit "M"**.

100. The Just Energy Entities are now seeking the advice and direction of the Court regarding a suspension of all ongoing claims review, claims determination, and dispute resolution processes under the Claims Procedure Order, the Appointment Order, and the First Endorsement. Under the Stalking Horse Transaction, the proceeds payable by the Sponsor will not result in any recoveries to the Just Energy Entities' General Unsecured Creditors, including the Term Loan Lenders. Accordingly, in the absence of a Successful Bid being accepted within the SISP which provides sufficient value to allow for recoveries to General Unsecured Creditors, these Claims will not need to be resolved. As such, the Just Energy Entities and the Monitor are of the view that it is unnecessary at this time to spend the money and devote limited company, employee and other resources to determine the validity and value of the unresolved claims in the Claims Process, including the Contingent Litigation Claims and the Pariveda claim (subject to the one caveat discussed below).

101. The one caveat to the foregoing is with respect to Claims which must be adjudicated for purposes of determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered into pursuant to the SISP. For example, under

the Stalking Horse Transaction Agreement, the Just Energy Entities are required to satisfy in cash in full certain secured claims, including all Commodity Supplier Claims that are accepted claims pursuant to the Claims Procedure Order. As such, in order to determine entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction, the Just Energy Entities anticipate that a very small number of Claims will need to be determined under the Claims Procedure Order which include, but are not limited to, Claims submitted pursuant to certain Commodity Agreements.

102. The Just Energy Entities are accordingly seeking the advice and direction of the CCAA Court regarding the suspension of all ongoing claims review, claims determination, and dispute resolution processes under the Claims Procedure Order, the Appointment Order, and the First Endorsement, pending further order of the CCAA Court, unless the adjudication of such Claim is necessary for purposes of determining entitlement to proceeds to be distributed in accordance with the Stalking Horse Transaction or another transaction entered into pursuant to the SISP. For clarity, the Just Energy Entities do not seek to alter any final determinations that have already been made pursuant to the Claims Procedure Order.

103. The Just Energy Entities propose that, in the event the CCAA Court is prepared to suspend all ongoing claims review, claims determination, and dispute resolution processes, the following paragraph be included in the proposed SISP Order:

**THIS COURT ORDERS** that the ongoing claims review, claims determination and dispute resolution processes under (a) the Claims Procedure Order; (b) the Order of this Court dated March 3, 2022, among other things, appointing the Honourable Justice Dennis O'Connor as Claims Officer for the purposes set forth therein; and (c) the Endorsement of this Court dated June 10, 2022, shall be suspended pending further Order of this Court; provided that, for certainty, (x) where (i) a Claimant has not submitted a Proof of Claim or D&O Proof of Claim by the applicable Bar Date, (ii) a Negative Notice Claimant has



not submitted a Notice of Dispute of Claim by the applicable Bar Date, or (iii) a Claim or D&O Claim has already been disallowed or revised in accordance with the Claims Procedure Order and the applicable period of time to dispute such revision or disallowance has expired without the Claimant submitting a Notice of Dispute of Revision or Disallowance, such Claimant will continue to be barred from pursuing such Claim or D&O Claim pursuant to the relevant provisions of the Claims Procedure Order and (y) this Order does not impact the acceptance of any Claims or other final determination or agreement in respect of Claims made pursuant to the Claims Procedure Order prior to the date of this Order; provided further that, notwithstanding anything to the contrary herein, the Just Energy Entities shall be permitted, with the consent of the Monitor, to refer any Claim to a Claims Officer or this Court for adjudication for the purposes of determining entitlement to proceeds to be distributed in accordance with a transaction completed pursuant to the SISP.

**F. UPDATE ON ERCOT LITIGATION AND RECEIPT OF HB 4492 PROCEEDS**

104. As discussed in certain of my previous affidavits sworn in these proceedings, on October 13, 2021, the Texas Public Utility Commission (“**PUCT**”) signed a final order authorizing the Electric Reliability Council of Texas (“**ERCOT**”) to issue \$2.1 billion of securitization bonds and to use the proceeds from such bonds to repay market participants certain costs and expenses incurred during the February 2021 winter storm (“**HB 4492**”). In line with the Just Energy Entities’ previously disclosed expectations regarding the timing and quantum of recoveries under HB 4492, on June 22 and 29, 2022, ERCOT repaid various of the Just Energy Entities the total sum of US\$147.5 million. Such proceeds are accounted for as a source of cash in the projected cash on hand of the Just Energy Entities at the time of closing of the Stalking Horse Transaction and will be used by the Just Energy Entities to settle the projected uses of cash (including payment of the Priority Payments discussed above) upon closing of the Stalking Horse Transaction.

105. As discussed further in the Affidavit of James C. Tecce, sworn April 14, 2022, various of the Just Energy Entities commenced an adversary proceeding (the “**Adversary Proceeding**”) in

the U.S. Bankruptcy Court by filing a complaint (the “**Initial Complaint**”) against the PUCT and ERCOT relating to the actions taken by the PUCT and ERCOT during the winter storm in February 2021. The Adversary Proceeding seeks, among other things, to avoid obligations incurred, and to claw back payments made, to ERCOT pursuant to section 36.1 of the CCAA (the “**Section 36.1 Claims**”).

106. In January 2022, the PUCT and ERCOT moved to dismiss the Initial Complaint. At a hearing on February 2, 2022, the U.S. Bankruptcy Court dismissed the PUCT from the Adversary Proceeding. The U.S. Bankruptcy Court also dismissed certain claims against ERCOT and directed the Just Energy Entities to file an amended complaint with respect to claims for setoff and those arising under the CCAA.

107. The applicable Just Energy Entities filed an amended complaint (the “**First Amended Complaint**”) on February 11, 2022. The First Amended Complaint contains six counts: Count 1 (Preference (Obligations) - CCAA (§ 36.1), BIA (§ 95)); Count 2 (Preference (Transfers) - CCAA (§ 36.1), BIA (§ 95)); Count 3 (Transfer at Undervalue - CCAA (§ 36.1), BIA (§ 96)); Count 4 (Recovering Proceeds - CCAA (§ 36.1), BIA (§ 98)); Count 5 (Turnover - 11 U.S.C. § 542(a)); and Count 6 (Setoff, Recoupment)).

108. In March 2022, ERCOT filed a further motion to dismiss the First Amended Complaint on the basis that, amongst other things, Just Energy (as foreign representative) did not have standing to advance the Section 36.1 Claims. At a hearing held on April 4, 2022 to consider ERCOT’s second motion to dismiss, the U.S. Bankruptcy Court requested that the parties seek direction from the CCAA Court with respect to the proper party to advance the Section 36.1 Claims.

109. By endorsement dated May 5, 2022 (the “**Section 36.1 Endorsement**”), the CCAA Court determined that Just Energy (as foreign representative) and other Just Energy Entities, as the case may be, were authorized and empowered to pursue the Section 36.1 Claims in the Adversary Proceeding, *nunc pro tunc*. Further, the Monitor was authorized and directed to take whatever actions and steps it deemed advisable to assist and supervise the Just Energy Entities with respect to the prosecution of the Section 36.1 Claims in the Adversary Proceeding. A copy of the Section 36.1 Endorsement and related Order, dated May 5, 2022, is attached hereto as **Exhibit “N”**.

110. The Section 36.1 Endorsement and related Order were given full force and effect in the United States pursuant to an Order of the U.S. Bankruptcy Court granted July 19, 2022. A copy of the U.S. Bankruptcy Court’s Order is attached hereto as **Exhibit “O”**.

111. On June 9, 2022, the U.S. Bankruptcy Court held a continued hearing on ERCOT’s motion to dismiss the First Amended Complaint. At that hearing, the U.S. Bankruptcy Court dismissed Count 3 (Transfer at Undervalue - CCAA (§ 36.1), BIA (§ 96)). The Bankruptcy Court also dismissed Counts 1 and 2 (Preference - CCAA (§ 36.1), BIA (§ 95)) with leave to replead those Counts to identify with more specificity the individual obligations and transfers at issue. At that time, the U.S. Bankruptcy Court deferred ruling on ERCOT’s other arguments.

112. On June 14, 2022, the Just Energy Entities filed a second amended complaint (the “**Second Amended Complaint**”). The Second Amended Complaint contains the same Counts as the First Amended Complaint, except for Count 3 (Transfer at Undervalue - CCAA (§ 36.1), BIA (§ 96)).

113. On June 21, 2022, ERCOT filed a third motion to dismiss the Second Amended Complaint. At a hearing on June 27, the U.S. Bankruptcy Court granted ERCOT’s motion in

part: (i) dismissing Count 6 (Setoff, Recoupment); and (ii) striking certain allegations from the Second Amended Complaint. The U.S. Bankruptcy Court denied ERCOT’s motion in all other respects, including with respect to arguments based on sovereign immunity, abstention, the filed-rates doctrine, and the PUCT as a necessary party (the “**June 27 Order**”). A table summarizing the foregoing is provided below:

<b>Count</b>	<b>June 9 Hearing</b>	<b>June 27 Hearing</b>
Count 1 (Preference (Obligations) CCAA (§ 36.1), BIA (§ 95))	Dismissed with leave to replead	Upheld
Count 2 (Preference (Transfers) - CCAA (§ 36.1), BIA (§ 95))	Dismissed with leave to replead	Upheld
Count 3 (Transfer at Undervalue - CCAA (§ 36.1), BIA (§ 96))	Dismissed	-
Count 4 (Recovering Proceeds - CCAA (§ 36.1), BIA (§ 98))	Deferred determination	Upheld
Count 5 (Turnover - 11 U.S.C. § 542(a))	Deferred determination	Upheld
Count 6 (Setoff, Recoupment)	Deferred determination	Dismissed

114. During the hearing on June 27, 2022, counsel for ERCOT informed the U.S. Bankruptcy Court that ERCOT intends to seek a direct appeal of certain aspects of the U.S. Bankruptcy Court’s ruling to the U.S. Court of Appeals for the Fifth Circuit. On July 19, 2022, ERCOT filed a notice of appeal of the June 27 Order and, by Order granted July 19, 2022, the U.S. Bankruptcy Court certified the June 27 Order for direct appeal to the Fifth Circuit and recommended that the appeal be heard on an expedited basis. A copy of the Order Certifying Direct Interlocutory Appeal is attached hereto as **Exhibit “P”**.

**G. EXTENSION TO THE STAY PERIOD**

115. The Initial Order granted a Stay Period until and including March 19, 2021. The Stay Period has subsequently been extended to, most recently, August 19, 2022.

116. The Just Energy Entities are seeking to extend the Stay Period up to and including October 31, 2022, which date generally coincides with the Milestone for CCAA Court approval of a transaction coming out of any Auction. The Just Energy Entities believe that the extension of the Stay Period is necessary and appropriate in the circumstances to provide the Just Energy Entities with the necessary breathing room to:

- (a) implement the SISP including, if applicable, the Auction process required thereunder;
- (b) finalize all Definitive Documents with respect to the Successful Bid and serve a motion seeking the Vesting Order or one or more Implementation Orders in accordance with the SISP and the SISP Support Agreement;
- (c) provide the necessary breathing room for the Just Energy Entities as they continue to work towards their restructuring objectives; and
- (d) permit the Just Energy Entities to attend to the various other CCAA and/or Chapter 15 matters that will arise in the course of the proceedings.

117. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Since the last extension to the Stay Period on June 7, 2022, the Just Energy Entities have, among other things, undertaken discussions with (i) the Plan

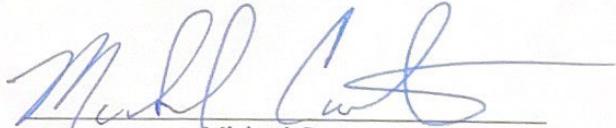
Sponsor, certain of the Contingent Litigation Claimants and Pariveda regarding options for resolution of such claims in a manner which permits the Plan to move forward, and (ii) the DIP Lenders, Supporting Secured CF Lenders and Shell regarding the terms on which they would continue to support the Just Energy Entities' efforts to restructure. The Just Energy Entities have also negotiated and finalized the SISP Support Agreement, proposed SISP, and Stalking Horse Transaction Agreement with all interested parties.

118. I understand that the Monitor will file a report (the "Monitor's Eleventh Report") which 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 October 31, 2022. I further understand that the Monitor's Eleventh Report will recommend that the Stay Period be extended.

SWORN BEFORE ME over video  
teleconference this 4<sup>th</sup> day of August, 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.

*MC*

\_\_\_\_\_  
Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No.77944T)

  
\_\_\_\_\_  
Michael Carter

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

---

Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**TRANSACTION AGREEMENT**

**JUST ENERGY GROUP INC.**

**as the Company**

**-and-**

**LVS III SPE XV LP,**

**TOCU XVII LLC,**

**HVS XVI LLC,**

**OC II LVS XIV LP,**

**OC III LFE I LP,**

**CBHT Energy I LLC**

**each as a Purchaser and collectively, as the Purchaser**



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**Disclosure Letter and Exhibits**

Disclosure Letter

Exhibit A – Terms of the New Preferred Equity

Exhibit B – Form of Release

## TRANSACTION AGREEMENT

**THIS AGREEMENT** is made as of August 4, 2022

### AMONG:

Just Energy Group Inc. (“**Just Energy**” or “**Company**”)

-and-

LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT ENERGY I LLC (each, a “**Purchaser**” and collectively, the “**Purchaser**”).

### RECITALS:

- A. The Just Energy Entities carry on the business, taken as a whole, of serving as a retail energy provider specializing in electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options (collectively, the “**Business**”).
- B. On March 9, 2021, the Applicants commenced proceedings under the CCAA before the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) to, among other things, seek creditor protection for, and certain relief in respect of, certain of the Just Energy Entities.
- C. On March 9, 2021, the Applicants commenced ancillary insolvency proceedings under Chapter 15 of Title 11 of the United States Code (the “**U.S. Proceedings**”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.
- D. Pursuant to the Support Agreement entered into on the date of this Agreement, by and among the Just Energy Entities, the Purchaser and the other parties signatory thereto (as amended, supplemented, or otherwise modified from time to time, the “**Support Agreement**”), the Purchaser has agreed to act as a “stalking horse” bidder and, if selected or deemed as having submitted the Successful Bid in accordance with the terms of the SISP, to purchase the Purchased Interests from the Just Energy Entities, and the Company has agreed to cause the Purchased Interests to be acquired by the Purchaser, and Purchaser further wishes to indirectly assume from the Just Energy Entities the Assumed Liabilities, pursuant to and in accordance with the terms of the SISP and subject to and in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE**, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement,

“**Administrative Expense Amount**” means cash in an amount of C\$1,900,000, which shall be paid by the Just Energy Entities to the Monitor on the Closing Date out of the cash and cash equivalents of the Just Energy Entities as at the Closing Date and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs, subject to the terms hereof.

“**Administrative Expense Costs**” means the reasonable and documented fees and costs of (i) the Monitor and its professional advisors and (ii) professional advisors of the Just Energy Entities for services performed prior to and, other than in respect of the Just Energy Entities, after the Closing Date, in each case, relating directly or indirectly to the CCAA Proceedings, the U.S. Proceedings, and this Agreement and including without limitation (a) costs required to wind down and/or dissolve and/or bankrupt Residual Co. and (b) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and Residual Co.

“**Adversary Proceeding**” means adversary proceeding number 21-4299, commenced on November 12, 2021 in the U.S. Proceedings before the U.S. Bankruptcy Court, by Just Energy, Just Energy Texas LP, Fulcrum Retail Energy LLC and Hudson Energy Services LLC, as the foreign representatives, against Electric Reliability Council of Texas, Inc. and the Public Utility Commission of Texas.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise). For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Agreement**” means this transaction agreement and all attachments, including the Disclosure Letter and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this transaction agreement and all attached Exhibits, and unless otherwise indicated, references to Articles, Sections, the Disclosure Letter and Exhibits are to Articles, Sections, the Disclosure Letter and Exhibits in this transaction agreement.

“**Alternative Restructuring Proposal**” means any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of

reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity's material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the transaction contemplated hereby and any amendment to or variation of any such inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement, and is with a counterparty other than the Purchaser or any Affiliate of the Purchaser.

**“Antitrust Approvals”** means any approval, clearance, filing or expiration or termination of a waiting period pursuant to which a transaction would be deemed to be unconditionally approved in relation to the transactions contemplated hereby under any Antitrust Law of any country or jurisdiction that the Purchaser agrees, acting reasonably, is required, other than the Competition Act Approval.

**“Antitrust Laws”** means all Applicable Laws, including any antitrust, competition or trade regulation laws (including, without limitation, the HSR Act), that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, restraint of trade or lessening or preventing competition through merger or acquisition.

**“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Just Energy Entities, the Purchaser, the Business, or any of the Purchased Interests or the Assumed Liabilities.

**“Applicants”** means the Company, each Residual Co. (at the time such Residual Co. becomes an Applicant) and those additional applicants listed on Schedule 1.1(a).

**“Articles of Reorganization”** means articles of reorganization in respect of the Company's authorized and issued common shares to provide for the redemption or cancellation thereof by the Company for no consideration on Closing; such articles of reorganization to be in form and substance satisfactory to the Purchaser, acting reasonably.

**“Assumed Liabilities”** has the meaning given to such term in Section 2.3.

**“BP Commodity/ISO Services Claim”** means all Pre-Filing Claims of BP Canada Energy Group ULC and BP Energy Company in the aggregate principal amounts of \$229,461,558.59 and C\$170,652.60, plus all accrued and unpaid interest thereon through to and including the Closing Date.

**“Break-Up Fee”** has the meaning given to such term in Section 9.3(a).

**“Business”** has the meaning given to such term in Recital A.

**“Business Day”** means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario and New York, New York are open for commercial banking business during normal banking hours.

“**Cash Management Obligations**” means has the meaning given to such term in the Support Agreement.

“**Causes of Action**” means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of the Just Energy Entities against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Closing Time (which Causes of Action for the avoidance of doubt shall be retained by the Acquired Entities on Closing).

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).

“**CCAA Court**” has the meaning given to such term in Recital B.

“**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Applicants pursuant to the Initial CCAA Order.

“**Claims**” has the meaning given to such term in the Claims Procedure Order.

“**Claims Bar Date**” has the meaning given to such term in the Claims Procedure Order.

“**Claims Procedure Order**” means the order of the CCAA Court dated September 15, 2021 in the CCAA Proceedings establishing a claims procedure in respect of the Just Energy Entities and which established November 1, 2021 on or before 5:00 p.m. (Toronto time) as the last date in which Persons wishing to assert a Claim against the Just Energy Entities could file such claim, as same may be further amended, restated or varied from time to time, and in all such cases any such amended, restated or varied order shall be in form and substance reasonably acceptable to the Just Energy Entities and the Purchaser.

“**Closing**” means the completion of the sale and purchase of the Purchased Interests pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Interests.

“**Closing Date**” means a date no later than five (5) Business Days after the conditions set forth in Article 6 have been satisfied or waived, other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that, if there is to be a Closing hereunder, then the Closing Date shall be no later than the Outside Date.

“**Closing Documents**” means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or before the Closing.

**“Closing Time”** means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

**“Code”** means the United States Internal Revenue Code of 1986, as amended.

**“Commissioner”** means the Commissioner of Competition appointed under the Competition Act or any Person duly authorized to exercise powers of the Commission of Competition.

**“Commodity Agreement”** means a gas supply agreement, electricity supply agreement or other agreement with any of the Just Energy Entities 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.

**“Commodity Supplier”** means any counterparty to a Commodity Agreement.

**“Company”** has the meaning given to such term in the preamble to this Agreement.

**“Company Subsidiaries”** means collectively each Person that is controlled by the Just Energy Entities (for the purposes of this definition, “control”, as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise).

**“Competition Act”** means the Competition Act (Canada), R.S.C., 1985, c. C-34.

**“Competition Act Approval”** means that: (i) the Commissioner shall have issued an Advance Ruling Certificate under subsection 102(1) of the Competition Act in respect of the transactions contemplated by this Agreement, or (ii) the applicable waiting period under section 123 of the Competition Act shall have expired or been waived by the Commissioner, or the obligation to submit a notification shall have been waived under paragraph 113(c) of the Competition Act, and the Commissioner shall have issued a No Action Letter.

**“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to the Purchaser or any of its Affiliates by the Company or any of the Just Energy Entities’ representatives, including information about identifiable individuals, any information relating to the Just Energy Entities, or any customer or supplier of the Just Energy Entities, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Purchaser or its representatives in breach of this Agreement or that is received by the Purchaser from an independent third party that, to the knowledge of the Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Purchaser or its representatives without reference to any Confidential Information.



**“Continuing Contracts”** means a contract, arrangement, or other agreement (oral or written) for which a notice of disclaimer pursuant to Section 32 of the CCAA has not been sent by any of the Just Energy Entities; provided that Continuing Contracts shall not include the Third Amended and Restated Scheduling Coordinator Agreement dated December 1, 2014 between Shell Energy North America (US), L.P., Just Energy New York Corp., Just Energy (U.S.) Corp. and Just Energy Solutions Inc. (formerly Commerce Energy, Inc.) or any other agreement whereby Shell performs ISO or scheduling services on behalf of any Applicant whereby an Applicant has reimbursement obligations to Shell for payments made by Shell on behalf of an Applicant to an ISO.

**“Credit Agreement”** means the ninth amended and restated credit agreement dated as of September 28, 2020, by and among Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, the Credit Facility Agent and the Credit Facility Lenders, as such credit agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

**“Credit Bid Consideration”** has the meaning given to such term in Section 3.1(a)(ii).

**“Credit Facility Agent”** means National Bank of Canada, in its capacity as administrative agent for the Credit Facility Lenders.

**“Credit Facility Documents”** means, collectively, the Credit Agreement and all related documentation, including, all guarantee and security documentation related to the foregoing.

**“Credit Facility LC Claim”** means any claim of or obligation owing to any Credit Facility Lender relating to any letter of credit issued but undrawn under the Credit Facility Documents immediately prior to Closing.

**“Credit Facility Lenders”** means the lenders party to the Credit Agreement from time to time, in such capacity.

**“Credit Facility Remaining Debt”** means all debts, liabilities and other obligations (other than the Credit Facility LC Claims and the Cash Management Obligations) owing by the Just Energy Entities to the Credit Facility Agent and the Credit Facility Lenders under the Credit Facility Documents as of the Closing Date that are not otherwise repaid in accordance with the New Credit Agreement.

**“DIP Agent”** means Alter Domus (US) LLC, in its capacity as administrative and collateral agent for the DIP Lenders.

**“DIP Documents”** means, collectively, the DIP Term Sheet and all related documentation, including, without limitation, all guarantee and security documentation, related to the foregoing.

**“DIP Financing”** means the debtor-in-possession financing made pursuant to the DIP Term Sheet.

**“DIP Lenders”** means the lenders under the DIP Term Sheet, in such capacity, and “DIP Lender” means any one of them.

**“DIP Term Sheet”** means the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities party thereto, the DIP Agent and the DIP Lenders, dated as of March 9, 2021, as such term sheet may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

**“Disclosure Letter”** means the disclosure letter dated the date hereof regarding this Agreement.

**“Employee Priority Claims”** means any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of any of the Just Energy Entities whose employment was terminated between the Filing Date and the Closing Date and (b) unpaid amounts provided for in Section 6(5)(a) of the CCAA.

**“Employment Agreements”** means, collectively, the employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the Just Energy Entities that, on or prior to the Closing, have not resigned, in each case, in existence on the date hereof; provided, however, that Employment Agreements shall not include employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the Just Energy Entities that have been terminated or disclaimed without the consent of the Purchaser.

**“Encumbrance”** means any security interest (whether contractual, statutory or otherwise), lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust), option or adverse claim or encumbrance of any nature or kind.

**“Energy Regulator”** means 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.

**“Energy Regulator Claims”** means any Claim that may be asserted by any Energy Regulator against a Just Energy Entity, excluding any: (i) Claim with respect to the subject matter of the Adversary Proceeding, including any Claim with respect to obligations of the Just Energy Entities underlying the invoices that are the subject of the Adversary Proceeding; and (ii) Claim by any Taxing Authority.

**“Energy Regulator Notices”** means notice of the Agreement to the Energy Regulator in the time and manner required by Applicable Law and includes, but is not limited to, notice to the Energy Regulator regarding potential implications to performance guarantees that might have been provided in support of an application for a licence, order or permit, as the case may be.

**“Equity Financing”** has the meaning given to such term in Section 5.9(b).

**“Equity Financing Sources”** has the meaning given to such term in Section 5.9(b).

“**Equity Interests**” means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

“**ETA**” means the *Excise Tax Act* (Canada).

“**Excluded Assets**” has the meaning given to such term in Section 2.2.

“**Excluded Contracts**” means contracts of the Just Energy Entities as specified on Schedule 2.2(c) of the Disclosure Letter.

“**Excluded Liabilities**” has the meaning given to such term in Section 2.4.

“**Filing Date**” means March 9, 2021.

“**Final Order**” means with respect to any order or judgment of the CCAA Court or the U.S. Bankruptcy Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the Chapter 15 Cases or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Company and the Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the U.S. Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

“**Fundamental Representations and Warranties of the Company**” means the representations and warranties of the Company included in Sections 4.1 [*Due Authorization and Enforceability of Obligations*], 4.2 [*Existence and Good Standing*] and 4.4 [*Absence of Conflicts*].

“**GAAP**” means generally accepted accounting principles in the U.S., including International Accounting Standards and U.S. GAAP.

“**Governmental Authority**” means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**GST/HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA or any other statute in any jurisdiction of Canada.

“**Guarantee**” has the meaning given to such term in Section 5.9(b).

“**HSR Act**” means the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the rules and regulations promulgated thereunder, as amended.

“**Implementation Steps**” has the meaning given to such term in Section 2.7(b).

“**Initial CCAA Order**” means the initial order of the CCAA Court pursuant to the CCAA commencing the CCAA Proceedings, as amended, restated, supplemented and/or modified from time to time.

“**Initial Recognition Order**” means the Order of the U.S. Bankruptcy Court in the U.S. Proceedings recognizing, on a final basis, the CCAA Proceedings as “foreign main proceedings” pursuant to section 1502(4) of the *U.S. Bankruptcy Code*.

“**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.

“**Intercreditor Agreement**” means the Sixth Amended and Restated Intercreditor Agreement dated as of September 1, 2015 between National Bank of Canada, as collateral agent and agent for itself as agent and the Lenders (as defined therein); Shell; BP Canada Energy Group ULC; BP Canada Energy Marketing Corp.; BP Energy Company; Exelon Generation Company, LLC; Bruce Power L.P.; EDF Trading North America, LLC; Nextera Energy Power Marketing, LLC; Macquarie Bank Limited; Macquarie Energy Canada Ltd.; Macquarie Energy LLC; Morgan Stanley Capital Group Inc.; 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 (as may be further amended, restated, supplemented, or otherwise modified from time to time).

“**Investment Canada Act**” means the *Investment Canada Act* (Canada), R.S.C., 1985, c. 28 (1<sup>st</sup> Supp).

“**Investment Canada Act Approval**” means both:

(1) receipt by the Purchaser of a certification letter from the Director of Investments under the Investment Canada Act pursuant to subsection 13(1) of the Investment Canada Act confirming that that the transactions contemplated by this Agreement are not reviewable under Part IV of the Investment Canada Act;

and

(2) either: (A) no notice is given under subsection 25.2(1) or 25.3(2) of the Investment Canada Act within the prescribed period; or, (B) if notice is given under subsection 25.2(1) or

25.3(2) of the Investment Canada Act, then either (a) the Minister or Ministers under the Investment Canada Act have sent to the Purchaser a notice under paragraph 25.2(4)(a) or 25.3(6)(b) of the Investment Canada Act; or (b) the Governor in Council has issued an order under paragraph 25.4(1)(b) of the Investment Canada Act authorizing the transactions contemplated by this Agreement.

**“Just Energy Entities”** means the Company, Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada 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., 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.

**“Material Adverse Effect”** means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on (i) the business, assets, liabilities, financial conditions or results of operations of the Just Energy Entities, collectively, or (ii) prevents the ability of any of the Just Energy Entities to perform its obligations under, or to consummate the transactions contemplated by, this Agreement, taken as a whole; in each case except to the extent that any such change, effect, event, occurrence, state of facts or development is attributable to: (a) general economic or business conditions; (b) Canada, the U.S. or foreign economies, or financial, banking or securities markets in general, or other general business, banking, financial or economic conditions (including (i) any disruption in any of the foregoing markets, (ii) any change in the currency exchange rates or (iii) any decline or rise in the price of any security, commodity, contract or index); (c) acts of God or other calamities, national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (d) the identity of the Purchaser or its Affiliates; (e) conditions affecting generally the industry in which the Just Energy Entities participates; (f) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement or the transactions contemplated by this Agreement, or the identity of the Parties, including any termination of, reduction in or similar adverse impact on relationships, contractual or otherwise, with any customers, suppliers, financing sources, licensors, licensees, distributors, partners, employees or others having relationships with the Just Energy Entities; (g) changes in Applicable Laws or the interpretation thereof; (h) any change in GAAP or other accounting requirements or principles; (i) national or international political, labor or social conditions; (j) the failure of the Just Energy Entities to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to

the clauses contained in this definition); or (k) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, this Agreement; provided that the exceptions set forth in clauses (a), (b), (c), (e), (g), (h) or (i) shall not apply to the extent that such event is disproportionately adverse to the Just Energy Entities, taken as a whole, as compared to other companies in the industries in which the Just Energy Entities operate.

**“Monitor”** means FTI Consulting Canada Inc., as Court-appointed monitor of the Just Energy Entities in the CCAA Proceeding and not in its personal capacity.

**“Monitor’s Certificate”** means the certificate delivered to the Purchaser and filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Company and the Purchaser that all conditions to Closing have been satisfied or waived by the applicable Parties and the transactions contemplated by this Agreement have been completed.

**“New Credit Agreement”** means the tenth amended and restated credit agreement dated as of the Closing Date, by and among Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, the Credit Facility Agent and the Credit Facility Lenders, as such credit agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof, which shall be in a form consistent with the term sheet with respect thereto as contained in Exhibit 1 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement) (including that any letters of credit issued by a Credit Facility Lender pursuant to the Credit Agreement shall continue under the New Credit Agreement or be discharged and, if required, replaced with new letters of credit issued under the New Credit Agreement, unless otherwise agreed to by the applicable Credit Facility Lender and the Just Energy Entities, with the consent of the Purchaser) and otherwise acceptable to the Purchaser as of the Closing Date.

**“New Intercreditor Agreement”** means the seventh amended and restated intercreditor agreement by, among others, the Just Energy Entities, the Credit Facility Agent and the applicable Commodity Suppliers, which shall provide for the same relative supplier and lender priorities as contemplated in the existing sixth amended and restated intercreditor agreement subject to modifications contained therein, which shall be in a form consistent with the term sheet with respect thereto as contained in Exhibit 4 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement) and otherwise acceptable to the Purchaser as of the Closing Date.

**“New Preferred Equity”** has the meaning given to such term in Section 2.1(a).

**“No Action Letter”** means written confirmation from the Commissioner that the Commissioner does not, at that time, intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement.

**“Order”** means any order of the Court made in the CCAA Proceedings, any order of the U.S. Court made in the U.S. Proceedings, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

**“Outside Date”** has the meaning given to such term in Section 9.1(c).

“**Parties**” means the Company and the Purchaser collectively, and “**Party**” means either the Company or the Purchaser, as the context requires.

“**PATRIOT Act**” has the meaning given to such term in Section 5.11.

“**PCMLTFA**” has the meaning given to such term in Section 5.11.

“**Permitted Encumbrances**” means the Encumbrances listed in Schedule 1.1(b).

“**Person**” means includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Governmental Authority.

“**Post-Closing Straddle Tax Period**” has the meaning given to such term in Section 7.4(c).

“**Post-Filing Claim**” or “**Post-Filing Claims**” means any or all indebtedness, liability, or obligation of the Just Energy Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the Just Energy Entities during such period or under or in accordance with any Continuing Contract; provided that, for certainty, such amounts are not a Restructuring Period Claim or a Restructuring Period D&O Claim, each as defined in the Claims Procedure Order.

“**Pre-Filing Claims**” has the meaning given to such term in the Claims Procedure Order.

“**Priority Payments Amount**” means cash in an amount equal to the value of the Priority Payments less the value of the Cash Purchase Price.

“**Priority Payments**” has the meaning given to such term in the Vesting Order.

“**Purchase Price**” has the meaning given to such term in Section 3.1(a).

“**Purchased Interests**” has the meaning given to such term in Section 2.1(a).

“**Purchaser**” has the meaning given to such term in the preamble to this Agreement.

“**Released Claims**” means all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “claims” as defined in the CCAA or the U.S. Bankruptcy Code and

including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Residual Co.**” means an entity to be formed by the Company in Canada and an entity to be formed by the Company in the United States, in each case, in form satisfactory to the Purchaser, acting reasonably, prior to the Closing and each of which shall have no issued and outstanding shares; provided, that no such entity shall be a flow through entity for Canadian or U.S. tax purposes unless approved by the Purchaser.

“**Sanctioned Country**” means any country or territory to the extent that such country or territory itself is the subject of any comprehensive sanctions (currently, Crimea, Cuba, Iran, North Korea, Syria and those portions of the Donetsk People’s Republic or Luhansk People’s Republic regions (and such other regions) of Ukraine over which any Sanctions Law authority imposes comprehensive Sanctions Laws), or any country or territory whose government is the subject of Sanctions Laws (currently, Venezuela) or that is otherwise the subject of broad restrictions under Sanctions Laws (including Afghanistan, Russia and Belarus).

“**Sanctioned Person**” means (i) any Person identified in any Sanctions Law-related list of designated Persons maintained by the Government of Canada or other Sanctions Laws authorities, (ii) any Person located, incorporated, or resident in a Sanctioned Country, or (iii) any Person directly or indirectly owned or controlled by, or acting for the benefit or on behalf of, a Person described in clause (i) or (ii) to the extent the owned or controlled Person is itself subject to the restrictions or prohibitions as the Person described in clause (i) or (ii).

“**Sanctions Laws**” means economic and financial sanctions laws administered, enacted or enforced from time to time by the Government of Canada, U.S., European Union, United Kingdom, or United Nations Security Council.

“**Shell**” has the meaning given to such term in Section 6.2(i).

“**SISP**” means the Sale and Investment Solicitation Process substantially in the form as appended as Exhibit D of the Support Agreement or otherwise in form and substance satisfactory to the Purchaser and the Company, each acting reasonably.

“**SISP Order**” means an order of the CCAA Court that, among other things, approves the SISP and related matters, substantially in the form as contained in Exhibit 2 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement), or as otherwise acceptable to the Purchaser and the Company, each acting reasonably.

“**SISP Recognition Order**” means the Order of the U.S. Bankruptcy Court entered in the U.S. Proceedings recognizing and giving effect to the SISP Order, which order shall be in form and substance acceptable to the Purchaser and the Company, each acting reasonably.

“**Successful Bid**” has the meaning given to such term in the SISP.

“**Support Agreement**” has the meaning given to such term in Recital D.



“**Tax**” and “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Tax Act**” means the *Income Tax Act (Canada)* and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

“**Tax Return**” means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

“**Taxing Authority**” means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the U.S. and each and every state and locality of the U.S., and any Canadian, U.S. or other Governmental Authority exercising taxing authority or power, and “Taxing Authority” means any one of the Taxing Authorities.

“**Transaction Regulatory Approvals**” means any material licenses, permits or approvals required from any Governmental Authority or under any Applicable Laws relating to the business and operations of the Just Energy Entities that would be required to be obtained in order to permit the Just Energy Entities and Purchaser to complete the transactions contemplated by this Agreement and the Support Agreement, including but not limited to, and in each case to the extent it has been agreed to in accordance this Agreement that such approval shall be obtained, the Federal Energy Regulatory Commission, the Competition Act Approval, the Antitrust Approvals and the Investment Canada Act Approval.

“**Transfer Taxes**” means all transfer, documentary, sales, use, stamp, registration, customs duties, import and export taxes, surtaxes, value added, GST/HST, provincial sales/retail Taxes, conveyance fees, security interest filing or recording fee and any other similar Taxes (including any real property transfer Tax and any other similar Tax), any governmental assessment, and any related penalties and interest.

“**U.S.**” means the United States of America.

“**U.S. Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq, as amended.

“**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the District of Texas, Houston Division, overseeing the U.S. Proceedings.

“**U.S. Proceedings**” has the meaning given to such term in Recital C.

“**Vesting Order**” means an order of the CCAA Court substantially in the form of Exhibit 3 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement) (or as otherwise acceptable to the Purchaser and the Company, each acting reasonably).

“**Vesting Recognition Order**” means an order of the U.S. Bankruptcy Court entered in the U.S. Proceedings in form and substance acceptable to the Purchaser, which shall, among other things, recognize and give effect to the Vesting Order and otherwise approve this Agreement and the transactions contemplated hereby.

## **1.2 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.

## **1.3 Headings, Table of Contents, etc.**

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

## **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

## **1.5 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in U.S. dollars. References to “\$” are to U.S. dollars. References to “C\$” are to Canadian dollars.

## **1.6 Certain Phrases**

In this Agreement (i) the words “including”, “includes” and “include” and any derivatives of such words mean “including (or includes or include) without limitation” and (ii) the words “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

## **1.7 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon (i) such a determination of invalidity or unenforceability or (ii) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

## **1.8 Knowledge**

Any reference to the knowledge of (i) the Company or the Just Energy Entities, means the actual knowledge, after reasonable inquiry, of R. Scott Gahn, Michael Carter and Jonah Davids, and (ii) the Purchaser, means the actual knowledge, after reasonable inquiry, of Scott Striegel.

## **1.9 Entire Agreement**

This Agreement, the Disclosure Letter, the Support Agreement and the agreements and other documents required to be delivered pursuant to this Agreement or the Support Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement or the Support Agreement and any document required to be delivered pursuant to this Agreement or the Support Agreement.

## **1.10 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

## **1.11 Governing Law; Jurisdiction and Venue**

This Agreement, the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed

by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the CCAA Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.7 shall be deemed effective service of process on such Party.

### **1.12 Incorporation of Disclosure Letter, Schedules and Exhibits**

The Disclosure Letter and any schedule or exhibit attached thereto, and any schedule or exhibit attached to this Agreement, is an integral part of this Agreement.

### **1.13 Accounting Terms**

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP unless otherwise specified.

### **1.14 Non-Business Days**

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

### **1.15 Computation of Time Periods**

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

## **ARTICLE 2 PURCHASE AND SALE**

### **2.1 Agreement to Purchase and Sell Purchased Interests**

- (a) Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, and subject to the completion of the Implementation Steps required to be completed prior to the Closing Time, the Company shall cause Just Energy (U.S.) Corp. to issue to the Purchaser, and each Purchaser (severally and not jointly) shall purchase from Just Energy (U.S.) Corp., free and clear of all Encumbrances (other than Permitted Encumbrances), newly issued common equity, and newly issued preferred equity (the “**New Preferred Equity**”) of Just Energy (U.S.) Corp. (or its successor if converted into another entity prior to the Closing in accordance with the Implementation Steps), with such equity interests to be allocated to each Purchaser as set forth on Schedule 2.1(a) (collectively, the “**Purchased Interests**”).
- (b) The terms of the New Preferred Equity shall be consistent with the terms set forth on Exhibit A hereto.

- (c) Pursuant to the Vesting Order, in accordance with the Implementation Steps, all Equity Interests of Just Energy (U.S.) Corp. outstanding prior to the issuance of the Purchased Interests shall be cancelled, and the Purchased Interests shall represent 100% of the outstanding Equity Interests in Just Energy (U.S.) Corp. after such cancellation and issuance.
- (d) In accordance with the Implementation Steps, Just Energy (U.S.) Corp. shall subscribe for and the Company shall issue to Just Energy (U.S.) Corp. newly issued common equity of the Company and pursuant to the Vesting Order and Articles of Reorganization immediately after the issuance of such common equity, all other Equity Interests of the Company shall be cancelled or redeemed, and, immediately after such cancellation or redemption, Just Energy (U.S.) Corp. shall hold 100% of the outstanding Equity Interests in the Company.
- (e) For the avoidance of doubt, upon the Closing and after the completion of the Implementation Steps, each other Just Energy Entity (including the Company) and every direct and indirect subsidiary of the Company, except those listed on Schedule 2.2(f), shall be owned, directly or indirectly, by Just Energy (U.S.) Corp.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Closing, the assets of the Just Energy Entities shall not include any of the following assets, together with any other assets as set forth on Schedule 2.2 of the Disclosure Letter (collectively, the “**Excluded Assets**”):

- (a) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities, provided that the applicable Just Energy Entity may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return, provided, however that Residual Co. shall retain the original copies of any of the records required to be provided to the applicable Just Energy Entity hereunder (and provide the applicable Just Energy Entity with a copy thereof) to the extent Residual Co. is required to do so under Applicable Law;
- (b) the Administrative Expense Amount;
- (c) the Priority Payments Amount, which for the avoidance of doubt, shall be paid in accordance with Section 3.2 and shall not be transferred to Residual Co pursuant to Section 2.6;
- (d) the Excluded Contracts;
- (e) all communications, information or records, written or oral, that are in any way related to (i) the transactions contemplated by this Agreement, (ii) the sale of the Purchased Interests, (iii) any Excluded Asset or (iv) any Excluded Liability;

- (f) the equity interests of each entity set forth on Schedule 2.2(f), which Schedule may be modified as agreed upon by the Company and the Purchaser, each acting reasonably, at least seven (7) days prior to the hearing of the Just Energy Entities' motion to the CCAA Court seeking the Vesting Order; and
- (g) any rights which accrue to Residual Co. under the transaction documents.

### **2.3 Liabilities of Just Energy Entities**

Subject to the Implementation Steps and pursuant to this Agreement and the Vesting Order, as of the Closing Time the only obligations and liabilities of the Just Energy Entities shall consist of only the items specifically set forth below, as applicable (collectively, the “**Assumed Liabilities**”); provided, for the avoidance of doubt the Assumed Liabilities of any Just Energy Entities pursuant to this Section 2.3 shall continue to be liabilities of the applicable Just Energy Entity (and, except as applied to Section 2.3(f) no other Person) as of the Closing; provided, further, however, that each of the Just Energy Entities shall take such steps as are necessary to ensure that any claim that could give rise to responsible person liability is satisfied if the applicable Just Energy Entity is, for any reason, unable to satisfy such claim:

- (a) *Post-Filing Claims* – all Post-Filing Claims;
- (b) *Liabilities of Just Energy Entities* – all liabilities of the Just Energy Entities arising from and after Closing;
- (c) *Credit Facility* – all Credit Facility LC Claims and the Credit Facility Remaining Debt (if any);
- (d) *Cash Management Obligations* – all Cash Management Obligations;
- (e) *Energy Regulator Claims* – Energy Regulator Claims relating to the Just Energy Entities;
- (f) *Taxes* – (A) Tax liabilities of the Just Energy Entities for any tax period or the portion thereof beginning on or after the Filing Date, and (B) any other Taxes, including sales or use taxes, payable to a Taxing Authority for any period 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, excluding from (A), for the avoidance of doubt (x) all income tax or similar liabilities of any Just Energy Entity for any tax period ending prior to the Filing Date, and (y) any Tax or similar liability directly and solely related to the Excluded Assets, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes (excluding, for the avoidance of doubt, any such person serving in such capacity at Residual Co.);
- (g) *Texas Comptroller* – All Claims of the Texas Comptroller of Public Accounts that have been accepted pursuant to the Claims Procedure Order;

- (h) *Intercompany Claims* – Intercompany Claims between Just Energy Entities to the extent that the Implementation Steps contemplate such claims continuing as Assumed Liabilities;
- (i) *Indemnification Obligations* – any and all indemnification obligations of the Just Energy Entities to current and former directors, officers and or other person employed or previously employed by the Just Energy Entities (excluding, for the avoidance of doubt, Residual Co.);
- (j) *Employee Priority Claims* – all Employee Priority Claims; and
- (k) *Non-Just Energy Entity Liabilities* – all obligations and liabilities of the direct and indirect subsidiaries of the Company that are not Just Energy Entities, excluding those set forth on Schedule 2.2(f).

Notwithstanding the foregoing, nothing in this Agreement shall be read to extend or shall be interpreted as extending or amending the Claims Bar Date or give or shall be interpreted as giving any rights to any Person in respect of Claims against any Just Energy Entity that have been barred or extinguished pursuant to the Claims Procedure Order (it being understood that this proviso shall in no way limit the assumption of liabilities described in Section 2.3(f)(B)).

## **2.4 Excluded Liabilities**

Except as expressly assumed pursuant to or specifically contemplated by Section 2.3, all Claims and all debts, obligations, and liabilities of the Just Energy Entities or any predecessors of the Just Energy Entities, of any kind or nature, shall be assigned and become the sole obligation of the applicable Residual Co. pursuant to the terms of the Vesting Order and this Agreement, and, as of the Closing, the Just Energy Entities shall not have any obligation, duty, or liability of any kind whatsoever, except as expressly assumed pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and such liabilities or obligations shall be the sole responsibility of the applicable Residual Co. (collectively, the “**Excluded Liabilities**”). All intercompany obligations and balances which do not continue as Assumed Liabilities pursuant to the Implementation Steps shall be Excluded Liabilities.

## **2.5 Transfer of Excluded Liabilities to Residual Co.**

On the Closing Date, pursuant to the terms of the Vesting Order, the Just Energy Entities shall assign and transfer the Excluded Liabilities to the applicable Residual Co. (with Excluded Liabilities with respect to any Just Energy Entity organized in Canada being assigned to the Residual Co. organized in Canada and any Excluded Liabilities with respect to any Just Energy Entity organized in the United States being assigned to the Residual Co. organized in the United States), and such Residual Co. shall assume the applicable Excluded Liabilities. All of the Excluded Liabilities shall be discharged from the Just Energy Entities as of the Closing, pursuant to the Vesting Order.

## 2.6 Transfer of Excluded Assets to Residual Co.

On the Closing Date, pursuant to the terms of the Vesting Order and, where applicable, in consideration for Residual Co. assuming the Excluded Liabilities pursuant to Section 2.5 from a Just Energy Entity, the Just Energy Entities shall assign and transfer the Excluded Assets to the applicable Residual Co. (with Excluded Assets with respect to any Just Energy Entity organized in Canada being assigned to the Residual Co. organized in Canada and any Excluded Assets with respect to any Just Energy Entity organized in the United States being assigned to the Residual Co. organized in the United States), and the Excluded Assets shall be vested in the applicable Residual Co. pursuant to the Vesting Order.

## 2.7 Pre-Closing and Closing Reorganization

- (a) The specific mechanism for implementing the Closing, payment of the Cash Purchase Price and Credit Bid Consideration, and the structure of the transactions contemplated by this Agreement shall be structured in a tax efficient manner mutually agreed upon by the parties, each acting reasonably.
- (b) On or prior to the Closing Date, the Just Energy Entities shall effect the transaction steps and pre-closing reorganization (collectively, the “**Implementation Steps**”) of the Just Energy Entities as set forth on a schedule to be agreed upon by the Company, the Credit Facility Lenders and the Purchaser, each acting reasonably, at least seven (7) days prior to the hearing of the Just Energy Entities’ motion to the CCAA Court seeking the Vesting Order; provided that in no event will the Implementation Steps described in Schedule 2.7(c) be materially prejudicial to the interests of the Purchaser under the other sections of this Agreement. The Implementation Steps may include, without limitation, resolving intercompany obligations, the formation of new entities required to implement the transactions contemplated by this Agreement in a tax efficient manner, amending the partnership agreements to reflect the economic arrangement of the parties, and transfers of equity interests in the Just Energy Entities as agreed upon by the Company, the Credit Facility Lenders and the Purchaser, each acting reasonably, consistent with Section 2.7(a).
- (c) The Implementation Steps shall occur, and be deemed to have occurred in the order and manner to be set out in Schedule 2.7(c).
- (d) The steps to be taken and the compromises and releases to be effective on the Closing Date are deemed to occur and be effected in the steps and sequential order set forth in Schedule 2.7(c), beginning on or before the Closing Date at such time as is specified therein.



**ARTICLE 3**  
**PURCHASE PRICE AND RELATED MATTERS**

**3.1 Purchase Price**

- (a) The purchase price payable by each Purchaser (severally and not jointly) for the Purchased Interests (the “**Purchase Price**”) shall be:
- (i) cash in the amount of \$184,857,692.31, plus up to an additional C\$10 million solely in the event and to the extent additional funds (taking into account the Cash Purchase Price, the aggregate amount of cash held by the Just Energy Entities as of the Closing Date and the Credit Facility Remaining Debt) are required to pay all amounts to be paid by the Just Energy Entities pursuant to this Agreement and the Vesting Order (the “**Cash Purchase Price**”), allocated among each Purchaser in the amounts set forth on Schedule 3.1(a)(i);
  - (ii) subject to the Implementation Steps, the release of the applicable Just Energy Entities from all amounts outstanding and obligations owing to CBHT Energy I LLC pursuant to the BP Commodity/ISO Services Claim as of the Closing Date, including the principal amount of such claims and interest accrued as of the Closing Date, which amount as of the Filing Date is \$229,461,558.59 and C\$170,652.60, plus all accrued and unpaid interest thereon through to and including the Closing Date, in return for the issuance of the New Preferred Equity, plus any fees and expenses associated therewith (such aggregate amount, the “**Credit Bid Consideration**”); and
  - (iii) the assumption of the Assumed Liabilities as set forth herein.
- (b) Each Purchaser shall satisfy the obligations pursuant to Section 3.1 and the Purchase Price as follows:
- (i) CBHT Energy I LLC shall, at the Closing Time, in respect of the Credit Bid Consideration, cause the release of the applicable Just Energy Entities from all amounts outstanding and obligations owing pursuant to the BP Commodity/ISO Services Claim, including the principal amount of such claims and interest accrued as of the Closing Date, and any other documents or agreements entered into therewith in an aggregate amount equal to the Credit Bid Consideration, upon which the BP Commodity/ISO Services Claim, together with all documents, instruments, agreements and other related instruments shall, automatically and without any further formality, be released, discharged, terminated and of no further force and effect; and
  - (ii) at the Closing Time, each Purchaser (other than CBHT Energy I LLC) shall pay to the Company its respective portion of the Cash Purchase Price (as allocated on Schedule 3.1(a)(i)).

- (c) The Purchaser and its Affiliates, on the one hand, and the Company, and any of its Affiliates, on the other hand, shall be entitled to deduct and withhold from the Purchase Price or other amounts otherwise payable pursuant to this Agreement such amounts as such Person is required to deduct and withhold under Applicable Law provided, however, that the Purchaser and its Affiliates shall not make any such deduction or withholding pursuant to Section 1445 of the Code, as long as at Closing, the Company shall have delivered to the Purchaser certification required by Section 10.2(c). Before making any such deduction or withholding, the withholding agent shall use commercially reasonable efforts to provide the Person in respect of which deduction or withholding is proposed to be made reasonable advance written notice of the intention to make such deduction or withholding, and the withholding agent shall cooperate with any reasonable request from such Person to obtain reduction of or relief from such deduction or withholding to the extent permitted by Applicable Law. To the extent that amounts are so deducted and withheld and remitted to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### **3.2 Payment of Certain Liabilities**

On the Closing Date, upon payment of the Cash Purchase Price to the Company, the Just Energy Entities shall satisfy, in accordance with the Implementation Steps, the Priority Payments as required to be paid on Closing in the Vesting Order from the Priority Payments Amount plus the Cash Purchase Price such that all the Priority Payments shall be satisfied in full in connection with the Closing.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants, on behalf of itself and all other Just Energy Entities, to the Purchaser as follows, and acknowledges that the Purchaser is relying upon the following representations and warranties in connection with its purchase of the Purchased Interests:

### **4.1 Due Authorization and Enforceability of Obligations**

This Agreement has been duly authorized, executed and delivered by it, and, subject to the granting of the SISP Order this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

### **4.2 Existence and Good Standing**

Each of the Just Energy Entities is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and, subject to the granting of the SISP Order, (i) has all requisite power and authority to execute and deliver this Agreement and (ii) has taken all requisite corporate or other action necessary for it to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transaction contemplated hereunder.

### **4.3 Sophisticated Parties**

Each of the Just Energy Entities (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

### **4.4 Absence of Conflicts**

The execution and delivery of this Agreement by the Company and the completion by the Company of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of the properties or assets of any Just Energy Entity, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under the certificate of incorporation, articles, by-laws or other constituent documents of any Just Energy Entity. The execution, delivery and performance by the Company does not and will not: (x) violate any provision of law, rule, or regulation applicable to the Just Energy Entities or any Just Energy Entity's charter or by-laws (or other similar governing documents) or those of any subsidiaries; (y) except as the consummation of the transactions contemplated herein may constitute a "Change of Control" (as may be defined in the Credit Agreement, the Intercreditor Agreement, the existing supply agreements with Shell, and the Term Loan Agreement) or any equivalent concept under the Credit Agreement, the Intercreditor Agreement, the existing supply agreements with Shell, or the Term Loan Agreement, conflict with, result in a breach of, or constitute (with or without notice or lapse of time or both) a default under any material agreement to which any Just Energy Entity is a party or any debt for borrowed money to which it is a party that, in any case, is not remedied, cured or waived, or (z) violate any Order, statute, rule, or regulation.

### **4.5 Approvals and Consents**

The execution and delivery of this Agreement by the Company, the completion by the Company of its obligations hereunder and the consummation by the Company of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the SISP Order and the Transaction Regulatory Approvals.

### **4.6 No Actions**

There is not, as of the date hereof, pending or, to the Company's knowledge, threatened against any Just Energy Entity or any of its properties, nor has any Just Energy Entity received any written notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent the Company from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

#### **4.7 Subsidiaries**

Schedule 4.7 sets forth a complete and correct list of the name and jurisdiction of organization of each Just Energy Entity. All the outstanding Equity Interests of the Just Energy Entities (other than those of the Company) are owned by the Company, by one or more Company Subsidiaries or by the Company and one or more Company Subsidiaries, free and clear of all pledges, claims, liens, charges, options, security interests, licenses or other encumbrances of any kind or nature whatsoever (other than Permitted Encumbrances), except for transfer restrictions imposed by applicable securities laws, and, except as would not be material to the Company and the Just Energy Entities, taken as a whole, are duly authorized, validly issued, fully paid and nonassessable and not subject to any pre-emptive rights. Except for the Equity Interests in the Just Energy Entities, the Company does not own, directly or indirectly, any Equity Interests in, any Person.

#### **4.8 No Stop Order**

As of the time of entering into this Agreement, no order halting or suspending trading in securities of the Just Energy Entities has been issued to and is outstanding against any of the Just Energy Entities, and, to any Just Energy Entity's knowledge, no investigations or proceedings for such purpose are pending or threatened.

#### **4.9 Support Agreement Representations and Warranties**

The representations and warranties of Just Energy in the Support Agreement are true and correct.

#### **4.10 Sanctioned Person**

None of the Just Energy Entities, nor any of their respective officers, directors, employees or agents, is a Sanctioned Person.

#### **4.11 Sanctions Laws**

None of the Just Energy Entities has (i) assets located in, or otherwise directly or, to the knowledge of any of the Just Energy Entities, indirectly, derives revenues from or engages in, investments, dealings, activities, or transactions in or with, any Sanctioned Country in violation of Sanctions Laws; or (ii) directly or, to the knowledge of any of the Just Energy Entities, indirectly, derives revenues from or engages in investments, dealings, activities, or transactions with, any Sanctioned Person in violation of Sanctions Laws.

#### **4.12 Anti-Money Laundering Laws; Anti-Corruption Laws**

- (a) The operations of the Just Energy Entities are and have been at all times conducted in compliance with, in all respects, (i) the U.S. Currency and Foreign Transactions Reporting Act of 1970, the PCMLTFA (as defined below), the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the PATRIOT Act (as defined below), the Bank Secrecy Act (31 U.S.C. §§5311-5332), and any other applicable laws related to money laundering or terrorism financing (“**Anti-Money**

**Laundering Laws**”), (ii) the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder, and any other applicable laws or regulations concerning or relating to bribery or corruption (“**Anti-Corruption Laws**”) and (iii) Sanctions Laws.

- (b) No action, suit, investigation or legal proceeding by or before any Governmental Authority or any arbitrator involving the Just Energy Entities or any officer, director, employee or agent thereof, or any informal or formal investigation by any Just Energy Entity or its legal or other representatives involving the foregoing, with respect to Anti-Money Laundering Laws, Anti-Corruption Laws or Sanctions Laws is pending, or to the knowledge of any of the Just Energy Entities, threatened.
- (c) Each Just Energy Entity has instituted and maintains policies and procedures designed to ensure compliance by each Just Energy Entity and its directors, officers, employees, and agents with Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions Laws.

#### **4.13 Investment Canada Act**

Neither the Company nor any of the Just Energy Entities carries on a “cultural business” within the meaning of the Investment Canada Act.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

Each Purchaser represents and warrants, severally and not jointly, and only as to itself, to the Company as follows, and acknowledges that the Company is relying upon the following representations and warranties in connection with the sale of the Purchased Interests:

#### **5.1 Due Authorization and Enforceability of Obligations**

This Agreement has been duly authorized, executed and delivered by each Purchaser, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

#### **5.2 Existence and Good Standing**

Each Purchaser is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

### **5.3 Sophisticated Party**

Each Purchaser (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

### **5.4 Absence of Conflicts**

The execution and delivery of this Agreement by the each and the completion by each Purchaser of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

### **5.5 Approvals and Consents**

The execution and delivery of this Agreement by each Purchaser, the completion by each Purchaser of its obligations hereunder and the consummation by each Purchaser of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order and the Transaction Regulatory Approvals.

### **5.6 No Actions**

There is not, as of the date hereof, pending or, to each Purchaser's knowledge, threatened against it or any of its properties, nor has any Purchaser received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

### **5.7 Accredited Investor**

Each Purchaser is an "accredited investor", as such term is defined in NI 45-106 and in Rule 501 of Regulation D under the United States Securities Act of 1933 (the "**Securities Act**") and it was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106 and acknowledges that the Purchased Interests will be subject to resale restrictions under applicable securities laws. The Purchased Interests are being acquired by each Purchaser for its own account, and not with a view to, or for the offer or sale in connection with, any public distribution or sale of the Purchased Interests or any interest in them. Each Purchaser has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of its investment in the Purchased Interests, and each Purchaser is capable of bearing the economic risks of such investment, including a complete loss of its investment in the Purchased Interests. Each

Purchaser acknowledges that the Purchased Interests are not registered under the Securities Act, any state securities law, regulation or rule or any applicable foreign securities law, regulation or rule, and agrees that the Purchased Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of except pursuant to a registered offering in compliance with, or in a transaction exempt from, the registration requirements of the Securities Act and any other applicable state and foreign securities laws.

## **5.8 Financial Ability**

Each Purchaser has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

## **5.9 Credit Bid; Availability of Funds**

- (a) CBHT Energy I LLC has executed, on or prior to the date hereof, the requisite instruction letters to fully authorize the Purchaser, and the Purchaser is duly authorized, to, among other things, deliver the Credit Bid Consideration in connection with the consummation of the Closing hereunder.
- (b) The Purchaser has delivered to the Company complete and accurate copies of executed limited guarantees dated as of the date of this Agreement (each, a “**Guarantee**” and collectively, the “**Guarantees**”) from certain Affiliates of the Purchaser (the “**Equity Financing Sources**”) pursuant to which the Equity Financing Sources have guaranteed, for the benefit of the Company, subject only to the terms and conditions therein, the Cash Purchase Price (the “**Equity Financing**”) amongst other guarantees set out therein.
- (c) Each Guarantee, in the form so delivered to the Company, is in full force and effect and is a legal, valid and binding obligation of the Purchaser and the respective Equity Financing Sources, enforceable against the parties thereto in accordance with its terms, and the Purchaser knows of no fact or circumstance that would cause the Equity Financing to be unavailable on a timely basis in order to consummate the Closing on the terms and subject to the conditions therein. There are no other agreements, side letters or arrangements to which the Purchaser is a party relating to any Guarantee that could reasonably be expected to prevent, impair or materially delay the consummation of the Equity Financing. As of this date of this Agreement, none of the Guarantees has been amended or modified (and no such amendment or modification is contemplated), and the respective commitments set forth in the Guarantees have not been withdrawn or rescinded in any respect (and no such withdrawal or rescission is contemplated).

## **5.10 No Sanctions**

No Purchaser nor any of its subsidiaries nor any of their respective directors or officers or, to its knowledge, employees acting on behalf of it or any of its subsidiaries, (i) is a Person identified in any sanctions-related list of designated Persons maintained by the Government of Canada, or

(ii) is greater than 50% owned or controlled by any Person described under clause (i) to the extent the owned or controlled Person is itself subject to the restrictions or prohibitions as the Person described in clause (i).

### **5.11 Purchase Price Funds**

To the Purchaser's knowledge, the funds representing the Cash Purchase Price for the Purchased Interests and the aggregate amounts which will be paid by it to the Company hereunder: (i) do not represent proceeds of crime for the purposes of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (the "PCMLTFA"), and (ii) have not been and will not be derived directly or indirectly from or related to any activity that is deemed criminal under the laws of Canada, the U.S., or any other jurisdiction, in each case, with respect to each of clause (i) and (ii), in violation thereof. The Purchaser acknowledges and agrees that the Just Energy Entities may be required by Law to provide disclosure pursuant to the PCMLTFA. The funds representing payment of the amounts to be advanced by the Purchaser hereunder will not represent proceeds of crime for the purposes of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (the "PATRIOT Act") in violation of the PATRIOT Act, and the Purchaser acknowledges that the Just Energy Entities may in the future be required by law to disclose the Purchaser's name and other information relating to this Agreement and the amounts payable by the Purchaser to the Just Energy Entities hereunder, on a confidential basis, pursuant to the PATRIOT Act. No portion of the funds representing payment of the amounts to be advanced by the Purchaser hereunder (A) has been or will be, to its knowledge, derived from or related to any activity that is deemed criminal under the laws of the U.S., or any other jurisdiction, or (B) is being tendered on behalf of a Person or entity who has not been identified to or by the Purchaser, and the Purchaser shall promptly notify the Just Energy Entities if the Purchaser discovers that any of such representations ceases to be true and provide the Just Energy Entities with appropriate information which is reasonably available in connection therewith.

### **5.12 Investment Canada Act**

Each Purchaser is a "trade agreement investor" within the meaning of the Investment Canada Act.

## **ARTICLE 6 CONDITIONS**

### **6.1 Conditions for the Benefit of the Purchaser and the Company**

The respective obligations of each Purchaser and the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the purchase of the Purchased Interests or any of the other transactions pursuant to this Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Just Energy Entity, shall be in effect;



- (b) *Final Orders* – each of the SISP Order and the Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *Final U.S. Orders* – the Claims Procedure Recognition Order (as defined in the Support Agreement), SISP Recognition Order and Vesting Recognition Order shall have been issued and entered by the U.S. Bankruptcy Court and shall be Final Orders;
- (d) *Support Agreement* – the Support Agreement shall not have been terminated by any party thereto;
- (e) *Transaction Regulatory Approvals* – the Just Energy Entities and the Purchaser shall have received all required Transaction Regulatory Approvals and provided the Energy Regulator Notices set forth on Schedule 6.1(e), and all required Transaction Regulatory Approvals shall be in full force and effect, except for Transaction Regulatory Approvals that need not be in full force and effect prior to Closing; and
- (f) *New Credit Agreement; New Intercreditor Agreement* – each of the New Credit Agreement and the New Intercreditor Agreement shall have been entered into by and among the parties thereto.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Company and each Purchaser. Any condition in this Section 6.1 may be waived by the Company and by any Purchaser, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Company or the Purchaser, as applicable, only if made in writing.

## **6.2 Conditions for the Benefit of the Purchaser**

The obligation of any Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by any Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of each Purchaser):

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed or complied with by the Company at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – (i) the Fundamental Representations and Warranties of the Company shall be true and correct in all respects as of the Closing Date, as if made at and as of such date and (ii) all other representations and warranties of the Company contained in Article 4 shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not, in the aggregate, have a Material Adverse Effect (and, for

this purpose, any reference to “material”, “Material Adverse Effect” or other concepts of materiality in such representation and warranties shall be ignored);

- (c) *Officer’s Certificates* – the Purchaser shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Performance of Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Company without personal liability by an executive officer of Just Energy or other Persons acceptable to the Purchaser, in each case in form and substance reasonably satisfactory to the Purchaser;
- (d) *No Material Adverse Effect* – since the date hereof, no change effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
- (e) *Company’s Deliverables* – the Company shall have delivered to the Purchaser all of the deliverables contained in Section 10.2 in form and substance reasonably satisfactory to the Purchaser;
- (f) *Vesting Order Approval* – the Vesting Order shall have been granted by October 15, 2022;
- (g) *Implementation Steps* – the Just Energy Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably acceptable to the Purchaser, acting reasonably;
- (h) *Cash on Hand* – the aggregate amount of cash held by the Just Energy Entities immediately after giving effect to the payment of all amounts provided for in this Agreement and in the Vesting Order shall be equal to or greater than \$C0;
- (i) *Continuing Contracts* – Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, “**Shell**”) shall have confirmed in writing, to the Company and each Purchaser that (i) it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated hereby, and (ii) all existing and any potential future trades will be transacted in accordance with the Continuing Contracts (as may be amended, restated, supplemented and/or replaced by the Just Energy Entities and Shell from time to time following the Closing Date) or new arrangements, in each case, in accordance with the terms thereof and subject to the terms of the New Intercreditor Agreement;
- (j) *Termination of Securities Reporting Obligations* – As of the Closing and upon the consummation of the transactions contemplated in the Support Agreement, none of the Just Energy Entities shall be a reporting issuer (or equivalent thereof) under any U.S. securities laws or Canadian securities laws; and
- (k) *Sufficient Funds* – As of immediately prior to the Closing, the Cash Purchase Price, plus the aggregate amount of cash held by the Just Energy Entities, plus the Credit

Facility Remaining Debt, shall be sufficient to pay all amounts to be paid by the Just Energy Entities pursuant to this Agreement and the Vesting Order.

### **6.3 Conditions for the Benefit of the Company**

The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Company of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Company):

- (a) *Truth of Representations and Warranties* – the representations and warranties of each Purchaser contained in Article 5 will be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on each Purchaser’s ability to consummate the transactions contemplated by this Agreement;
- (b) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Purchaser at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) *Officer’s Certificate* – the Company shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) and 6.3(b) signed for and on behalf of each Purchaser without personal liability by an executive officer of each Purchaser or other Persons acceptable to the Company, acting in a commercially reasonable manner, in each case, in form and substance satisfactory to the Company, acting in a commercially reasonable manner;
- (d) *Purchaser Deliverables* – each Purchaser shall have delivered to the Company all of the deliverables contained in Section 10.3 in form and substance satisfactory to the Company, acting in a commercially reasonable manner;
- (e) *Management Incentive Plan* – the management incentive plan shall have been executed on terms consistent in all respects with the terms set forth in the MIP Term Sheet, attached as Exhibit 5 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement); and
- (f) *Employment Agreements* – the Employment Agreements shall not have been disclaimed and shall be in place on and as of the Closing Date.

**ARTICLE 7**  
**ADDITIONAL AGREEMENTS OF THE PARTIES**

**7.1 Access to Information**

- (a) Until the Closing Time, the Company shall give to the Purchaser's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Business, the Just Energy Entities, the Assumed Liabilities and the employees, and shall furnish them with all such information relating to the Business, the Just Energy Entities, the Assumed Liabilities and the employees as the Purchaser may reasonably request in connection with the transactions contemplated by this Agreement; provided that such access shall be conducted at the Purchaser's expense, in accordance with Applicable Law and under supervision of the Company's personnel and in such a manner as to maintain confidentiality, and the Company will not be required to provide access to or copies of any such books and records if (a) the provision thereof would cause the Company to be in contravention of any Applicable Law or (b) making such information available would (1) result in the loss of any lawyer-client or other legal privilege, or (2) cause the Company to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Company or any of its Affiliates are a party). Such access shall include access for such environmental investigations deemed appropriate by the Purchaser, acting reasonably, provided that any intrusive environmental investigation shall be subject to the prior approval of the Company, acting reasonably. Notwithstanding anything in this Section 7.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person. The Company shall use commercially reasonable efforts to also deliver to the Purchaser authorizations to Governmental Authorities necessary to permit the Purchaser to obtain information in respect of the Just Energy Entities from the files of such Governmental Authorities.
- (b) Following the Closing, the Just Energy Entities shall make all books and records of the Just Energy Entities reasonably available to the Monitor and any trustee in bankruptcy of any of the Just Energy Entities upon at least five (5) Business Days prior notice, for a period of seven (7) years after Closing, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that the Purchaser shall not be obligated to make such books and records available to the extent that doing so would (a) violate Applicable Law, (b) jeopardize the protection of a solicitor-client privilege, or (c) unreasonably interfere with the ongoing business and operations of the Just Energy Entities and their Affiliates, as determined by the Just Energy Entities, acting reasonably.

## 7.2 Approvals and Consents

- (a) With regard to the Competition Act Approval and/or Investment Canada Act Approval:
  - (i) if Competition Act Approval is required, the Parties shall, as soon as reasonably practicable, and in no event more than ten (10) Business Days after the date hereof, submit a request to the Commissioner for an Advance Ruling Certificate or, in the alternative, a No Action Letter in respect of the transaction contemplated by this Agreement;
  - (ii) if Competition Act Approval is required, the Parties shall submit, at the Parties' joint election and within ten (10) Business Days of such mutually agreed election, notification filings in accordance with Part IX of the Competition Act in respect of the transactions contemplated by this Agreement; and
  - (iii) if the Purchaser, acting reasonably, determines that Investment Canada Act Approval should be obtained, the Purchaser shall, as soon as reasonably practicable and in no event more than ten (10) Business Days after the date hereof, submit the notification for the Investment Canada Act Approval.
- (b) The Company shall be responsible for the payment of any filing fees required to be paid in connection with any filing made in respect of the Competition Act Approval and the Antitrust Approvals, as applicable.
- (c) The Parties shall use commercially reasonable efforts to apply for and obtain any Transaction Regulatory Approvals and to file any Energy Regulator Notices as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in accordance with Section 7.2(d), in each case at the sole cost and expense of the Company.
- (d) The Parties shall use commercially reasonable efforts to apply for and obtain the Transaction Regulatory Approvals and to file the Energy Regulator Notices and shall co-operate with one another in connection with obtaining such approvals. Without limiting the generality of the foregoing, the Parties shall: (i) give each other reasonable advance notice of all meetings or other oral communications with any Governmental Authority relating to the Transaction Regulatory Approvals or Energy Regulator Notices, as applicable, and provide as soon as practicable but in any case, if any, within the required time, any additional submissions, information and/or documents requested by any Governmental Authority necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (ii) not participate independently in any such meeting or other oral communication without first giving the other Party (or their outside counsel) an opportunity to attend and participate in such meeting or other oral communication, unless otherwise required or requested by such Governmental Authority; (iii) if any Governmental Authority initiates an oral communication regarding the Transaction Regulatory Approvals or Energy

Regulator Notices, promptly notify the other Party of the substance of such communication; (iv) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals) made or submitted by or on behalf of a Party with a Governmental Authority regarding the Transaction Regulatory Approvals or Energy Regulator Notices as applicable; and (v) promptly provide each other with copies of all written communications to or from any Governmental Authority relating to the Transaction Regulatory Approvals and Energy Regulator Notices as applicable.

- (e) Each of the Parties may, as advisable and necessary, reasonably designate any competitively or commercially sensitive material provided to the other under this Section 7.2 as “Outside Counsel Only Material”, provided that the disclosing Party also provides a redacted version to the receiving Party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Parties, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.
- (f) The obligations of either Party to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require either Party (or any Affiliate thereof) to undertake any divestiture of any business or business segment of such Party, to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Parties. In connection with obtaining the Transaction Regulatory Approvals, no Just Energy Entity shall agree to any of the foregoing items without the prior written consent of the Purchaser.

### **7.3 Covenants Relating to this Agreement**

- (a) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, from the date hereof until the Closing Date, each Party shall and, where appropriate, shall cause each of its Affiliates to:
  - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment

at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and

- (ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) From the date hereof until the Closing Date, the Purchaser hereby agrees, and hereby agrees to cause its representatives to, keep the Company informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Company or the Monitor, as to the Purchaser's progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) From the date hereof until the Closing Date, the Company hereby agrees, and hereby agrees to cause its representatives to, keep the Purchaser informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Purchaser or the Monitor, as to the Company's progress in terms of the satisfaction of the conditions precedent contained herein.
- (d) The Company and the Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.
- (e) From the date hereof until the Closing Date, the Company hereby agrees, and hereby agrees to cause its representatives to, promptly notify the Purchaser of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Agreement, or (ii) any Material Adverse Effect occurring from and after the date hereof prior to the Closing Date.
- (f) The Company and Purchaser agree to use commercial reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the transaction contemplated by this Agreement.

#### **7.4 Tax Matters**

- (a) The Purchaser and the Company agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Interests and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other

proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. The Purchaser and the Company also agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Just Energy Entities, the Purchased Interests and the Assumed Liabilities as is reasonably necessary for the Purchaser to acquire them in a tax efficient manner for both the Company and the Just Energy Entities.

- (b) The Purchaser and the Company shall each be responsible for the preparation of their own statements required to be filed under the Tax Act, the ETA and the Code and other similar forms and returns in accordance with Applicable Law.
- (c) For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Closing Date or Filing Date, as applicable (a “**Straddle Period**”), all real property Taxes, personal property Taxes and similar ad valorem obligations for shall be apportioned between the taxable period up to and including the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the “**Pre-Closing Straddle Tax Period**”) and the taxable period after the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the “**Post-Closing Straddle Tax Period**”), on a per diem basis. Except as otherwise provided herein, with respect to the Purchased Interests, the Company shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar *ad valorem* obligations that are attributable to the Pre-Closing Straddle Tax Period, and the Purchaser shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Post-Closing Straddle Tax Period. For all purposes under this Agreement, in the case of any Tax based upon or related to income, receipts, sales, use, payroll, or withholding, in respect of any Straddle Period, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if the relevant Straddle Period ended on and included the Closing Date or Filing Date, as applicable. To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.
- (d) The Purchaser shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the purchase and sale of the Purchased Interests under this Agreement (including for greater certainty, any Transfer Tax related with the importation, or change of importation classification, of the Purchased Interests) and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under Applicable Law (except any Transfer Tax which, under Applicable Law, is collectible by the Company or applicable Just Energy Entity, in which case such Transfer Tax shall be collected by the Company or Just Energy Entity, as the case may be, and remitted by the Company or Just Energy Entity to the appropriate Governmental Authority as provided for under the Applicable Law but, for the avoidance of doubt, the Purchaser shall remain economically



responsible for and shall pay to or reimburse, or cause to be paid or reimbursed, as the case may be, the Company or the applicable Just Energy Entity for any such Transfer Tax). The Company and the Purchaser shall reasonably cooperate to mitigate and/or eliminate the amount of Transfer Taxes resulting from the transactions contemplated herein (provided, for the avoidance of doubt, this shall not require the parties to structure the transactions in a manner eligible for the benefits of Section 1146(a) of the United States Bankruptcy Code). The Purchaser shall be responsible for preparing and filing all necessary Tax Returns or other documents with respect to such Transfer Taxes (other than any GST/HST returns required to be filed by any Just Energy Entity set forth on Schedule 2.2(f)); provided, however, that in the event any such Tax Return requires execution by any Just Energy Entity, the Purchaser shall deliver it to such Just Energy Entity not less than ten (10) Business Days before the due date thereof, and the Company shall reasonably promptly execute such Tax Return and return it to the Purchaser.

## **7.5 Employee Matters**

Unless otherwise expressly provided for by the management incentive plan, or agreed to in writing by and among any of the Just Energy Entities, the Purchaser, and the applicable employee (or employees) affected by any change or modification, each of the Employment Agreements will not be disclaimed and will remain in place as of, and as a condition to the occurrence of, the Closing pursuant to Section 6.3(f).

## **7.6 Administrative Expense Amount**

- (a) On the Closing Date, the Just Energy Entities shall pay to the Monitor the Administrative Expense Amount, which the Monitor shall hold in trust for the benefit of Persons entitled to be paid the Administrative Expense Costs.
- (b) From time to time after the Closing Date, the Monitor may pay from the Administrative Expense Amount the Administrative Expense Costs at its sole discretion and without further authorization from the Company or Purchaser. Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to the Company.
- (c) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Company and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 7.6; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the CCAA Court-appointed Monitor of the Applicants pursuant to the Initial CCAA Order and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise, save and except for and only to the extent of the Monitor's gross negligence or intentional fault.

- (d) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 7.6 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 7.6 shall survive the termination or non-completion of the transactions contemplated by this Agreement.

## **7.7 Certain Payments or Instruments Received from Third Persons**

- (a) To the extent that, after the Closing Date: (a) the Purchaser or any of its Affiliates receives any payment or instrument that is for the account of the Company according to the terms of any Closing Document, the Purchaser shall, and shall cause its Affiliates to, promptly deliver such amount or instrument to the Company; or (b) any of the Just Energy Entities or any of their controlled Affiliates receives any payment or instrument that is for the account of the Purchaser according to the terms of any Closing Document or that relates to the Business, including any governmental assistance refunds received by any Just Energy Entity after the Closing Date, the Just Energy Entities shall promptly deliver such amount or instrument to the Purchaser.
- (b) All amounts due and payable under this Section 7.7 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use its commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

## **7.8 Bulk Sales**

The Vesting Order and the Vesting Recognition Order, as applicable, shall provide either that (i) the Just Energy Entities have complied with the requirements of any Applicable Law relating to bulk sales and transfer or (ii) compliance with the Applicable Law relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

## **7.9 Release by the Purchaser**

Except in connection with any obligations of the Company or the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, each Purchaser hereby releases and forever discharges the Company, the Monitor and their respective Affiliates, and each of their respective successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the Purchased Interests or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

At the Closing Time, the Purchaser shall cause the Just Energy Entities to release and forever discharge all officers, directors, partners, limited partners, employees, agents, financial and legal advisors of each of the Just Energy Entities and their respective successors and assigns from any and all actual or potential Causes of Action against such Persons, except for Causes of Action

related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence (provided that in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their applicable duties and responsibilities), and such release to be in the form attached as Exhibit B to this Agreement.

#### **7.10 Release by the Company**

Except in connection with any obligations of each Purchaser and the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, the Company hereby release and forever discharge each Purchaser, the Monitor and their respective Affiliates, and each of their respective successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to (i) the Purchased Interests, (ii) the Assumed Liabilities, (iii) the Excluded Assets or (iv) the Excluded Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

### **ARTICLE 8 INSOLVENCY PROVISIONS**

#### **8.1 Court Orders and Related Matters**

- (a) From and after the date of this Agreement and until the Closing Date, the Company shall deliver to the Purchaser drafts of any and all pleadings, motions, notices, statements, applications, schedules, reports, and other papers to be filed or submitted by any Just Energy Entity in connection with or related to this Agreement, including with respect to the SISP Order, the Vesting Order, the Vesting Recognition Order and the SISP Recognition Order, for the Purchaser's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). The Company acknowledges and agrees (i) that any such pleadings, motions, notices, statements, applications, schedules, reports, or other papers shall be in form and substance satisfactory to the Purchaser, acting reasonably, and (ii) to consult and cooperate with the Purchaser regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses testimony, in connection with such hearing.
- (b) Notice of the motions seeking the issuance of the Vesting Order, the Vesting Recognition Order, the SISP Order, and the SISP Recognition Order shall be served by the Company on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the U.S. Bankruptcy Code, the U.S. Bankruptcy Court and any other Person determined necessary by the Company or the Purchaser, acting reasonably.

- (c) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that (i) the SISP Order has not been issued and entered by the CCAA Court by August 17, 2022 or such later date agreed to in writing by the Purchaser in its sole discretion; (ii) the SISP Recognition Order, if any, has not been issued and entered by the U.S. Bankruptcy Court within sixteen (16) Business Days of the SISP Order being entered by the CCAA Court or such later date agreed to in writing by the Purchaser in its sole discretion; (iii) the Vesting Order has not been issued and entered by the CCAA Court by October 15, 2022 or such later date agreed to in writing by the Purchaser in its sole discretion; (iv) or the Vesting Recognition Order has not been issued and entered by the U.S. Bankruptcy Court within fourteen (14) Business Days of the Vesting Order being entered by the CCAA Court or such later date agreed to in writing by the Purchaser in its sole discretion, the Purchaser may terminate this Agreement.
- (d) If the Vesting Order, the Vesting Recognition Order as applicable, relating to this Agreement is appealed or a motion for leave to appeal, rehearing, reargument or reconsideration is filed with respect thereto, the Company agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion.
- (e) The Company acknowledges and agrees, that the Vesting Order, and the Vesting Recognition Order shall provide that, on the Closing Date and concurrently with the Closing, the Purchased Interests shall be transferred to the Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

## **ARTICLE 9 TERMINATION**

### **9.1 Termination**

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Company and the Purchaser;
- (b) by the Purchaser or the Company, if this Agreement is not the Successful Bid (as determined pursuant to, the SISP);
- (c) by the Purchaser or the Company, if Closing has not occurred on or before November 30, 2022 or such later date agreed to by both the Company and the Purchaser in writing in consultation with the Monitor (the “**Outside Date**”), provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in Article 6 by the Outside Date; provided, further, to the extent the only condition to the Closing that remains outstanding is the receipt of Transaction Regulatory Approvals and the filing of Energy Regulator Notices pursuant to Section 6.1(e), the Outside Date shall be automatically extended for another sixty (60) days, and thereafter, the Purchaser shall have the right to further extend the Outside Date in its sole discretion on written notice to the Company.

- (d) by the Purchaser or the Company, if at any time after the date hereof any of the conditions in Article 6 is not capable of being satisfied by the applicable dates required in Article 6 of this Agreement or if not otherwise required, by the Outside Date;
- (e) by the Purchaser, upon the appointment of a receiver, trustee in bankruptcy or similar official in respect of any Just Energy Entity or any of the property of any Just Energy Entity, other than with the prior written consent of the Purchaser;
- (f) by the Purchaser, pursuant to Section 8.1(c);
- (g) by the Purchaser or the Company, upon the termination, dismissal or conversion of the CCAA Proceedings or the U.S. Proceedings;
- (h) by the Purchaser or the Company, upon denial of the SISP Order, the Vesting Order, the SISP Recognition Order or the Vesting Recognition Order (or if any such order is stayed, vacated or varied without the consent of the Purchaser);
- (i) by the Purchaser or the Company, if a court of competent jurisdiction, including the CCAA Court or the U.S. Bankruptcy Court, or other Governmental Authority has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such Order or action has become a Final Order;
- (j) by the Company, if there has been a material violation or breach by the Purchaser of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Outside Date and such violation or breach has not been waived by the Company or cured within ten (10) Business Days after written notice thereof from the Company, unless the Company is in material breach of their obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Outside Date;
- (k) by the Purchaser, if there has been a material violation or breach by the Company of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Outside Date and such violation or breach has not been waived by the Company or cured within ten (10) Business Days after written notice thereof from the Purchaser, unless the Purchaser is in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Outside Date; and
- (l) by the Purchaser or the Company, if the Support Agreement is terminated pursuant to the terms thereof.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give written notice of such termination to the other Party or

Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

## 9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) Article 1, this Section 9.2, Section 9.3, Section 11.1, Section 11.3, Section 11.5, Section 11.6, Section 11.7 and Section 11.8 shall survive and (b) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement, or impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement in accordance with Section 11.3.

## 9.3 Termination Fee

- (a) Upon CCAA Court approval of an Alternative Restructuring Proposal that is not provided by the Purchaser or any of its Affiliates in accordance with the terms of the SISP Order, or upon the Company's termination of the Support Agreement pursuant to Section 10(b)(iv) thereof, a fee in cash equal to, in the aggregate, \$14,660,000.00 (such amount, the "**Break-Up Fee**") shall be payable concurrently with the consummation of an Alternative Restructuring Proposal to the Purchaser, in the same allocation among such Purchaser as contained in Schedule 3.1(a)(i), by a Just Energy Entity organized in the United States (the identity of which shall be subject to the approval of the Purchaser (not to be unreasonably withheld, conditioned or delayed)).
- (b) The Company shall obtain within the SISP Order a court-ordered charge in favor of the Purchaser in the full amount of the Break-Up Fee to secure the payment of the Break-Up Fee, which charge shall have the priority given to it pursuant to the SISP Order.
- (c) For the avoidance of doubt, and notwithstanding anything to the contrary set forth in this Section 9.3, (x) under no circumstances shall the Company be obligated to pay the Break-Up Fee more than once and (y) in no event shall the Company (or any other Person) be required to pay all or any portion of the Break-Up Fee to the Purchaser if the Company has terminated this Agreement or the Support Agreement other than in connection with CCAA Court approval of an Alternative Restructuring Proposal in accordance with the terms of the SISP Order, or upon the Company's termination of the Support Agreement pursuant to Section 10(b)(iv) thereof.
- (d) The Company acknowledges (i) that the Purchaser has made a substantial investment of management time and incurred substantial out-of-pocket expenses in connection with the negotiation and execution of this Agreement, its due diligence of the Business and the Just Energy Entities, and its effort to consummate the transactions contemplated hereby, and (ii) that the Parties' efforts have substantially benefited the Company and the bankruptcy estates of the Just Energy

Entities through the submission of the offer that is reflected in this Agreement, that will serve as a minimum bid on which other potential interested bidders can rely, thus increasing the likelihood that the price at which the Just Energy Entities are sold will reflect their true worth. The Parties hereby acknowledge that the amounts payable pursuant to this Section 9.3 are commercially reasonable and necessary to induce the Purchaser to enter into this Agreement and consummate the transactions contemplated hereby. For the avoidance of doubt, the covenants set forth in this Section 9.3 are continuing obligations and survive termination of this Agreement.

## **ARTICLE 10 CLOSING**

### **10.1 Location and Time of the Closing**

The Closing shall take place at the Closing Time on the Closing Date at the offices of Cassels Brock & Blackwell LLP, Scotia Plaza, Suite 2100, 40 King St. W, Toronto, ON M5H 3C2, or at such other location as may be agreed upon by the Parties.

### **10.2 The Company's Deliveries at Closing**

At Closing, the Company shall deliver to the Purchaser the following:

- (a) a true copy of each of the Vesting Order, the SISP Order, the Vesting Recognition Order, the SISP Recognition Order, each of which shall be final;
- (b) executed copy of the Monitor's Certificate;
- (c) a certificate of a senior officer or director of the Company in form and substance reasonably satisfactory to the Purchaser: (a) certifying that the board of directors of the Company, has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (b) certifying as to the incumbency and signatures of the officers and directors of the Company;
- (d) the certificates contemplated by Section 6.2(c);
- (e) evidence of the filing of the Articles of Reorganization;
- (f) an affidavit, signed under penalties of perjury, stating that the applicable company is not and has not been at any time during the period specified in Section 897(c)(1)(A)(ii) of the Code a United States real property holding corporation, dated as of the Closing Date and in form and substance reasonably satisfactory to the Purchaser and as required under Treasury Regulation Section 1.897-2(h) so that the Purchaser is exempt from withholding any portion of the Purchase Price thereunder, together with proof reasonably satisfactory to the Purchaser that the Company or the applicable Just Energy Entity or Just Energy Entities have provided

notice of such affidavit to the IRS in accordance with Treasury Regulation Section 1.897-2(h)(2); and

- (g) in the case of a partnership, the appropriate certificate under Treasury Regulation Section 1.1445-11T(d)(1) that the partnership interest is not a U.S. real property interest and the partnership is not described in Section 1.1445-11T(d)(1) of the Treasury Regulations, and that it is in compliance with Treasury Regulation Section 1.1446(f)-2(b)(4).

### **10.3 Purchaser's Deliveries at Closing**

At Closing, the Purchaser shall deliver to the Company:

- (a) the payment contemplated by Section 3.1;
- (b) a certificate of an authorized signatory of each Purchaser's manager (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Company: (a) certifying that the manager has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (b) certifying as to the incumbency and signature of the authorized signatory of Purchaser executing this Agreement and the other transaction documents contemplated herein, as applicable;
- (c) the certificate contemplated by Section 6.3(c);
- (d) the release contemplated by Section 7.9; and
- (e) all other documents required to be delivered by the Purchaser on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Company in good faith.

### **10.4 Monitor**

When the conditions to Closing set out in Article 6 have been satisfied and/or waived by the Company or the Purchaser, as applicable, the Company and the Purchaser, or their respective counsel, shall each deliver to the Monitor written confirmation that all conditions to Closing have been satisfied or waived. Upon receipt of such written confirmation, the Monitor shall: (i) issue forthwith its Monitor's Certificate in accordance with the Vesting Order; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to the Company and the Purchaser). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Company and the Purchaser that all conditions to Closing have been satisfied or waived, and the Monitor will have no liability to the Company or the Purchaser or any other Person as a result of filing the Monitor's Certificate.



## **10.5 Simultaneous Transactions**

All actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

## **10.6 Further Assurances**

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, the Purchaser and the Company shall execute and deliver at (and after) the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.

# **ARTICLE 11 GENERAL MATTERS**

## **11.1 Confidentiality**

After the Closing Time, the Company shall maintain the confidentiality of all confidential information relating to the Business and the Just Energy Entities (but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Purchaser or its representatives in breach of this Agreement or that is received by the Purchaser from an independent third party that, to the knowledge of the Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Purchaser or its representatives without reference to any Confidential Information), including the Confidential Information, except any disclosure of such information and records as may be required by Applicable Law. If the Company or any Just Energy Entity, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall, or shall cause the Company or its representative to, provide the Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with the Purchaser, at the Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, the Company shall, or shall cause the applicable Just Energy Entity or representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such Affiliate or representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. The Company shall instruct each Just Energy Entity and representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 11.1 by any of the Just Energy Entities or representatives.

## 11.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Company or the Purchaser without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings and the U.S. Proceedings) or by any stock exchange on which any of the securities of such Party or any of its Affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Company (A) with the CCAA Court and the U.S. Bankruptcy Court; and (B) on its profile on [www.sedar.com](http://www.sedar.com) and on the U.S. Securities and Exchange Commission's website at [www.sec.gov](http://www.sec.gov); and (ii) the transactions contemplated in this Agreement may be disclosed by the Company to the CCAA Court and the U.S. Bankruptcy Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Company, the Purchaser and their respective professional advisors may prepare and file such reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

The Purchaser shall be afforded an opportunity to review and comment on such materials prior to their filing. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to them.

## 11.3 Injunctive Relief

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or

other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.

- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 11.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.
- (c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

#### **11.4 Survival**

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 11 and Sections 7.1(b), 7.4, 7.7, 7.9 and 7.10, to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

#### **11.5 Non-Recourse**

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, Affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Purchaser or the Company, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the transactions contemplated hereby.

#### **11.6 Assignment; Binding Effect**

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent the Purchaser may, upon prior notice to the Company: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its Affiliates; or (b) direct that title to all or some of the Purchased Interests be transferred to, and the corresponding Assumed Liabilities be assumed by, one or more of its Affiliates; provided that no such assignment or direction shall relieve the Purchaser of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

## 11.7 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (a) the date of personal delivery; (b) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (c) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (d) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to the Purchaser at:

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036-6745

Attention: David Botter  
Sarah Link Schultz  
Zachary Wittenberg

Email: [Redacted]  
[Redacted]  
[Redacted]

and to:

Cassels Brock & Blackwell LLP  
Scotia Plaza, Suite 2100  
40 King St. W  
Toronto, ON M5H 3C2

Attention Ryan Jacobs  
Jane Dietrich  
Joseph Bellissimo

Email: [Redacted]  
[Redacted]  
[Redacted]

(b) If to the Company at:

Just Energy Group Inc.  
100 King Street West, Suite 2630  
Toronto, Ontario M5X 1E1

Attention: Jonah Davids  
Email: [Redacted]

and to:

Osler, Hoskin & Harcourt LLP  
100 King Street West, Suite 6200  
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman  
Michael De Lellis  
Jeremy Dacks  
Dave Rosenblat  
Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

and to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022

Attention: Brian Schartz  
Neil Herman  
Allyson B. Smith  
Email: [Redacted]  
[Redacted]  
[Redacted]

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

### **11.8 Counterparts; Electronic Signatures**

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

### **11.9 Language**

The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

*[Signature pages to follow]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.

**JUST ENERGY GROUP INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President,  
General Counsel and Corporate  
Secretary

We have the authority to bind the Corporation

**LVS III SPE XV LP**

By: LVS III GP LLC, its general partner

By: [Redacted]  
Name:  
Title:

**TOCU XVII LLC**

By: [Redacted]  
Name:  
Title:

**HVS XVI LLC**

By: [Redacted]  
Name:  
Title:

**OC II LVS XIV LP**

By: OC II GPI LLC, its general partner

By: [Redacted]  
Name:  
Title:

**OC III LFE I LP**

By: OC II GP LLC, its general partner

By: [Redacted]  
Name:  
Title:

**CBHT Energy I LLC**

By: [Redacted]\_\_\_\_\_

Name:

Title:



**Disclosure Letter**

**DISCLOSURE LETTER**  
**to**  
**TRANSACTION AGREEMENT**

**by and among**

**JUST ENERGY GROUP INC.**

**as the Company**

**-and-**

**LVS III SPE XV LP,**

**TOCU XVII LLC,**

**HVS XVI LLC,**

**OC II LVS XIV LP,**

**OC III LFE I LP,**

**CBHT ENERGY I LLC**

**each as a Purchaser and collectively, as the Purchaser**

Schedule 1.1(a)  
Additional Applicants

None.

Schedule 1.1(b)  
Permitted Encumbrances

- Encumbrances securing Assumed Liabilities to the extent that such Assumed Liabilities are secured by Encumbrances as of the Closing Time
- Encumbrances securing obligations under the New Credit Agreement
- Encumbrances which are the subject of the New Intercreditor Agreement
- “Permitted Encumbrances” as defined in the Credit Agreement, subject to those amendments to such definition provided for in Exhibit 1 of the Stalking Horse Term Sheet, except to the extent that they relate to an Excluded Liability or Excluded Asset

Schedule 2.1(a)

Equity Interest Allocation Percentages

**[Redacted]**

Schedule 2.2(c)  
Excluded Contracts

None.

Schedule 2.2  
Excluded Assets

None.

Schedule 2.2(f)  
Excluded Equity Interests



Schedule 3.1(a)(i)

Cash Purchase Price Allocation

**[Redacted]**

Schedule 4.7  
Subsidiaries

	<b>Name</b>	<b>Jurisdiction of Incorporation</b>
1.	Just Energy Group Inc.	Canada
2.	Just Energy Corp.	Ontario
3.	Ontario Energy Commodities Inc.	Ontario
4.	Universal Energy Corporation	Ontario
5.	Just Energy Finance Canada ULC	Nova Scotia
6.	Hudson Energy Canada Corp.	Canada
7.	11929747 Canada Inc.	Canada
8.	12175592 Canada Inc.	Canada
9.	JE Services Holdco I Inc.	Canada
10.	JE Services Holdco II Inc.	Canada
11.	8704104 Canada Inc.	Canada
12.	Just Energy Advanced Solutions Corp.	Ontario
13.	Just Energy (U.S.) Corp.	Delaware
14.	Just Energy Illinois Corp.	Delaware
15.	Just Energy Indiana Corp.	Delaware
16.	Just Energy Massachusetts Corp.	Delaware
17.	Just Energy New York Corp.	Delaware
18.	Just Energy Texas I Corp.	Delaware
19.	Just Energy, LLC	Texas
20.	Just Energy Pennsylvania Corp.	Delaware
21.	Just Energy Michigan Corp.	Delaware
22.	Just Energy Solutions Inc.	California

23.	Hudson Energy Services LLC	New Jersey
24.	Hudson Energy Corp.	Delaware
25.	Interactive Energy Group LLC	Delaware
26.	Hudson Parent Holdings LLC	Delaware
27.	Drag Marketing LLC	Delaware
28.	Just Energy Advanced Solutions LLC	Delaware
29.	Fulcrum Retail Energy LLC	Texas
30.	Fulcrum Retail Holdings LLC	Texas
31.	Tara Energy, LLC	Texas
32.	Just Energy Marketing Corp.	Delaware
33.	Just Energy Connecticut Corp.	Delaware
34.	Just Energy Limited	Delaware
35.	Just Solar Holdings Corp.	Delaware
36.	Just Energy (Finance) Hungary Zrt.	Hungary
37.	Just Energy Ontario L.P.	Ontario
38.	Just Energy Manitoba L.P.	Manitoba
39.	Just Energy (B.C.) Limited Partnership	British Columbia
40.	Just Energy Québec L.P.	Quebec
41.	Just Energy Trading L.P.	Ontario
42.	Just Energy Alberta L.P.	Alberta
43.	Just Green L.P.	Alberta
44.	Just Energy Prairies L.P.	Manitoba
45.	JEBPO Services LLP	India
46.	Just Energy Texas LP	Texas

Schedule 6.1(e)

Transaction Regulatory Approvals to be Obtained and Energy Regulator Notices to be Provided  
Prior to the Closing Time

1. Authorization from the Federal Energy Regulatory Commission under Section 203 of the Federal Power Act
2. Competition Act Approval, if required
3. Investment Canada Act Approval
4. Energy Regulator Notices to
  - a. the Registrar under *The Direct Sellers Act*, RSS 1978, c D-28, to the extent there is a change in membership of the licensee;
  - b. the Connecticut Public Utilities Regulatory Authority; and,
  - c. the applicable Energy Regulator, to the extent there is a change in the officers, directors or members of the licensee or a change in control of the licensee, and such change requires notification to such Energy Regulator.
5. Hart-Scott-Rodino Approval, if required in the reasonable judgment of Purchaser

## Exhibit A

### Terms of the New Preferred Equity

On the Closing Date, Just Energy (U.S.) Corp. (or its successor if converted into another entity prior to the Closing in accordance with the Implementation Steps) will issue a new class of preferred equity on the following terms and conditions and, to the extent applicable, subject to the terms and conditions set out in the New Credit Agreement:

- (a) Amount: The amount of the BP Commodity / ISO Services Claim as of the Closing Date, all converted into United States currency, as applicable
- (b) Maturity:
  - 1. Perpetual
  - 2. Repayment in full upon a change of control transaction
  - 3. Right to force sale in year six (6)
- (c) Dividends: 12.50% accreting yield with dividends as and when declared by the board of directors for the first four (4) years, increasing 1% annually thereafter
- (d) Fees: Exit fee of 5.00%
- (e) ECF Sweep: The ECF Sweep is as permitted pursuant to the terms of the New Credit Agreement

**Exhibit B**

Form of Release

(see attached)

## RELEASE AGREEMENT

This Release Agreement (this “Release Agreement”) is made and entered into as of [●], 2022 (the “Effective Date”) by each of the Releasing Parties (as defined herein) in favor of the Released Parties (as defined herein).

WHEREAS, on [●], 2022 (the “Closing Date”), pursuant to that certain Transaction Agreement, dated as of August 4, 2022 (together with all exhibits and schedules attached thereto, and as amended, supplemented, or otherwise modified from time to time, the “Transaction Agreement”),<sup>1</sup> by and between Just Energy Group Inc. (“JEGI”) and the Purchaser, upon the consummation of the Closing, concurrently with the effectiveness of this Release Agreement and after the completion of the Implementation Steps, all of the Releasing Parties are now owned, directly or indirectly, by Just Energy (U.S.) Corp; and

WHEREAS, the Releasing Parties desire to effectuate the release provision set forth in Article 7.9 of the Transaction Agreement, all as more fully set forth herein.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Releasing Parties hereby agree as follows:

### 1. Defined Terms.

(a) The terms defined in the recitals hereto shall have the meanings set forth therein.

(b) The following terms have the following meanings:

“Causes of Action” means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of the Just Energy Entities against any Person, in each case based in whole or in part on any act or omission, transaction, dealing, or other occurrence existing or taking place on or prior to the Closing Time.

“Final Order” means with respect to any order or judgment of the CCAA Court or the U.S. Bankruptcy Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the Chapter 15 Cases or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified, or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing, has expired and no appeal, leave to appeal, or

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Transaction Agreement.

petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Company and the Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such order shall not cause such order to not be a Final Order.

“Released Causes of Action” means the Causes of Action irrevocably and unconditionally waived, released, and discharged by the Releasing Parties pursuant to Section 2 of this Release Agreement.

“Released Parties” means, collectively, (a) all current and former officers, directors, partners, limited partners, employees, agents, financial and legal advisors of each of the Releasing Parties and (b) the respective successors and assigns of each individual or entity in clause (a).

“Releasing Parties” means, collectively, (a) JEGI, Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada 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., 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 and (b) the respective successors and assigns of each entity in clause (a).

## 2. Releases.

(a) Each Releasing Party hereby irrevocably and unconditionally waives, releases, and discharges each Released Party from any and all actual or potential Causes of Action against the Released Parties; *provided, however*, that, with respect to each Released Party, the foregoing provision shall not waive or release Causes of Action related to any act or omission by such Released Party that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence; *provided, further*, that in all respects such Released Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their applicable duties and responsibilities.



(b) Each Releasing Party understands, acknowledges, and agrees that the releases provided for herein are full and final general releases of all Released Causes of Action, including those that could have been asserted in any legal or equitable proceeding against the Released Parties. Each Releasing Party hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Released Cause of Action, or commencing, instituting, or causing to be commenced any action, suit, or proceeding of any kind, against any Released Party, or against any other person, corporation, or entity which might claim over or against any Released Party, based upon any Released Cause of Action. Each Releasing Party further agrees that in the event such Releasing Party should bring a Released Cause of Action against any Released Party or any such other person, corporation, or entity, this Release Agreement shall serve as a complete defense to such Cause of Action.

(c) Each Releasing Party has read Section 1542 of the Civil Code of the State of California (“Section 1542”), which provides as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. Each Releasing Party understands that Section 1542, or a comparable statute, rule, regulation, or order of another jurisdiction, gives such Releasing Party the right not to release existing Causes of Action of which such Releasing Party is not aware, unless such Releasing Party voluntarily chooses to waive this right. Having been so apprised, each Releasing Party nevertheless hereby voluntarily elects to and does waive the rights described in Section 1542, and all such other comparable statutes, rules, regulations, or orders, and elects to assume all risks for Causes of Action that exist, existed, or may hereafter exist in its favor, known or unknown, suspected or unsuspected, arising out of or related to Causes of Action or other matters purported to be released pursuant to this Release Agreement.

3. Severability. Any term or provision of this Release Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

4. Waivers. No waiver of any of the terms or provisions of this Release Agreement shall be binding against any Released Party hereto unless such waiver is in a writing signed by such Released Party.

5. No Assignment. This Release Agreement shall be binding upon the Releasing Parties and inure to the sole benefit of the Released Parties. No Releasing Party hereto may assign any of its obligations under this Release Agreement. Any assignment in violation of this Section 5 shall be null and void *ab initio*.

6. Governing Law. This Release Agreement shall be governed by and construed in accordance with the laws of [●], without giving effect to principles of choice of law. Any action, suit, or proceeding arising out of or related to this Release Agreement shall be brought and maintained exclusively in the state and federal courts in [●], and each Releasing Party irrevocably and unconditionally: (a) submits to the personal jurisdiction of those courts for purposes of, and waives any defense of venue or inconvenient forum in, any such action, suit, or proceeding in those

courts; (b) expressly waives any requirement for the posting of a bond by a party bringing such action, suit, or proceeding; (c) consents to process being served in any such action, suit, or proceeding by mailing, certified mail, return receipt requested, a copy thereof to such party at the address in effect for notices set forth on the signature pages hereto, and agrees that such service shall constitute good and sufficient service of process and notice thereof; *provided* that nothing in clause (c) hereof shall affect or limit any right to serve process in any other manner permitted by law, and (d) WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION, SUIT, OR PROCEEDING.

7. Counterparts. This Release Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Release Agreement, each individual executing this Release Agreement on behalf of a Releasing Party has been duly authorized and empowered to execute and deliver this Release Agreement on behalf of said Releasing Party.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Releasing Parties have executed this Release Agreement on the day and year first above written.

**[Just Energy (U.S.) Corp., on behalf itself and each other Releasing Party]**

By: \_\_\_\_\_  
Name: [●]  
Title: [●]

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

# Sale and Investment Solicitation Process

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1. On August 17, 2022, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**SISP Order**”) that, among other things, (a) authorized Just Energy (as defined below) to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof, (b) approved the Support Agreement, (c) authorized and directed Just Energy Group Inc. to enter into the Stalking Horse Transaction Agreement, (d) approved the Break-Up Fee, and (e) granted the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Second Amended & Restated Initial Order granted by the Court in Just Energy’s proceedings under the *Companies’ Creditors Arrangement Act* on May 26, 2021, as amended, restated or supplemented from time to time or the SISP Order, as applicable.
2. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives that are superior to the sale transaction to be provided for in the Stalking Horse Transaction Agreement involving the shares and/or the business and assets of Just Energy Group Inc. and its direct and indirect subsidiaries (collectively, “**Just Energy**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court (as defined below) approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of Just Energy’s shares, assets and/or business and/or an investment in Just Energy, each of which shall be subject to all terms set forth in this SISP.
3. The SISP shall be conducted by Just Energy under the oversight of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the “**Monitor**”), with the assistance of BMO Capital Markets (the “**Financial Advisor**”).
4. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by Just Energy and the Financial Advisor.
5. The SISP will be conducted such that Just Energy and the Financial Advisor will (under the oversight of the Monitor):
  - a) prepare marketing materials and a process letter;
  - b) prepare and provide applicable parties with access to a data room containing diligence information;
  - c) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to Just Energy); and
  - d) request that such parties (other than the Sponsor or its designee) submit (i) a notice of intent to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Just Energy Entities that would be the subject of the bid and that reflects a reasonably likely prospect of culminating in a Qualified Bid (as defined below), as determined by the Just Energy Entities in consultation with the Monitor and the Credit Facility Agent (subject to the confidentiality requirements set forth in Section 15 below) (a “**NOI**”) by the NOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 7 below, as determined by the Just Energy Entities in consultation with the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).

6. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- a) Just Energy to commence solicitation process on the date of service of the motion for approval of the SISP – August 4, 2022;<sup>1</sup>
  - b) Court approval of SISP and authorizing Just Energy to enter into the Stalking Horse Transaction Agreement – August 17, 2022;
  - c) Deadline to submit NOI – 11:59 p.m. Eastern Daylight Time on August 25, 2022 (the “**NOI Deadline**”);
  - d) Deadline to submit a Qualified Bid – 11:59 p.m. Eastern Daylight Time on September 29, 2022 (the “**Qualified Bid Deadline**”);
  - e) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. Eastern Daylight Time on October 6, 2022;
  - f) Just Energy to hold Auction (if applicable) – 10:00 a.m. Eastern Daylight Time on October 8, 2022; and
  - g) Implementation Order (as defined below) hearing:
    - o (if no NOI is submitted) – by no later than September 2, 2022, subject to Court availability.
    - o (if there is no Auction) – by no later than October 15, 2022, subject to Court availability.
    - o (if there is an Auction) – by no later than twelve (12) days after completion of the Auction, subject to Court availability.
7. In order to constitute a Qualified Bid, a bid must comply with the following:
- a. it provides for (i) the payment in full in cash on closing of the BP Commodity/ISO Services Claim (as defined in the Support Agreement), unless otherwise agreed to by the holder of such claim in its sole discretion; (ii) the payment in full in cash on closing of the Credit Facility Claims, unless otherwise agreed to by the Credit Facility Agent in its sole discretion; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) or (ii) including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion (iv) the return of all outstanding letters of credit and release of all Credit Facility LC Claims or arrangements satisfactory to the applicable Credit Facility Lenders in their discretion to secure with cash collateral or otherwise any Credit Facility LC Claims not released, and (v) the payment in full in cash on closing of any outstanding Cash Management Obligations or arrangements satisfactory to the applicable Credit Facility Lenders or their affiliates to secure with cash collateral or otherwise any outstanding Cash Management Obligations.
  - b. it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus Just Energy’s cash on hand must be sufficient for payment in full of the items contemplated in Sections 7(a)(i) and 7(a)(ii) herein, 3.2 of the Stalking Horse Transaction Agreement and the Break-Up Fee, plus USD\$1,000,000, on closing, which Cash Consideration Value is estimated to be USD\$460,000,000 as of December 31, 2022.

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<sup>1</sup> To the extent any dates would fall on a non-business day, to be the first business day thereafter.

- c. it is reasonably capable of being consummated by 90 days after completion of the Auction if selected as the Successful Bid;
- d. it contains:
  - i. duly executed binding transaction document(s);
  - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
  - iii. a redline to the form of transaction document(s) provided by Just Energy, if applicable;
  - iv. evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
  - v. disclosure of any connections or agreements with Just Energy or any of its affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of Just Energy or any of its affiliates; and
  - vi. such other information reasonably requested by Just Energy or the Monitor;
- e. it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- f. it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the Purchaser in connection with the Transaction Agreement;
- g. it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h. it is not conditional upon:
  - i. approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
  - ii. the outcome of any due diligence by the bidder; or
  - iii. the bidder obtaining financing;
- i. it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- j. it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the energy sector, including an electric utility, retail service provider, a company with a tariff on file with the Federal Energy Regulatory Commission, or any intermediate holding company;
- k. it includes full details of the bidder's intended treatment of Just Energy's employees under the proposed bid;
- l. it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with this SISP;
- m. a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
- n. it is received by the Qualified Bid Deadline.

8. The Qualified Bid Deadline may be extended by (i) Just Energy for up to no longer than seven days with the consent of the Monitor, the Credit Facility Agent and the Sponsor, acting reasonably, or (ii) further order of the Court. In such circumstances, the milestones contained in Subsections 6(f) and (g) shall be extended by the same amount of time.
9. Just Energy, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified in Section 7 above and deem a non-compliant bid to be a Qualified Bid, provided that Just Energy shall not waive compliance with the requirements specified in Subsections 7(a), (b), (e), (e), (g), (h), (j) or (l) without the prior written consent of the Sponsor and Credit Facility Agent, each acting reasonably.
10. Notwithstanding the requirements specified in Section 7 above, the transactions contemplated by the Stalking Horse Transaction Agreement (the “**Stalking Horse Transaction**”), is deemed to be a Qualified Bid, provided that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
11. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, Just Energy shall proceed with an auction process to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, Just Energy shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by Just Energy specifying which Qualified Bid is the leading bid.
12. If, by the NOI Deadline no NOI has been received, then the SISP shall be deemed to be terminated and the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement. If no Qualified Bid (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, then the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement.
13. Following selection of a Successful Bid, Just Energy, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 6. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by Just Energy, in consultation with the Monitor, Just Energy shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize Just Energy to complete the transactions contemplated thereby, as applicable, and authorizing Just Energy to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
14. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid,



will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to an Implementation Order or such earlier date as may be determined by Just Energy, in consultation with the Monitor.

15. Just Energy shall provide information in respect of the SISP to the DIP Lenders, the holder of the BP Commodity/ISO Services Claim and the Supporting Secured CF Lenders on a confidential basis, including (A) copies (or if not provided to the Just Energy Entities in writing, a detailed description) of any NOI and any bid received, including any Qualified Bid, no later than one (1) calendar day following receipt thereof by the Just Energy Entities or their advisors and (B) such other information as reasonably requested by the DIP Lenders', the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders' respective legal counsel or financial advisors or as necessary to keep the DIP Lenders, the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders informed no later than one (1) calendar day after any such request or any material change to the proposed terms of any bid received, including any Qualified Bid, as to the terms of any bid, including any Qualified Bid, (including any changes to the proposed terms thereof) and the status and substance of discussions related thereto. Just Energy shall be permitted, in its discretion, to provide general updates and information in respect of the SISP to counsel to any unsecured creditor of Just Energy (a "**General Unsecured Creditor**") on a confidential basis, upon: (i) the irrevocable confirmation in writing from such counsel that the applicable General Unsecured Creditor will not submit any NOI or bid in the SISP, and (ii) counsel to such General Unsecured Creditor executing confidentiality agreements with Just Energy, in form and substance satisfactory to Just Energy and the Monitor.
16. Any amendments to this SISP may only be made by Just Energy with the written consent of the Monitor and after consultation with the Credit Facility Agent, or by further order of the Court, provided that Just Energy shall not amend Subsections 7(a), (b), (e), (f), (g), (h), (j) or (l) or Section 15 without the prior written consent of the Sponsor and the Credit Facility Agent.

**SCHEDULE “A”: AUCTION PROCEDURES**

1. **Auction.** If Just Energy receives at least one Qualified Bid (other than the Stalking Horse Transaction), Just Energy will conduct and administer the Auction in accordance with the terms of the SISIP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. Eastern Daylight Time on the day prior to the Auction, each Qualified Party (other than the Sponsor) must inform Just Energy whether it intends to participate in the Auction. Just Energy will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only Just Energy, the other counterparties to the Support Agreement, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by Just Energy, in consultation with the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to Just Energy’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of USD\$1,000,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that Just Energy, in its discretion, may establish separate video conference rooms to permit interim discussions between Just Energy and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and

- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.

#### **Selection of Successful Bid**

4. **Selection.** Before the conclusion of the Auction, Just Energy, in consultation with the Monitor, will: (a) review each Qualified Bid, considering the factors set out in Section 7 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by 90 days after completion of the Auction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, (v) the net benefit to Just Energy and (vi) any other factors Just Energy may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by Just Energy in its sole discretion, subject to the milestones set forth in Section 6 of the SISP.

THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

# COURT OF APPEAL FOR ONTARIO

CITATION: Just Energy Group Inc. (Re), 2022 ONCA 498

DATE: 20220628

DOCKET: M53250

Benotto, Zarnett and Sossin JJ.A.

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.

Ken Rosenberg, Jeffrey Larry and Danielle Glatt, for the moving party U.S.  
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.* and U.S. counsel  
for Trevor Jordet, in his capacity as proposed class representative in *Jordet v.*  
*Just Energy Solutions Inc.*

John MacDonald, Marc Wasserman, Michael De Lellis, Jeremy Dacks and Karin Sachar, for the responding parties Just Energy Group Inc. et al.

Alan Merskey, John M. Picone and Christopher Selby, for the DIP Lenders

James Gage, Heather Meredith and Natasha Rambaran, for the Credit Facility Lenders

Heard: in writing

Motion for leave to appeal from the order of Justice Thomas McEwen of the Superior Court of Justice, dated February 9, 2022.

### REASONS FOR DECISION

[1] Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (“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.* and *Jordet v. Just Energy Solutions, Inc.* (the “U.S. Litigation”) seek leave to appeal the motion judge’s order dismissing their motion seeking, among other things, an order that the Class Claimants be treated as unaffected creditors in the CCAA Proceeding or, in the alternative, an order directing amongst other things, an expedited adjudication framework for their claims. For the reasons that follow, we refuse leave.

### **Background**

[2] Just Energy Group Inc., et al. (the “Applicants”) have been under the protection of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“CCAA”) since March 2021. The Applicants provide energy to approximately 950,000 customers in Canada and the U.S. and employ over 1,000 people. They

have been working with the significant stakeholders in their capital structure to develop a going-concern restructuring plan.

[3] U.S. Class Counsel brought a Motion for Advice and Direction on February 9, 2022, primarily seeking:

1. An order declaring that the Class Claimants are to be unaffected by this CCAA Proceeding;
2. In the alternative, an order directing an expedited process be undertaken to adjudicate the Class Claimants' asserted claims.

[4] The Applicants, supported by the Monitor, opposed the motion, as did the DIP Lenders, Credit Facility Lenders and Shell.

[5] The motion judge dismissed the motion.

[6] On the first issue, the motion judge disagreed with U.S. Class Counsel's submissions and found that granting an order leaving the Class Claimants unaffected would allow the unsecured Class Claimants to partially dictate the form of the Plan, which has not yet been placed before the CCAA Court.

[7] The motion judge held that the request "ran contrary to the caselaw that allows debtors to determine how they should deal with creditors in a proposed plan – subject to a creditor vote" and concluded that "[t]o 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."

[8] On the second issue, the motion judge disagreed with U.S. Class Counsel's position that they should be granted their requested process to adjudicate their clients' asserted claims. Against the backdrop of there already being a claims procedure order in place and the timing of this particular restructuring, he made the following findings:

- 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, [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 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 the 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 be adjudicated before other claims and prior to the next contemplated step in the CCAA Proceeding.

[9] In seeking leave, U.S. Class Counsel focus on the second issue, concerning the timing and procedures for the adjudication of their claims. U.S. Class Counsel submit that the proposed appeal raises serious and arguable grounds with respect



to how contingent claims ought to be addressed in CCAA proceedings in the face of a pending plan or arrangement or compromise. The proposed appeal would ask:

Did the supervising judge err in failing to order a 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 of creditors?

### **The Test for Leave is Not Met**

[10] It is well-established that leave to appeal is granted sparingly in CCAA proceedings and only where there are serious and arguable grounds that are of real and significant interest to the parties. In addressing whether leave should be granted, the court will consider:

- 1) whether the proposed appeal is *prima facie* meritorious or frivolous;
- 2) whether the points on the proposed appeal are of significance to the practice;
- 3) whether the points on the proposed appeal are of significance to the action; and
- 4) whether the proposed appeal will unduly hinder the progress of the action: see, for e.g., *Stelco Inc. (Re)* (2005), 2005 CanLII 8671 (ON CA), 75 O.R. (3d) 5 (C.A.), at para. 24; *Timminco Ltd. (Re)*, 2012 ONCA 552, 2 C.B.R. (6th) 332, at para. 2; *Nortel Networks Corp. (Re)*, 2016 ONCA 332, 36 C.B.R. (6th) 1, at para. 34.

[11] Having reviewed the materials filed on this leave motion, we are not satisfied that the proposed appeal is *prima facie* meritorious or that the case is of significance to the practice.

[12] U.S. Class Counsel seek to challenge a discretionary order of the motion judge, who as the supervising judge is extensively familiar with this complex cross-border CCAA proceeding. As the supervising judge, he applied his knowledge of

the proceeding and made findings of fact based on the evidence to refuse to order the process requested by U.S. Class Counsel. It is well-established that a supervising judge's exercise of discretion which seeks to balance the competing interests of various stakeholders within the CCAA proceeding is entitled to a high level of deference. "Appellate intervention is justified only where the 'supervising judge erred in principle or exercised their discretion unreasonably'": 9354-9186 *Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, 78 C.B.R. (6th) 1, at paras. 53 to 54"; *Laurentian University of Sudbury (Re)*, 2021 ONCA 199, 87 C.B.R. (6th) 243, at para. 20. We are not satisfied that the motion judge made an error in principle or exercised his discretion unreasonably.

[13] We are also not persuaded that the motion judge's decision is of significance to the insolvency practice, given that it was a fact-specific exercise of his discretion.

### **Disposition**

[14] The motion for leave to appeal is dismissed, with costs to the responding parties Just Energy Group Inc and the DIP Lenders each in the amount of \$7,000 inclusive of disbursements and HST.

*M. L. Benetto J.A.*

*B. Benetto J.A.*

*L. SOSSIN J.A.*

THIS IS **EXHIBIT “D”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**CITATION:** Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.,  
2022 ONSC 3487  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220610

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
IN THE MATTER OF THE COMPANIES' ) *Jeremy Dacks, Shawn Irving, Marc*  
*CREDITORS ARRANGEMENT ACT,* ) *Wasserman and Michael De Lellis, for the*  
R.S.C. 1985, c. C-36, AS AMENDED ) Applicants, the Just Energy Group  
)  
– and – ) Allyson Smith, U.S. Counsel to the Just  
) Energy Group  
)  
IN THE MATTER OF A PLAN OF )  
COMPROMISE OR ARRANGMENT OF ) *Ryan Jacobs, Alan Merskey, Jane Dietrich*  
JUST ENERGY GROUP INC., JUST ) and John M. Picone, Canadian Counsel to  
ENERGY CORP., ONTARIO ENERGY ) LVS III SPE XV LP, TOCU XVII LLC,  
COMMODITIES INC., UNIVERSALE ) HVS XVI LLC, and OC II LVS XIV LP in  
ENERGY CORPORATION, JUST ) their capacity as the DIP Lenders  
ENERGY FINANCE CANADA ULC, )  
HUDSON ENERGY CANADA CORP., ) *David Botter, Sarah Schultz and Abid*  
JUST MANAGEMENT CORP., JUST ) *Quereshi, US Counsel to LVS III SPE XV*  
ENERGY FINANCE HOLDING INC., ) LP, TOCU XVII LLC, HVS XVI LLC, and  
11929747 CANADA INC., 12175592 ) OC II LVS XIV LP in their capacity as the  
CANADA INC., JE SERVICES HOLDCO ) DIP Lenders  
I INC., JE SERVICES HOLDCO II INC., )  
8704104 CANADA INC., JUST ENERGY ) *Heather Meredith, James Gage and Natasha*  
ADVANCED SOLUTIONS CORP., JUST ) *Rambaran, Canadian Counsel to the Agent*  
ENERGY (U.S.) CORP., JUST ENERGY ) and the Credit Facility Lenders  
ILLINOIS CORP., JUST ENERGY )  
INDIANA CORP., JUST ENERGY ) *Jeff Larry, Max Starnino and Danielle Glatt,*  
MASSACHUSETTS CORP., JUST ) Counsel to US Counsel for Fira Donin and  
ENERGY NEW YORK CORP., JUST ) Inna Golovan, in their capacity as proposed  
ENERGY TEXAS I CORP., JUST ) class representatives in *Donin et al. v. Just*  
ENERGY, LLC, JUST ENERGY ) *Energy Group Inc. et al.;* Counsel to US  
PENNSYLVANIA CORP., JUST ) Counsel for Trevor Jordet, in his capacity as  
ENERGY MICHIGAN CORP., JUST ) proposed class representative in *Jordet v.*  
ENERGY SOLUTIONS INC., HUDSON ) *Just Energy Solutions Inc.*  
ENERGY SERVICES LLC, HUDSON )  
ENERGY CORP., INTERACTIVE ) *Steven Wittels and Susan Russell, US*  
ENERGY GROUP LLC , HUDSON ) Counsel for the Respondent Fira Donin and  
PARENT HOLDINGS LLC, DRAG ) Inna Golovan, in their capacity as proposed  
MARKETING LLS, JUST ENERGY ) class representatives in *Donin et al. v. Just*  
ADVANCED SOLUTIONS LLC, ) *Energy Group Inc. et al.;* US Counsel for

FULCRUM RETAIL ENERGY LLC, ) Trevor Jordet, in his capacity as proposed  
FULCRUM RETAIL HOLDINGS LLC, ) class representative in *Jordet v. Just Energy*  
TARA ENERGY, LLC, JUST ENERGY ) *Solutions Inc.*  
MARKETING CORP., JUST ENERGY )  
CONNECTICUT CORP., JUST ENERGY ) *David Rosenfeld and James Harnum, for*  
LIMITED, JUST SOLAR HOLDINGS ) Haidar Omarali in his capacity as  
CORP. and JUST ENERGY (FINANCE) ) Representative Plaintiff in *Omarali v. Just*  
HUNGARY ZRT. ) *Energy*  
)  
Applicants ) *Howard Gorman, Ryan Manns and Aaron*  
) *Stephenson, for Shell Energy North*  
- and - ) *American (Canada) Inc. and Shell Energy*  
) *North America (US)*  
MORGAN STANLEY CAPITAL GROUP )  
INC. ) *Mike Weinczok, for Computershare Trust*  
) *Company of Canada*  
Respondents )  
) *Jessica MacKinnon, for Macquarie Energy*  
) *LLC and Macquarie Energy Canada Ltd.*  
)  
) *Bevan Brooksbank, for Chubb Insurance Co*  
) *of Canada*  
)  
) *Jason Wadden, for Dundon Advisers LLC*  
)  
) *Pat Corney, for the Ontario Energy Board*  
)  
) *Virginia Gauthier, for NextEra Energy*  
) *Marketing, LLC*  
)  
) *Harvey Chaiton, for Pariveda Solutions, Inc.*  
)  
) *Alexandra McCawley, for FortisBC Energy*  
) *Inc.*  
)  
) *Chris Burr, for Energy Earth, LLC*  
)  
) *Robert Thornton, Rebecca Kennedy, Rachel*  
) *Nicholson and Puya Fesharaki, for FTI*  
) *Consulting Canada Inc., as Monitor*  
)  
) *John F. Higgins and Emily Nasir, U.S.*  
) *Counsel to FTI Consulting Canada Inc., as*  
) *Monitor*

) **HEARD:** June 7, 2022

**ENDORSEMENT**

**MCEWEN J.**

[1] I am providing this brief Endorsement, in advance of Reasons, given the time constraints concerning this matter and particularly the August 2, 2022 meeting date.

[2] With respect to the issues raised at the June 7, 2022 motion, I order as follows:

- i. Subject to the Orders that follow, the uncontested portions of the Support Agreement, the Backstop Commitment Letter, the issuance of the Backstop Commitment Letter and the issuance of the Backstop Commitment Fee Shares, Termination Fee and Charge, sealing order and fees are approved as per the draft order.
- ii. Subject to the Orders that follow, the uncontested portions of the draft Meetings Order shall go.
- iii. There shall be two classes of creditors for the purposes of considering and voting on the Plan: the Secured Creditor Class and the Unsecured Creditor Class.
- iv. For greater clarity, the Unsecured Creditors Class shall include the Term Loan Lenders, the two U.S. class actions, the Omarali class action and the Texas Power Interruption Claimants.
- v. The plaintiff class in each of the U.S. class actions and the Omarali class action will be entitled to one vote at the meeting. The Texas Power Interruption Claimants will be entitled to four votes (one per action).
- vi. Summary proceedings will be conducted on an expedited basis as soon as reasonably possible, in an effort to determine the validity and value of the claims of the plaintiff class in the U.S. class actions, the Omarali class action, the Texas Power Interruption Claimants and Pariveda Solutions Inc.
- vii. The Monitor shall, forthwith, liaise with the relevant parties to determine a process to conduct the claim determinations and valuations. In this regard, the Monitor shall contact the Honourable Dennis O'Connor, the Claims Officer currently adjudicating claims submitted in the U.S. Class Actions to determine if he is prepared to provide assistance with respect to the valuations.
- viii. I will conduct a further hearing in the very near future to determine the process to be followed in determining and valuing the relevant claims and any matters arising

out of the Claim Procedure Order made in this proceeding dated September 15, 2021.

- ix. The parties are further directed to provide me with supplementary submissions in writing – not to exceed 10 pages – within three business days with respect to a secondary issue relating to creditor classification. I have already determined that there shall be one class of unsecured creditors. The supplementary submissions should address the appropriateness of the terms of the proposed differential consideration being offered to unsecured creditors in the plan, which is contested and which I have not yet approved. Specifically, the submissions should address the rationale for providing New Common Shares to the unsecured Term Loan Lenders and cash consideration to the General Unsecured Creditor Class.



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McEwen J.

**Released:** June 10, 2022

**CITATION:** Just Energy v. Morgan Stanley et. al., 2022 ONSC 3487  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220610

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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 ARRANGMENT OF JUST ENERGY GROUP  
INC., JUST ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSALE 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 LLS, 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

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**ENDORSEMENT**

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McEwen J.

**Released: June 10, 2022**



**CITATION:** Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022  
ONSC 3470

**COURT FILE NO.:** CV-21-00658423-00CL

**DATE:** 20220621

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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 ARRANGMENT OF  
JUST ENERGY GROUP INC., JUST  
ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSALE  
ENERGY CORPORATION, JUST  
ENERGY FINANCE CANADA ULC,  
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) *and the Credit Facility Lenders*  
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) *Jeff Larry, Max Starnino and Danielle Glatt,*  
) *Counsel to US Counsel for Fira Donin and*  
) *Inna Golovan, in their capacity as proposed*  
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) *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.*  
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) *Steven Wittels and Susan Russell, US*  
) *Counsel for the Respondent Fira Donin and*  
) *Inna Golovan, in their capacity as proposed*  
) *class representatives in Donin et al. v. Just*  
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FULCRUM RETAIL ENERGY LLC, ) Trevor Jordet, in his capacity as proposed  
FULCRUM RETAIL HOLDINGS LLC, ) class representative in *Jordet v. Just Energy*  
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CONNECTICUT CORP., JUST ENERGY ) *David Rosenfeld and James Harnum*, for  
LIMITED, JUST SOLAR HOLDINGS ) Haidar Omarali in his capacity as  
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) *Nicholson and Puya Fesharaki*, for FTI  
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) *John F. Higgins* and *Emily Nasir*, U.S.  
) Counsel to FTI Consulting Canada Inc., as  
) Monitor  
)  
) **HEARD:** June 7, 2022

### **ENDORSEMENT**

#### **MCEWEN J.**

[1] This Endorsement deals with the motion brought by the Applicants seeking an Authorization Order and Meetings Order.

[2] As a result of the time sensitivity of this matter, I released a brief endorsement on June 10, 2022 setting out my orders with reasons to follow (the “June 10 Endorsement”). I have attached the June 10 Endorsement as Schedule “A” and I am now providing those reasons.

[3] Also, given the ongoing time sensitivity, I am releasing these reasons by way of a somewhat abbreviated endorsement. I do not propose to deal with each and every argument raised by the parties but rather focus on the primary submissions.

[4] It is also not possible to address all of the dozens of cases that were referred to by the parties at the motion. I will focus on the most relevant case law.

[5] In conducting the analysis below I have sought to advance and achieve the remedial purpose of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”) in keeping with the caselaw, particularly the caselaw that has emerged from the Supreme Court of Canada.

[6] In this regard, I have specifically had regard to the guidance set out in the following two Supreme Court of Canada cases.

[7] In *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 (*Century Services*) at para. 70, the court described a CCAA court’s mandate:

The general language of the CCAA should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA – avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for



successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

[8] More recently, the court in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at para. 205 set out the importance of finding constructive solutions:

First, it is important to remember that the purpose of CCAA proceedings is not to disadvantage creditors but rather to try to provide a constructive solution for all stakeholders when a company has become insolvent.

## **BRIEF OVERVIEW**

[9] The Applicants obtained relief under the CCAA by way of Initial Order dated March 9, 2021.

[10] A number of Orders have followed. I have been managing this matter for the last six months.

[11] Generally, the proposed Authorization Order seeks approval for the Plan Support Agreement, the Backstop Commitment Letter and the issuance of the Backstop Commitment Fee Shares; approval of the termination fee and the termination fee charge; sealing unredacted versions of the Plan Support Agreement and Backstop Commitment Letter; amending the Claims Procedure Order to allow the U.S. Bankruptcy Court to adjudicate certain claims; extending the stay period to August 19, 2022 and approving the fees of the Monitor and its counsel.

[12] Pursuant to the June 10 Endorsement, I approved the uncontested portions of the proposed Authorization Order.

[13] Generally, the proposed Meetings Order seeks acceptance of the filing of the Applicants' Plan of Compromise and Arrangement dated May 26, 2022. The terms of the proposed Meetings Order also, amongst other things, seek a meeting date of August 2, 2022 and related relief concerning the establishment of two classes of creditors as well as rules and procedures for the voting mechanisms at the meeting.

[14] Again, in the June 10 Endorsement, I approved the uncontested portions of the draft Meetings Order.

[15] In considering the disputed portions of the proposed Orders, I am mindful of the fact that, generally, the threshold for granting a Meetings Order is rather low and that a heavy burden should not be imposed upon the debtor company: *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 OAC 282 (CA) at para. 90. I have kept this in mind in fashioning the remedies. I am, however, of the view that the procedure followed at the meeting must be conducted in a fashion so that the result is not unjustly predetermined. Some of the positions taken by the Applicants required modification prior to the meeting being conducted; otherwise, a constructive solution cannot be achieved for all stakeholders and the Plan will ultimately fail at the sanction hearing.

Similarly, as will be seen below, I have found that some of the positions taken by certain stakeholders are also unduly partisan. I therefore made the orders contained in the June 10 Endorsement.

## THE ISSUES IN DISPUTE

[16] These issues in dispute largely concern the Applicants<sup>1</sup> and litigants who had commenced actions against the Applicants as follows:

- (i) Two uncertified U.S. class actions which advance claims on behalf of hundreds of thousands of the Applicants' U.S. customers for alleged losses arising from the Applicants' alleged wrongful energy pricing contracts: *Donin v. Just Energy Group Inc. et al.* and *Jordet v. Just Energy Solutions Inc.* (together the "U.S. Class Actions").
- (ii) The certified Ontario class action with Mr. Haidar Omarali as the representative plaintiff (the "Omarali Class Action") in which 7,723 allegedly misclassified sales agents of Just Energy, who were designated as independent contractors, seek entitlements as employees pursuant to the *Employment Standards Act, 2000*.
- (iii) Four actions brought in Texas by approximately 250 claimants pursuing claims for alleged loss of business, personal injury and/or property damage (the "Mass Tort Claims") in four different actions arising out of a winter storm in 2021.<sup>2</sup> Unlike the class action claims, all of these claims are brought by individual claimants. The claims are based on Texan law.

(collectively the "Litigation Claimants")

[17] The issues in dispute are as follows:

- (i) The number of votes the Litigation Claimants should be afforded at the meeting.
- (ii) The valuation of the Litigation Claimants' actions for the purposes of voting.
- (iii) Whether the Term Loan Lenders should be placed into their own class of unsecured creditors.

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<sup>1</sup> The Applicants' submissions are supported by the Planned Sponsor/DIP Lenders and the Credit Facility Lenders. For ease of reference, however, I will refer to the submissions as being advanced on behalf of the Applicants.

<sup>2</sup> There were originally 364 Mass Tort Claims, but in oral submissions, counsel conceded that the best estimate is 252 claimants.

- (iv) The appropriateness of the Applicants' proposal that differential consideration be offered to unsecured creditors in the Plan which would have New Common Shares provided to the Term Loan Lenders and cash consideration being provided to the General Unsecured Creditor Class.

[18] The Monitor supports the relief sought by the Applicants with respect to the disputed issues.

[19] I will deal with each of the disputed issues in turn.

**(i) The number of votes the Litigation Claimants should be afforded at the meeting**

[20] The Applicants seek to provide a single vote to each of the two U.S. Class Actions, one vote to the Omarali Class Action and four votes to the Mass Tort Claims since, as noted, four separate actions have been brought.

[21] The Litigation Claimants submit that they ought to be allowed one vote for each member of the class, or in the case of the Mass Tort Claims, one vote per plaintiff. This would have the U.S. Class Actions possessing at least 400,000 votes and likely many more. The Omarali Class Action would possess 7,723 votes and, in total, the Mass Tort Claims would possess approximately 250 votes.

[22] As noted in the June 10 Endorsement, I accept the submissions of the Applicants that only one vote ought to be afforded per action which would have the U.S. Class Actions have a total of two votes, the Omarali Class Action have one vote and the Mass Tort Claims have four votes.

[23] I begin my analysis with respect to the dispute between the Applicants and the Litigation Claimants as to whether the Litigation Claimants are creditors and entitled to vote at all.

[24] The Applicants submit that the Litigation Claimants are not creditors and that by affording them one vote per action, the Applicants are effecting a very reasonable compromise. The Applicants submit that the Litigation Claimants constitute unsecured, highly speculative, unproven contentious claims. As such, the Litigation Claimants cannot be considered to be creditors.

[25] I disagree.

[26] I prefer the argument of the Litigation Claimants that when one does a purposeful analysis of the provisions of the CCAA and the *Bankruptcy and Insolvency Act*, RSC., 1985, c. B-3 (the "BIA"), the Litigation Claimants are, in law, creditors.

[27] The CCAA does not contain a definition of "creditor". Section 2(1), however, of the CCAA does provide for a definition of "claim" which means, "any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*".



[28] The BIA defines a claim to include, “any claim or liability provable in proceedings under this *Act* by a creditor.” A “creditor” is defined as, “a person having a claim provable as a claim under this *Act*.”

[29] In my view, therefore, a harmonious reading of the provisions of the CCAA and BIA supports the notion that the Litigation Claimants are creditors since they possess a claim that is provable as a claim, as I will outline further below.

[30] This conclusion is supported by the Supreme Court of Canada decisions in *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67 at paras. 22, 26, 27, 34, 35 and 38; 9354-9186 *Quebec inc. v. Callidus Corp.*, 2020 SCC 10 at paras. 58 and 65. The Applicants’ submissions in this regard were not supported by case law.

[31] I am therefore of the view that the Litigation Claimants are entitled to vote at the meeting.

[32] The question, therefore, that remains is whether they should be entitled to one vote per lawsuit, as submitted by the Applicants, or whether each member of the Class Actions and each Litigant in the Mass Tort Claims ought to be afforded a vote.

[33] The Mass Tort Claims submit that it would be particularly unfair to them to be limited to one vote since the plaintiffs in those four actions are not “class plaintiffs” but rather they each possess their own individual claim. The Litigation Claimants further submit that I do not have jurisdiction to restrict the voting as proposed by the Applicants. They submit that each member of the class/plaintiff is a creditor in their own right with a provable claim. They cite a number of cases in which a number of individuals were provided with a vote.<sup>3</sup>

[34] As noted, the Litigation Claimants submit that they should be entitled to possess in excess of 400,000 votes with the Omarali Class Action submitting it should be entitled to 7,723 votes and the Mass Tort Claims being entitled to approximately 250 votes.

[35] The Applicants submit that it would be grossly disproportionate to allow the Litigation Claimants the number of votes they seek given the fact that their claims remain unsecured, speculative and unproven. They point to the fact that, based on numerosity, this would allow the Litigation Claimants to override the wishes of secured creditors and Term Loan Lenders who have over \$1 billion of funded debt, not to mention the interests of the employees, suppliers and other stakeholders – all of whom have strong interests in ensuring that the Applicants’ restructuring succeeds.

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<sup>3</sup> *Cline Mining Corporation (Re)*, 2014 ONSC 6998; *Arrangement relative à Bloom Lake*, 2018 QCCS 1657; *New Home Warranty of British Columbia Inc., (Bankruptcy of)*, 1999 CanLII 6751 (BC SC); Amended and Restated Meeting Order dated October 27, 2020 at paras. 17, 18 and 24 Court File No. CV-17-11846-00XL (*Sears*).

[36] I prefer the submissions of the Applicants in this regard subject to the caveat, as set out in the June 10 Endorsement, that a process must be undertaken to determine the validity and value of the Litigation Claimants' claims.<sup>4</sup>

[37] First, I do not accept the Litigation Claimants' argument that I lack jurisdiction to provide for such a vote. In my view, based on the aforementioned Supreme Court of Canada guidance in *Century Services* and *Sun Indalex* I have authority to make such an order as it advances the policy objectives underlying the CCAA and, coupled with a proper valuation, strives to treat the Litigation Claimants fairly as between them and the other stakeholders, particularly unsecured creditors.

[38] Similarly, I reject the Omarali Class Action argument that I cannot make such an order as it runs contrary to the provisions of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "CPA"). They submit that Mr. Omarali represents the class, and he does not and cannot subsume the class members' claims or rights. While I do not necessarily quarrel with this submission insofar as the CPA is concerned, the CPA is a provincial, procedural statute. This matter is proceeding pursuant to the provisions of the CCAA. While the provisions of the CPA may be instructive, they do not override my discretion derived from the CCAA in coming to the aforementioned decision.

[39] I am also of the view that the caselaw referred to by the Litigation Claimants in para. 33 above is distinguishable. In this regard I prefer the submissions of the Applicants, which are set out in para. 20 of their Reply Factum in which they set out that the claimants in those actions had proven claims that were less speculative than the claims being pursued by the Litigation Claimants. The circumstances in this matter are unique given the multitude and nature of the Litigation Claimants. In my view, the preferable path is to afford the Litigation Claimants one vote per action and determine the validity and value of their claims.

[40] In the circumstances of this CCAA proceeding it would be unfair and create an unfortunate precedent if individuals in class proceedings were able to collectively use their votes to swamp the unsecured class on numerosity grounds and defeat a plan in a situation where they have yet to have a proven claim.

[41] I appreciate the Mass Tort Claims are in a different position. However, given the unproven nature of their claims and in an attempt to achieve a fair overall treatment of all of the Litigation Claimants and other stakeholders, they, too, should be subject to one vote per action.

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<sup>4</sup> As can be seen in the June 10 Endorsement, I also allowed for the valuation of the claim of the creditor, Pariveda Solutions, Inc. who attended at the motion and sought a similar valuation since its approximate U.S. \$46 million claim had been assessed at \$1.

**(ii) The valuation of the Litigation Claimants' actions for the purposes of voting**

[42] In addition to restricting the Litigation Claimants to one vote, the Applicants also submit that since the Litigation Claimants' causes of action are highly speculative and unproven, they should be restricted to \$1 per vote. The Applicants submit that this treatment is consistent with similar treatment of unresolved contingent claims in other plans approved by this Court. They rely upon the rationale set out in the Notices of Disallowance that have been delivered. They also submit that it would be impossible to try to place any type of value on the Litigation Claimants' claims given the short period of time before the meeting, which is to take place on August 2, 2022. They further argue that any attempt to attribute a real value to the Litigation Claimant's claims would be wholly arbitrary, as there is insufficient information before this Court to attribute even an estimated value. The Applicants' position would limit the Litigation Claimants to 7 votes with a total value of \$7.

[43] The Litigation Claimants, not surprisingly, disagree. They generally submit that there must be some genuine attempt to value their claims, otherwise they would have no meaningful participation at the meeting. By way of example, they point out that the de minimis claims (35 in total) that are valued at less than \$10 per claim, would be afforded more weight than their own. The Litigation Claimants further submit that the CCAA confirms a broad and flexible authority upon this Court to allow for whatever reasonable valuation can be undertaken to protect the integrity of the process. The valuation of claims in a restructuring process is necessary and fundamental to the democratic underpinnings of the CCAA statute.

[44] I agree with the Litigation Claimants that their claims cannot be considered to be essentially worthless based on the record before me.

[45] By way of example, the uncertified U.S. Class Actions allege that the Applicants targeted consumers and businesses hoping to save on supply energy costs. The U.S. Class Actions submit that the Applicants lured customers with a teaser or fixed price for a limited time period. It was initially below competitors' rates and, after the initial period elapsed, the Applicants exploited the consumers by increasing energy costs. The Applicants have moved unsuccessfully to dismiss the U.S. Class Actions, which have been reduced in scope but continue on. Without commenting in any meaningful way on the legitimacy of the U.S. Class Actions, the Applicants have settled other lawsuits generally of the same nature. The U.S. Class Actions are also of a nature that has been certified in the past: see, for example, *In re U.S. Food Service Inc. Pricing Litig.*, 729 F. 3d at 127.

[46] The Omarali Class Action, in Ontario, has been certified. As noted, the action involves allegations that sales agents were misclassified as independent contractors. Shortly after the Omarali Class Action was certified, Just Energy reclassified its sales agents from independent contractors to employees. The Omarali Class Action was ready for trial and a trial date had been set at the time the Applicants obtained relief under the CCAA.

[47] While the Mass Tort Claims are at an early stage and have yet to be proven, they are the typical type of claims that one could expect in the circumstances of the weather event and largely involve claims for loss of business, personal injury and property damage.

[48] I have already accepted that the Litigation Claimants are entitled to vote at the meeting. As per the June 10 Endorsement, I am also satisfied that a summary proceeding ought to be conducted on an expedited basis as soon as reasonably possible to determine the validity and value of the Litigation Claimants.

[49] This is consistent with the guidance set out by the Supreme Court of Canada in *Century Services* and *Callidus* which provides that participants are to be treated advantageously and fairly as circumstances permit and that creditors should not be disadvantaged. To find otherwise would result in the Litigation Claimants having no meaningful role at the meeting, which would be entirely unfair.

[50] It ought to be undertaken prior to the Meetings Order; otherwise, a proper valuation would be largely meaningless as the Litigation Claimants would be restricted to one vote/\$1 which would ensure that the Litigation Claimants had no meaningful voice at the meeting.

[51] While time is short, and the Applicants and Litigation Claimants blame each other for allowing this matter to have proceeded this far without any valuation or dispute resolution having taken place, the unfortunate reality is that this has not taken place and the proposal put forth by the Applicants is unacceptable. It must be remedied by way of a valuation, as best as it can be conducted in the circumstances.

[52] Such a valuation approach has been undertaken in other CCAA cases and is consistent with the principles set out in s. 11 and s. 20 of the CCAA: see *Air Canada, re* 2004 CanLII 6674 (ON SC) at para. 2; *AbitibiBowater inc. (Arrangement relative à)*, 2010 QCCS 1261 at para. 230.

[53] I appreciate, as noted, that the time is short and the proceedings must be conducted in an expedited fashion. I see no alternative, however, in an attempt to enact a process that is fair to all stakeholders including the Litigation Claimants.

[54] To do otherwise would result in an unfair disenfranchisement of the Litigation Claimants.

[55] Last, I acknowledge that my decision to order a valuation could appear contrary to my decision of February 23, 2022 where I declined the request of the U.S. Class Actions to adjudicate their claims prior to the determination of the Applicants' Plan. At the time of the making of that decision, however, I was influenced by the fact that the Applicants were concerned that such a process would distract it from the important negotiations it was carrying out with its lenders. Those negotiations are now completed. Further, and more significantly, is the fact at the time of that order the Applicants' Plan had not yet been offered to this Court, nor had the issue of the Meetings Order been addressed. They are now both before the court and, for the reasons noted, I believe a valuation is necessary.

**(iii) Whether the Term Loan Lenders should be placed into their own class of unsecured creditors**

[56] Here, the Litigation Claimants submit that the unsecured Term Loan Lenders should be placed in their own class as they have no commonality of interest with other unsecured creditors.

[57] The Applicants' Plan proposes that the Term Loan Lenders will receive their pro-rata share of 10% of the New Common Shares in the continuing Just Energy entity. The other unsecured creditors will receive limited consideration, established at \$10 million, subject to erosion for amounts to be paid to Convenience Claims valued at no more than \$1,500 and the Applicants' legal and financial advisor fees, amongst other deductions. The Litigation Claimants also point to the fact that the Term Loan Lenders are owned in the majority by the Pacific Investment Management Company LLC ("PIMCO"). PIMCO is the Plan Sponsor and DIP Lender.

[58] In this regard, the Litigation Claimants submit that it would be inappropriate to have a single class of unsecured creditors where the Term Loan Lenders stand to profit from a continuing legal relationship with the Applicants whereas the other unsecured creditors do not and share a relatively small, eroding pot. They point to a series of cases that have held that the foundation for commonality of interests is that classes must be structured to prevent injustice and enable members to consult with a view to their common interest.<sup>5</sup>

[59] The Applicants respond by submitting the only reason the Litigation Claimants wish to put the Term Loan Lenders in a separate class is to ensure a "no vote" in the class occupied by the Litigation Claimants.

[60] The Applicants submit that the real basis for classification is a commonality of legal interests the creditors have relative to the debtor. They do not have to have an identity of interests *vis-à-vis* each other in order to be placed into the same class. Creditors with different legal rights can therefore be included within the same class so long as their interests are not so materially dissimilar so that it is impossible for them to consult together with a view to voting in their common interest: *Re SemCanada Crude Company* 2009 ABQB 490 at para. 38; *Re Canadian Airlines Corp.*, 2000 ABQB 442 (CanLII) at para. 31, leave to appeal ref'd 2000 ABCA 149.

[61] I prefer the submissions of the Applicants in this regard. The motivations of creditors to approve or disapprove of the Plan are largely irrelevant to classification and the interests that are primarily to be considered are the interests of the creditor in relation to the debtor company. Two unsecured creditors differently motivated due to their own economic interests and anticipated recoveries does not justify placing them in separate classes. To do so would run contrary to the general reluctance in the caselaw to fragment cases.

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<sup>5</sup> For example, *Woodwards' Ltd.*, re 1993 CanLII 870 (BC SC); *San Francisco Gifts Limited v. Oxford Properties Group Inc.*, 2004 ABCA 386

[62] Last, in coming to this conclusion I am mindful of the Litigation Claimants' submissions that the differences between their interests and the Term Loan Lenders' interests preclude reasonable consultation. I agree with Koehnen J., however, in his decision in *Re Sherritt International Corporation*, 2020 ONSC 5822 (CanLII) at para. 43 wherein he stated, generally, that differences of opinion do not lead to a conclusion that it is impossible to consult. There may be significant differences, but this does not justify fragmentation, particularly where the bulk of the caselaw warns against it.<sup>6</sup>

**(iv) The appropriateness of the Applicants' proposal that differential consideration be offered to unsecured creditors in the Plan which would have New Common Shares provided to the Term Loan Lenders and cash consideration being provided to the General Unsecured Creditor Class**

[63] In the June 10 Endorsement I requested additional submissions. I have received them and an additional endorsement will soon follow.

## CONCLUSION

[64] Both the Applicants and the Litigation Claimants put forth proposals that unduly favoured their own interests. The orders that I have made in the June 10 Endorsement have sought to address these inequities. I have sought to establish a process where the Applicants and the stakeholders are treated as evenly and fairly as the current circumstances permit and in accordance with the policy objectives underlying the CCAA. I have sought, in my orders, to provide a constructive solution with respect to the differences concerning the Applicants and the Litigation Claimants.

## DISPOSITION

[65] For the reasons above, I made the orders contained in my June 10, 2022 Endorsement.

[66] Insofar as the Sealing Order is concerned, I note that I was satisfied that the criteria set out by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 and *Sherman Estate v. Donovan*, 2021 SCC 25 were met as the information the Applicants seek to seal concerns discreet financial details of the Plan which constitutes an important commercial and public interest in the circumstances of this CCAA proceeding. The Plan allows for interested third parties to complete due diligence and submit a competing proposal. Accordingly, court openness poses a serious risk to this important commercial and public interest. I can see no other way to prevent the identified risk other than redacting the sensitive financial information. Last, as a matter of proportionality, the benefits of redacting this information

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<sup>6</sup> For example, *Canadian Airlines*, at para. 22; *Sears*, at para.16

outweigh the negative effects in the circumstances of this case. This Order is subject to further orders of this court.

[67] If necessary, other incidental issues raised at the motion can be dealt with at a case conference.

A handwritten signature in black ink, appearing to read "McEwen, J.", positioned above a horizontal line.

McEwen, J.

**Released: June 21, 2022**

**SCHEDULE “A”**

**CITATION:** Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.,  
2022 ONSC 3487  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220610

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
IN THE MATTER OF THE COMPANIES’ ) *Jeremy Dacks, Shawn Irving, Marc*  
*CREDITORS ARRANGEMENT ACT,* ) *Wasserman and Michael De Lellis, for the*  
R.S.C. 1985, c. C-36, AS AMENDED ) Applicants, the Just Energy Group  
)  
– and – ) Allyson Smith, U.S. Counsel to the Just  
) Energy Group  
)  
IN THE MATTER OF A PLAN OF )  
COMPROMISE OR ARRANGMENT OF ) *Ryan Jacobs, Alan Merskey, Jane Dietrich*  
JUST ENERGY GROUP INC., JUST ) and John M. Picone, Canadian Counsel to  
ENERGY CORP., ONTARIO ENERGY ) LVS III SPE XV LP, TOCU XVII LLC,  
COMMODITIES INC., UNIVERSALE ) HVS XVI LLC, and OC II LVS XIV LP in  
ENERGY CORPORATION, JUST ) their capacity as the DIP Lenders  
ENERGY FINANCE CANADA ULC, )  
HUDSON ENERGY CANADA CORP., ) *David Botter, Sarah Schultz and Abid*  
JUST MANAGEMENT CORP., JUST ) *Quereshi, US Counsel to LVS III SPE XV*  
ENERGY FINANCE HOLDING INC., ) LP, TOCU XVII LLC, HVS XVI LLC, and  
11929747 CANADA INC., 12175592 ) OC II LVS XIV LP in their capacity as the  
CANADA INC., JE SERVICES HOLDCO ) DIP Lenders  
I INC., JE SERVICES HOLDCO II INC., )  
8704104 CANADA INC., JUST ENERGY ) *Heather Meredith, James Gage and Natasha*  
ADVANCED SOLUTIONS CORP., JUST ) *Rambaran, Canadian Counsel to the Agent*  
ENERGY (U.S.) CORP., JUST ENERGY ) and the Credit Facility Lenders  
ILLINOIS CORP., JUST ENERGY )  
INDIANA CORP., JUST ENERGY ) *Jeff Larry, Max Starnino and Danielle Glatt,*  
MASSACHUSETTS CORP., JUST ) Counsel to US Counsel for Fira Donin and  
ENERGY NEW YORK CORP., JUST ) Inna Golovan, in their capacity as proposed  
ENERGY TEXAS I CORP., JUST ) class representatives in *Donin et al. v. Just*  
ENERGY, LLC, JUST ENERGY ) *Energy Group Inc. et al.*; Counsel to US  
PENNSYLVANIA CORP., JUST ) Counsel for Trevor Jordet, in his capacity as  
ENERGY MICHIGAN CORP., JUST ) proposed class representative in *Jordet v.*  
ENERGY SOLUTIONS INC., HUDSON ) *Just Energy Solutions Inc.*  
ENERGY SERVICES LLC, HUDSON )





- ) *Robert Thornton, Rebecca Kennedy, Rachel*
- ) *Nicholson and Puya Fesharaki, for FTI*
- ) *Consulting Canada Inc., as Monitor*
- )
- ) *John F. Higgins and Emily Nasir, U.S.*
- ) *Counsel to FTI Consulting Canada Inc., as*
- ) *Monitor*
  
- ) **HEARD:** June 7, 2022

### **ENDORSEMENT**

#### **MCEWEN J.**

[68] I am providing this brief Endorsement, in advance of Reasons, given the time constraints concerning this matter and particularly the August 2, 2022 meeting date.

[69] With respect to the issues raised at the June 7, 2022 motion, I order as follows:

- (i) Subject to the Orders that follow, the uncontested portions of the Support Agreement, the Backstop Commitment Letter, the issuance of the Backstop Commitment Letter and the issuance of the Backstop Commitment Fee Shares, Termination Fee and Charge, sealing order and fees are approved as per the draft order.
- (ii) Subject to the Orders that follow, the uncontested portions of the draft Meetings Order shall go.
- (iii) There shall be two classes of creditors for the purposes of considering and voting on the Plan: the Secured Creditor Class and the Unsecured Creditor Class.
- (iv) For greater clarity, the Unsecured Creditors Class shall include the Term Loan Lenders, the two U.S. class actions, the Omarali class action and the Texas Power Interruption Claimants.
- (v) The plaintiff class in each of the U.S. class actions and the Omarali class action will be entitled to one vote at the meeting. The Texas Power Interruption Claimants will be entitled to four votes (one per action).
- (vi) Summary proceedings will be conducted on an expedited basis as soon as reasonably possible, in an effort to determine the validity and value of the claims

of the plaintiff class in the U.S. class actions, the Omarali class action, the Texas Power Interruption Claimants and Pariveda Solutions Inc.

- (vii) The Monitor shall, forthwith, liaise with the relevant parties to determine a process to conduct the claim determinations and valuations. In this regard, the Monitor shall contact the Honourable Dennis O'Connor, the Claims Officer currently adjudicating claims submitted in the U.S. Class Actions to determine if he is prepared to provide assistance with respect to the valuations.
- (viii) I will conduct a further hearing in the very near future to determine the process to be followed in determining and valuing the relevant claims and any matters arising out of the Claim Procedure Order made in this proceeding dated September 15, 2021.
- (ix) The parties are further directed to provide me with supplementary submissions in writing – not to exceed 10 pages – within three business days with respect to a secondary issue relating to creditor classification. I have already determined that there shall be one class of unsecured creditors. The supplementary submissions should address the appropriateness of the terms of the proposed differential consideration being offered to unsecured creditors in the plan, which is contested and which I have not yet approved. Specifically, the submissions should address the rationale for providing New Common Shares to the unsecured Term Loan Lenders and cash consideration to the General Unsecured Creditor Class.



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McEwen J.

**CITATION:** Just Energy v. Morgan Stanley et. al., 2022 ONSC 3487  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220610

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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 ARRANGMENT OF JUST ENERGY GROUP  
INC., JUST ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSALE 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 LLS, JUST ENERGY ADVANCED  
SOLUTIONS LLC, FULCRUM RETAIL ENERGY  
LLC, FULCRUM RETAIL HOLDINGS LLC, TARA  
ENERGY, LLC, JUST ENERGY MARKETING

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CORP., JUST ENERGY CONNECTICUT CORP.,  
JUST ENERGY LIMITED, JUST SOLAR HOLDINGS  
CORP. and JUST ENERGY (FINANCE) HUNGARY  
ZRT.

Applicants

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**ENDORSEMENT**

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McEwen J.

**Released: June 10, 2022**

**CITATION:** Just Energy v. Morgan Stanley et. al., 2022 ONSC 3470  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220621

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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  
ARRANGMENT OF JUST ENERGY GROUP INC., JUST  
ENERGY CORP., ONTARIO ENERGY COMMODITIES  
INC., UNIVERSALE 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  
LLS, 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

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**ENDORSEMENT**

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**Released: June 21, 2022**

McEwen J.

THIS IS **EXHIBIT “E”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**CITATION:** Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022  
ONSC 3698  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220623

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
IN THE MATTER OF THE COMPANIES' ) *Jeremy Dacks, Shawn Irving, Marc*  
*CREDITORS ARRANGEMENT ACT,* ) *Wasserman and Michael De Lellis, for the*  
R.S.C. 1985, c. C-36, AS AMENDED ) Applicants, the Just Energy Group  
)  
- and - ) Allyson Smith, U.S. Counsel to the Just  
) Energy Group  
IN THE MATTER OF A PLAN OF )  
COMPROMISE OR ARRANGMENT OF ) *Ryan Jacobs, Alan Merskey, Jane Dietrich*  
JUST ENERGY GROUP INC., JUST ) and John M. Picone, Canadian Counsel to  
ENERGY CORP., ONTARIO ENERGY ) LVS III SPE XV LP, TOCU XVII LLC,  
COMMODITIES INC., UNIVERSALE ) HVS XVI LLC, and OC II LVS XIV LP in  
ENERGY CORPORATION, JUST ) their capacity as the DIP Lenders  
ENERGY FINANCE CANADA ULC, )  
HUDSON ENERGY CANADA CORP., ) *David Botter, Sarah Schultz and Abid*  
JUST MANAGEMENT CORP., JUST ) *Quereshi, US Counsel to LVS III SPE XV*  
ENERGY FINANCE HOLDING INC., ) LP, TOCU XVII LLC, HVS XVI LLC, and  
11929747 CANADA INC., 12175592 ) OC II LVS XIV LP in their capacity as the  
CANADA INC., JE SERVICES HOLDCO ) DIP Lenders  
I INC., JE SERVICES HOLDCO II INC., )  
8704104 CANADA INC., JUST ENERGY ) *Heather Meredith, James Gage and Natasha*  
ADVANCED SOLUTIONS CORP., JUST ) *Rambaran, Canadian Counsel to the Agent*  
ENERGY (U.S.) CORP., JUST ENERGY ) and the Credit Facility Lenders  
ILLINOIS CORP., JUST ENERGY )  
INDIANA CORP., JUST ENERGY ) *Jeff Larry, Max Starnino and Danielle Glatt,*  
MASSACHUSETTS CORP., JUST ) Counsel to US Counsel for Fira Donin and  
ENERGY NEW YORK CORP., JUST ) Inna Golovan, in their capacity as proposed  
ENERGY TEXAS I CORP., JUST ) class representatives in *Donin et al. v. Just*  
ENERGY, LLC, JUST ENERGY ) *Energy Group Inc. et al.*; Counsel to US  
PENNSYLVANIA CORP., JUST ) Counsel for Trevor Jordet, in his capacity as  
ENERGY MICHIGAN CORP., JUST ) proposed class representative in *Jordet v.*  
ENERGY SOLUTIONS INC., HUDSON ) *Just Energy Solutions Inc.*  
ENERGY SERVICES LLC, HUDSON )  
ENERGY CORP., INTERACTIVE ) *Steven Wittels and Susan Russell, US*  
ENERGY GROUP LLC , HUDSON ) Counsel for the Respondent Fira Donin and  
PARENT HOLDINGS LLC, DRAG ) Inna Golovan, in their capacity as proposed  
MARKETING LLS, JUST ENERGY ) class representatives in *Donin et al. v. Just*  
ADVANCED SOLUTIONS LLC, ) *Energy Group Inc. et al.*; US Counsel for



FULCRUM RETAIL ENERGY LLC, ) Trevor Jordet, in his capacity as proposed  
FULCRUM RETAIL HOLDINGS LLC, ) class representative in *Jordet v. Just Energy*  
TARA ENERGY, LLC, JUST ENERGY ) *Solutions Inc.*  
MARKETING CORP., JUST ENERGY )  
CONNECTICUT CORP., JUST ENERGY ) *David Rosenfeld and James Harnum*, for  
LIMITED, JUST SOLAR HOLDINGS ) Haidar Omarali in his capacity as  
CORP. and JUST ENERGY (FINANCE) ) Representative Plaintiff in *Omarali v. Just*  
HUNGARY ZRT. ) *Energy*  
)  
Applicants ) *Howard Gorman, Ryan Manns and Aaron*  
) *Stephenson*, for Shell Energy North  
- and - ) American (Canada) Inc. and Shell Energy  
) North America (US)  
MORGAN STANLEY CAPITAL GROUP )  
INC. ) *Mike Weinczok*, for Computershare Trust  
) Company of Canada  
Respondents )  
) *Jessica MacKinnon*, for Macquarie Energy  
) LLC and Macquarie Energy Canada Ltd.  
)  
) *Bevan Brooksbank*, for Chubb Insurance Co  
) of Canada  
)  
) *Jason Wadden*, for Dundon Advisers LLC  
)  
) *Pat Corney*, for the Ontario Energy Board  
)  
) *Virginia Gauthier*, for NextEra Energy  
) Marketing, LLC  
)  
) *Harvey Chaiton*, for Pariveda Solutions, Inc.  
)  
) *Alexandra McCawley*, for FortisBC Energy  
) Inc.  
)  
) *Chris Burr*, for Energy Earth, LLC  
)  
) *Robert Thornton, Rebecca Kennedy, Rachel*  
) *Nicholson and Puya Fesharaki*, for FTI  
) Consulting Canada Inc., as Monitor

) *John F. Higgins* and *Emily Nasir*, U.S.  
) Counsel to FTI Consulting Canada Inc., as  
) Monitor  
)  
) **HEARD:** June 7, 2022

**ENDORSEMENT**

**MCEWEN J.**

[1] On June 10, 2022 I released a brief endorsement setting out certain orders and requesting supplementary written submissions (the “written submissions”) concerning the appropriateness of the terms of the proposed differential consideration being offered to unsecured creditors in the Plan. I specifically asked that submissions address the rationale for providing New Common Shares to the unsecured Term Loan Lenders and cash consideration to the General Unsecured Creditor Class.

[2] This endorsement deals with those written submissions.

[3] Having read the written submissions I accept the Applicants’ submissions, which are supported by the DIP Lender, that the appropriateness of the terms of the proposed differential compensation ought to be dealt with at the Sanction Hearing.

[4] A material condition precedent to the proposed Plan is that Just Energy cease to be a reporting issuer under the *U.S. Exchange Act* after it emerges from CCAA. In order to do so, Just Energy must meet certain mandatory requirements to cease being a reporting issuer. The current structure of the Plan contemplates that only the Term Loan Lenders receive the New Common Shares. If there is also a distribution to the General Unsecured Creditors Class, the Applicants and DIP Lender submit that these requirements would be impossible to meet.

[5] They also submit that it is also not possible to give the Term Loan Lenders cash instead of New Common Shares because there is insufficient cash available.

[6] It also bears noting that experts retained by the Applicants and U.S. Class Counsel have delivered conflicting reports as to fairness of the proposed differential consideration. To date there have been no cross-examinations of the experts.

[7] As noted in my previous decision, the threshold for granting a Meetings Order is rather low. Given the complicated nature of the proposed differential consideration and the conflicting experts’ reports, it is preferable to wait until the Sanction Hearing to determine the fairness of this

portion of the Plan. Accordingly, I do not accept the Litigation Claimants' submission that is clear that the Plan cannot be sanctioned and is doomed to fail.

Handwritten signature in cursive script, appearing to read "McEwen, J."

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McEwen, J.

**Released: June 23, 2022**

**CITATION:** Just Energy v. Morgan Stanley et. al., 2022 ONSC 3698  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220623

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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  
ARRANGMENT OF JUST ENERGY GROUP INC., JUST  
ENERGY CORP., ONTARIO ENERGY COMMODITIES  
INC., UNIVERSALE 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  
LLS, 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

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**ENDORSEMENT**

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**Released: June 23, 2022**

McEwen J.

THIS IS **EXHIBIT “F”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**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., 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 FOR LEAVE TO APPEAL**

**THE MOVING PARTY**, Haidar Omarali in his capacity as representative plaintiff of the certified class (the "**Class**") in *Omarali v. Just Energy* (the "**Omarali Action**"), will make a motion to the Court of Appeal for Ontario on a date to be fixed by the Registrar.

**PROPOSED METHOD OF HEARING:** The motion is to be heard in writing or as otherwise determined by this Court.

**THE MOTION IS FOR:**

1. An order granting Mr. Omarali, on behalf of the Class, leave to appeal to the Court of Appeal for Ontario from the decision of Justice McEwen (the "**Motion Judge**") dated June 10, 2022, which, *inter alia*, ordered the Class is entitled to only one vote in respect of the voting on the proposed Plan, and not one vote for each of the members of the Class;
2. An order validating the manner of service of the notice of motion and motion materials herein, if necessary;
3. An order abridging the time for the hearing of this motion;
4. If leave to appeal is granted, an order expediting the hearing of this appeal;
5. Costs of this motion, to be fixed by the court; and
6. Such further and other relief as this Honourable Court deems fit.

**THE GROUNDS FOR THIS MOTION ARE:**

7. This case raises important issues with respect to the requirement pursuant to ss. 6(1) of the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") that a Court cannot sanction a plan of arrangement and compromise unless a majority in *number* of creditors, which also represents two-thirds in *value* of the creditors' claims, vote to approve it.
8. The proposed appeal raises serious and arguable grounds with respect to the rights of each creditor to vote on a proposed Plan, and engages issues that are important to the parties and to these CCAA proceedings, but are also significant to the public and the practice of insolvency law in general.

## Background to the Meeting Order

9. The Omarali Action was commenced against Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario LP (collectively, "**Just Energy**"). It concerns Just Energy's misclassification of over 7,700 employees as "independent contractors" and resulting violations of the minimum requirements of the *Employment Standards Act, 2000*, SO 2000, c 41, including with respect to minimum wage, overtime pay, vacation pay, holiday pay and minimum working hours and conditions.
10. On July 27, 2016, Justice Belobaba certified the Omarali Action as a class proceeding with 13 common issues (the "**Certification Order**").
11. After an opt out process concluded, where individuals meeting the class definition could choose not to be part of the Class, 7,723 Class Members were identified.
12. On March 9, 2021, Just Energy Group Inc. ("**Just Energy**") and certain of its affiliates (collectively, the "**Applicants**") were granted protection under the CCAA from the Ontario Superior Court of Justice (Commercial List). The Omarali Action was stayed and the trial scheduled for November 2021 would not proceed.
13. On September 8, 2021, Just Energy sought court approval of a claims procedure order.
14. On September 10, 2021, Class Counsel sought confirmation that the Class Counsel may, through the Representative Plaintiff, file one proof of claim form on behalf of all Class Members rather than file thousands of individual claim forms. Just Energy did not propose any alternative.
15. On February 2, 2022, Just Energy wholly disallowed the Class Members' claims.



16. On February 24, 2022, Class Counsel filed a Notice of Dispute for all Class Members.
17. The Applicants filed its Plan of Compromise and Arrangement on May 26, 2022.
18. The Applicants filed a Motion on May 13, 2022, which *inter alia* sought a Meeting Order. The proposed Meeting Order sought a meeting date of August 2, 2022. The proposed Meeting Order also sought to provide one vote for the Class as a whole.
19. By an endorsement dated June 10, 2022, the Motion Judge ordered that the Class was entitled to one vote at the meeting, and further ordered the conduct of expedited summary proceedings to determine the validity and value of the Omarali Class Action.
20. On June 21, 2022, the Motion Judge released a supplementary endorsement which included reasons with respect to the June 10, 2022 endorsement. The Motion Judge held that the members of the Class are creditors, and therefore entitled to vote at the meeting.
21. The Motion Judge accepted the submission of the Applicant that the Class should be accorded only one vote, noting that it would be unfair if individuals in class proceedings could "use their votes to swamp the unsecured class on numerosity grounds *and defeat a plan* in a situation where they have yet to have a proven claim" [Emphasis added].

### **The proposed appeal**

22. If leave is granted, this court would be asked to answer the following questions:
  - (a) Did the Motion Judge err in ordering that the class members in a certified class action with 7,723 members be entitled to only one vote, regardless of whether their claims were found to meritorious before the creditors' meeting?

- (b) Did the Motion Judge err in approving a voting process which would not require a majority in number of creditors within a class to vote to approve a Plan?
- (c) Did the Motion Judge err in concluding that providing each of the members of the Class a vote would be unfair based on speculative concerns that they may vote against the Plan?

**The factors relevant to granting leave to appeal favour leave being granted**

- 23. The issue of the number of votes to which creditors in a group with common contingent claims are entitled is of significance to the practice. The Motion Judge's determination that the Class is only entitled to one vote has the effect of disenfranchising thousands of individual creditors. These individuals are creditors who were left out of the consultations and negotiations that led to the proposed Plan, and this decision would deny them a voice in the approval of the Plan.
- 24. If this decision is left undisturbed, it may have a significant impact on how future Plans are negotiated between creditors in CCAA proceedings which involve certified but as yet unproven class action claims. Specifically, it may encourage and facilitate the sidelining and exclusion of class action claimants and members of other representative actions from the process of negotiating a Plan.
- 25. This issue is also significant to this proceeding. The approach to the vote of the Meeting Order disenfranchises thousands of members of a certified class. As acknowledged by both the Applicant and the Motion Judge, the effect of this approach is of such significance that it could have an impact on the outcome of the vote, and whether or not the Plan is approved.

26. The proposed appeal is *prima facie* meritorious. The Motion Judge erred in ordering that the Class is only entitled to one vote as:
- (a) Section 6(1) of the CCAA states that the court *may* sanction a plan of compromise or arrangement if a "majority in number representing two thirds in value of the creditors, or the class of creditors..." agree. There are two separate requirements, that a majority in number of the creditors agree, and that their claims represent two thirds of the value of all creditors.
  - (b) The Motion Judge sought a "harmonious reading of the provisions of the CCAA and the [*Bankruptcy and Insolvency Act* ("**BIA**")]," and concluded such a reading supported the notion that the Litigation Claimants are creditors, and that they are entitled to vote at the meeting. Section 2 of the BIA defines creditor as "a person having a claim provable as a claim under this Act."
  - (c) Mr. Omarali has been appointed to represent the Class, he does not – and cannot – subsume the Class Members' claims or rights. Although the class has a court-appointed representative to take them through the certified common issues, class members do not lose entitlements associated with their individuals claims. The Motion Judge's order contravenes the *Class Proceedings Act, 1992, S.O. 1992, c. 6* and the Certification Order.
  - (d) The Omarali Action is certified and was ready for trial. The Motion Judge has concluded the Class has a provable claim, and as such the number of votes should be determined by the number of claims.

- (e) The Motion Judge cited that individuals in class proceedings might "use their votes to swamp the unsecured class on numerosity grounds and defeat a plan in a situation where they have yet to have a proven claim." This is an improper consideration which should not determine voting rights. Treating creditors appropriately in a Plan such that they willingly support it is the proper way to ensure they do not use their votes as a "veto."

27. The proposed appeal will not unduly hinder the progress of the CCAA proceeding.

### **Statutory Grounds**

28. Rules 1.04, 1.05, 61.03 and 61.03.1 of the Rules of Civil Procedure.
29. Sections 2, 6, 11, 13 and 14 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36.
30. Sections 24, 25 and 26 of the *Class Proceedings Act, 1992*, S.O. 1992
31. Such further and other grounds as the lawyers may advise.

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

32. The orders and endorsements made in the CCAA Proceedings;
33. Affidavit of Vlad Calina, affirmed May 26, 2022;
34. Supplemental Affidavit of Vlad Calina, affirmed June 1, 2022;
35. Factum of the Applicant, dated May 13, 2022; and

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

**July 4, 2022**

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**Counsel for Haidar Omarali in his  
capacity as Representative Plaintiff  
*Omarali v. Just Energy***

**TO: CCAA SERVICE LIST**

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

AND IN THE MAATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST  
ENERGY GROUP INC., *et al.*

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

*Applicants*

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
FOR LEAVE TO APPEAL**

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**Counsel for Haidar Omarali in his  
capacity as Representative Plaintiff  
*Omarali v. Just Energy***





**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**”)

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

**THE MOVING PARTIES**, Wittels McInturff Palikovic, Finkelstein Blankinship, FreiPearson, Garber LLP, and Shub Law Firm LLP (collectively, “**U.S. Class Counsel**”), in their capacity as counsel to at least hundreds of thousands of the Applicants’ U.S.

customers (the “**U.S. Customers**”) in in two U.S. class actions,<sup>1</sup> will make a motion to a panel of the Court of Appeal for Ontario, in writing, on a date to be fixed by the registrar.

**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 (the “**Motion Judge**”) dated June 10, 2022 (the “**Order**”), allowing the Applicants’ motion for an Authorization Order and a Meetings Order;
2. An order validating the manner of service of this notice of motion and motion materials herein, if necessary;
3. The costs of this motion; and
4. Such further and other relief as this Honourable Court deems fit.

**THE GROUNDS FOR THE MOTION ARE:**

5. The Motion Judge’s orders dated June 10 and 23, 2022 (the “**Orders**”) undermine the democratic principles that form the foundation of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”). The Plan of Arrangement and Compromise (“**Plan**”) endorsed in the Orders effectively disenfranchises hundreds of thousands of creditors, setting a new precedent that could have far-reaching impacts for CCAA litigation and the practice of insolvency law more broadly.

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<sup>1</sup> (*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, or the “**U.S. Class Actions**”).

6. Specifically, under the endorsed Plan creditors in the U.S. Class Actions are denied the meaningful right to vote because:

- (a) they are allocated only one vote per class action (two votes in total) in circumstances where each class action represents (at least) hundreds of thousands of the Applicants' U.S. Customers with strong and viable claims. Pursuant to the CCAA, each of the U.S. Customers is a creditor in their own right and is entitled to a vote; and
- (b) the Plan places the Term Loan Lenders (whose legal and financial interests—including the kind of consideration they would receive under the proposed Plan—are so disparate as to frustrate the ability to meaningfully consult on the Plan) in the same class as the Other General Unsecured Creditors (defined below), including the U.S. Customers.

7. The vote by creditors is one of the core requirements of approval of a restructuring plan under the CCAA.

8. 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**

9. The Donin Action was commenced on October 3, 2017. The Jordet Action was commenced on April 6, 2018. In each case, a class action is proposed on behalf of the

plaintiffs and other U.S. customers in 11 states in which the Applicants named as defendants (the “**Just Energy Defendants**”) do business.

10. The U.S. Class Actions allege that the Just Energy Defendants target consumers and businesses hoping to save on energy supply costs. They lure in customers with a teaser or fixed rate for a limited time period that is initially below its competitors’ rates. Once that initial rate expires, the Just Energy Defendants charge what they represent to be a “variable rate” which under the applicable contracts must be set according to “business and market conditions”.

11. The U.S. Class Actions further allege that the Just Energy Defendants exploit their pricing discretion and the dramatic information asymmetry with its customers to artificially inflate their variable rates without regard to their contractual obligations. As a result, the Just Energy Defendants’ variable rates are consistently substantially higher than those otherwise available in the natural gas and electricity supply markets, and do not fluctuate based on any reasonable interpretation of “business market conditions”, such as wholesale market energy prices or the rates of other competitive market participants (including local utilities and the Just Energy Defendants’ own fixed rates).

12. The Just Energy Defendants moved unsuccessfully to dismiss the U.S. Class Actions. In both of the U.S. Class Actions, two different federal court judges found that the U.S. Customers’ breach of contract and breach of duty of good faith claims were plausible. The progress of the U.S. Class Actions was significantly delayed by the Just Energy Defendants’ unsuccessful motions to dismiss the actions.

## 2. The CCAA Proceeding

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

14. On September 15, 2021, the Applicants proposed, and the Court issued, a “**Claims Procedure Order**” which, among other things, establishes a procedure for the adjudication of claims, but does not provide timelines for the final adjudication of disputed claims or any mechanism to ensure that disputed claims are properly estimated for voting purposes if the final adjudication of a disputed claim does not occur before the creditors meeting to vote on a proposed plan.

15. For both cases, U.S. Class Counsel provided over 40 pages of Claim Documentation setting out the relevant background and merits of the respective U.S. Class Actions, including:

- (a) a detailed analysis of the breach of contract and breach of duty of good faith claims, including significant case law and statutory support;
- (b) reference to four similar U.S. class actions that were certified following a contested class-certification motion (all four cases are in respect of ESCO customers who were overcharged under the terms of their customer agreements);
- (c) evidence of denunciation of the Just Energy Defendants’ pricing practices by relevant regulators as further demonstration of the strength of the Class Claimants’ claims; and

(d) a supporting expert report.

The U.S. Class Actions are perfectly suited for certification. There is substantial precedent for certification of this type of class action.

16. Nevertheless, on January 11, 2022, the Applicants served a Notice of Revision or Disallowance entirely disallowing the U.S. Class Actions as “meritless” (the “**Notice of Disallowance**”). The Notices of Disallowance are pro forma or blanket responses to the U.S. Class Actions in that they largely repeat the failed legal arguments that the Applicants made in their unsuccessful attempts to have the Donin Action and the Jordet Action dismissed.

17. On February 10, 2022, U.S. Class Counsel disputed the disallowance. The Notices of Dispute includes additional legal and evidentiary support for the U.S. Class Actions.

18. On February 9, 2022, U.S. Class Counsel brought a motion for advice and direction requesting, among other things, that the Court order an Expedited Adjudication Framework so that the U.S. Customer Claims could be finally adjudicated prior to a vote on the Plan.

19. At the end of the hearing, the Court advised the parties that the motion was dismissed with reasons to follow. His Honour delivered his reasons on February 23, 2022.

20. On February 24, 2022, U.S. Class Counsel filed a Notice of Motion for Leave to Appeal the February 9 Order to the Ontario Court of Appeal on an expedited basis.

21. On June 28, 2022, the Ontario Court of Appeal dismissed U.S. Class Counsel's motion for leave to appeal.

22. On March 3, 2022, the Court appointed the Honourable Justice Dennis O'Connor as Claims Officer (the "**Claims Officer**"), for the purposes of finally adjudicating the U.S. Customer claims (the "**O'Connor Adjudication**").

23. The O'Connor adjudication is a non-expedited claims process. Although Justice O'Connor has made a number of preliminary rulings in the O'Connor Adjudication in respect of, among other things, class size and discovery rights, thereby streamlining the U.S. Class Action Claims, the O'Connor Adjudication has very little to no chance of determining the U.S. Customer Claims prior to the meeting of creditors.

***B. The Meetings Motion and the impugned Order***

24. On May 12, 2022, after months of advising the Court and interested parties that a Plan was pending, the Applicants finally filed their Plan.

25. The Plan revealed the intention of the plan sponsor, Pacific Investment Management Company LLC ("**PIMCO**"), together with the other plan supporters, to take control of the Applicants' going-concern business while wiping out all of the other unsecured creditors including the class actions filed against the Applicants, except, as described below, the general unsecured Term Loan Lenders (PIMCO owns 66% of the Term Loan).

26. In effect, PIMCO has turned this restructuring into a "loan to own" process without a proper marketing process or valuation.

27. PIMCO and the Applicants structured the Plan and, in particular, the voting procedure, to guarantee a positive result for themselves while disenfranchising the U.S. Customers (among other creditors).

**1. The Applicants proposed to limit (at least) hundreds of thousands of U.S. Customers with claims to one single vote**

28. The Plan disclosed that the Applicants proposed to limit (at least) hundreds of thousands of U.S. Customers of the Applicants with claims to one single vote.

29. In the Donin Action alone, U.S. Class Counsel has determined that in just New York state, the class of U.S. Customers is comprised of 417,162 individuals during the relevant time frame.

30. Each of these 417,162 customers has a claim against the Applicants and ought to have a meaningful vote.

**2. The Plan contemplates gross disparity in the kind of consideration to the Term Loan Lenders relative to the Other General Unsecured Creditors**

31. The Plan contemplates two classes of creditors for the purposes of voting on and receiving distributions (or other treatment) under the Plan:

- (a) the Secured Creditor Class (comprised of the Credit Facility Lenders); and
- (b) the Unsecured Creditor Class (comprised of the Term Loan Lenders, General Unsecured Creditors, and Convenience Claims, each defined under the Plan).



32. PIMCO owns 66% of the Term Loan, and as a result, is the majority Term Loan Lender. PIMCO's affiliates are also the DIP Lenders, the assignees of a significant secured supplier claim (the BP Debt) and, as noted above, the proposed Plan sponsor.

33. Within the Unsecured Creditor Class, the Plan contemplates the following disparate treatment:

- (a) the Term Loan Lenders (66% PIMCO) will receive their pro rata share of 10% of the New Common Shares. The Term Loan Lenders will also have the right to participate in the New Equity Offering. In the result, the Term Loan Lenders will receive 100% of the common equity through a backstopped participation in an equity rights offering that is not available to the non-Term Loan Lender General Unsecured Creditors;
- (b) Convenience Claims will be paid in full up to \$1,500 from the General Unsecured Creditor Cash Pool (established at \$10 million); and
- (c) the Other General Unsecured Creditors holding Accepted Claims will be paid their pro rata share of the General Unsecured Creditor Cash Pool (after payment of Convenience Claims and permitted fees and expenses (estimated in the Applicants' record to be in the range of \$4-\$7 million) and subject to the turnover requirements in the Subordinated Note Indenture and the Plan. The Applicants currently estimate that the Other General Unsecured Creditors will receive 2.5 to 5 cents on the dollar).

34. The proposed cash payment to the General Unsecured Creditors is also at risk of erosion because it remains subject to an unknown number of convenience class creditors receiving a 100% recovery on claims at or below \$1,500 (100% recovery) and creditors with claims above \$1,500 (other than contingent creditors) opting-in to the convenience class.

35. Moreover, any proceeds to the Other Unsecured Creditors are further diminished by professional fees whereas the Term Loan Lenders' fees are being paid by the Applicants.

36. The forms of consideration given to the Term Loan Lenders (equity) and the Other General Unsecured Creditors (a cash payout) are entirely different in kind and provide very different opportunities and risks.

37. Equity represents a continuing interest in the Applicants with an opportunity for enhanced recovery and profits. This is particularly true given that the value of the Texas Weather Event Assets will accrue entirely to the benefit of the Term Loan Lenders as the new equity holders.

38. Conversely, the proposed (de minimis) cash payment to the Other General Unsecured Creditors is a one-time payment with no up-side potential including no right to participate in or benefit from the Undisclosed Assets.

**3. The Applicants proposed to limit the U.S. Customer claims to one dollar**

39. The Plan also proposed to arbitrarily limit the U.S. Customers' claims to one dollar, without any meaningful attempt to independently value the claims for voting purposes.

**4. U.S. Class Counsel's Response to the Meetings Motion and Notice of Motion**

40. In response to the Meetings Motion, U.S. Class Counsel moved for, among other things, an order:

- (a) declaring that each U.S. Customer is a creditor in their own right and entitled to a vote on any plan of compromise and/or arrangement filed in these proceedings;
- (b) declaring that, in these proceedings, the plaintiffs in the U.S. Class Actions (the "**U.S. Plaintiffs**") are representatives of the U.S. Customers and are entitled to vote on any plan of compromise and/or arrangement filed in these proceedings on behalf of the U.S. Customers, and/or, if necessary, formally appointing the U.S. Plaintiffs as representatives for the U.S. Customers and Paliare Roland Rosenberg Rothstein LLP as their lawyers in these proceedings; and
- (c) for advice and directions from the Court in respect of a summary valuation (estimation) of the U.S. Customer Claims for voting purposes only.

## 5. The Other Contingent Creditors

41. In the motion below, two other groups of contingent creditors with significant claims joined U.S. Class Council in opposing the Meetings Order, on substantially the same bases:

- (a) Haidar Omarali, representative plaintiff on behalf of class members in an Ontario class action, certified on July 27, 2016 (the “**Omarali Class Action**”). The Omarali Class Action represents 7,724 former sales agents of Just Energy, who were allegedly wrongfully classified as independent contractors. These claimants seek entitlements as employees pursuant to the *Employment Standards Act, 2000* SO, c. 41; and
- (b) approximately 250 claimants in four tort actions brought in Texas pursuant to Texan law. These claimants are pursuing damages for alleged loss of business, personal injury, and/or damage to property arising out of the Applicant’s mismanagement during and after the Texas Weather Events (the “**Mass Tort Claimants**”, collectively with the Omarali Class Action and the U.S. Customers’ the “**Contingent Creditors**”).

42. These claimants were joined by a third contingent creditor, Pariveda Solutions Inc., who sought valuation of their contingent claim. Pariveda Solutions Inc., estimates the value of its claim at US \$46 million, but the Plan valued the claim at \$1 for voting purposes.

## 6. The June 10, 2022 and June 23 Orders

43. The motions were heard on June 7, 2022.

44. On June 10, 2022, the Motion Judge endorsed the Applicants' motion, with reasons to follow.

45. The Motion Judge accepted the Contingent Creditors' submissions that a purposive reading of the CCAA and the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3 supports the proposition that contingent claimants are legally creditors for the purposes of the CCAA and accepted U.S. Class Counsel's submissions that the Applicants' valuation of the contingent claims at \$1 was inappropriate in the circumstances and impermissibly devalued the contingent claims. Accordingly, His Honour endorsed that a summary proceeding be conducted on an expedited basis to determine the validity and value of the contingent claims.

46. The Motion Judge also held, however, that:

- (a) it was appropriate for the Applicants' to limit (at least) hundreds of thousands of the U.S. Customers with claims to one single vote; and,
- (b) the Unsecured Creditor Class would include the Term Loan Lenders as well as the Other General Unsecured Creditors.

47. The Motion Judge released reasons for decision on June 21, 2022, with a further endorsement and reasons released on June 23, 2022 in respect of the issue of the appropriateness of the consideration being offered to the Term Loan Lenders.

48. This proposed appeal addresses the Motion Judge's June 10, 2022 and June 23, 2022 Orders.

**C. Proposed appeal**

49. If leave is granted, the Court would be asked to answer the following two questions:

(a) Did the court below err in denying a vote to each U.S. Customer (and to other similarly situated creditors)?

(b) Did the Court err in allowing the Term Loan Lenders to vote in the same class as other unsecured creditors who will be receiving a fundamentally different form of consideration through the proposed plan?

**D. Leave to appeal should be granted**

50. The points raised on the proposed appeal are significant to these proceedings and to the practice of insolvency law and are *prima facie* meritorious.

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

52. The motion judge erred by denying hundreds of thousands of the Applicants' U.S. Customers and other creditors their right to vote on the plan, and effectively undermined the scheme of the CCAA.

53. There is no legal authority, either in the CCAA itself or in insolvency jurisprudence more broadly, to support the conclusion that the Applicants' U.S. Customers should only be afforded one vote per class action. To the contrary, the general discretion afforded to a supervising judge by the CCAA is expressly "subject to the restrictions set out in this Act".

54. The CCAA affords each creditor a vote—it makes no distinction for the procedural mechanism used to advance the creditor’s claim, whether class action, mass action or otherwise. Moreover, the CCAA expressly empowers individual creditors by conditioning the success of a restructuring plan on a double majority consisting not only a special majority by value, but a majority in number.

55. The Motion Judge’s finding that the U.S. Customers should be afforded only one vote per class action runs contrary to the well established and longstanding principle, reflected in the language of the CCAA that each creditor is afforded a vote.

56. The Motion Judge’s decision has the potential to disenfranchise creditors whose claims are the subject of class actions and other representative claims in future CCAA proceedings.

57. The Motion Judge also erred in finding that the Term Loan Lenders should be in the same class as the Other General Unsecured Creditors (including the U.S. Customers) for voting purposes inasmuch as the form of consideration given to the Term Loan Lenders (equity) and the Other General Unsecured Creditors (a declining cash payout) are so entirely different in kind and provide such very different opportunities and risks, as to preclude any meaningful consultation between these two groups of creditors at the creditors meeting.

58. The proposed appeal will not unduly hinder the progress of the CCAA Proceeding.

**E. Statutory Grounds**

59. Rules 1.04, 1.05, 61.03.1 and 63.02 of the *Rules of Civil Procedure*.
60. Sections 2, 6, 11, 22, and 14(2) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
61. Sections 2 and 121 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended.
62. Such further and other grounds as the lawyers may advise.

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

63. Orders and endorsements of the court made in the CCAA Proceeding;
64. The evidence before the court on the motion; and
65. Such further and other evidence as counsel may advise and as this Honourable Court may permit.



July 4, 2022

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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**

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

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THIS IS **EXHIBIT “G”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

---

Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

August 4, 2022

**VIA EMAIL**

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**Re: Just Energy Group Inc.  
Court File No. CV-21-00658423-00CL**

We write regarding estimation of the *Donin* and *Jordet* consumer class claims (the “U.S. Class Actions”). As you know, paragraph 2(vii) of Justice McEwen’s endorsement dated June 10, 2022, directed the Monitor to determine a process to conduct the estimation of the U.S. Class Actions. Further to that order, which remains outstanding and unvaried, the *Donin* and *Jordet* creditor groups propose that, subject to their availability, Justice O’Connor or Justice McEwen estimate the claims. If neither is available, then we propose that a mutually agreed arbitrator from JAMS be engaged. We further propose that the following process and schedule be imposed:

1. by August 19th, the Parties to provide evidence in writing and make written submissions to the adjudicator regarding the merits of the *Donin* and *Jordet* creditor groups’ claims, conditional class certification of the creditor groups for the purposes of estimation, and estimation of the damages of their claim (the “Written Record”);
2. as soon as possible and within sufficient time to permit the estimation of the *Donin* & *Jordet* creditor groups’ claims by August 31, 2022, the adjudicator will convene a brief hearing at which parties will be entitled to make oral argument and address any questions the adjudicator may have based on the Written Record;
3. by August 31, 2022, the adjudicator to release their estimate of the *Donin* & *Jordet* creditor groups’ claims.

Following the adjudicator’s ruling, the estimation of the *Donin* and *Jordet* claims shall be used for the purposes of voting and standing in the within the CCAA proceeding.

## **A. Background of the Estimation Process**

As evidenced by the progress made thus far, Justice O'Connor is well-equipped to quickly estimate the claims. He has held four hearings regarding the procedural posture of the U.S. Class Actions, the scope and damages involved in these claims, and the merits of the consumers' claim that Just Energy overcharged them for gas and electricity. The Parties have also made substantial written submissions to Justice O'Connor addressing these same issues, having collectively submitted seven briefs totaling 68 pages. Justice O'Connor has also issued three procedural and substantive rulings, demonstrating his familiarity with the cases and their merits. Indeed, on May 24, 2022, Justice O'Connor issued a ruling ordering Just Energy to produce additional discovery and narrowing the scope of the *Jordet* and *Donin* claims. Following Justice O'Connor's ruling, Just Energy produced a selection of documents and data, which will allow the parties to efficiently and effectively estimate the *Jordet* and *Donin* claims.

In light of Justice O'Connor's prior rulings, estimation of the *Donin* and *Jordet* claims can be conducted expeditiously. Following Justice O'Connor's ruling on May 24th, 2022, the Company has produced documents and data which may allow the Parties to effectively estimate the claims.

## **B. The Estimation Process.**

The estimation process can be conducted efficiently and swiftly. The *Jordet* and *Donin* claims are based upon breach of contract. In their written submissions, the Parties will argue whether Just Energy charged its customers variable rates that violated the terms of its contracts, namely to set variable rates based upon market and business conditions. The Parties will compare the rates charged by Just Energy to its wholesale costs for natural gas and electricity and the local utilities to assess whether Just Energy charged competitive prices. Just Energy has produced all the data necessary to make this comparison. The Parties will also make written submissions regarding whether the *Jordet* and *Donin* claims should be certified as a class for purposes of the estimation process. This is a simple question of law applied to a limited and straightforward set of facts. Indeed, all four U.S. courts to consider a contested motion to certify a class of customers overcharged for variable gas and electric rates pursuant to their customer agreements have granted the motions and certified the respective classes. The issues are narrow, well trod by U.S. courts, and damages can be simply assessed using data produced by Just Energy. There is no reason a claims estimation cannot be rendered in short order.

Each of these steps can proceed while the Company determines its next steps within the CCAA proceeding.

### **1. A Breach of Contract Claim Can Be Quickly Adjudicated.**

To state a breach of contract claim, the classes need only satisfy three elements: "the existence of a contract, including its essential terms; breach of a duty imposed by the contract;

and resultant damages.” *Jordet v. Just Energy Solutions, Inc.*, 505 F. Supp. 3d 214, 222 (W.D.N.Y. 2020) (citations omitted). The classes allege that Just Energy breached its contract with class members, which represented that variable rates were priced based on market/business conditions, because Just Energy’s variable rates bear no semblance to either wholesale prices or retail rates otherwise available in the market. The classes will use comparators to demonstrate that Just Energy’s prices are not based on market conditions.

First, the classes will use comparisons to class members’ local utility rates, which countless courts have held is a proper comparator. In *Mirkin v. XOOM Energy, LLC*, the U.S. Court of Appeals for the Second Circuit concluded that the plaintiffs could plausibly state a claim for breach of contract because the defendant ESCO deviated from the leading public utility by “up to” sixty percent. 931 F.3d 173, 178 (2d Cir. 2019). The Second Circuit also held that utilities reflect wholesale market costs that can be used to evaluate whether an ESCOs’ rates are reflective of such costs. *Id.* at 178 n.2 (“Because utility companies like Con Edison participate on the wholesale energy market, their rates are another reflection of the Market Supply Cost.”). Courts throughout the United States agree that contemporaneous utility rates serve as a proper barometer for business and market conditions and have sustained claims based on the differentials. *See, e.g., Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 426 (S.D.N.Y. 2020) (“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.”); *Oladapo v. Smart One Energy, LLC*, No. 14-7117, 2016 WL 344976, at \*4 (S.D.N.Y. Jan. 27, 2016) (“the fact that [the ESCO’s] rates consistently rose over time, while those set by [local utility] fluctuated, indicates that [the ESCO] was not setting its rates in response to ‘changing gas market conditions’”); *Melville v. Spark Energy, Inc.*, No. 15-8706, 2016 WL 6775635, at \*5 (D.N.J. Nov. 15, 2016) (“because [local utility] is a supplier in the energy market; its prices thus serve as at least partial indications of the market rate and are relevant despite the lack of a savings guarantee clause.”); *Landau v. Viridian Energy PA LLC*, 223 F. Supp. 3d 401, 410 (E.D. Pa. 2016) (finding breach of contract where rates were higher than the local utility’s rates); *Chen v. Hiko Energy, LLC*, No. 14-1771, 2014 WL 7389011, at \*4 (S.D.N.Y. Dec. 29, 2014) (“Given the dramatic differences in pricing between defendant and [the local utility], it is plausible defendant’s rates were not, in fact, reflective of the wholesale cost of electricity or gas, market-related factors, and . . . “costs, expenses and margins.”).

Second, the classes will use Just Energy’s own costs to demonstrate that Just Energy’s variable rate was inconsistent and significantly higher than wholesale costs. *See, e.g., Landau*, 223 F. Supp. 3d at 408-09 (where “[an ESCO’s] rates increased or stayed the same even when the average wholesale market price for the region decreased[,]” breach of contract claim may proceed to trial); *Mirkin*, 2016 WL 3661106, at \*8 (breach of contract where 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 (D. Conn.), and *Steketee v. Viridian Energy, Inc.*, No. 15-585 (D. Conn.)); *Edwards v. N. Am. Power & Gas*,

*LLC*, 120 F. Supp. 3d 132, 42-43 (D. Conn. 2015) (sustaining contract 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.”).

Each of these comparators can be easily analyzed using data Just Energy produced to determine whether Just Energy breached its contracts with its consumers to proceed with the evaluation.

## 2. All Four Similar Actions to Reach Class Certification Have Been Certified.

Determining whether the classes should be certified is a simple matter of applying well-trod U.S. law to the limited set of facts at issue here. Notably, the four U.S. courts that have addressed a contested motion to certify a class of ESCO customers overcharged under the terms of their customer agreements easily granted the motions. See *Bell v. Gateway Energy Services Corp.*, No. 31168/2018 (Rockland Cnty. Super. Ct. Jan. 8, 2021), NYSCEF Doc. No. 152; *Claridge v. N. Am. Power & Gas, LLC*, No. 15-1261, 2016 WL 7009062 (S.D.N.Y. Nov. 30, 2016); *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); and *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.

Indeed, there are few cases better suited for class certification. The *Donin* and *Jordet* claims arise out of uniform misrepresentations regarding the pricing methodology for Just Energy’s variable rate made in its standard customer contract. Just Energy provides its prospective natural gas and electricity customers with its standard contract prior to each contract’s initiation. The resultant injury to the class members is also uniform because when Just Energy sets its variable rates, it uses the same rate for all customers within each utility region.

Under U.S. law, breach of contract claims are routinely certified for class treatment. “Contract claims satisfy Rule 23(b)(3) when the claims of the proposed class ‘focus predominantly on common evidence[.]’” *Claridge*, 2016 WL 7009062, at \*6 (quoting *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 125 (2d Cir. 2013)). “[C]laims arising from interpretations of a form contract appear to present the classic case for treatment as a class action, and breach of contract cases are routinely certified as such.” *In re Scotts EZ Seed Litig.*, 304 F.R.D. 397, 411 (S.D.N.Y. 2015); *accord Gillis v. Respond Power, LLC*, 677 F. App’x 752, 756 (3d Cir. 2017) (“Because form contracts should be interpreted uniformly as to all signatories, Pennsylvania and federal courts have recognized that claims involving the interpretation of standard form contracts are particularly well-suited for class treatment.”) (vacating district court’s denial of class certification and remanding). Additionally, “[t]he Second Circuit has affirmed certification of a contract claim when minor variations existed in the language of the disputed contracts because the underlying claim was directed to a ‘substantially similar’ terms.”

*Claridge*, 2016 WL 7009062, at \*6 (quoting *In re U.S. Foodservice Inc.*, 729 F.3d at 124; accord *In re Scotts EZ Seed Litig.*, 304 F.R.D. at 411 (certifying contract class where, “[a]lthough plaintiffs do not allege defendants breached a ‘form contract,’ the representations defendants made to each plaintiff were uniform.”) (quoting *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 74 (E.D.N.Y. 2004)); *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003), *aff’d sub nom. Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005) (affirming certification of breach of contract class where the defendant failed to price natural gas in accordance with its uniform contractual obligations).

Timely and efficient estimation of the *Jordet* and *Donin* claims is in the best interest of all Parties. Estimation will ensure that the *Jordet* and *Donin* claims will have fair and equitable participation in any upcoming vote within the CCAA proceeding.

Class Counsel looks forward to conferring with you regarding the estimation.

Respectfully submitted,

*s/ D. Greg Blankinship*

D. Greg Blankinship

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THIS IS **EXHIBIT “H”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

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Toronto, Ontario, Canada M5X 1B8  
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**OSLER**

Toronto

August 4, 2022

Montréal

Marc Wasserman  
Direct Dial: 416.862.4908  
mwasserman@osler.com  
Our Matter Number: 1218715

Calgary

**SENT BY EMAIL**

Ottawa

Massimo (Max) Starnino  
Paliare Roland Rosenberg Rothstein LLP  
155 Wellington Street West  
35th Floor  
Toronto, Ontario M5V 3H1

Vancouver

New York

D. Greg Blankinship  
Finkelstien, Blankinship, Frei-Pearson & Garber, LLP  
1 North Broadway  
Suite 900  
White Plains, NY 10601

Steven L. Wittels  
Wittels McInturff Palikovic  
18 Half Mile Road  
Armonk, NY 10504

Dear Counsel:

**Just Energy Group Inc.**  
**Court File No.: CV-21-00658423-00CL**

We are writing in regard to your letter dated August 4, 2022, where you state that an estimation of your clients' claims are necessary for the purposes of voting and standing in the CCAA Proceeding. With respect, we disagree.

**Proposed Estimation Lacks Utility**

As you have been aware of since July 18, 2022, the Just Energy Entities intend to file a motion seeking the approval of a sale and investment solicitation process (“SISP”) supported by a stalking horse transaction. This is necessary for the stability of the company as it seeks to emerge from insolvency protection in the near term. The SISP will test the market to determine the value of the company. The estimation of your clients' claims is irrelevant to this process, if the SISP determines that there is value beyond the secured creditors, a process will be implemented to determine who is entitled to any additional value. You have the ability to participate in the SISP process which allows for transactions superior to the stalking horse transaction to be brought forward, including transactions in the form of a plan of arrangement.

We note that we have never taken the position that you do not have standing in the CCAA Proceedings as is demonstrated by your continued participation in the court process.

We also note that the Just Energy Entities have spent a significant amount of time re-adjudicating aspects of your clients' claims before Claims Officer O'Connor, who agreed with previous decisions of the U.S. Courts and significantly reduced the scope of the Proofs of Claim filed.

For these reasons, as previously disclosed to you, Just Energy intends to bring a motion for advice and directions returnable on August 17<sup>th</sup> with respect to suspension of the Claims Process in light of the proposed SISP. To the extent that you wish to make submissions with respect to this motion, you may, of course, do so.

### **Proposed Estimation Process Not Feasible**

In addition to having no utility at this time, it is not feasible to provide for an estimation of the Donin and Jordet claims in the manner set forward in your letter. While Justice O'Connor's rulings confirm (consistent with prior US decisions) the more limited scope of the Putative US Class Actions, multiple substantive issues must still be determined before any estimate can be made.

Even on the most expedited timeframe imaginable, an estimation would still require a meaningful and fair determination of (among other things):

- (a) certification;
- (b) liability, if any, which would require determination of:
  - a. the implications of key contractual terms;
  - b. what appropriate comparators should be; and
  - c. which comparators are appropriate for which customers; and
- (c) damages, including the analysis of what differential, if any, there was between what putative class members paid under the variable rate energy contracts and any appropriate benchmark price.

Absent determinations of these key contingencies, any estimate will, at best, generate a value that is meaningless and arbitrary and be unfair to the company and its stakeholders. Many of these issues require expert evidence in order for an adjudicator to make an informed decision. It is not feasible to provide written evidence, expert reports, written briefs, and make oral arguments in the manner suggested in your letter while the company is in the process of implementing a SISP.

### Advance Information Provided with respect to the Proposed SISP

On July 16, 2022, Canadian counsel for US Class Counsel advised for the first time that their clients anticipate filing their own restructuring plan for consideration by the creditors. To date, we have not received any outline or indication of what such a proposed plan would provide. We note that the proposed SISP will give your clients the opportunity to submit any transaction that they consider appropriate as part of that process, including a plan of arrangement.

Once informed of your intention to put forward a plan, Just Energy provided you with early access to information regarding its proposed SISP, including the terms therein and intended timing for a motion to approve same, and have both welcomed and facilitated your participation in same. More particularly:

Date	Event
July 18, 2022	Just Energy advised Canadian counsel and the financial advisor for US Class Counsel (collectively, the “ <b>Advisors</b> ”) that it would be launching a SISP, and that it would give the Advisors data room access in connection therewith as soon as it was set up (prior to launch of the SISP).
July 20, 2022	Access to the data room was provided to certain of the Advisors, with the remaining Advisors confirming access by July 22, 2022.
July 22, 2022	A form of non-disclosure agreement was provided for the Advisors’ proposed financier for a potential transaction, which was subsequently settled and executed.
July 25, 2022	During a call with the Advisors, Just Energy advised that it would be making a motion for approval of the SISP on August 17 <sup>th</sup> .
July 30, 2022	Just Energy provided the proposed SISP to the Advisors.
August 1, 2022	Advisors apprised of, among other things, the proposed break fee (including quantum), the structure of the stalking horse bid (i.e. that it would proceed by way of reverse vesting order) and the anticipated stalking horse bidder information rights.

We remain available to discuss the foregoing with you at your convenience and are happy to consider any comments or suggestions you may have with respect to the SISP. We also remain available to attempt to resolve any outstanding matters consensually in advance of the August 17<sup>th</sup> hearing.

Yours very truly,

A handwritten signature in black ink, appearing to be 'M. Wasserman', with a long horizontal flourish extending to the right.

Marc Wasserman  
MS:fd

c: Robert Thornton and Rebecca Kennedy - *Thornton Group Finnigan LLP*  
Paul Bishop, *FTI Consulting Canada Inc.*  
Jeremy Dacks – *Osler Hoskin & Harcourt LLP*

THIS IS **EXHIBIT “I”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

## SUPPORT AGREEMENT

This SUPPORT AGREEMENT (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, together with all exhibits and schedules attached hereto or incorporated herein, this “**Agreement**”) dated August 4, 2022 is made among:

- (a) Just Energy Group Inc. (“**Just Energy**”), 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., 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 (collectively, the “**Just Energy Entities**” or the “**Company**”);
- (b) LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP (each in its capacity as holder of Claims under the DIP Financing (as defined below), collectively, the “**DIP Lenders**”);
- (c) CBHT Energy I LLC, in its capacity as the beneficial holder of the Pre-Filing Claims of BP Canada Energy Group ULC and BP Energy Company (“**CBHT**” and together with OC III LFE I LP and the DIP Lenders, the “**Sponsor**”);
- (d) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, “**Shell**”); and
- (e) the undersigned financial institutions as lenders under the Credit Agreement (as defined below), in each case solely in its capacity as a holder of Claims under the Credit Agreement (such lenders in such capacity, the “**Supporting Secured CF Lenders**”), and National Bank of Canada, as administrative agent under the Credit Agreement (in such capacity, the “**Credit Facility Agent**”).

The Just Energy Entities, the Sponsor, Shell after the Shell Effective Date, the Supporting Secured CF Lenders after the Secured CF Effective Date, and any other Person (as defined in the Bankruptcy Code (as defined below)) that becomes a party hereto in accordance with the terms hereof are referred to herein collectively, as the “**Parties**” and individually, as a “**Party**.”

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in **Exhibit A**.

### **RECITALS**

**WHEREAS**, on March 9, 2021 (the “**Filing Date**”), (a) Just Energy and certain of the Just Energy Entities commenced proceedings (the “**CCAA Proceedings**”) under the Companies’ Creditors Arrangement Act (as amended, the “**CCAA**”) in the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) and (b) the foreign representative for certain of the Just Energy Entities commenced cases (the “**Chapter 15 Cases**”) under chapter 15 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**US Bankruptcy Court**”);

**WHEREAS**, also on March 9, 2021, (a) the CCAA Court entered an order (as amended and restated on March 19, 2021 and May 26, 2021, and as it may be further amended, restated, varied and/or supplemented from time to time, the “**Initial Order**”) granting certain relief to Just Energy, including, but not limited to, approval of debtor-in-possession financing (the “**DIP Financing**”) pursuant to that certain *CCAA Interim Debtor-in-Possession Financing Term Sheet* (as amended from time to time, the “**DIP Term Sheet**”) and (b) the US Bankruptcy Court entered an order [Docket No. 23] granting certain relief to the Just Energy Entities, including, but not limited to, authorizing the Just Energy Entities to comply with the terms and conditions of the DIP Financing;

**WHEREAS**, the Parties have engaged in good faith, arm’s-length negotiations regarding a stalking horse transaction concerning the Company (the “**Stalking-Horse Bid**”), the material terms of which are set forth in that certain transaction agreement and related exhibits attached hereto as **Exhibit B** (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with this Agreement and in connection with the SISP, the “**Transaction Agreement**”) and consistent in all material respects with that certain stalking horse transaction term sheet and related exhibits attached hereto as **Exhibit C** (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with this Agreement and in connection with the SISP, the “**Stalking Horse Term Sheet**”) (the foregoing, including the transactions contemplated by the exhibits to such term sheet, the “**Transaction**”).

**WHEREAS**, the Parties have negotiated in good faith the terms of a sale and investment solicitation process to be implemented in the CCAA Proceedings, the terms of which are attached hereto as **Exhibit D** (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and this Agreement, the “**SISP**”).



**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

## **AGREEMENT**

### 1. **Effective Date.**

(a) This Agreement shall become effective, and the obligations contained herein shall become binding upon the Company and the Sponsor upon the date that this Agreement has been executed and delivered by (x) the Company and (y) the Sponsor (such date, the “**Effective Date**”); *provided, however*, that until the SISP Order is granted, the Company’s sole obligations under this Agreement are those set forth in Sections 6(a), (b), (c), (d), (g), (h) and (j) and 9, and in the event that SISP Order is not granted on or before the applicable Milestone, the Company shall have no obligations hereunder; *provided, further*, that on the Effective Date, the Plan Support Agreement and the Backstop Commitment Letter shall automatically terminate.

(b) This Agreement shall become effective, and the obligations contained herein shall become binding on Shell (and the reciprocal obligations will become binding on the Company, the Sponsor, and the other Parties), upon the first date (such date, the “**Shell Effective Date**”) that this Agreement (x) has met the conditions set forth in Section 1(a) and (y) has been executed and delivered by Shell, the Sponsor, and the Company. For the avoidance of doubt, Shell shall have no obligations under Sections 5, 6, and 7. In the event that SISP Order is not granted on or before the applicable Milestone, Shell shall have no obligations hereunder.

(c) This Agreement shall become effective, and the obligations contained herein shall become binding on a Supporting Secured CF Lender (and the reciprocal obligations will become binding on the Company, the Sponsor, and the other Parties), upon the first date (such date, the “**Secured CF Effective Date**”) that this Agreement (x) has met the conditions set forth in Section 1(a) and (y) has been executed and delivered by such Supporting Secured CF Lender, the Company, the Sponsor, and Shell. In the event that SISP Order is not granted on or before the applicable Milestone (without regard to any extension of such Milestone after the date hereof, unless the Requisite Supporting Secured CF Lenders have consented thereto), the Supporting Secured CF Lenders shall have no obligations hereunder.

2. **Exhibits and Schedules Incorporated by Reference.** The Stalking Horse Term Sheet and any other exhibits attached to the Stalking Horse Term Sheet or hereto (and any schedules to such exhibits) (collectively, the “**Exhibits and Schedules**”) are expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall be deemed to include the Stalking Horse Term Sheet and any other Exhibits and Schedules. In the event of any inconsistency between this Agreement (without reference to the Exhibits and Schedules) and the Exhibits and Schedules, this Agreement (without reference to the Exhibits and Schedules) shall govern. In the case of a conflict of the provisions contained in the text of this Agreement and the Transaction Agreement (when executed and approved by the CCAA Court), the terms of the Transaction Agreement (when executed and approved by the CCAA Court) shall govern (provided that the absence of an approval or consent right in the Transaction Agreement in

favour of the Supporting Secured CF Lenders in respect of a matter will not be considered to be in conflict with and will not limit an approval or consent right of the Supporting Secured CF Lenders in this Agreement).

3. **Definitive Documents.**

(a) The definitive documents and agreements governing the Transaction (and all exhibits and schedules attached thereto, the “**Definitive Documents**”) shall consist of: (i) this Agreement, (ii) the Stalking Horse Term Sheet; (iii) the SISP Order; (iv) the SISP Recognition Order; (v) the Transaction Agreement; (vi) the Vesting Order; (vii) the Vesting Recognition Order; (viii) the New Credit Agreement; (ix) the New Intercreditor Agreement; (x) the Implementation Steps; (xi) the Articles of Reorganization; and (xii) such other definitive documentation relating to the Transaction as is necessary or desirable to consummate the Transaction.

(b) The Definitive Documents not executed or in a form attached to this Agreement remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter, or instrument related to the Transaction shall contain terms, conditions, representations, warranties, and covenants consistent in all material respects with the terms of this Agreement, as they may be modified, amended, or supplemented in accordance with this Agreement, and shall be subject to the approval requirements set forth herein.

(i) Any document that is included within the definition of “**Definitive Documents,**” including any amendment, supplement, or modification thereof, shall be in form and substance reasonably acceptable to (x) the Just Energy Entities and (y) the Sponsor.

(ii) If the Shell Effective Date has occurred, then any document that is included within the definition of “**Definitive Documents**” to which Shell is a signatory shall be in form and substance reasonably acceptable to Shell.

(iii) If the Secured CF Effective Date has occurred, then any document that is included within the definition of “**Definitive Documents,**” including any amendment, supplement, or modification thereof shall be in form and substance reasonably acceptable to the Requisite Supporting Secured CF Lenders; *provided, however,* that the New Credit Agreement and New Intercreditor Agreement shall also be consistent and comply with the term sheets for each attached as exhibits to the Stalking Horse Term Sheet.

4. **Milestones.** The Transaction shall be implemented on the following timeline (each deadline, as may be extended in accordance with this Agreement, a “**Milestone**”):

- (a) In connection with the CCAA Proceedings,
- (i) On or before August 4, 2022, the Just Energy Entities shall serve the SISP Motion;
  - (ii) On or before August 17, 2022, the Just Energy Entities shall obtain the SISP Order;

(iii) On or before October 13, 2022, the Just Energy Entities shall serve the Vesting Motion;

(iv) On or before October 21, 2022, the Just Energy Entities shall obtain the Vesting Order; and

(b) In connection with the Chapter 15 Cases,

(i) On or before August 19, 2022, the Just Energy Entities shall file with the US Bankruptcy Court the Claims Procedure Recognition Motion (which, for greater certainty, may be contained in the same motion as the SISP Recognition Motion);

(ii) On or before September 9, 2022, the Just Energy Entities shall obtain the Claims Procedure Recognition Order;

(iii) On or before August 19, 2022, the Just Energy Entities shall file with the US Bankruptcy Court the SISP Recognition Motion (which, for greater certainty, may be contained in the same motion as the Claims Procedure Recognition Motion);

(iv) On or before September 9, 2022, the Just Energy Entities shall obtain the SISP Recognition Order;

(v) On or before October 24, 2022, the Just Energy Entities shall file with the US Bankruptcy Court the Vesting Recognition Motion;

(vi) The Just Energy Entities shall facilitate the setting of a hearing before the US Bankruptcy Court on the Vesting Recognition Motion to be no later than November 14, 2022;

(vii) On or before November 16, 2022, the Just Energy Entities shall obtain the Vesting Recognition Order; and

(c) In connection with the Transaction,

(i) On or before the date of the SISP Order, the Sponsor and the applicable Just Energy Entities shall have executed the Transaction Agreement; and

(ii) No later than November 30, 2022 (the “**Initial Outside Date**”), or such later date or dates as may be determined by the Sponsor on written notice to the other Parties (the “**Outside Date**”), the Transaction shall close; *provided, however*, in the event the Initial Outside Date is not extended, the Initial Outside Date shall be the Outside Date; *provided, further*, to the extent the only condition to the closing of the Transaction that remains outstanding is the receipt of Regulatory Approval(s), the Outside Date shall be automatically extended for another sixty (60) days, and thereafter, the Sponsor shall have the right to further extend the Outside Date in its sole discretion on written notice to the other Parties.

The Sponsor may extend a Milestone on written notice to the Just Energy Entities and the other Parties (which may be delivered by email), acting reasonably.

5. **Commitments of the Sponsor.** Subject to the terms and conditions hereof and to carrying out the SISP in accordance with the SISP Order, unless inconsistent with the DIP Lenders' obligations or rights under the DIP Financing, which obligations and rights shall control in the event of a conflict, and subject to the terms and conditions hereof, the Sponsor shall, from the Effective Date until the occurrence of the SA Termination Date (as defined below):

(a) support the Transaction and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which it is legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Transaction; *provided, however*, the foregoing shall not require the Sponsor to take or refrain from taking any action that would materially change or impair the terms of the Transaction or its rights under this Agreement;

(b) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve the consummation of the Transaction and implementation steps provided for or contemplated in the Transaction; *provided* that, subject to the terms of the Definitive Documents and this Agreement, in no circumstance shall there be any obligation to amend, modify, or waive any provision of the Transaction Agreement;

(c) not object to, delay, impede, or take any other action to interfere with consummation or implementation of the Transaction contemplated by this Agreement; *provided* that the exercise of any rights under the Transaction Agreement shall not be considered a breach of this Agreement;

(d) not directly or indirectly take any action that could reasonably be expected to or would interfere with, delay, impede, or postpone the Transaction or the transactions contemplated by the Transaction or this Agreement; *provided* that the exercise of any rights under the Transaction Agreement shall not be considered a breach of this Agreement;

(e) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Transaction;

(f) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the CCAA Proceedings, the Chapter 15 Cases, this Agreement, or the Transaction contemplated herein against the Just Energy Entities or the other Parties hereto to the extent such litigation or proceeding is inconsistent with the transactions contemplated by this Agreement, other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement; *provided, however*, for the avoidance of doubt, as set forth above in this Section, the foregoing shall not affect the DIP Lenders' ability to take any action permitted under the DIP Term Sheet or in connection with the DIP Financing; *provided further* that nothing herein shall affect the Sponsor's ability to take any action permitted under the Transaction Agreement;

(g) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or interests in the Just Energy Entities; *provided, however*, for the avoidance of doubt, as set forth above in this Section, the foregoing shall not affect the DIP Lenders' ability to take any action permitted under the DIP Term Sheet or in connection with the DIP Financing; *provided further* that nothing herein shall affect the Sponsor's ability to take any action permitted under the Transaction Agreement;

(h) except as contemplated in this Agreement, not initiate, or have initiated on its behalf, not object to, delay, impede, or take any other action to interfere with the Just Energy Entities' ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court; *provided, however*, for the avoidance of doubt, as set forth above in this Section, the foregoing shall not affect the DIP Lenders' ability to take any action permitted under the DIP Term Sheet or in connection with the DIP Financing, or in connection with the Transaction; and

(i) between the date hereof and the SA Termination Date, provide prompt written notice to the Just Energy Entities and the other Parties, to the extent known by the Sponsor, of: (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of the Sponsor contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of the Sponsor contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in this Agreement or a Definitive Document not to occur or become impossible to satisfy; or (ii) the receipt of written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Transaction.

Notwithstanding the foregoing, nothing in this Agreement shall (i) be construed to prohibit the Sponsor from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as, from the Effective Date until the occurrence of the applicable SA Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement or the Transaction Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Transaction; (ii) prevent the Sponsor from enforcing this Agreement or the Transaction Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement or the Transaction Agreement; (iii) affect, modify, or change in any way any right of the Sponsor under the DIP Term Sheet and any related documents; (iv) except as otherwise expressly provided in this Agreement or the Transaction Agreement, be construed to limit the Sponsor's rights under any applicable credit agreement, including the DIP Term Sheet, other loan document, instrument, and/or applicable law; (v) affect the rights of the Sponsor to consult with the Just Energy Entities, Shell, the Supporting Secured CF Lenders, the Credit Facility Agent, or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings or the Chapter 15 Cases; *provided* that without the written consent (which may be delivered via email) of the Just Energy Entities, the Sponsor shall not consult with any party whom the Just Energy Entities have informed the Sponsor has made an Alternative Restructuring Proposal; (vi) impair or waive the rights of the Sponsor to assert or raise any objection permitted under this Agreement or the Transaction Agreement in connection with any hearing contemplated by this Agreement, the Transaction Agreement or the SISP or in the CCAA

Court or the US Bankruptcy Court or prevent the Sponsor from enforcing this Agreement or the Transaction Agreement against the Just Energy Entities, Shell, the Supporting Secured CF Lenders, or the Credit Facility Agent; (vii) based on advice of counsel (which may be in-house counsel), prevent the Sponsor from taking any action that is required by applicable law (*provided, however*, that if the Sponsor proposes to take any action that is otherwise inconsistent with this Agreement or the Transaction Agreement in order to comply with applicable law, the Sponsor shall provide advance notice to the extent permissible under applicable law to the other Parties at that time to the extent the provision of notice is practicable under the circumstances); *provided further* that as of the date hereof, the Sponsor represents and warrants to each other Party that the Sponsor is unaware of any such action; (viii) based on advice of counsel (which may be in-house counsel), require the Sponsor to take any action that is prohibited by applicable law or to waive or forego the benefit of any applicable legal privilege (*provided, however*, that if the Sponsor proposes to take any action that is otherwise inconsistent with this Agreement or the Transaction Agreement in order to comply with applicable law, the Sponsor shall provide advance notice to the extent permissible under applicable law to the other Parties at that time to the extent the provision of notice is practicable under the circumstances); *provided further* that, as of the date hereof, the Sponsor represents and warrants to each other Party that the Sponsor is unaware of any such matter; or (ix) except as otherwise provided in, or envisioned by, this Agreement as of the Effective Date, require the Sponsor to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations.

6. **Commitments of the Company.** Subject to the terms and conditions hereof and to carrying out the SISP in accordance with the SISP Order, and except as the Sponsor may expressly release the Just Energy Entities in writing (which writing may be via email) from any of the following obligations (which release may be withheld, conditioned, or delayed by the Sponsor in its sole discretion) (each such release, a “**Section 6 Waiver**”):

(a) each of the Just Energy Entities: (i) agrees to (x) support and use commercially reasonable efforts to complete the Transaction as set forth in this Agreement, (y) negotiate in good faith and execute and deliver the Definitive Documents and take any and all steps reasonably necessary and appropriate in furtherance of the Transaction and this Agreement, and (z) take commercially reasonable efforts to complete the Transaction in accordance with each Milestone set forth in Section 4; and (ii) shall not (x) file any motion, pleading, or Definitive Documents with the CCAA Court, the US Bankruptcy Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, are inconsistent with this Agreement (including the consent rights of the other Parties set forth herein as to the form and substance of such motion, pleading, or Definitive Document), or (y) undertake any action that is inconsistent with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Transaction described in this Agreement or the Stalking Horse Term Sheet;

(b) each of the Just Energy Entities agrees to use commercially reasonable efforts to cure, vacate, reverse, set aside, or have overruled any ruling or order of the CCAA Court, the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction (including any appellate court) enjoining or rendering impossible the consummation of the Transaction;



(c) each of the Just Energy Entities agrees to provide prompt written notice to the other Parties between the date hereof and the SA Termination Date of: (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (x) any representation or warranty of the Just Energy Entities contained in this Agreement to be untrue or inaccurate in any material respect, (y) any covenant of the Just Energy Entities contained in this Agreement not to be satisfied in any material respect, or (z) any condition precedent contained in this Agreement or a Definitive Document not to occur or become impossible to satisfy; (ii) receipt of any written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Transaction; (iii) receipt of any written notice from any governmental body that is material to the consummation of the transactions contemplated by the Transaction; and (iv) to the extent involving the Company, any material governmental or third party complaints, litigations, investigations, or hearings (or communications indicating that the same is contemplated or threatened);

(d) the Just Energy Entities agree to take commercially reasonable efforts to ensure that all consents and approvals necessary for the implementation of the Transaction (including, without limitation, regulatory, court, and other approvals) shall have been obtained to the satisfaction of the Sponsor, the Credit Facility Agent, and the Just Energy Entities, and that all necessary filings and notifications and similar actions shall have been taken to the satisfaction of the Sponsor, the Credit Facility Agent, and the Just Energy Entities prior to Closing; *provided* that in no event would a Just Energy Entity be required to dispose of any assets or agree to any behavioral remedies in connection with obtaining Regulatory Approvals, unless agreed to by the Sponsor, the Requisite Supporting Secured CF Lenders, Shell, and the Company; *provided further* that in connection with obtaining the Regulatory Approvals, no Just Energy Entity shall agree to any of the foregoing items without the prior written consent of the Sponsor;

(e) Just Energy agrees to apply for and obtain orders from the applicable Canadian Securities Regulatory Authorities which provide that, at Closing, Just Energy Entities will have ceased to be a reporting issuer (or equivalent) under any Canadian securities laws, and that no Just Energy Entity will become a reporting issuer (or equivalent) under any Canadian securities laws as a result of the completion of the Transaction;

(f) the Just Energy Entities shall pay the reasonable and documented fees and expenses of the Supporting Creditors (as defined below) incurred in connection with the Transaction, the CCAA Proceedings and the Chapter 15 Cases, including, without limitation, the reasonable and documented fees and expenses of such parties' legal, financial, and other advisors, as and when they come due after receipt of applicable invoices and in accordance with the arrangements in place as of the date of this Agreement, including, without limitation, as set forth in the DIP Term Sheet, or, with respect to any additional fees and expenses, as otherwise agreed to by the Sponsor;

(g) the Just Energy Entities shall: (i) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with this Agreement and use commercially reasonable efforts to preserve intact the Just Energy Entities' business organization and relationships with third parties and, subject to (ii) below, its employees (which shall not prohibit the Just Energy Entities from taking actions outside of the ordinary course of business to

the extent approved by the CCAA Court and the US Bankruptcy Court, as applicable and with the consent of the Sponsor); (ii) not have disclaimed or terminated any employment or consulting agreement with an officer, director, or member of senior management, other than “for cause,” without the written consent of the Sponsor; (iii) keep the Sponsor, the Supporting Secured CF Lenders, and the Credit Facility Agent informed about the operations of the Just Energy Entities; and (iv) provide each of the other Parties any material information reasonably requested regarding the Just Energy Entities (on a confidential basis) and provide, and direct the Just Energy Entities’ employees, officers, advisors, and other representatives to provide, to the Sponsor’ legal, financial, and other advisors, (x) reasonable access during normal business hours to the Just Energy Entities’ books, records, and facilities (on a confidential basis), and (y) reasonable access to the management and advisors of the Just Energy Entities for the purposes of evaluating the Just Energy Entities’ assets, liabilities, operations, businesses, finances, strategies, prospects, and affairs;

(h) the Just Energy Entities agree (i) to prepare or cause to be prepared the applicable Definitive Documents within the Just Energy Entities’ control (including all relevant motions, applications, orders, and agreements), (ii) to provide draft copies of all documents, including the Definitive Documents within the Just Energy Entities’ control, that the Just Energy Entities intend to file with the CCAA Court or the US Bankruptcy Court, in each case, to counsel to the Sponsor and Credit Facility Agent at least three (3) days before such documents are to be filed with the CCAA Court and/or the US Bankruptcy Court or as soon as practicable thereafter; *provided* that each such pleading or document shall be acceptable to the Sponsor and the Credit Facility Agent, each acting reasonably, and consistent with, and shall otherwise contain, the terms and conditions set forth in this Agreement (including the consent rights of any Party, as may be applicable, set forth herein as to the form and substance of such pleading or document), and (iii) without limiting any approval rights set forth herein, consult in good faith with the advisors to the Sponsor and Credit Facility Agent regarding the form and substance and timing of service and filing of any of the foregoing documents in advance of the filing, execution, distribution, or use (as applicable) thereof;

(i) the Just Energy Entities agree to file timely a formal objection to any motion filed with the CCAA Court or the US Bankruptcy Court, as applicable, seeking an order that would undermine the Transaction or any relief sought in connection therewith;

(j) the Just Energy Entities agree to file timely a formal objection to any motion filed with the CCAA Court or the US Bankruptcy Court, as applicable, by any Person seeking the entry of an order: (i) lifting the stay of proceedings in the CCAA Proceedings or the Chapter 15 Cases; (ii) terminating the CCAA Proceedings or converting the CCAA Proceedings to proceedings under the Bankruptcy and Insolvency Act (Canada); (iii) directing the appointment of an examiner or a trustee; (iv) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code; or (v) dismissing any of the Chapter 15 Cases;

(k) the Just Energy Entities agree to act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve the consummation of the Transaction and implementation steps provided for or contemplated in the Transaction; and



(l) the Just Energy Entities agree not object to, delay, impede, or take any other action to interfere with consummation, or implementation of, the Transaction contemplated by this Agreement.

7. **Commitments of the Supporting Secured CF Lenders.** Subject to the terms and conditions hereof and to carrying out the SISP in accordance with the SISP Order, each Supporting Secured CF Lender and the Credit Facility Agent shall (severally, and not jointly and severally), solely as it remains the legal owner of Credit Facility Claims and Credit Facility LC Claims, from the Secured CF Effective Date until the occurrence of the SA Termination Date (as defined below):

(a) support the Transaction and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Transaction; *provided, however*, the foregoing shall not require the Supporting Secured CF Lenders or the Credit Facility Agent to take or refrain from taking any action that would materially change or impair (i) the terms of the Transaction or (ii) their rights under this Agreement;

(b) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve the consummation of the Transaction and implementation steps provided for or contemplated in the Transaction;

(c) not object to, delay, impede, or take any other action to interfere with consummation, or implementation of, the Transaction contemplated by this Agreement;

(d) not directly or indirectly take any action that would interfere with, delay, impede, or postpone the transactions contemplated by this Agreement;

(e) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Transaction;

(f) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the CCAA Proceedings, the Chapter 15 Cases, this Agreement, or the Transaction contemplated herein against the Just Energy Entities or the other Parties hereto other than to enforce this Agreement, that certain accommodation and support agreement dated March 18, 2021 between the Just Energy Entities, the Credit Facility Agent, and the Supporting Secured CF Lenders (the "**Accommodation Agreement**"), or any Definitive Document or as otherwise permitted under this Agreement;

(g) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or interests in the Just Energy Entities, other than in accordance with the Accommodation Agreement or in a manner consistent with this Agreement;

(h) not object to, delay, impede, or take any other action to interfere with the Just Energy Entities' ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court, other than in accordance with the Accommodation Agreement or this Agreement;

(i) participate in the New Credit Facility (subject to the terms and conditions of the New Credit Agreement) and enter into the New Intercreditor Agreement on substantially similar terms as the Intercreditor Agreement but subject to the changes set forth in **Exhibit 4** to the Stalking Horse Term Sheet, in each case subject to the implementation of the transactions contemplated in, and Closing occurring in accordance with, the Transaction Agreement; and

(j) between the date hereof and the SA Termination Date, provide prompt written notice to the other Parties, to the extent known by such Supporting Secured CF Lender or Credit Facility Agent, as the case may be, of: (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of the Supporting Secured CF Lender or Credit Facility Agent (as the case may be) contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of the Supporting Secured CF Lender or Credit Facility Agent (as the case may be) contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in this Agreement not to occur or become impossible to satisfy; or (ii) the receipt of written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Transaction.

Notwithstanding the foregoing, nothing in this Agreement shall: (i) be construed to prohibit any Supporting Secured CF Lender or the Credit Facility Agent from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as until the occurrence of the SA Termination Date applicable to such Supporting Creditor (as defined below), such appearance and the positions advocated in connection therewith are (A) consistent with the SISP or (B) not inconsistent with this Agreement or the Transaction Agreement and not for the purpose of hindering, delaying, or preventing the consummation of the Transaction; (ii) prevent any Supporting Secured CF Lender or the Credit Facility Agent from enforcing this Agreement or the Transaction Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement or the Transaction Agreement; (iii) direct, modify, or change in any way any right of the Supporting Secured CF Lenders and Credit Facility Agent under the Accommodation Agreement and any related documents; (iv) except as otherwise expressly provided in this Agreement or the Transaction Agreement, be construed to limit the rights of any Supporting Secured CF Lender or the Credit Facility Agent under any applicable credit agreement, other loan document, instrument, and/or applicable law; (v) affect the rights of any Supporting Secured CF Lender or the Credit Facility Agent to consult with the other Supporting Secured CF Lenders, the Just Energy Entities, the Sponsor, Shell, or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings, the Chapter 15 Cases or the SISP; *provided*, that without the written consent (which may be delivered via email) of the Just Energy Entities, the Supporting Secured CF Lenders shall not consult with any party whom the Just Energy Entities have informed the Supporting Secured CF Lenders has made an Alternative Restructuring Proposal; (vi) impair or waive the rights of any Supporting Secured CF Lender or the Credit Facility Agent to assert or raise any objection

permitted under this Agreement or the Transaction Agreement in connection with any hearing contemplated by this Agreement, the Transaction Agreement or the SISP or in the CCAA Court or the US Bankruptcy Court or prevent such Supporting Secured CF Lender or the Credit Facility Agent from enforcing this Agreement or the Transaction Agreement against the other Parties; (vii) based on advice of counsel (which may be in-house counsel), prevent any Supporting Secured CF Lender or the Credit Facility Agent from taking any action that is required by applicable law (*provided, however*, that if any Supporting Secured CF Lender or the Credit Facility Agent proposes to take any action that is otherwise inconsistent with this Agreement or the Transaction Agreement in order to comply with applicable law, such Supporting Secured CF Lender or the Credit Facility Agent shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances; *provided further* that, as of the date hereof, each Supporting Secured CF Lender represents and warrants to each other Party that it is unaware of any such action); (viii) based on advice of counsel (which may be in-house counsel), require any Supporting Secured CF Lender or the Credit Facility Agent to take any action that is prohibited by applicable law or to waive or forego the benefit of any applicable legal privilege (*provided, however*, that if any Supporting Secured CF Lender or the Credit Facility Agent proposes to take any action that is otherwise inconsistent with this Agreement in order to comply with applicable law, such Supporting Secured CF Lender or the Credit Facility Agent, as the case may be, shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances; *provided further* that, as of the date hereof, such Supporting Secured CF Lender represents and warrants to each other Party that it is unaware of any such matter); or (ix) except as otherwise provided in, or envisioned by, this Agreement as of the Secured CF Effective Date, require any Supporting Secured CF Lender or the Credit Facility Agent to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations (other than customary expenses that may be incurred in connection with the New Credit Facility).

8. **Commitments of Shell.** Subject to the terms and conditions hereof, Shell shall, from the Shell Effective Date until the occurrence of the SA Termination Date (as defined below):

(a) support the Transaction and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Transaction; *provided, however*, the foregoing shall not require Shell to take or refrain from taking any action that would materially change or impair (i) the terms of the Transaction or (ii) its rights under this Agreement;

(b) act in good faith and take (and cause its agents, representatives, and employees to take) all actions that are reasonably necessary or appropriate, and all actions required by the CCAA Court and/or the US Bankruptcy Court, to support and achieve the consummation of the Transaction and implementation steps provided for or contemplated in the Transaction;

(c) not object to, delay, impede, or take any other action to interfere with consummation, or implementation of, the transactions contemplated by this Agreement;

(d) not directly or indirectly take any action that would interfere with, delay, impede, or postpone the Transaction contemplated by this Agreement;

(e) not file any motion, pleading, or other document with the US Bankruptcy Court, the CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with the Transaction;

(f) not initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the CCAA Proceedings, the Chapter 15 Cases, this Agreement, or the Transaction contemplated herein against the Just Energy Entities or the other Parties hereto other than to enforce this Agreement, the Support Agreement dated March 9, 2021 among Shell Energy North America (US), L.P., Shell Energy North America (Canada) Inc., Just Energy Ontario L.P., Just Energy (U.S.) Corp., Just Energy New York Corp., Just Energy Alberta L.P., Fulcrum Retail Holdings LLC, Just Energy Texas LP, Just Energy Solutions Inc., Just Energy Illinois Corp., Just Energy Corp. and Just Green L.P. (the “**Shell Commodity Support Agreement**”), or any Definitive Document or as otherwise permitted under this Agreement;

(g) not exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims or interests in the Just Energy Entities, other than in accordance with the Shell Commodity Support Agreement or this Agreement;

(h) not object to, delay, impede, or take any other action to interfere with the Just Energy Entities’ ownership and possession of their assets, wherever located, or interfere with the stay imposed by the CCAA Court and the US Bankruptcy Court, other than in accordance with this Agreement;

(i) between the date hereof and the SA Termination Date, provide prompt written notice to the other Parties, to the extent known by Shell, of: (i) the occurrence, or failure to occur, of any event of which the occurrence or failure to occur would be reasonably likely to cause (A) any representation or warranty of Shell contained in this Agreement to be untrue or inaccurate in any material respect, (B) any covenant of Shell contained in this Agreement not to be satisfied in any material respect, or (C) any condition precedent contained in this Agreement not to occur or become impossible to satisfy; or (ii) the receipt of written notice from any third party alleging that the consent of such party is or may be required as a condition precedent to consummation of the transactions contemplated by the Transaction; and

(j) effective as of Closing under the Transaction Agreement: (i) to continue to provide commodity supply in accordance with the existing Shell agreements, as may be amended, restated, supplemented and/or replaced by agreement between Shell and the applicable Just Energy Entity to the appropriate Just Energy Entities or additional Just Energy Entities; and (ii) to enter into the New Intercreditor Agreement on substantially similar terms as the Intercreditor Agreement but subject to the changes set forth in **Exhibit E** hereto; *provided* that notwithstanding the foregoing, nothing herein shall obligate Shell to continue providing services under the Third Amended and Restated Scheduling Coordinator Agreement dated December 1, 2014 between Shell Energy North America (US), L.P., Just Energy New York Corp., Just Energy (U.S.) Corp. and Just Energy Solutions Inc. (formerly Commerce Energy, Inc.) or any other agreement whereby Shell performs ISO or scheduling services on behalf of any Just Energy Entity whereby a Just

Energy Entity has reimbursement obligations to Shell for payments made by Shell on behalf of a Just Energy Entity to an ISO.

Notwithstanding the foregoing, nothing in this Agreement shall: (i) be construed to prohibit Shell from appearing as a party-in-interest in any matter to be adjudicated in the CCAA Proceedings or the Chapter 15 Cases, so long as, from the Shell Effective Date until the occurrence of the applicable SA Termination Date, such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement or the Transaction Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Transaction; (ii) prevent Shell from enforcing this Agreement or the Transaction Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement or the Transaction Agreement; (iii) direct, modify, or change in any way any right of Shell under the Shell Commodity Support Agreement; (iv) except as otherwise expressly provided in this Agreement or the Transaction Agreement, be construed to limit Shell's rights under any applicable credit agreement, other loan document, instrument, other commercial agreement with a Just Energy Entity, and/or applicable law; (v) affect the rights of Shell to consult with the Just Energy Entities, the Sponsor, the Supporting Secured CF Lenders, the Credit Facility Agent, or any other creditor or stakeholder of the Just Energy Entities or any other party in interest in the CCAA Proceedings, the Chapter 15 Cases or the SISP; *provided* that without the written consent (which may be delivered via email) of the Just Energy Entities, Shell shall not consult with any party whom the Just Energy Entities have informed Shell has made an Alternative Restructuring Proposal; (vi) impair or waive the rights of Shell to assert or raise any objection permitted under this Agreement or the Transaction Agreement in connection with any hearing contemplated under this Agreement or the Transaction Agreement or in the CCAA Court or the US Bankruptcy Court or prevent Shell from enforcing this Agreement or the Transaction Agreement against the other Parties; (vii) based on advice of counsel (which may be in-house counsel), prevent Shell from taking any action that is required by applicable law (*provided, however*, that if Shell proposes to take any action that is otherwise inconsistent with this Agreement or the Transaction Agreement in order to comply with applicable law, Shell shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided, however*, that, as of the date hereof, Shell represents and warrants to each other Party that Shell is unaware of any such action; (viii) based on advice of counsel (which may be in-house counsel), require Shell to take any action that is prohibited by applicable law or to waive or forego the benefit of any applicable legal privilege (*provided, however*, that if Shell proposes to take any action that is otherwise inconsistent with this Agreement or the Transaction Agreement in order to comply with applicable law, Shell shall provide advance notice to the extent permissible under applicable law to the other Parties to the extent the provision of notice is practicable under the circumstances); *provided further* that, as of the date hereof, Shell represents and warrants to each other Party that Shell is unaware of any such matter; or (ix) except as otherwise provided in, or envisioned by, this Agreement as of the Shell Effective Date, require Shell to incur any expenses, liabilities, or other obligations, or to agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations (other than customary expenses that may be incurred in connection with the New Intercreditor Agreement).

9. **Additional Provisions Regarding the Just Energy Entities.** The Just Energy Entities shall provide on a confidential basis to the legal counsel and financial advisors of the Sponsor and the Supporting Secured CF Lenders (A) copies (or if not provided to the Just

Energy Entities in writing, a detailed description) of any Alternative Restructuring Proposal no later than one (1) calendar day following receipt thereof by the Just Energy Entities or their advisors and (B) such other information as reasonably requested by the Sponsor's or the Supporting Secured CF Lenders' legal counsel and financial advisors or as necessary to keep the Sponsor and the Supporting Secured CF Lenders informed no later than one (1) calendar day after any such request or any material change to the proposed terms of any Alternative Restructuring Proposal as to the terms of any Alternative Restructuring Proposal (including any changes to the proposed terms thereof) and the status and substance of discussions related thereto.

10. **Termination.**

(a) **Sponsor Termination Events.** The Sponsor shall have the right, but not the obligation, to terminate this Agreement with respect to the Sponsor upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events, unless waived in writing on a prospective or retroactive basis by the Sponsor:

(i) the failure to meet any of the Milestones in Section 4 (as they may be extended in accordance with Section 4) unless such failure is the result of any act, omission, or delay on the part of the Sponsor;

(ii) upon the termination of the Transaction Agreement for any reason in accordance with its terms;

(iii) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(iv) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(v) if the Just Energy Entities file any motion or any request for relief seeking to (a) dismiss any of the Chapter 15 Cases, (b) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(vi) upon the Just Energy Entities' withdrawal, waiver, amendment, or modification of, or the filing of (or announced intention to file) a pleading seeking to withdraw, waive, amend, or modify any of the Definitive Documents, including motions, notices, exhibits, appendices, and orders, that is both not consistent in all material respects with this Agreement and not done with the consent of the Sponsor;

(vii) any condition precedent contained in this Agreement or any of the Definitive Documents becomes incapable of being satisfied;

(viii) at any time if any of the closing conditions set out in the Transaction Agreement is not capable of being satisfied prior to the Outside Date;



(ix) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any ruling or order the effect of which would be materially inconsistent with the purpose or intention of this Agreement, the Transaction, or enjoining or otherwise impeding the consummation of the Transaction on the terms and conditions set forth in this Agreement or the Transaction Agreement; *provided, however*, that the Sponsor shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such ruling or order to obtain relief that would allow consummation of the Transaction in a manner that (x) does not prevent or diminish in a material way compliance with the terms of this Agreement and (y) is acceptable to the Sponsor;

(x) either (a) the Just Energy Entities request or (b) the CCAA Court approves any amendments or modifications to the SISP Order that are not acceptable to the Sponsor, acting reasonably;

(xi) any of the key milestone dates set out in Section 6 of the SISP (prior to any extension thereof in accordance with the terms of the SISP) are not met, unless such extension is consented to by the Sponsor;

(xii) Just Energy or the Monitor waives or seeks authority to waive any of the requirements under the SISP that Just Energy is not permitted to waive in accordance with the terms thereof;

(xiii) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(xiv) the Just Energy Entities file, propose, or otherwise support any restructuring, sale, or liquidation transaction other than as contemplated by this Agreement, the Transaction Agreement, or in accordance with the SISP Order, or with the consent of the Sponsor;

(xv) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or any assets that would materially and adversely affect the Just Energy Entities' ability to operate their business in the ordinary course or ability to implement the transactions contemplated in this Agreement or the Transaction Agreement;

(xvi) a failure by the Just Energy Entities to pay the fees and expenses of the Sponsor, including but not limited to the Sponsor's legal, financial, and any other advisors, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(xvii) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the

Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(xviii) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing;

(xix) the Just Energy Entities' failure to obtain the Vesting Recognition Order (x) by September 30, 2022, if the SISP has been terminated and the Transaction Agreement has become the Successful Bid because a suitable NOI was not received before the NOI Deadline;

(xx) the occurrence of an Event of Default under Sections 25(a), 25(b)(ii) (provided that the failure to deliver any Cash Flow Statement by the date set out in Section 18 of the DIP Term Sheet continues for three (3) business days), 25(b)(iii) (solely with respect to Section 35 of the DIP Term Sheet), 25(e) (solely with respect to: (y) the affirmative covenants in clauses (1) and/or (21) on Schedule H of the DIP Term Sheet (and in the case of covenant (21) excluding any Material Contract or Material License terminated (A) with the prior written consent of (I) the Monitor and the Sponsor or (II) the CCAA Court or (B) solely as a result of entering into this Agreement or the Transaction Agreement); and/or (z) the negative covenants in Schedule I of the DIP Term Sheet), 25(f), 25(j), 25(k), 25(l), 25(m), and/or 25(p) of the DIP Term Sheet, in each case that has not been cured (if susceptible to cure) or waived by the applicable percentage of the lenders thereunder in accordance with the terms of the DIP Term Sheet, and the obligations under the DIP Term Sheet have been accelerated;

(xxi) upon (a) a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of the Sponsor's or any of its affiliates' claims against any of the Just Energy Entities, and/or the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, the Sponsor, or the agent under any of the relevant facilities (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary proceeding commenced by any third party) or (b) the entry of an order by the CCAA Court or the US Bankruptcy Court (other than with respect to any action commenced by the Just Energy Entities against ERCOT) providing relief adverse to the interests of the Sponsor or any of its affiliates or the agent under any relevant facilities with respect to any of the foregoing claims, causes of action, or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action, or proceeding;

(xxii) subject to the terms of the SISP, the Sponsor is not the successful bidder under the SISP; or



(xxiii) any other Party terminates its obligations under this Agreement.

(b) Company Termination Events. The Just Energy Entities may terminate this Agreement, in each case, upon delivery of written notice to the other Parties upon the occurrence of any of the following events:

(i) a material breach by the Sponsor of any representation, warranty, or covenant set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Sponsor of written notice detailing such breach;

(ii) upon the termination of the Transaction Agreement for any reason in accordance with its terms;

(iii) the failure to meet any of the Milestones in Section 4 unless (x) such failure is the result of any act, omission, or delay on the part of the Just Energy Entities or (y) such Milestone is extended in accordance with Section 4;

(iv) the board of directors, board of managers, or such similar governing body of any Just Energy Entity determines, upon the advice of outside legal counsel and financial advisors, that proceeding with the Transaction would be inconsistent with the exercise of its fiduciary duties or applicable law; *provided* that the Just Energy Entities shall not have the right to terminate this Agreement under this Section 10(b)(iv) if either (x) no Qualified Bids, other than the Stalking Horse Transaction, are received by the Qualified Bid Deadline (as such terms are defined in the SISP) or (y) the Stalking Horse Transaction is declared the Successful Bid (as such terms are defined in the SISP);

(v) subject to the terms of the SISP, the Sponsor is not the successful bidder under the SISP;

(vi) (A) any condition precedent contained in this Agreement or any of the Definitive Documents that cannot be waived becomes incapable of being satisfied, and (B)(x) any condition precedent contained in this Agreement or any of the Definitive Documents that can be waived by a party other than the Company becomes incapable of being satisfied and (y) the Company has requested a waiver of such condition precedent and such waiver has been denied;

(vii) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order enjoining or otherwise impeding the consummation of the Transaction on the terms and conditions set forth in this Agreement or the Transaction Agreement; *provided, however*, that the Just Energy Entities have made commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such final ruling or Final Order prior to terminating this Agreement; or

(viii) any other Party terminates its obligations under this Agreement and such termination either (A) renders the Transaction incapable of consummation or (B) materially changes the overall economic terms of the Transaction in a manner that is adverse to the Just Energy Entities (which would include Shell failing to confirm, in writing, to the Just Energy Entities and the Sponsor that (x) it will not exercise any termination rights under Continuing

Contracts solely as a result of the Transaction and (y) all existing and future trades will be provided for under the Continuing Contracts (as may be amended, restated, supplemented, and/or replaced by the Just Energy Entities other than Just Energy and Shell from time to time following Closing) or new arrangements, in each case, in accordance with the terms thereof and subject to the terms of the New Intercreditor Agreement, or the New Credit Agreement not being entered into).

(c) Supporting Secured CF Lender Termination Events. The Requisite Supporting Secured CF Lenders<sup>1</sup> shall have the right, but not the obligation, to terminate this Agreement upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events, unless waived in writing on a prospective or retroactive basis by the applicable Requisite Supporting Secured CF Lenders (*provided, however*, that any such termination shall only be with respect to the applicable Supporting Secured CF Lenders and the Credit Facility Agent, and this Agreement shall remain in full force and effect as to the other Parties hereto at such time, and the term “**Parties**” shall thereafter exclude the applicable Supporting Secured CF Lenders and the Credit Facility Agent):

(i) upon the termination of the Transaction Agreement for any reason in accordance with its terms;

(ii) in the event that a Qualified Bid (other than the Transaction Agreement) is received by Just Energy before the Qualified Bid Deadline; *provided* that the termination right pursuant to this clause is subject to any further agreement (or waiver) between the Supporting Secured CF Lenders and the Sponsor made at or prior to any Auction;

(iii) either (a) the Just Energy Entities request or (b) the CCAA Court approves any amendments or modifications to the SISP Order that are not acceptable to the Requisite Supporting Secured CF Lenders, acting reasonably;

(iv) any of the key milestone dates set out in Section 6 of the SISP (prior to any extension thereof in accordance with the terms of the SISP) are not met, unless such extension is consented to by the Requisite Supporting Secured CF Lenders;

(v) Just Energy or the Monitor waives or seeks authority to waive any of the requirements under the SISP that Just Energy is not permitted to waive in accordance with the terms thereof;

(vi) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(vii) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the

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<sup>1</sup> The holders of in excess of 66 2/3% of the Credit Facility Claims shall be the “**Requisite Supporting Secured CF Lenders.**”

Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(viii) the Just Energy Entities file any motion or any request for relief seeking to (a) dismiss any of the Chapter 15 Cases, (b) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(ix) upon the Just Energy Entities' withdrawal, waiver, amendment, or modification, or the filing of (or announced intention to file) a pleading seeking to withdraw, waive, amend, or modify any of the Definitive Documents, including motions, notices, exhibits, appendices, and orders, that is both not consistent in all material respects with this Agreement and not done with the consent of the Requisite Supporting Secured CF Lenders;

(x) any condition precedent contained in the Transaction Agreement or New Credit Agreement becomes incapable of being satisfied or any condition precedent contained in the Transaction Agreement is waived without the consent of the Requisite Supporting Secured CF Lenders;

(xi) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order, the effect of which would be materially inconsistent with the purpose or intention of this Agreement, the Transaction, or enjoining or otherwise impeding the consummation of the Transaction on the terms and conditions set forth in this Agreement or the Transaction Agreement; *provided, however*, that the Supporting Secured CF Lenders shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set aside, or have overruled as quickly as possible such final ruling or Final Order to obtain relief that would allow consummation of the Transaction in a manner that (x) does not prevent or diminish in a material way compliance with the terms of this Agreement and (y) is acceptable to the Requisite Supporting Secured CF Lenders;

(xii) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(xiii) the Just Energy Entities file, propose, or otherwise support any restructuring, sale, or liquidation transaction other than as contemplated by this Agreement or in accordance with the SISF Order (A) that materially and adversely affects the treatment, rights, or interests of the Supporting Secured CF Lenders as compared to the treatment, rights, or interests of the Supporting Secured CF Lenders hereunder and (B) without the consent of the Requisite Supporting Secured CF Lenders;

(xiv) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or any assets that would materially and adversely affect the Just Energy Entities' ability to operate

their business in the ordinary course or ability to implement the transactions contemplated in this Agreement or the Transaction Agreement, including the Transaction;

(xv) a failure by the Just Energy Entities to pay the fees and expenses of the Supporting Secured CF Lenders and Credit Facility Agent, including but not limited to the legal, financial, and any other advisors of the Supporting Secured CF Lenders and Credit Facility Agent, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(xvi) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(xvii) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing;

(xviii) the obligations of the Company under the DIP Term Sheet are accelerated or the commitments under the DIP Term Sheet are terminated;

(xix) upon (a) a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of the Supporting Secured CF Lenders' or any of their affiliates' claims against any of the Just Energy Entities, and/or the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, the Supporting Secured CF Lenders or the Credit Facility Agent (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary proceeding commenced by any third party), or (b) the entry of an order by the CCAA Court or the US Bankruptcy Court (other than with respect to any action commenced by the Just Energy Entities against ERCOT) providing relief adverse to the interests of the Supporting Secured CF Lenders or the Credit Facility Agent with respect to any of the foregoing claims, causes of action, or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action or proceeding;

(xx) the Sponsor or Shell terminates its obligations under this Agreement;

(xxi) the Just Energy Entities' failure to obtain the Vesting Recognition Order (x) by September 30, 2022, if the SISP has been terminated and the Transaction Agreement has become the Successful Bid because a suitable NOI was not received before the NOI Deadline;

(xxii) if the Closing of the Transaction has not occurred by November 30, 2022 (the "**Initial Secured CF Lenders Outside Date**") *provided* that if the Closing will not occur by the Initial Secured CF Lenders Outside Date solely because the receipt of a Regulatory Approval remains outstanding, then the Initial Secured CF Lenders Outside Date may be automatically extended for another sixty (60) days upon written notice given on or before the Initial Secured CF Lenders Outside Date to the Credit Facility Agent or its counsel that there is a reasonable expectation that the condition will be satisfied by such extended date, which notice may be from either the Company or the Plan Sponsor (or their respective counsel) and given by email; or

(xxiii) a Section 6 Waiver is given by the Sponsor without the consent of the Requisite Supporting Secured CF Lenders, unless such Section 6 Waiver relates exclusively to an obligation of the Just Energy Entities to the Sponsor and such waiver has no direct or indirect materially adverse effect on the Supporting Secured CF Lenders or the Credit Facility Agent.

(d) Shell Termination Events. Shell, in each case, with respect solely to Shell, shall have the right, but not the obligation, to terminate this Agreement upon delivery of written notice to the other Parties at any time after the occurrence of or during the continuation of any of the following events, unless hereafter waived in writing on a prospective or retroactive basis by Shell (*provided, however*, that any such termination shall only be with respect to Shell, this Agreement shall remain in full force and effect as to the other Parties hereto at such time, and the term "**Parties**" shall thereafter exclude Shell):

(i) if the CCAA Proceedings are dismissed, terminated, stayed, modified, or converted to a proceeding under the Bankruptcy and Insolvency Act (Canada) or Winding-Up and Restructuring Act (Canada);

(ii) if the US Bankruptcy Court enters an order (a) dismissing any of the Chapter 15 Cases, (b) converting any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appointing a trustee or an examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iii) the Just Energy Entities file any motion or any request for relief seeking to (a) dismiss any of the Chapter 15 Cases, (b) convert any of the Chapter 15 Cases to a case under chapter 7 of the Bankruptcy Code, or (c) appoint a trustee or examiner with expanded powers pursuant to Bankruptcy Code section 1104 in any of the Chapter 15 Cases;

(iv) the issuance by any governmental authority, including the CCAA Court or the US Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any final ruling or Final Order enjoining or otherwise impeding the consummation of the Transaction on the terms and conditions set forth in this Agreement or the Transaction Agreement; *provided, however*, that Shell shall not have the right to terminate under this clause if the Just Energy Entities are using commercially reasonable efforts to cure, vacate, reserve, set

aside, or have overruled as quickly as possible such final ruling or Final Order to obtain relief that would allow consummation of the Transaction in a manner that (x) does not prevent or diminish in a material way compliance with the terms of this Agreement and (y) is acceptable to Shell;

(v) a material breach by any Just Energy Entity of any representation, warranty, or covenant of such Just Energy Entity set forth in this Agreement that (to the extent curable) remains uncured for a period of ten (10) days after the receipt by the Just Energy Entities of written notice detailing such breach;

(vi) the Just Energy Entities file, propose, or otherwise support any restructuring, sale, or liquidation transaction other than as contemplated by this Agreement or in accordance with the SISP Order (A) that materially and adversely affects the treatment or rights of Shell as compared to the treatment and rights set forth herein and (B) without the consent of Shell;

(vii) an order is entered by the CCAA Court or the US Bankruptcy Court authorizing any party to proceed against any material asset of any of the Just Energy Entities or any assets that would materially and adversely affect the Just Energy Entities' ability to operate their business in the ordinary course or ability to implement the transactions contemplated in this Agreement or the Transaction Agreement;

(viii) a failure by the Just Energy Entities to pay the fees and expenses of Shell, including but not limited to Shell's legal, financial, and any other advisors, as and when due pursuant to the terms of any applicable engagement letters and any applicable orders of the CCAA Court or the US Bankruptcy Court;

(ix) the entry of an order by any court of competent jurisdiction granting the relief sought in an involuntary proceeding against any entity constituting the Just Energy Entities seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization, or other relief in respect of any entity comprising the Just Energy Entities or the Just Energy Entities' debts, or of a substantial part of the Just Energy Entities' assets, under any federal, state, or foreign bankruptcy, insolvency, administrative, receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof);

(x) if any of the Just Energy Entities (a) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described above, (b) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator, or similar official for the Just Energy Entities or for a substantial part of the Just Energy Entities' assets, (c) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (d) makes a general assignment or arrangement for the benefit of creditors, or (e) takes any corporate action for the purpose of authorizing any of the foregoing;

(xi) upon a filing by any of the Just Energy Entities of any motion, objection, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination, or characterization of, any portion of Shell's



or any of its affiliates' claims against any of the Just Energy Entities, and/or the liens securing any such claims or asserting any other claim or cause of action against and/or with respect to any such claims, liens, Shell, or the agent under any of the relevant facilities (or if any Just Energy Entity files a pleading supporting any such motion, application, or adversary proceeding commenced by any third party);

(xii) the termination of this Agreement by any Party, other than a Supporting Secured CF Lender;

(xiii) any default by a Just Energy Entity in the payment of any undisputed post-Filing Date invoice owing to Shell when due and payable, provided that such amount remains unpaid for a period of three (3) days after receipt (or deemed receipt under the applicable underlying agreement) by the Just Energy Entities of written notice detailing such default (the "**Cure Period**"), which Cure Period is for one-time use only and shall only apply in the case of one such default;

(xiv) if the Closing of the Transaction has not occurred by January 31, 2023 unless further extended by Shell;

(xv) upon the Just Energy Entities' withdrawal, waiver, amendment, or modification, or the filing of (or announced intention to file) a pleading seeking to withdraw, waive, amend, or modify any of the Definitive Documents, including motions, notices, exhibits, appendices, and orders, that is both not consistent in all material respects with this Agreement and not done with the consent of Shell;

(xvi) the obligations of the Company under the DIP Term Sheet are accelerated or the commitments under the DIP Term Sheet are terminated;

(xvii) upon the entry of an order by the CCAA Court or the US Bankruptcy Court (other than with respect to any action commenced by the Just Energy Entities against ERCOT) providing relief adverse to the interests of Shell with respect to any of the foregoing claims, causes of action, or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action or proceeding;

(xviii) subject to the terms of the SISP, the Sponsor is not the successful bidder under the SISP;

(xix) the Sponsor terminates its obligations under this Agreement or the Transaction Agreement; or

(xx) a Section 6 Waiver is given by the Sponsor without the consent of Shell, unless such Section 6 Waiver relates exclusively to an obligation of the Just Energy Entities to the Sponsor and such waiver has no direct or indirect materially adverse effect on Shell.

(e) Mutual Termination/Automatic Termination. This Agreement and the obligations of the Parties hereunder may be terminated by mutual written agreement by the Just Energy Entities and the Sponsor. Notwithstanding anything in this Agreement to the contrary, this

Agreement shall terminate automatically in respect of all Parties upon termination by the Company under Section 10(b) or upon Closing.

(f) Termination Generally. The earliest date on which termination of this Agreement as to a Party is effective in accordance with this Section 11 or Section 15 shall be referred to, with respect to such Party, as a “**SA Termination Date**.” Upon the occurrence of a SA Termination Date, the applicable Party’s obligations (as set forth herein) under this Agreement shall be terminated effective immediately, and such Parties or Party hereto shall be released from all commitments, undertakings, and agreements hereunder; *provided*, that any claim for breach of this Agreement that occurs prior to such SA Termination Date shall survive such termination, and all rights and remedies with respect to such claims shall not be prejudiced in any way. For the avoidance of doubt, the automatic stay arising pursuant to Bankruptcy Code section 362 or the stay of proceedings provided for in the CCAA Proceedings or in other applicable Canadian laws shall be deemed waived or modified for purposes of providing notice or exercising rights hereunder.

## 11. Transfers.

(a) Each of the Parties other than the Just Energy Entities (the “**Supporting Creditors**”), solely with respect to itself (as expressly identified and limited on its signature page to this Agreement or Joinder Agreement (as defined below), as applicable), shall not sell, transfer, assign, pledge, hypothecate, participate, donate, or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales, or other transactions in which any Person receives the right to own or acquire any current or future interest in) (each, a “**Transfer**”), or permit a Transfer of, directly or indirectly, in whole or in part, any of its Claims or, in each case, any option thereon or any right or interest therein or any other claims against the Company (including grant any proxies, deposit any Claims into a voting trust, or enter into a voting agreement with respect to any such Claims), unless the transferee thereof either (i) is a Supporting Creditor or (ii) before or contemporaneously with such Transfer, agrees in writing for the benefit of the Parties to become a Party and to be bound by all of the terms of this Agreement applicable to the Supporting Creditor who is a transferor (such Supporting Creditor, the “**Transferor**”), by executing a joinder agreement substantially in the form attached hereto as Exhibit F (a “**Joinder Agreement**”), and delivering an executed copy thereof within two (2) business days after such Transfer to (1) Kirkland & Ellis LLP (“**K&E**”) and Osler Hoskin Harcourt LLP (“**Osler**”), counsel to the Just Energy Entities, (2) Akin Gump Strauss Hauer & Feld LLP (“**Akin**”) and Cassels Brock & Blackwell LLP (“**Cassels**”), counsel to the Sponsor, and (3) McCarthy Tétrault LLP (“**McCarthy**”) and Chapman & Cutler LLP (“**Chapman**”), counsel to the Supporting Secured CF Lenders and the Credit Facility Agent ((1), (2), and (3) the “**Transfer Notice Parties**”) in which event (x) the transferee shall be deemed to be a Party in the same manner as the Transferor to the extent of such transferred rights and obligations and (y) the Transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of such transferred rights and obligations; *provided* that failure to deliver such Joinder Agreement on a timely basis shall not by itself affect the applicable Transferor’s or transferee’s obligations under this Agreement with respect to such Claims or render the Transfer *void ab initio* with respect to such Claims; *provided* that the failure by the Transferor to comply with the procedures set forth in this Section 11(a) with respect to a Transfer to any entity that, as of the date of such Transfer controls, is controlled by, or is under common control with the Transferor shall



not, without more, constitute a breach of this Agreement if (i) the transferee provides notice of such Transfer to the Transfer Notice Parties (which may be delivered by email) promptly after such Transfer and (ii) the transferee shall be bound by all terms of this Agreement applicable to the Transferor, and deemed to be the Sponsor, Shell, or a Supporting Secured CF Lender, as applicable. To the extent that the Transferor's Claim or other securities issued by the Company may be loaned (and consequently pledged, hypothecated, encumbered, or rehypothecated by) as part of customary securities lending arrangements (each such arrangement, a "**Customary Securities Lending Arrangement**"), and such Customary Securities Lending Arrangement does not adversely affect the Transferor's ability to timely satisfy any of its obligations under this Agreement, such Customary Securities Lending Arrangement shall not be deemed a Transfer hereunder. Each of the Supporting Creditors agrees that any Transfer of any Claims that does not comply with the terms and procedures set forth herein shall be deemed *void ab initio*, and the Just Energy Entities shall have the right to enforce the voiding of such Transfer. This Agreement shall in no way be construed to preclude any of the Supporting Creditors from acquiring additional Claims against the Just Energy Entities; *provided that* (i) any such additional Claims automatically shall be subject to all of the terms of this Agreement and (ii) such Supporting Creditor agrees (A) that such additional Claims shall be subject to this Agreement (except as expressly provided below), and (B) to notify the Transfer Notice Parties within three (3) business days following such acquisition of the aggregate amount.

(b) Notwithstanding this Section 11, any Supporting Creditor may Transfer its Claims against the Just Energy Entities to an entity that is acting in its capacity as a Qualified Marketmaker<sup>2</sup> without the requirement that such Qualified Marketmaker execute and deliver a Joinder Agreement in respect of such Claims against the Just Energy Entities or be a Supporting Creditor; *provided that* such Qualified Marketmaker (i) subsequently Transfers such Claims against the Just Energy Entities to a transferee that is or becomes (by executing and delivering a Joinder Agreement in accordance with this Section 11) a Supporting Creditor at the time of such Transfer within ten (10) calendar days of its acquisition of such Claims, and (ii) if such Qualified Marketmaker fails to comply with its obligations in this Section 11, such Qualified Marketmaker shall be required to, and shall be deemed to be without further action, a Supporting Creditor hereunder solely with respect to such Claims; *provided that* the Qualified Marketmaker shall automatically, and without further notice or action, no longer be a Supporting Creditor with respect to such Claims at such time that the transferee of such Claims becomes a Supporting Creditor with respect to such Claims. Any Transfer documentation between a transferring Supporting Creditor and the Qualified Marketmaker shall contain a requirement that the Qualified Marketmaker comply with the foregoing, which covenant will be held by the transferor for the benefit of the Just Energy Entities. To the extent any Supporting Creditor is acting in its capacity as a Qualified Marketmaker, it may Transfer any Claims that it acquires from a holder of such Claims that is not a Supporting Creditor without the requirement that the transferee be or become a Supporting Creditor. Notwithstanding anything to the contrary in this Agreement, the restrictions on Transfer

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<sup>2</sup> A "**Qualified Marketmaker**" means an entity that (i) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers Claims against the Just Energy Entities (or enter with customers into long and short positions in Claims against the Just Energy Entities), in its capacity as a dealer or market maker in Claims against the Just Energy Entities and (ii) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

in this Section 11 shall not apply to the grant of any liens or encumbrances on any Claims in favor of a bank or broker-dealer holding custody of such Claims in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such Claims (which Transfer shall comply with the requirements of this Section 11). Notwithstanding anything to the contrary in this Agreement, the restrictions on Transfer in this Section 11 shall not apply to the credit bidding of the BP Commodity / ISO Services Claim as contemplated by and pursuant to the Stalking Horse Term Sheet and the Transaction Agreement (including any Transfer of such claim in connection therewith).

12. **Definitive Documents; Good Faith Cooperation; Further Assurances.**

Each Party hereby covenants and agrees to cooperate with each other in good faith in connection with, and shall exercise commercially reasonable efforts with respect to, the pursuit, approval, implementation, and consummation of the transactions contemplated by this Agreement as well as the negotiation, drafting, execution, and delivery of the Definitive Documents. Furthermore, subject to the terms hereof, each of the Parties shall take such action as may be reasonably necessary or reasonably requested by the other Parties to carry out the purposes and intent of this Agreement, and shall refrain from taking any action that would frustrate the purposes and intent of this Agreement subject in each case to the terms and conditions of the applicable agreements.

13. **Representations and Warranties.**

(a) Each of the Parties (severally, and not jointly and severally), and in the case of the Just Energy Entities subject to the issuance of the SISP Order, represents and warrants to each other Party that the following statements are true, correct, and complete as of the date hereof (or, if later, the date that such Party first became or becomes a Party):

(i) it is validly existing and in good standing under the laws of the state or province of its incorporation or organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(ii) except as expressly provided in this Agreement or otherwise required by the CCAA or the Bankruptcy Code, no material consent or approval of, or any registration or filing with, any governmental authority or regulatory body is required for it to carry out and perform its obligations under this Agreement and the Transaction Agreement;

(iii) it has all requisite organizational power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its obligations under, this Agreement and the Transaction Agreement;

(iv) the execution and delivery by it of this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary organizational action on its part;

(v) it has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement; and

(vi) the execution, delivery, and performance by such Party of this Agreement does not and will not (x) violate any provision of law, rule, or regulation applicable to it or any of its subsidiaries or its charter or bylaws (or other similar governing documents) or those of any of its subsidiaries, (y) except as the Transaction may constitute a “Change of Control” (as may be defined in the Credit Agreement, the Intercreditor Agreement, and the existing supply agreements with Shell) or any equivalent concept under the Credit Agreement, the Intercreditor Agreement, or the existing supply agreements with Shell, conflict with, result in a breach of, or constitute (with or without notice or lapse of time or both) a default under the Credit Agreement, Intercreditor Agreement or existing supply agreements with Shell, or (z) violate any order, writ, injunction, decree, statute, rule, or regulation.

(b) Each Supporting Secured CF Lender (severally, and not jointly and severally) represents and warrants to the Just Energy Entities that, as of the date hereof (or as of the date such Supporting Secured CF Lender becomes a Party hereto), (i) such Supporting Secured CF Lender is the beneficial owner of (x) the proportion of all Credit Facility Claims equal to the proportion that its commitments under the Credit Agreement represents of all commitments of the Credit Facility Lenders under the Credit Agreement and (y) the Credit Facility LC Claims in respect of the outstanding letters of credit issued by it pursuant to the Credit Agreement as of such date, subject to the reimbursement and indemnity obligations of the other Credit Facility Lenders or Export Development Canada under the Credit Facility Documents, (the claims described in (x) and (y) being collectively, the “**Supporting Secured CF Lender Specified Claims**”), and (ii) such Supporting Secured CF Lender has (x) sole investment or voting discretion with respect to such Supporting Secured CF Lender Specified Claims, and (y) full power and authority to vote on and consent to matters concerning such Supporting Secured CF Lender Specified Claims or to exchange, assign, and Transfer such Supporting Secured CF Lender Specified Claims.

(c) The Sponsor represents and warrants to the Just Energy Entities that, as of the date hereof, the Sponsor (i) is or, after taking into account the settlement of any pending assignments to which the Sponsor is a party as of the date of this Agreement, will be the owner of the Claims and interests set forth below its name on the signature page hereto and/or (ii) has or, after taking into account the settlement of any pending assignments to which the Sponsor is a party as of the date of this Agreement, will have, with respect to the beneficial owner(s) of such Claims and interests, (x) sole investment or voting discretion with respect to such Claims, and (y) full power and authority to vote on and consent to matters concerning such Claims and interests or to exchange, assign, and Transfer such Claims and interests. Except for such Claims and interests set forth on its signature page, the Sponsor does not own or, with respect to any beneficial owners thereof, have any voting, investment, or other power, with respect to any other Claims or interests against the Just Energy Entities.

(d) The Just Energy Entities represent and warrant that the only ISO Services Obligations (as defined in the Intercreditor Agreement) that were outstanding as of the Filing Date are: (i) Shell Energy ISO Reimbursement Obligations (as defined in the Intercreditor Agreement) in the aggregate amount of approximately USD\$3.3 million, calculated on a gross basis (which was netted against approximately USD\$11.1 million of an independent systems operator services

receivable owed by Shell to the Just Energy Entities); and (ii) the applicable amount of the BP Commodity / ISO Services Claim.

14. **Amendments.** Except as otherwise expressly set forth herein, this Agreement (including any Exhibits and Schedules) may not be waived, modified, amended, or supplemented except in a writing signed by the Just Energy Entities and the Sponsor; *provided further* that any waiver, modification, amendment, or supplement that (w) adversely and disproportionately impacts the treatment or rights of any Supporting Secured CF Lender with respect to its Credit Facility Claims, Credit Facility LC Claims, Commodity Supplier Claims or Cash Management Obligations as compared to the treatment or rights of any other Supporting Secured CF Lender shall require the consent of such adversely and disproportionately impacted Supporting Secured CF Lender, (x) amends the rights or obligations, or adversely impacts the treatment or interests of, Shell or the Supporting Secured CF Lenders under or as contemplated by this Agreement (including the Exhibits and Schedules) shall require the consent of any such Party, (y) relates to the Transaction Agreement, the New Credit Agreement or the New Intercreditor Agreement shall require the consent of the Supporting Secured CF Lenders, or (z) except as otherwise provided in, or envisioned by, this Agreement as of the Shell Effective Date, or the Secured CF Effective Date, as applicable, requires Shell, any Supporting Secured CF Lender or the Credit Facility Agent to incur any expenses, liabilities, or other obligations, or agree to any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations, shall require the consent of the impacted Party; *provided further* that in the case of either (x) or (y), in the event that any such Supporting Creditor whose consent is required does not consent to such waiver, change, modification, or amendment (a “**Non-Supporting Creditor**”), this Agreement may be terminated by such Non-Supporting Creditor (as applicable to it) upon written notice to the other Parties, but this Agreement shall continue in full force and effect in respect to all other Supporting Creditors whose consent is not required or whose consent is required and was provided.

15. **Governing Law; Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to the conflicts of law principles thereof.

(b) Each Party irrevocably agrees that any legal action, suit, or proceeding arising out of or relating to this Agreement brought by any party or its successors or assigns shall be brought and determined in the CCAA Court and each Party hereby irrevocably submits to the exclusive jurisdiction of the CCAA Court and, if the CCAA Court does not have (or abstains from) jurisdiction, Courts of the Province of Ontario, and any appellate court from any thereof, for itself and with respect to its property, generally and unconditionally, with regard to any such proceeding arising out of or relating to this Agreement. Each Party further agrees that notice as provided herein shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. Each Party hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim, or otherwise, in any proceeding arising out of or relating to this Agreement, (i) any claim that it is not personally subject to the jurisdiction of the CCAA Court as described herein for any reason, (ii) that it or its property is exempt or immune from jurisdiction of such court or from any legal process commenced in such

court (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (iii) that (x) the proceeding in such court is brought in an inconvenient forum, (y) the venue of such proceeding is improper, or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such court.

(c) **EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

16. **Specific Performance/Remedies.** The Parties understand and agree that money damages would be an insufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (including attorneys' fees and costs) as a remedy of any such breach, without the necessity of proving the inadequacy of money damages as a remedy. Each Party hereby waives any requirement for the security or posting of any bond in connection with such remedies.

17. **Survival.** Notwithstanding the termination of this Agreement pursuant to Section 10 hereof, Sections 10(f) and 14-28 shall survive such termination and shall continue in full force and effect in accordance with the terms hereof; *provided* that any liability of a Party for failure to comply with the terms of this Agreement shall survive such termination.

18. **Headings.** The headings of the sections, paragraphs, and subsections of this Agreement are inserted for convenience only and shall not affect the interpretation hereof or, for any purpose, be deemed a part of this Agreement.

19. **Successors and Assigns; Third Parties.** This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators, and representatives. There are no third-party beneficiaries under this Agreement and, except as set forth in Section 11, the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other Person.

20. **Relationship Among Parties.** Notwithstanding anything herein to the contrary, the duties and obligations of the Supporting Creditors under this Agreement shall be several, not joint and several. None of the Supporting Creditors shall have any fiduciary duty, any duty of trust or confidence in any form, or other duties or responsibilities to each other, the Just Energy Entities, or any of the Just Energy Entities' creditors, stockholders, or other stakeholders, and there are no commitments among or between the Supporting Secured CF Lenders, Shell, and/or the Sponsor. It is understood and agreed that any Supporting Creditor may trade in any



debt or equity securities of the Just Energy Entities without the consent of any other Party, subject to applicable securities laws and the terms of Section 11 of this Agreement. No prior history, pattern, or practice of sharing confidences among or between the Parties shall in any way affect or negate this understanding and agreement. The Parties have no agreement, arrangement, or understanding with respect to acting together for the purpose of acquiring, holding, voting, or disposing of any equity securities of the Just Energy Entities and do not constitute a “group” within the meaning of Rule 13d-5 under the Securities Act of 1933, as amended. The Just Energy Entities understand that each of the Supporting Creditors are engaged in a wide range of financial services and businesses, and, in furtherance of the foregoing, the Just Energy Entities acknowledge and agree that the obligations set forth in this Agreement (including Section 11 hereof) shall only apply to the trading desk(s) and/or business group(s) that principally manage and/or supervise such Supporting Creditor’s investment in and relations with the Just Energy Entities and shall not apply to any other trading desk, business group, or affiliate of such Supporting Creditor so long as they are not acting at the direction or for the benefit of such Supporting Creditor and so long as confidentiality is maintained consistent with any applicable confidentiality agreement.

21. **Prior Negotiations; Entire Agreement.** This Agreement, including the Exhibits and Schedules (including the Stalking Horse Term Sheet), constitutes the entire agreement of the Parties, and supersedes all other prior negotiations, with respect to the subject matter hereof and thereof.

22. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same agreement. Execution copies of this Agreement delivered by facsimile or PDF shall be deemed to be an original for the purposes of this paragraph.

23. **Notices.** All notices hereunder shall be deemed given if in writing and delivered to the following:

(a) If to the Just Energy Entities, to:

Kirkland & Ellis LLP  
Kirkland & Ellis International LLP  
609 Main Street  
Houston, Texas 77002  
Attention: Brian Schartz, P.C.  
[Redacted]

and

601 Lexington Avenue  
New York, New York 10022  
Attention: Allyson B. Smith  
[Redacted]

and

Osler, Hoskin & Harcourt LLP  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8  
Attention: Marc Wasserman, Michael De Lellis, and Jeremy Dacks  
**[Redacted]; [Redacted]; [Redacted]**

(b) If to the Sponsor, to:

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036-6745  
Attention: David H. Botter and Abid Qureshi  
**[Redacted]; [Redacted]**

and

2001 K St, NW  
Washington, DC 20006  
Attention: Kevin Eide  
**[Redacted]**

and

2300 N. Field Street, Suite 1800  
Dallas, Texas 75201  
Attention: Sarah Link Schultz  
**[Redacted]**

and

Cassels Brock & Blackwell LLP  
Scotia Plaza, Suite 2100  
40 King St. W  
Toronto, ON M5H 3C2  
Attention: Ryan Jacobs; Jane Dietrich; Joseph Bellissimo  
**[Redacted]; [Redacted]; [Redacted]**

(c) If to Shell, to:

Norton Rose Fulbright US LLP  
2200 Ross Avenue, Suite 3600  
Dallas, Texas 75201-7932  
Attention: Ryan Manns  
**[Redacted]**

and

Norton Rose Fulbright Canada LLP  
400 3<sup>rd</sup> Avenue SW, Suite 3700  
Calgary, AB T2P 4H2  
Attention: Howard Gorman  
[Redacted]

(d) If to a Supporting Secured CF Lender, to:

McCarthy Tétrault LLP  
66 Wellington Street West  
Suite 5300, TD Bank Tower Box 48  
Toronto, ON M5K 1E6  
Attention: Heather Meredith, James D. Gage, Justin Lapedus, D.J. Lynde  
[Redacted]; [Redacted]; [Redacted]; [Redacted]

and

Chapman and Cutler LLP  
320 South Canal Street  
Chicago, IL 60606  
Attention: Stephen Tetro [Redacted]

Any notice given by delivery, mail, or courier shall be effective when received. Any notice given by electronic mail shall be effective upon confirmation of transmission.

24. **No Solicitation; Adequate Information.** This Agreement is not and shall not be deemed to be a solicitation of votes on any plan. In addition, this Agreement does not constitute an offer to issue or sell securities to any Person, or the solicitation of an offer to acquire or buy securities, in any jurisdiction where such offer or solicitation would be unlawful.

25. **Severability.** If any provision of this Agreement, or the application of any such provision to any Person or circumstance, shall be held invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision hereof and this Agreement shall continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

26. **Interpretation; Rules of Construction; Representation by Counsel.** When a reference is made in this Agreement to a Section, Exhibit, or Schedule, such reference shall be to a Section, Exhibit, or Schedule, respectively, of or attached to this Agreement unless otherwise indicated. Unless the context of this Agreement otherwise requires, (a) words using the singular or plural number also include the plural or singular number, respectively, (b) the terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement, (c) the words “include,” “includes,” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation,” and (d) the word “or” shall not be exclusive and shall be read to mean “and/or.” The Parties agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of



any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

27. **Reliance and Authority.**

(a) **Sponsor.** Any provision of this Agreement that requires or contemplates the approval, agreement, consent, or waiver of the Sponsor shall be effective if, and only if, such approval, agreement, consent, or waiver is provided in writing and agreed to by the majority of the parties composing the Sponsor, and any Party shall be entitled to rely on written confirmation (including by email) from Akin or Cassels that the Sponsor has approved, agreed, consent to, or waived a particular matter.

(b) **Just Energy Entities.** With respect to any provision of this Agreement that requires or contemplates the approval, agreement, consent, or waiver of the Just Energy Entities, each Party shall be entitled to rely on written confirmation (including by email) from K&E or Osler that the Just Energy Entities have approved, agreed, consent to, or waived a particular matter.

(c) **Supporting Secured CF Lenders.** With respect to any provision of this Agreement that requires or contemplates the approval, agreement, consent, or waiver of the Supporting Secured CF Lenders or the Requisite Supporting Secured CF Lenders, each Party shall be entitled to rely on written confirmation (including by email) from McCarthy or Chapman that the Supporting Secured CF Lenders or the Requisite Supporting Secured CF Lenders have approved, agreed, consent to, or waived a particular matter.

(d) **Shell.** With respect to any provision of this Agreement that requires or contemplates the approval, agreement, consent, or waiver of Shell, each Party shall be entitled to rely on written confirmation (including by email) from counsel to Shell that Shell has approved, agreed, consent to, or waived a particular matter.

28. **Settlement Discussions.** This Agreement is part of a proposed settlement of matters that could otherwise be the subject of litigation among the Parties. Nothing in this Agreement shall be deemed an admission of any kind. Pursuant to Federal Rule of Evidence 408 and any Canadian law equivalent, any applicable state rules of evidence, and any other applicable law, foreign or domestic, this Agreement, and all negotiations relating thereto shall not be admissible into evidence in any proceeding other than to prove the existence of this Agreement or in a proceeding to enforce the terms of this Agreement.

*[Signature pages follow]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized officers, solely in their respective capacities as officers of the undersigned and not in any other capacity, as of the date first set forth above.

**COMPANY:**

**JUST ENERGY GROUP INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation

**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**ONTARIO ENERGY COMMODITIES  
INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**UNIVERSAL ENERGY CORPORATION**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY FINANCE CANADA ULC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**HUDSON ENERGY CANADA CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST MANAGEMENT CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**11929747 CANADA INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**12175592 CANADA INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JE SERVICES HOLDCO I INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JE SERVICES HOLDCO II INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**8704104 CANADA INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY ADVANCED SOLUTIONS  
CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY (U.S.) CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY ILLINOIS CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY INDIANA CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY MASSACHUSETTS  
CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY NEW YORK CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY TEXAS I CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY, LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**JUST ENERGY PENNSYLVANIA CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.



**JUST ENERGY MICHIGAN CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY SOLUTIONS INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**HUDSON ENERGY SERVICES LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**HUDSON ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**INTERACTIVE ENERGY GROUP LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**HUDSON PARENT HOLDINGS LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**DRAG MARKETING LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**JUST ENERGY ADVANCED SOLUTIONS  
LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**FULCRUM RETAIL ENERGY LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**FULCRUM RETAIL HOLDINGS LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**TARA ENERGY, LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Limited  
Liability Company.

**JUST ENERGY MARKETING CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY CONNECTICUT CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY LIMITED**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST SOLAR HOLDINGS CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Corporation.

**JUST ENERGY ONTARIO L.P.**, by its  
general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST ENERGY MANITOBA L.P.**, by its  
general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST ENERGY (B.C.) LIMITED  
PARTNERSHIP**, by its  
general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST ENERGY QUÉBEC L.P.**, by its  
general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST ENERGY TRADING L.P.**, by its  
general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST ENERGY ALBERTA L.P.**, by its  
general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST GREEN L.P.**, by its general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST ENERGY PRAIRIES L.P.**, by its  
general partner,  
**JUST ENERGY CORP.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.

**JUST ENERGY TEXAS LP**, by its general  
partner,  
**JUST ENERGY, LLC**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President, General  
Counsel and Corporate Secretary

We have the authority to bind the Partnership.



**JUST ENERGY (FINANCE) HUNGARY ZRT.**

By: (signed) "Zita Tarjanyi"  
Name: Zita Tarjanyi  
Title: Liquidator

I have the authority to bind the Corporation.

**JEBPO SERVICES LLP**

By: (signed) "Scott Fordham"  
Name: Scott Fordham  
Title: Designated Partner

By: (signed) "Sudheendrah Vasudeva"  
Name: Sudheendrah Vasudeva  
Title: Designated Partner

We have the authority to bind the Partnership.

**THE SPONSOR**

**LVS III SPE XV LP, by its general  
partner LVS III GP LLC**

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

Principal Amount of Credit Facility Claims: **[\$Redacted]**

Principal Amount of Claims under the DIP Financing **[\$Redacted]**

Principal Amount and Type of Other Claims: **[\$Redacted]**

Interests: **[Redacted]**

**THE SPONSOR**

**TOCU XVII LLC**

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

Principal Amount of Credit Facility Claims: **[\$Redacted]**

Principal Amount of Claims under the DIP Financing **[\$Redacted]**

Principal Amount and Type of Other Claims: **[\$Redacted]**

Interests: **[Redacted]**

**THE SPONSOR**

**HVS XVI LLC**

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

Principal Amount of Credit Facility Claims: **[\$Redacted]**

Principal Amount of Claims under the DIP Financing **[\$Redacted]**

Principal Amount and Type of Other Claims: **[\$Redacted]**

Interests: **[Redacted]**

**THE SPONSOR**

**OC II LVS XIV LP, by its general partner  
OC II GP I LLC**

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

Principal Amount of Credit Facility Claims: **[\$Redacted]**

Principal Amount of Claims under the DIP Financing **[\$Redacted]**

Principal Amount and Type of Other Claims: **[\$Redacted]**

Interests: **[Redacted]**

**THE SPONSOR**

**OC III LFE I LP, by its general partner  
OC III GP LLC**

By: [Redacted]  
Name:  
Title:

Principal Amount of Credit Facility Claims: **[\$[Redacted]]**  
Principal Amount of Claims under the DIP Financing **[\$[Redacted]]**  
Principal Amount and Type of Other Claims: **[\$[Redacted]]**  
Interests: **[Redacted]**

**THE SPONSOR**

**CBHT ENERGY I LLC**

By: **[Redacted]**\_\_\_\_\_

Name:

Title:

Principal Amount of Credit Facility Claims: **[\$Redacted]**

Principal Amount of Claims under the DIP Financing **[\$Redacted]**

Principal Amount and Type of Other Claims: **[\$Redacted]**

Interests: **[Redacted]**



**NATIONAL BANK OF CANADA,**  
as Credit Facility Agent

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

**NATIONAL BANK OF CANADA,**  
as Supporting Secured CF Lender

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

**CANADIAN IMPERIAL BANK OF  
COMMERCE,**  
as Supporting Secured CF Lender

By: **[Redacted]** \_\_\_\_\_  
Name:  
Title:

By: **[Redacted]** \_\_\_\_\_  
Name:  
Title:

**CANADIAN IMPERIAL BANK OF  
COMMERCE, NEW YORK BRANCH,**  
as Supporting Secured CF Lender

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

**ATB FINANCIAL,**  
as Supporting Secured CF Lender

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

**HSBC BANK CANADA,**  
as Supporting Secured CF Lender

By: **[Redacted]** \_\_\_\_\_  
Name:  
Title:

By: **[Redacted]** \_\_\_\_\_  
Name:  
Title:

**CANADIAN WESTERN BANK**, as  
Supporting Secured CF Lender

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

**JPMORGAN CHASE BANK, N.A.,**  
as Supporting Secured CF Lender

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:



**MORGAN STANLEY SENIOR FUNDING, INC.,**  
on behalf of its Special Assets Oversight Team as  
Supporting Secured CF Lender, and not on behalf of any  
of its other business units or teams or those of its  
affiliates

By: [Redacted]  
Name:  
Title:

**SHELL ENERGY NORTH AMERICA  
(CANADA) INC.**

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**SHELL ENERGY NORTH AMERICA  
(US), L.P.**

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**SHELL TRADING RISK MANAGEMENT,  
LLC**

By: **[Redacted]** \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

<b><u>DEFINED TERMS</u></b>	
<b>“Adversary Proceeding”</b>	means the adversary proceeding commenced on November 12, 2021 by JEGI, Just Energy Texas LP, Fulcrum Retail Energy LLC and Hudson Energy Services LLC against Electric Reliability Council of Texas, Inc. and the Public Utility Commission of Texas.
<b>“Alternative Restructuring Proposal”</b>	means any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity’s material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the Transaction and is with a counterparty other than the Sponsor or an affiliate of the Sponsor.
<b>“Articles of Reorganization”</b>	has the meaning given to it in the Transaction Agreement.

<b><u>DEFINED TERMS</u></b>	
<b>“Authorized Authority”</b>	means, in relation to any Person, property, transaction, event, or other matter, as applicable, any: (i) federal, provincial, territorial, state, municipal, or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign; (ii) agency, authority, commission, instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government, including any Taxing Authority; (iii) court, arbitrator, commission, or body exercising judicial, quasi-judicial, administrative, or similar functions, including the CCAA Court and the US Bankruptcy Court; or (iv) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction, event, or other matter.
<b>Backstop Commitment Letter</b>	shall mean that certain Backstop Commitment Letter dated May 12, 2022 between Just Energy (U.S.) Corp., the DIP Lenders and OC III LFE I LP.
<b>“BP Commodity/ISO Services Claim”</b>	means all Pre-Filing Claims of BP Canada Energy Group ULC and BP Energy Company in the aggregate principal amounts of US\$229,461,559 and \$170,653, plus all accrued and unpaid interest thereon through to and including the Closing Date.
<b>“Cash Management Obligations”</b>	has the meaning given to it in the Initial Order.
<b>“Claim”</b>	has the meaning given to it in the Claims Procedure Order.
<b>“Claims Procedure Order”</b>	means the order of the CCAA Court dated September 15, 2021 in the CCAA Proceedings establishing a claims procedure in respect of the Just Energy Entities, as same may be further amended, restated or varied from time to time, and in all such cases such order shall be in form and substance reasonably acceptable to the Just Energy Entities and the Sponsor.

<b><u>DEFINED TERMS</u></b>	
<b>“Claims Procedure Recognition Motion”</b>	means a motion filed in the Chapter 15 Cases with the US Bankruptcy Court seeking entry of the Claims Procedure Recognition Order.
<b>“Claims Procedure Recognition Order”</b>	means an order in the Chapter 15 Cases from the US Bankruptcy Court recognizing and giving effect in the United States to the Claims Procedure Order and the Claims Bar Date (as defined in the Claims Procedure Order).
<b>“Closing”</b>	means the completion of the Transaction in accordance with the terms of the Transaction Agreement.
<b>“Closing Date”</b>	means the date on which Closing occurs.
<b>“Commodity Agreement”</b>	means a gas supply agreement, electricity supply agreement or other agreement with any of the Just Energy Entities 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.
<b>“Commodity Supplier”</b>	means any counterparty to a Commodity Agreement.
<b>“Commodity Supplier Claims”</b>	means any Pre-Filing Claim or Restructuring Period Claim of any Commodity Supplier that is party to the Intercreditor Agreement in respect of a Commodity Agreement, plus any interest thereon to the Closing Date; <i>provided, however</i> , that in any case for the purposes of this Agreement “Commodity Supplier Claim” shall not include any BP Commodity / ISO Services Claim.
<b>“Continuing Contract”</b>	means a contract, arrangement, or other agreement (oral or written) for which a notice of disclaimer pursuant to section 32 of the CCAA has not been sent by any of the Just Energy Entities.

<b><u>DEFINED TERMS</u></b>	
<b>“Credit Agreement”</b>	means the ninth amended and restated credit agreement dated as of September 28, 2020, by and among Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, the Credit Facility Agent and the Credit Facility Lenders, as such credit agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.
<b>“Credit Facility Claim”</b>	means any amounts owing by the Just Energy Entities to the Credit Facility Lenders as of the Closing Date under the Credit Facility Documents, including all principal and all accrued and outstanding fees, costs, interest, or other amounts owing pursuant to the Credit Facility Documents as determined in accordance with the Claims Procedure Order; <i>provided</i> that the Credit Facility Claim shall not include any Credit Facility LC Claim, Commodity Supplier Claim or Cash Management Obligations.
<b>“Credit Facility Documents”</b>	means, collectively, the Credit Agreement and all related documentation, including, all guarantee and security documentation related to the foregoing.
<b>“Credit Facility LC Claim”</b>	means any Claim of any Credit Facility Lender relating to any letter of credit issued but undrawn under the Credit Facility Documents immediately prior to Closing.
<b>“Credit Facility Lenders”</b>	means the lenders party to the Credit Agreement from time to time, in such capacity.
<b>“Employee Priority Claim”</b>	means any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of any of the Just Energy Entities whose employment was terminated between the Filing Date and the Closing Date; and (b) unpaid amounts provided for in section 6(5)(a) of the CCAA.
<b>“Energy Regulator”</b>	means 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.

<b><u>DEFINED TERMS</u></b>	
<b>“Energy Regulator Claims”</b>	means any Claim that may be asserted by any Energy Regulator, excluding any: (i) Claim with respect to the subject matter of the Adversary Proceeding, including any Claim with respect to obligations of the Just Energy Entities underlying the invoices that are the subject of the Adversary Proceeding; and (ii) Claim by any Taxing Authority.
<b>“Final Order”</b>	means any order or judgment of the CCAA Court or the US Bankruptcy Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the Chapter 15 Cases or the docket of any court of competent jurisdiction, that has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Just Energy Entities, the Supporting Secured CF Lenders, Shell and the Sponsor, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice; <i>provided, however</i> , that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the US Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.
<b>“Government Priority Claims”</b>	means any Claim of any Governmental Entity against any Just Energy Entity in respect of amounts that are outstanding, if any, provided for in section 6(3) of the CCAA.

<b><u>DEFINED TERMS</u></b>	
<b>“Government Entity”</b>	means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power..
<b>“Implementation Steps”</b>	means the specific transaction steps and pre-closing reorganization of the Just Energy Entities to be effected, which shall be set out in an appendix to the Transaction Agreement (which appendix, for the avoidance of doubt, will be completed following the execution of the Transaction Agreement at least 7 days prior to the hearing of the Just Energy Entities’ motion to the CCAA Court seeking the Vesting Order) and which shall be in form and substance acceptable to the Just Energy Entities, the Supporting Secured CF Lenders and the Sponsor, each acting reasonably.
<b>“Intercompany Claim”</b>	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, and <b>“Intercompany Claims”</b> means all of them.



<b><u>DEFINED TERMS</u></b>	
<b>“Intercreditor Agreement”</b>	means the Sixth Amended and Restated Intercreditor Agreement dated as of September 1, 2015 between National Bank of Canada, as collateral agent and agent for itself as agent and the Lenders (as defined therein); Shell; BP Canada Energy Group ULC; BP Canada Energy Marketing Corp.; BP Energy Company; Exelon Generation Company, LLC; Bruce Power L.P.; EDF Trading North America, LLC; Nextera Energy Power Marketing, LLC; Macquarie Bank Limited; Macquarie Energy Canada Ltd.; Macquarie Energy LLC; Morgan Stanley Capital Group Inc.; 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 (as may be further amended, restated, supplemented, or otherwise modified from time to time).
<b>“Law”</b>	means any law, statute, order, decree, consent decree, writ, notice, judgment, rule, regulation, ordinance or other pronouncement having the effect of law whether in Canada, the United States or any other country, or any domestic or foreign state, county, province, city or other political subdivision or of any Authorized Authority.
<b>“Monitor”</b>	means FTI Consulting Canada Inc., as Court-appointed monitor of the Just Energy Entities in the CCAA Proceedings and not in its personal capacity.
<b>“New Credit Agreement”</b>	has the meaning given to it in the Stalking Horse Term Sheet.
<b>“New Credit Facility”</b>	means the credit facility to be made available to some or all of the Just Energy Entities pursuant to the New Credit Agreement.
<b>“New Intercreditor Agreement”</b>	has the meaning given to it in the Stalking Horse Term Sheet.

<b><u>DEFINED TERMS</u></b>	
<b>“Person”</b>	shall be broadly interpreted and includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Authorized Authority.
<b>“Plan Support Agreement”</b>	shall mean that certain Plan Support Agreement dated May 12, 2022 between the Just Energy Entities, the Sponsor, Shell, the Supporting Secured CF Lenders, the Credit Facility Agent, and the Supporting Unsecured Creditors (as defined in the Plan Support Agreement).
<b>“Post-Filing Claim” or “Post-Filing Claims”</b>	means any or all indebtedness, liability, or obligation of the Just Energy Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the Just Energy Entities during such period or under or in accordance with any Continuing Contract; provided that, for certainty, such amounts are not a Restructuring Period Claim or a Restructuring Period D&O Claim (as such terms are defined in the Claims Procedure Order).
<b>“Pre-Filing Claims”</b>	has the meaning given to it in the Claims Procedure Order.
<b>“Regulatory Approvals”</b>	has the meaning given to it in the Stalking Horse Term Sheet.
<b>“SISP Motion”</b>	means a motion filed in the CCAA Proceedings seeking entry of the SISP Order.
<b>“SISP Order”</b>	means an order of the CCAA Court substantially in the form attached as Exhibit 2 to the Stalking Horse Term Sheet.

<b><u>DEFINED TERMS</u></b>	
<b>“SISP Recognition Motion”</b>	means a motion filed in the Chapter 15 Cases with the US Bankruptcy Court seeking entry of the SISP Recognition Order.
<b>“SISP Recognition Order”</b>	means an order in the Chapter 15 Cases from the US Bankruptcy Court recognizing and giving effect in the United States to the SISP Order.
<b>“Taxing Authorities”</b>	means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the United States and each and every state and locality of the United States, and any Canadian, United States or other Authorized Authority exercising taxing authority or power, and “Taxing Authority” means any one of the Taxing Authorities.
<b>“Transaction Agreement”</b>	has the meaning given to it in the Recitals.
<b>“US Bankruptcy Rules”</b>	means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 15 Cases, and the general, local and chambers rules of the US Bankruptcy Court, as amended.
<b>“Vesting Motion”</b>	means a motion filed in the CCAA Proceedings seeking entry of the Vesting Order.
<b>“Vesting Order”</b>	means an order of the CCAA Court approving the Transaction Agreement, substantially in the form attached as Exhibit 3 to the Stalking Horse Term Sheet.
<b>“Vesting Recognition Motion”</b>	means a motion filed in the Chapter 15 Cases with the US Bankruptcy Court seeking entry of the Vesting Recognition Order.

**DEFINED TERMS**

<p><b>“Vesting Recognition Order”</b></p>	<p>means an order entered in the Chapter 15 Cases recognizing and giving effect in the United States to the Vesting Order.</p>
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**EXHIBIT B**

**Transaction Agreement**

**TRANSACTION AGREEMENT**

**JUST ENERGY GROUP INC.**

**as the Company**

**-and-**

**LVS III SPE XV LP,**

**TOCU XVII LLC,**

**HVS XVI LLC,**

**OC II LVS XIV LP,**

**OC III LFE I LP,**

**CBHT Energy I LLC**

**each as a Purchaser and collectively, as the Purchaser**

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**Disclosure Letter and Exhibits**

Disclosure Letter

Exhibit A – Terms of the New Preferred Equity

Exhibit B – Form of Release

## TRANSACTION AGREEMENT

**THIS AGREEMENT** is made as of August 4, 2022

### AMONG:

Just Energy Group Inc. (“**Just Energy**” or “**Company**”)

-and-

LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT ENERGY I LLC (each, a “**Purchaser**” and collectively, the “**Purchaser**”).

### RECITALS:

- A. The Just Energy Entities carry on the business, taken as a whole, of serving as a retail energy provider specializing in electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options (collectively, the “**Business**”).
- B. On March 9, 2021, the Applicants commenced proceedings under the CCAA before the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) to, among other things, seek creditor protection for, and certain relief in respect of, certain of the Just Energy Entities.
- C. On March 9, 2021, the Applicants commenced ancillary insolvency proceedings under Chapter 15 of Title 11 of the United States Code (the “**U.S. Proceedings**”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.
- D. Pursuant to the Support Agreement entered into on the date of this Agreement, by and among the Just Energy Entities, the Purchaser and the other parties signatory thereto (as amended, supplemented, or otherwise modified from time to time, the “**Support Agreement**”), the Purchaser has agreed to act as a “stalking horse” bidder and, if selected or deemed as having submitted the Successful Bid in accordance with the terms of the SISP, to purchase the Purchased Interests from the Just Energy Entities, and the Company has agreed to cause the Purchased Interests to be acquired by the Purchaser, and Purchaser further wishes to indirectly assume from the Just Energy Entities the Assumed Liabilities, pursuant to and in accordance with the terms of the SISP and subject to and in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE**, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement,

“**Administrative Expense Amount**” means cash in an amount of C\$1,900,000, which shall be paid by the Just Energy Entities to the Monitor on the Closing Date out of the cash and cash equivalents of the Just Energy Entities as at the Closing Date and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs, subject to the terms hereof.

“**Administrative Expense Costs**” means the reasonable and documented fees and costs of (i) the Monitor and its professional advisors and (ii) professional advisors of the Just Energy Entities for services performed prior to and, other than in respect of the Just Energy Entities, after the Closing Date, in each case, relating directly or indirectly to the CCAA Proceedings, the U.S. Proceedings, and this Agreement and including without limitation (a) costs required to wind down and/or dissolve and/or bankrupt Residual Co. and (b) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and Residual Co.

“**Adversary Proceeding**” means adversary proceeding number 21-4299, commenced on November 12, 2021 in the U.S. Proceedings before the U.S. Bankruptcy Court, by Just Energy, Just Energy Texas LP, Fulcrum Retail Energy LLC and Hudson Energy Services LLC, as the foreign representatives, against Electric Reliability Council of Texas, Inc. and the Public Utility Commission of Texas.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise). For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Agreement**” means this transaction agreement and all attachments, including the Disclosure Letter and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this transaction agreement and all attached Exhibits, and unless otherwise indicated, references to Articles, Sections, the Disclosure Letter and Exhibits are to Articles, Sections, the Disclosure Letter and Exhibits in this transaction agreement.

“**Alternative Restructuring Proposal**” means any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of

reorganization, share exchange, business combination, or similar transaction involving any one or more Just Energy Entity, one or more Just Energy Entity's material assets, or the debt, equity, or other interests in any one or more Just Energy Entity that is an alternative to or otherwise inconsistent with the transaction contemplated hereby and any amendment to or variation of any such inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement, and is with a counterparty other than the Purchaser or any Affiliate of the Purchaser.

**“Antitrust Approvals”** means any approval, clearance, filing or expiration or termination of a waiting period pursuant to which a transaction would be deemed to be unconditionally approved in relation to the transactions contemplated hereby under any Antitrust Law of any country or jurisdiction that the Purchaser agrees, acting reasonably, is required, other than the Competition Act Approval.

**“Antitrust Laws”** means all Applicable Laws, including any antitrust, competition or trade regulation laws (including, without limitation, the HSR Act), that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, restraint of trade or lessening or preventing competition through merger or acquisition.

**“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Just Energy Entities, the Purchaser, the Business, or any of the Purchased Interests or the Assumed Liabilities.

**“Applicants”** means the Company, each Residual Co. (at the time such Residual Co. becomes an Applicant) and those additional applicants listed on Schedule 1.1(a).

**“Articles of Reorganization”** means articles of reorganization in respect of the Company's authorized and issued common shares to provide for the redemption or cancellation thereof by the Company for no consideration on Closing; such articles of reorganization to be in form and substance satisfactory to the Purchaser, acting reasonably.

**“Assumed Liabilities”** has the meaning given to such term in Section 2.3.

**“BP Commodity/ISO Services Claim”** means all Pre-Filing Claims of BP Canada Energy Group ULC and BP Energy Company in the aggregate principal amounts of \$229,461,558.59 and C\$170,652.60, plus all accrued and unpaid interest thereon through to and including the Closing Date.

**“Break-Up Fee”** has the meaning given to such term in Section 9.3(a).

**“Business”** has the meaning given to such term in Recital A.

**“Business Day”** means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario and New York, New York are open for commercial banking business during normal banking hours.

“**Cash Management Obligations**” means has the meaning given to such term in the Support Agreement.

“**Causes of Action**” means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of the Just Energy Entities against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Closing Time (which Causes of Action for the avoidance of doubt shall be retained by the Acquired Entities on Closing).

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).

“**CCAA Court**” has the meaning given to such term in Recital B.

“**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Applicants pursuant to the Initial CCAA Order.

“**Claims**” has the meaning given to such term in the Claims Procedure Order.

“**Claims Bar Date**” has the meaning given to such term in the Claims Procedure Order.

“**Claims Procedure Order**” means the order of the CCAA Court dated September 15, 2021 in the CCAA Proceedings establishing a claims procedure in respect of the Just Energy Entities and which established November 1, 2021 on or before 5:00 p.m. (Toronto time) as the last date in which Persons wishing to assert a Claim against the Just Energy Entities could file such claim, as same may be further amended, restated or varied from time to time, and in all such cases any such amended, restated or varied order shall be in form and substance reasonably acceptable to the Just Energy Entities and the Purchaser.

“**Closing**” means the completion of the sale and purchase of the Purchased Interests pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Interests.

“**Closing Date**” means a date no later than five (5) Business Days after the conditions set forth in Article 6 have been satisfied or waived, other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that, if there is to be a Closing hereunder, then the Closing Date shall be no later than the Outside Date.

“**Closing Documents**” means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or before the Closing.

**“Closing Time”** means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

**“Code”** means the United States Internal Revenue Code of 1986, as amended.

**“Commissioner”** means the Commissioner of Competition appointed under the Competition Act or any Person duly authorized to exercise powers of the Commission of Competition.

**“Commodity Agreement”** means a gas supply agreement, electricity supply agreement or other agreement with any of the Just Energy Entities 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.

**“Commodity Supplier”** means any counterparty to a Commodity Agreement.

**“Company”** has the meaning given to such term in the preamble to this Agreement.

**“Company Subsidiaries”** means collectively each Person that is controlled by the Just Energy Entities (for the purposes of this definition, “control”, as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise).

**“Competition Act”** means the Competition Act (Canada), R.S.C., 1985, c. C-34.

**“Competition Act Approval”** means that: (i) the Commissioner shall have issued an Advance Ruling Certificate under subsection 102(1) of the Competition Act in respect of the transactions contemplated by this Agreement, or (ii) the applicable waiting period under section 123 of the Competition Act shall have expired or been waived by the Commissioner, or the obligation to submit a notification shall have been waived under paragraph 113(c) of the Competition Act, and the Commissioner shall have issued a No Action Letter.

**“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to the Purchaser or any of its Affiliates by the Company or any of the Just Energy Entities’ representatives, including information about identifiable individuals, any information relating to the Just Energy Entities, or any customer or supplier of the Just Energy Entities, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Purchaser or its representatives in breach of this Agreement or that is received by the Purchaser from an independent third party that, to the knowledge of the Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Purchaser or its representatives without reference to any Confidential Information.

**“Continuing Contracts”** means a contract, arrangement, or other agreement (oral or written) for which a notice of disclaimer pursuant to Section 32 of the CCAA has not been sent by any of the Just Energy Entities; provided that Continuing Contracts shall not include the Third Amended and Restated Scheduling Coordinator Agreement dated December 1, 2014 between Shell Energy North America (US), L.P., Just Energy New York Corp., Just Energy (U.S.) Corp. and Just Energy Solutions Inc. (formerly Commerce Energy, Inc.) or any other agreement whereby Shell performs ISO or scheduling services on behalf of any Applicant whereby an Applicant has reimbursement obligations to Shell for payments made by Shell on behalf of an Applicant to an ISO.

**“Credit Agreement”** means the ninth amended and restated credit agreement dated as of September 28, 2020, by and among Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, the Credit Facility Agent and the Credit Facility Lenders, as such credit agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

**“Credit Bid Consideration”** has the meaning given to such term in Section 3.1(a)(ii).

**“Credit Facility Agent”** means National Bank of Canada, in its capacity as administrative agent for the Credit Facility Lenders.

**“Credit Facility Documents”** means, collectively, the Credit Agreement and all related documentation, including, all guarantee and security documentation related to the foregoing.

**“Credit Facility LC Claim”** means any claim of or obligation owing to any Credit Facility Lender relating to any letter of credit issued but undrawn under the Credit Facility Documents immediately prior to Closing.

**“Credit Facility Lenders”** means the lenders party to the Credit Agreement from time to time, in such capacity.

**“Credit Facility Remaining Debt”** means all debts, liabilities and other obligations (other than the Credit Facility LC Claims and the Cash Management Obligations) owing by the Just Energy Entities to the Credit Facility Agent and the Credit Facility Lenders under the Credit Facility Documents as of the Closing Date that are not otherwise repaid in accordance with the New Credit Agreement.

**“DIP Agent”** means Alter Domus (US) LLC, in its capacity as administrative and collateral agent for the DIP Lenders.

**“DIP Documents”** means, collectively, the DIP Term Sheet and all related documentation, including, without limitation, all guarantee and security documentation, related to the foregoing.

**“DIP Financing”** means the debtor-in-possession financing made pursuant to the DIP Term Sheet.

**“DIP Lenders”** means the lenders under the DIP Term Sheet, in such capacity, and “DIP Lender” means any one of them.

**“DIP Term Sheet”** means the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities party thereto, the DIP Agent and the DIP Lenders, dated as of March 9, 2021, as such term sheet may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

**“Disclosure Letter”** means the disclosure letter dated the date hereof regarding this Agreement.

**“Employee Priority Claims”** means any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of any of the Just Energy Entities whose employment was terminated between the Filing Date and the Closing Date and (b) unpaid amounts provided for in Section 6(5)(a) of the CCAA.

**“Employment Agreements”** means, collectively, the employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the Just Energy Entities that, on or prior to the Closing, have not resigned, in each case, in existence on the date hereof; provided, however, that Employment Agreements shall not include employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the Just Energy Entities that have been terminated or disclaimed without the consent of the Purchaser.

**“Encumbrance”** means any security interest (whether contractual, statutory or otherwise), lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust), option or adverse claim or encumbrance of any nature or kind.

**“Energy Regulator”** means 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.

**“Energy Regulator Claims”** means any Claim that may be asserted by any Energy Regulator against a Just Energy Entity, excluding any: (i) Claim with respect to the subject matter of the Adversary Proceeding, including any Claim with respect to obligations of the Just Energy Entities underlying the invoices that are the subject of the Adversary Proceeding; and (ii) Claim by any Taxing Authority.

**“Energy Regulator Notices”** means notice of the Agreement to the Energy Regulator in the time and manner required by Applicable Law and includes, but is not limited to, notice to the Energy Regulator regarding potential implications to performance guarantees that might have been provided in support of an application for a licence, order or permit, as the case may be.

**“Equity Financing”** has the meaning given to such term in Section 5.9(b).

**“Equity Financing Sources”** has the meaning given to such term in Section 5.9(b).



“**Equity Interests**” means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

“**ETA**” means the *Excise Tax Act* (Canada).

“**Excluded Assets**” has the meaning given to such term in Section 2.2.

“**Excluded Contracts**” means contracts of the Just Energy Entities as specified on Schedule 2.2(c) of the Disclosure Letter.

“**Excluded Liabilities**” has the meaning given to such term in Section 2.4.

“**Filing Date**” means March 9, 2021.

“**Final Order**” means with respect to any order or judgment of the CCAA Court or the U.S. Bankruptcy Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the Chapter 15 Cases or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Company and the Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the U.S. Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

“**Fundamental Representations and Warranties of the Company**” means the representations and warranties of the Company included in Sections 4.1 [*Due Authorization and Enforceability of Obligations*], 4.2 [*Existence and Good Standing*] and 4.4 [*Absence of Conflicts*].

“**GAAP**” means generally accepted accounting principles in the U.S., including International Accounting Standards and U.S. GAAP.

“**Governmental Authority**” means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**GST/HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA or any other statute in any jurisdiction of Canada.

“**Guarantee**” has the meaning given to such term in Section 5.9(b).

“**HSR Act**” means the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the rules and regulations promulgated thereunder, as amended.

“**Implementation Steps**” has the meaning given to such term in Section 2.7(b).

“**Initial CCAA Order**” means the initial order of the CCAA Court pursuant to the CCAA commencing the CCAA Proceedings, as amended, restated, supplemented and/or modified from time to time.

“**Initial Recognition Order**” means the Order of the U.S. Bankruptcy Court in the U.S. Proceedings recognizing, on a final basis, the CCAA Proceedings as “foreign main proceedings” pursuant to section 1502(4) of the *U.S. Bankruptcy Code*.

“**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.

“**Intercreditor Agreement**” means the Sixth Amended and Restated Intercreditor Agreement dated as of September 1, 2015 between National Bank of Canada, as collateral agent and agent for itself as agent and the Lenders (as defined therein); Shell; BP Canada Energy Group ULC; BP Canada Energy Marketing Corp.; BP Energy Company; Exelon Generation Company, LLC; Bruce Power L.P.; EDF Trading North America, LLC; Nextera Energy Power Marketing, LLC; Macquarie Bank Limited; Macquarie Energy Canada Ltd.; Macquarie Energy LLC; Morgan Stanley Capital Group Inc.; 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 (as may be further amended, restated, supplemented, or otherwise modified from time to time).

“**Investment Canada Act**” means the *Investment Canada Act* (Canada), R.S.C., 1985, c. 28 (1<sup>st</sup> Supp).

“**Investment Canada Act Approval**” means both:

(1) receipt by the Purchaser of a certification letter from the Director of Investments under the Investment Canada Act pursuant to subsection 13(1) of the Investment Canada Act confirming that that the transactions contemplated by this Agreement are not reviewable under Part IV of the Investment Canada Act;

and

(2) either: (A) no notice is given under subsection 25.2(1) or 25.3(2) of the Investment Canada Act within the prescribed period; or, (B) if notice is given under subsection 25.2(1) or

25.3(2) of the Investment Canada Act, then either (a) the Minister or Ministers under the Investment Canada Act have sent to the Purchaser a notice under paragraph 25.2(4)(a) or 25.3(6)(b) of the Investment Canada Act; or (b) the Governor in Council has issued an order under paragraph 25.4(1)(b) of the Investment Canada Act authorizing the transactions contemplated by this Agreement.

**“Just Energy Entities”** means the Company, Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada 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., 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.

**“Material Adverse Effect”** means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on (i) the business, assets, liabilities, financial conditions or results of operations of the Just Energy Entities, collectively, or (ii) prevents the ability of any of the Just Energy Entities to perform its obligations under, or to consummate the transactions contemplated by, this Agreement, taken as a whole; in each case except to the extent that any such change, effect, event, occurrence, state of facts or development is attributable to: (a) general economic or business conditions; (b) Canada, the U.S. or foreign economies, or financial, banking or securities markets in general, or other general business, banking, financial or economic conditions (including (i) any disruption in any of the foregoing markets, (ii) any change in the currency exchange rates or (iii) any decline or rise in the price of any security, commodity, contract or index); (c) acts of God or other calamities, national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (d) the identity of the Purchaser or its Affiliates; (e) conditions affecting generally the industry in which the Just Energy Entities participates; (f) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement or the transactions contemplated by this Agreement, or the identity of the Parties, including any termination of, reduction in or similar adverse impact on relationships, contractual or otherwise, with any customers, suppliers, financing sources, licensors, licensees, distributors, partners, employees or others having relationships with the Just Energy Entities; (g) changes in Applicable Laws or the interpretation thereof; (h) any change in GAAP or other accounting requirements or principles; (i) national or international political, labor or social conditions; (j) the failure of the Just Energy Entities to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to

the clauses contained in this definition); or (k) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, this Agreement; provided that the exceptions set forth in clauses (a), (b), (c), (e), (g), (h) or (i) shall not apply to the extent that such event is disproportionately adverse to the Just Energy Entities, taken as a whole, as compared to other companies in the industries in which the Just Energy Entities operate.

**“Monitor”** means FTI Consulting Canada Inc., as Court-appointed monitor of the Just Energy Entities in the CCAA Proceeding and not in its personal capacity.

**“Monitor’s Certificate”** means the certificate delivered to the Purchaser and filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Company and the Purchaser that all conditions to Closing have been satisfied or waived by the applicable Parties and the transactions contemplated by this Agreement have been completed.

**“New Credit Agreement”** means the tenth amended and restated credit agreement dated as of the Closing Date, by and among Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, the Credit Facility Agent and the Credit Facility Lenders, as such credit agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof, which shall be in a form consistent with the term sheet with respect thereto as contained in Exhibit 1 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement) (including that any letters of credit issued by a Credit Facility Lender pursuant to the Credit Agreement shall continue under the New Credit Agreement or be discharged and, if required, replaced with new letters of credit issued under the New Credit Agreement, unless otherwise agreed to by the applicable Credit Facility Lender and the Just Energy Entities, with the consent of the Purchaser) and otherwise acceptable to the Purchaser as of the Closing Date.

**“New Intercreditor Agreement”** means the seventh amended and restated intercreditor agreement by, among others, the Just Energy Entities, the Credit Facility Agent and the applicable Commodity Suppliers, which shall provide for the same relative supplier and lender priorities as contemplated in the existing sixth amended and restated intercreditor agreement subject to modifications contained therein, which shall be in a form consistent with the term sheet with respect thereto as contained in Exhibit 4 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement) and otherwise acceptable to the Purchaser as of the Closing Date.

**“New Preferred Equity”** has the meaning given to such term in Section 2.1(a).

**“No Action Letter”** means written confirmation from the Commissioner that the Commissioner does not, at that time, intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement.

**“Order”** means any order of the Court made in the CCAA Proceedings, any order of the U.S. Court made in the U.S. Proceedings, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

**“Outside Date”** has the meaning given to such term in Section 9.1(c).

“**Parties**” means the Company and the Purchaser collectively, and “**Party**” means either the Company or the Purchaser, as the context requires.

“**PATRIOT Act**” has the meaning given to such term in Section 5.11.

“**PCMLTFA**” has the meaning given to such term in Section 5.11.

“**Permitted Encumbrances**” means the Encumbrances listed in Schedule 1.1(b).

“**Person**” means includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Governmental Authority.

“**Post-Closing Straddle Tax Period**” has the meaning given to such term in Section 7.4(c).

“**Post-Filing Claim**” or “**Post-Filing Claims**” means any or all indebtedness, liability, or obligation of the Just Energy Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the Just Energy Entities during such period or under or in accordance with any Continuing Contract; provided that, for certainty, such amounts are not a Restructuring Period Claim or a Restructuring Period D&O Claim, each as defined in the Claims Procedure Order.

“**Pre-Filing Claims**” has the meaning given to such term in the Claims Procedure Order.

“**Priority Payments Amount**” means cash in an amount equal to the value of the Priority Payments less the value of the Cash Purchase Price.

“**Priority Payments**” has the meaning given to such term in the Vesting Order.

“**Purchase Price**” has the meaning given to such term in Section 3.1(a).

“**Purchased Interests**” has the meaning given to such term in Section 2.1(a).

“**Purchaser**” has the meaning given to such term in the preamble to this Agreement.

“**Released Claims**” means all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “claims” as defined in the CCAA or the U.S. Bankruptcy Code and

including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Residual Co.**” means an entity to be formed by the Company in Canada and an entity to be formed by the Company in the United States, in each case, in form satisfactory to the Purchaser, acting reasonably, prior to the Closing and each of which shall have no issued and outstanding shares; provided, that no such entity shall be a flow through entity for Canadian or U.S. tax purposes unless approved by the Purchaser.

“**Sanctioned Country**” means any country or territory to the extent that such country or territory itself is the subject of any comprehensive sanctions (currently, Crimea, Cuba, Iran, North Korea, Syria and those portions of the Donetsk People’s Republic or Luhansk People’s Republic regions (and such other regions) of Ukraine over which any Sanctions Law authority imposes comprehensive Sanctions Laws), or any country or territory whose government is the subject of Sanctions Laws (currently, Venezuela) or that is otherwise the subject of broad restrictions under Sanctions Laws (including Afghanistan, Russia and Belarus).

“**Sanctioned Person**” means (i) any Person identified in any Sanctions Law-related list of designated Persons maintained by the Government of Canada or other Sanctions Laws authorities, (ii) any Person located, incorporated, or resident in a Sanctioned Country, or (iii) any Person directly or indirectly owned or controlled by, or acting for the benefit or on behalf of, a Person described in clause (i) or (ii) to the extent the owned or controlled Person is itself subject to the restrictions or prohibitions as the Person described in clause (i) or (ii).

“**Sanctions Laws**” means economic and financial sanctions laws administered, enacted or enforced from time to time by the Government of Canada, U.S., European Union, United Kingdom, or United Nations Security Council.

“**Shell**” has the meaning given to such term in Section 6.2(i).

“**SISP**” means the Sale and Investment Solicitation Process substantially in the form as appended as Exhibit D of the Support Agreement or otherwise in form and substance satisfactory to the Purchaser and the Company, each acting reasonably.

“**SISP Order**” means an order of the CCAA Court that, among other things, approves the SISP and related matters, substantially in the form as contained in Exhibit 2 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement), or as otherwise acceptable to the Purchaser and the Company, each acting reasonably.

“**SISP Recognition Order**” means the Order of the U.S. Bankruptcy Court entered in the U.S. Proceedings recognizing and giving effect to the SISP Order, which order shall be in form and substance acceptable to the Purchaser and the Company, each acting reasonably.

“**Successful Bid**” has the meaning given to such term in the SISP.

“**Support Agreement**” has the meaning given to such term in Recital D.

“**Tax**” and “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Tax Act**” means the *Income Tax Act (Canada)* and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

“**Tax Return**” means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

“**Taxing Authority**” means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the U.S. and each and every state and locality of the U.S., and any Canadian, U.S. or other Governmental Authority exercising taxing authority or power, and “Taxing Authority” means any one of the Taxing Authorities.

“**Transaction Regulatory Approvals**” means any material licenses, permits or approvals required from any Governmental Authority or under any Applicable Laws relating to the business and operations of the Just Energy Entities that would be required to be obtained in order to permit the Just Energy Entities and Purchaser to complete the transactions contemplated by this Agreement and the Support Agreement, including but not limited to, and in each case to the extent it has been agreed to in accordance this Agreement that such approval shall be obtained, the Federal Energy Regulatory Commission, the Competition Act Approval, the Antitrust Approvals and the Investment Canada Act Approval.

“**Transfer Taxes**” means all transfer, documentary, sales, use, stamp, registration, customs duties, import and export taxes, surtaxes, value added, GST/HST, provincial sales/retail Taxes, conveyance fees, security interest filing or recording fee and any other similar Taxes (including any real property transfer Tax and any other similar Tax), any governmental assessment, and any related penalties and interest.

“**U.S.**” means the United States of America.

“**U.S. Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq, as amended.

“**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the District of Texas, Houston Division, overseeing the U.S. Proceedings.

“**U.S. Proceedings**” has the meaning given to such term in Recital C.

“**Vesting Order**” means an order of the CCAA Court substantially in the form of Exhibit 3 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement) (or as otherwise acceptable to the Purchaser and the Company, each acting reasonably).

“**Vesting Recognition Order**” means an order of the U.S. Bankruptcy Court entered in the U.S. Proceedings in form and substance acceptable to the Purchaser, which shall, among other things, recognize and give effect to the Vesting Order and otherwise approve this Agreement and the transactions contemplated hereby.

## **1.2 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.

## **1.3 Headings, Table of Contents, etc.**

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

## **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

## **1.5 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in U.S. dollars. References to “\$” are to U.S. dollars. References to “C\$” are to Canadian dollars.

## **1.6 Certain Phrases**

In this Agreement (i) the words “including”, “includes” and “include” and any derivatives of such words mean “including (or includes or include) without limitation” and (ii) the words “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.



## **1.7 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon (i) such a determination of invalidity or unenforceability or (ii) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

## **1.8 Knowledge**

Any reference to the knowledge of (i) the Company or the Just Energy Entities, means the actual knowledge, after reasonable inquiry, of R. Scott Gahn, Michael Carter and Jonah Davids, and (ii) the Purchaser, means the actual knowledge, after reasonable inquiry, of Scott Striegel.

## **1.9 Entire Agreement**

This Agreement, the Disclosure Letter, the Support Agreement and the agreements and other documents required to be delivered pursuant to this Agreement or the Support Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement or the Support Agreement and any document required to be delivered pursuant to this Agreement or the Support Agreement.

## **1.10 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

## **1.11 Governing Law; Jurisdiction and Venue**

This Agreement, the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed

by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the CCAA Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.7 shall be deemed effective service of process on such Party.

### **1.12 Incorporation of Disclosure Letter, Schedules and Exhibits**

The Disclosure Letter and any schedule or exhibit attached thereto, and any schedule or exhibit attached to this Agreement, is an integral part of this Agreement.

### **1.13 Accounting Terms**

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP unless otherwise specified.

### **1.14 Non-Business Days**

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

### **1.15 Computation of Time Periods**

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

## **ARTICLE 2 PURCHASE AND SALE**

### **2.1 Agreement to Purchase and Sell Purchased Interests**

- (a) Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, and subject to the completion of the Implementation Steps required to be completed prior to the Closing Time, the Company shall cause Just Energy (U.S.) Corp. to issue to the Purchaser, and each Purchaser (severally and not jointly) shall purchase from Just Energy (U.S.) Corp., free and clear of all Encumbrances (other than Permitted Encumbrances), newly issued common equity, and newly issued preferred equity (the “**New Preferred Equity**”) of Just Energy (U.S.) Corp. (or its successor if converted into another entity prior to the Closing in accordance with the Implementation Steps), with such equity interests to be allocated to each Purchaser as set forth on Schedule 2.1(a) (collectively, the “**Purchased Interests**”).
- (b) The terms of the New Preferred Equity shall be consistent with the terms set forth on Exhibit A hereto.

- (c) Pursuant to the Vesting Order, in accordance with the Implementation Steps, all Equity Interests of Just Energy (U.S.) Corp. outstanding prior to the issuance of the Purchased Interests shall be cancelled, and the Purchased Interests shall represent 100% of the outstanding Equity Interests in Just Energy (U.S.) Corp. after such cancellation and issuance.
- (d) In accordance with the Implementation Steps, Just Energy (U.S.) Corp. shall subscribe for and the Company shall issue to Just Energy (U.S.) Corp. newly issued common equity of the Company and pursuant to the Vesting Order and Articles of Reorganization immediately after the issuance of such common equity, all other Equity Interests of the Company shall be cancelled or redeemed, and, immediately after such cancellation or redemption, Just Energy (U.S.) Corp. shall hold 100% of the outstanding Equity Interests in the Company.
- (e) For the avoidance of doubt, upon the Closing and after the completion of the Implementation Steps, each other Just Energy Entity (including the Company) and every direct and indirect subsidiary of the Company, except those listed on Schedule 2.2(f), shall be owned, directly or indirectly, by Just Energy (U.S.) Corp.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Closing, the assets of the Just Energy Entities shall not include any of the following assets, together with any other assets as set forth on Schedule 2.2 of the Disclosure Letter (collectively, the “**Excluded Assets**”):

- (a) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities, provided that the applicable Just Energy Entity may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return, provided, however that Residual Co. shall retain the original copies of any of the records required to be provided to the applicable Just Energy Entity hereunder (and provide the applicable Just Energy Entity with a copy thereof) to the extent Residual Co. is required to do so under Applicable Law;
- (b) the Administrative Expense Amount;
- (c) the Priority Payments Amount, which for the avoidance of doubt, shall be paid in accordance with Section 3.2 and shall not be transferred to Residual Co pursuant to Section 2.6;
- (d) the Excluded Contracts;
- (e) all communications, information or records, written or oral, that are in any way related to (i) the transactions contemplated by this Agreement, (ii) the sale of the Purchased Interests, (iii) any Excluded Asset or (iv) any Excluded Liability;

- (f) the equity interests of each entity set forth on Schedule 2.2(f), which Schedule may be modified as agreed upon by the Company and the Purchaser, each acting reasonably, at least seven (7) days prior to the hearing of the Just Energy Entities' motion to the CCAA Court seeking the Vesting Order; and
- (g) any rights which accrue to Residual Co. under the transaction documents.

### **2.3 Liabilities of Just Energy Entities**

Subject to the Implementation Steps and pursuant to this Agreement and the Vesting Order, as of the Closing Time the only obligations and liabilities of the Just Energy Entities shall consist of only the items specifically set forth below, as applicable (collectively, the “**Assumed Liabilities**”); provided, for the avoidance of doubt the Assumed Liabilities of any Just Energy Entities pursuant to this Section 2.3 shall continue to be liabilities of the applicable Just Energy Entity (and, except as applied to Section 2.3(f) no other Person) as of the Closing; provided, further, however, that each of the Just Energy Entities shall take such steps as are necessary to ensure that any claim that could give rise to responsible person liability is satisfied if the applicable Just Energy Entity is, for any reason, unable to satisfy such claim:

- (a) *Post-Filing Claims* – all Post-Filing Claims;
- (b) *Liabilities of Just Energy Entities* – all liabilities of the Just Energy Entities arising from and after Closing;
- (c) *Credit Facility* – all Credit Facility LC Claims and the Credit Facility Remaining Debt (if any);
- (d) *Cash Management Obligations* – all Cash Management Obligations;
- (e) *Energy Regulator Claims* – Energy Regulator Claims relating to the Just Energy Entities;
- (f) *Taxes* – (A) Tax liabilities of the Just Energy Entities for any tax period or the portion thereof beginning on or after the Filing Date, and (B) any other Taxes, including sales or use taxes, payable to a Taxing Authority for any period 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, excluding from (A), for the avoidance of doubt (x) all income tax or similar liabilities of any Just Energy Entity for any tax period ending prior to the Filing Date, and (y) any Tax or similar liability directly and solely related to the Excluded Assets, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes (excluding, for the avoidance of doubt, any such person serving in such capacity at Residual Co.);
- (g) *Texas Comptroller* – All Claims of the Texas Comptroller of Public Accounts that have been accepted pursuant to the Claims Procedure Order;

- (h) *Intercompany Claims* – Intercompany Claims between Just Energy Entities to the extent that the Implementation Steps contemplate such claims continuing as Assumed Liabilities;
- (i) *Indemnification Obligations* – any and all indemnification obligations of the Just Energy Entities to current and former directors, officers and or other person employed or previously employed by the Just Energy Entities (excluding, for the avoidance of doubt, Residual Co.);
- (j) *Employee Priority Claims* – all Employee Priority Claims; and
- (k) *Non-Just Energy Entity Liabilities* – all obligations and liabilities of the direct and indirect subsidiaries of the Company that are not Just Energy Entities, excluding those set forth on Schedule 2.2(f).

Notwithstanding the foregoing, nothing in this Agreement shall be read to extend or shall be interpreted as extending or amending the Claims Bar Date or give or shall be interpreted as giving any rights to any Person in respect of Claims against any Just Energy Entity that have been barred or extinguished pursuant to the Claims Procedure Order (it being understood that this proviso shall in no way limit the assumption of liabilities described in Section 2.3(f)(B)).

## **2.4 Excluded Liabilities**

Except as expressly assumed pursuant to or specifically contemplated by Section 2.3, all Claims and all debts, obligations, and liabilities of the Just Energy Entities or any predecessors of the Just Energy Entities, of any kind or nature, shall be assigned and become the sole obligation of the applicable Residual Co. pursuant to the terms of the Vesting Order and this Agreement, and, as of the Closing, the Just Energy Entities shall not have any obligation, duty, or liability of any kind whatsoever, except as expressly assumed pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and such liabilities or obligations shall be the sole responsibility of the applicable Residual Co. (collectively, the “**Excluded Liabilities**”). All intercompany obligations and balances which do not continue as Assumed Liabilities pursuant to the Implementation Steps shall be Excluded Liabilities.

## **2.5 Transfer of Excluded Liabilities to Residual Co.**

On the Closing Date, pursuant to the terms of the Vesting Order, the Just Energy Entities shall assign and transfer the Excluded Liabilities to the applicable Residual Co. (with Excluded Liabilities with respect to any Just Energy Entity organized in Canada being assigned to the Residual Co. organized in Canada and any Excluded Liabilities with respect to any Just Energy Entity organized in the United States being assigned to the Residual Co. organized in the United States), and such Residual Co. shall assume the applicable Excluded Liabilities. All of the Excluded Liabilities shall be discharged from the Just Energy Entities as of the Closing, pursuant to the Vesting Order.

## 2.6 Transfer of Excluded Assets to Residual Co.

On the Closing Date, pursuant to the terms of the Vesting Order and, where applicable, in consideration for Residual Co. assuming the Excluded Liabilities pursuant to Section 2.5 from a Just Energy Entity, the Just Energy Entities shall assign and transfer the Excluded Assets to the applicable Residual Co. (with Excluded Assets with respect to any Just Energy Entity organized in Canada being assigned to the Residual Co. organized in Canada and any Excluded Assets with respect to any Just Energy Entity organized in the United States being assigned to the Residual Co. organized in the United States), and the Excluded Assets shall be vested in the applicable Residual Co. pursuant to the Vesting Order.

## 2.7 Pre-Closing and Closing Reorganization

- (a) The specific mechanism for implementing the Closing, payment of the Cash Purchase Price and Credit Bid Consideration, and the structure of the transactions contemplated by this Agreement shall be structured in a tax efficient manner mutually agreed upon by the parties, each acting reasonably.
- (b) On or prior to the Closing Date, the Just Energy Entities shall effect the transaction steps and pre-closing reorganization (collectively, the “**Implementation Steps**”) of the Just Energy Entities as set forth on a schedule to be agreed upon by the Company, the Credit Facility Lenders and the Purchaser, each acting reasonably, at least seven (7) days prior to the hearing of the Just Energy Entities’ motion to the CCAA Court seeking the Vesting Order; provided that in no event will the Implementation Steps described in Schedule 2.7(c) be materially prejudicial to the interests of the Purchaser under the other sections of this Agreement. The Implementation Steps may include, without limitation, resolving intercompany obligations, the formation of new entities required to implement the transactions contemplated by this Agreement in a tax efficient manner, amending the partnership agreements to reflect the economic arrangement of the parties, and transfers of equity interests in the Just Energy Entities as agreed upon by the Company, the Credit Facility Lenders and the Purchaser, each acting reasonably, consistent with Section 2.7(a).
- (c) The Implementation Steps shall occur, and be deemed to have occurred in the order and manner to be set out in Schedule 2.7(c).
- (d) The steps to be taken and the compromises and releases to be effective on the Closing Date are deemed to occur and be effected in the steps and sequential order set forth in Schedule 2.7(c), beginning on or before the Closing Date at such time as is specified therein.

**ARTICLE 3**  
**PURCHASE PRICE AND RELATED MATTERS**

**3.1 Purchase Price**

- (a) The purchase price payable by each Purchaser (severally and not jointly) for the Purchased Interests (the “**Purchase Price**”) shall be:
- (i) cash in the amount of \$184,857,692.31, plus up to an additional C\$10 million solely in the event and to the extent additional funds (taking into account the Cash Purchase Price, the aggregate amount of cash held by the Just Energy Entities as of the Closing Date and the Credit Facility Remaining Debt) are required to pay all amounts to be paid by the Just Energy Entities pursuant to this Agreement and the Vesting Order (the “**Cash Purchase Price**”), allocated among each Purchaser in the amounts set forth on Schedule 3.1(a)(i);
  - (ii) subject to the Implementation Steps, the release of the applicable Just Energy Entities from all amounts outstanding and obligations owing to CBHT Energy I LLC pursuant to the BP Commodity/ISO Services Claim as of the Closing Date, including the principal amount of such claims and interest accrued as of the Closing Date, which amount as of the Filing Date is \$229,461,558.59 and C\$170,652.60, plus all accrued and unpaid interest thereon through to and including the Closing Date, in return for the issuance of the New Preferred Equity, plus any fees and expenses associated therewith (such aggregate amount, the “**Credit Bid Consideration**”); and
  - (iii) the assumption of the Assumed Liabilities as set forth herein.
- (b) Each Purchaser shall satisfy the obligations pursuant to Section 3.1 and the Purchase Price as follows:
- (i) CBHT Energy I LLC shall, at the Closing Time, in respect of the Credit Bid Consideration, cause the release of the applicable Just Energy Entities from all amounts outstanding and obligations owing pursuant to the BP Commodity/ISO Services Claim, including the principal amount of such claims and interest accrued as of the Closing Date, and any other documents or agreements entered into therewith in an aggregate amount equal to the Credit Bid Consideration, upon which the BP Commodity/ISO Services Claim, together with all documents, instruments, agreements and other related instruments shall, automatically and without any further formality, be released, discharged, terminated and of no further force and effect; and
  - (ii) at the Closing Time, each Purchaser (other than CBHT Energy I LLC) shall pay to the Company its respective portion of the Cash Purchase Price (as allocated on Schedule 3.1(a)(i)).

- (c) The Purchaser and its Affiliates, on the one hand, and the Company, and any of its Affiliates, on the other hand, shall be entitled to deduct and withhold from the Purchase Price or other amounts otherwise payable pursuant to this Agreement such amounts as such Person is required to deduct and withhold under Applicable Law provided, however, that the Purchaser and its Affiliates shall not make any such deduction or withholding pursuant to Section 1445 of the Code, as long as at Closing, the Company shall have delivered to the Purchaser certification required by Section 10.2(c). Before making any such deduction or withholding, the withholding agent shall use commercially reasonable efforts to provide the Person in respect of which deduction or withholding is proposed to be made reasonable advance written notice of the intention to make such deduction or withholding, and the withholding agent shall cooperate with any reasonable request from such Person to obtain reduction of or relief from such deduction or withholding to the extent permitted by Applicable Law. To the extent that amounts are so deducted and withheld and remitted to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### **3.2 Payment of Certain Liabilities**

On the Closing Date, upon payment of the Cash Purchase Price to the Company, the Just Energy Entities shall satisfy, in accordance with the Implementation Steps, the Priority Payments as required to be paid on Closing in the Vesting Order from the Priority Payments Amount plus the Cash Purchase Price such that all the Priority Payments shall be satisfied in full in connection with the Closing.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants, on behalf of itself and all other Just Energy Entities, to the Purchaser as follows, and acknowledges that the Purchaser is relying upon the following representations and warranties in connection with its purchase of the Purchased Interests:

### **4.1 Due Authorization and Enforceability of Obligations**

This Agreement has been duly authorized, executed and delivered by it, and, subject to the granting of the SISP Order this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

### **4.2 Existence and Good Standing**

Each of the Just Energy Entities is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and, subject to the granting of the SISP Order, (i) has all requisite power and authority to execute and deliver this Agreement and (ii) has taken all requisite corporate or other action necessary for it to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transaction contemplated hereunder.



### **4.3 Sophisticated Parties**

Each of the Just Energy Entities (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

### **4.4 Absence of Conflicts**

The execution and delivery of this Agreement by the Company and the completion by the Company of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of the properties or assets of any Just Energy Entity, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under the certificate of incorporation, articles, by-laws or other constituent documents of any Just Energy Entity. The execution, delivery and performance by the Company does not and will not: (x) violate any provision of law, rule, or regulation applicable to the Just Energy Entities or any Just Energy Entity's charter or by-laws (or other similar governing documents) or those of any subsidiaries; (y) except as the consummation of the transactions contemplated herein may constitute a "Change of Control" (as may be defined in the Credit Agreement, the Intercreditor Agreement, the existing supply agreements with Shell, and the Term Loan Agreement) or any equivalent concept under the Credit Agreement, the Intercreditor Agreement, the existing supply agreements with Shell, or the Term Loan Agreement, conflict with, result in a breach of, or constitute (with or without notice or lapse of time or both) a default under any material agreement to which any Just Energy Entity is a party or any debt for borrowed money to which it is a party that, in any case, is not remedied, cured or waived, or (z) violate any Order, statute, rule, or regulation.

### **4.5 Approvals and Consents**

The execution and delivery of this Agreement by the Company, the completion by the Company of its obligations hereunder and the consummation by the Company of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the SISP Order and the Transaction Regulatory Approvals.

### **4.6 No Actions**

There is not, as of the date hereof, pending or, to the Company's knowledge, threatened against any Just Energy Entity or any of its properties, nor has any Just Energy Entity received any written notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent the Company from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

#### **4.7 Subsidiaries**

Schedule 4.7 sets forth a complete and correct list of the name and jurisdiction of organization of each Just Energy Entity. All the outstanding Equity Interests of the Just Energy Entities (other than those of the Company) are owned by the Company, by one or more Company Subsidiaries or by the Company and one or more Company Subsidiaries, free and clear of all pledges, claims, liens, charges, options, security interests, licenses or other encumbrances of any kind or nature whatsoever (other than Permitted Encumbrances), except for transfer restrictions imposed by applicable securities laws, and, except as would not be material to the Company and the Just Energy Entities, taken as a whole, are duly authorized, validly issued, fully paid and nonassessable and not subject to any pre-emptive rights. Except for the Equity Interests in the Just Energy Entities, the Company does not own, directly or indirectly, any Equity Interests in, any Person.

#### **4.8 No Stop Order**

As of the time of entering into this Agreement, no order halting or suspending trading in securities of the Just Energy Entities has been issued to and is outstanding against any of the Just Energy Entities, and, to any Just Energy Entity's knowledge, no investigations or proceedings for such purpose are pending or threatened.

#### **4.9 Support Agreement Representations and Warranties**

The representations and warranties of Just Energy in the Support Agreement are true and correct.

#### **4.10 Sanctioned Person**

None of the Just Energy Entities, nor any of their respective officers, directors, employees or agents, is a Sanctioned Person.

#### **4.11 Sanctions Laws**

None of the Just Energy Entities has (i) assets located in, or otherwise directly or, to the knowledge of any of the Just Energy Entities, indirectly, derives revenues from or engages in, investments, dealings, activities, or transactions in or with, any Sanctioned Country in violation of Sanctions Laws; or (ii) directly or, to the knowledge of any of the Just Energy Entities, indirectly, derives revenues from or engages in investments, dealings, activities, or transactions with, any Sanctioned Person in violation of Sanctions Laws.

#### **4.12 Anti-Money Laundering Laws; Anti-Corruption Laws**

- (a) The operations of the Just Energy Entities are and have been at all times conducted in compliance with, in all respects, (i) the U.S. Currency and Foreign Transactions Reporting Act of 1970, the PCMLTFA (as defined below), the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the PATRIOT Act (as defined below), the Bank Secrecy Act (31 U.S.C. §§5311-5332), and any other applicable laws related to money laundering or terrorism financing (“**Anti-Money**

**Laundering Laws**”), (ii) the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder, and any other applicable laws or regulations concerning or relating to bribery or corruption (“**Anti-Corruption Laws**”) and (iii) Sanctions Laws.

- (b) No action, suit, investigation or legal proceeding by or before any Governmental Authority or any arbitrator involving the Just Energy Entities or any officer, director, employee or agent thereof, or any informal or formal investigation by any Just Energy Entity or its legal or other representatives involving the foregoing, with respect to Anti-Money Laundering Laws, Anti-Corruption Laws or Sanctions Laws is pending, or to the knowledge of any of the Just Energy Entities, threatened.
- (c) Each Just Energy Entity has instituted and maintains policies and procedures designed to ensure compliance by each Just Energy Entity and its directors, officers, employees, and agents with Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions Laws.

#### **4.13 Investment Canada Act**

Neither the Company nor any of the Just Energy Entities carries on a “cultural business” within the meaning of the Investment Canada Act.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

Each Purchaser represents and warrants, severally and not jointly, and only as to itself, to the Company as follows, and acknowledges that the Company is relying upon the following representations and warranties in connection with the sale of the Purchased Interests:

#### **5.1 Due Authorization and Enforceability of Obligations**

This Agreement has been duly authorized, executed and delivered by each Purchaser, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

#### **5.2 Existence and Good Standing**

Each Purchaser is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

### **5.3 Sophisticated Party**

Each Purchaser (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

### **5.4 Absence of Conflicts**

The execution and delivery of this Agreement by the each and the completion by each Purchaser of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

### **5.5 Approvals and Consents**

The execution and delivery of this Agreement by each Purchaser, the completion by each Purchaser of its obligations hereunder and the consummation by each Purchaser of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order and the Transaction Regulatory Approvals.

### **5.6 No Actions**

There is not, as of the date hereof, pending or, to each Purchaser's knowledge, threatened against it or any of its properties, nor has any Purchaser received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

### **5.7 Accredited Investor**

Each Purchaser is an "accredited investor", as such term is defined in NI 45-106 and in Rule 501 of Regulation D under the United States Securities Act of 1933 (the "**Securities Act**") and it was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106 and acknowledges that the Purchased Interests will be subject to resale restrictions under applicable securities laws. The Purchased Interests are being acquired by each Purchaser for its own account, and not with a view to, or for the offer or sale in connection with, any public distribution or sale of the Purchased Interests or any interest in them. Each Purchaser has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of its investment in the Purchased Interests, and each Purchaser is capable of bearing the economic risks of such investment, including a complete loss of its investment in the Purchased Interests. Each

Purchaser acknowledges that the Purchased Interests are not registered under the Securities Act, any state securities law, regulation or rule or any applicable foreign securities law, regulation or rule, and agrees that the Purchased Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of except pursuant to a registered offering in compliance with, or in a transaction exempt from, the registration requirements of the Securities Act and any other applicable state and foreign securities laws.

## **5.8 Financial Ability**

Each Purchaser has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

## **5.9 Credit Bid; Availability of Funds**

- (a) CBHT Energy I LLC has executed, on or prior to the date hereof, the requisite instruction letters to fully authorize the Purchaser, and the Purchaser is duly authorized, to, among other things, deliver the Credit Bid Consideration in connection with the consummation of the Closing hereunder.
- (b) The Purchaser has delivered to the Company complete and accurate copies of executed limited guarantees dated as of the date of this Agreement (each, a “**Guarantee**” and collectively, the “**Guarantees**”) from certain Affiliates of the Purchaser (the “**Equity Financing Sources**”) pursuant to which the Equity Financing Sources have guaranteed, for the benefit of the Company, subject only to the terms and conditions therein, the Cash Purchase Price (the “**Equity Financing**”) amongst other guarantees set out therein.
- (c) Each Guarantee, in the form so delivered to the Company, is in full force and effect and is a legal, valid and binding obligation of the Purchaser and the respective Equity Financing Sources, enforceable against the parties thereto in accordance with its terms, and the Purchaser knows of no fact or circumstance that would cause the Equity Financing to be unavailable on a timely basis in order to consummate the Closing on the terms and subject to the conditions therein. There are no other agreements, side letters or arrangements to which the Purchaser is a party relating to any Guarantee that could reasonably be expected to prevent, impair or materially delay the consummation of the Equity Financing. As of this date of this Agreement, none of the Guarantees has been amended or modified (and no such amendment or modification is contemplated), and the respective commitments set forth in the Guarantees have not been withdrawn or rescinded in any respect (and no such withdrawal or rescission is contemplated).

## **5.10 No Sanctions**

No Purchaser nor any of its subsidiaries nor any of their respective directors or officers or, to its knowledge, employees acting on behalf of it or any of its subsidiaries, (i) is a Person identified in any sanctions-related list of designated Persons maintained by the Government of Canada, or

(ii) is greater than 50% owned or controlled by any Person described under clause (i) to the extent the owned or controlled Person is itself subject to the restrictions or prohibitions as the Person described in clause (i).

### **5.11 Purchase Price Funds**

To the Purchaser's knowledge, the funds representing the Cash Purchase Price for the Purchased Interests and the aggregate amounts which will be paid by it to the Company hereunder: (i) do not represent proceeds of crime for the purposes of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (the "PCMLTFA"), and (ii) have not been and will not be derived directly or indirectly from or related to any activity that is deemed criminal under the laws of Canada, the U.S., or any other jurisdiction, in each case, with respect to each of clause (i) and (ii), in violation thereof. The Purchaser acknowledges and agrees that the Just Energy Entities may be required by Law to provide disclosure pursuant to the PCMLTFA. The funds representing payment of the amounts to be advanced by the Purchaser hereunder will not represent proceeds of crime for the purposes of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (the "PATRIOT Act") in violation of the PATRIOT Act, and the Purchaser acknowledges that the Just Energy Entities may in the future be required by law to disclose the Purchaser's name and other information relating to this Agreement and the amounts payable by the Purchaser to the Just Energy Entities hereunder, on a confidential basis, pursuant to the PATRIOT Act. No portion of the funds representing payment of the amounts to be advanced by the Purchaser hereunder (A) has been or will be, to its knowledge, derived from or related to any activity that is deemed criminal under the laws of the U.S., or any other jurisdiction, or (B) is being tendered on behalf of a Person or entity who has not been identified to or by the Purchaser, and the Purchaser shall promptly notify the Just Energy Entities if the Purchaser discovers that any of such representations ceases to be true and provide the Just Energy Entities with appropriate information which is reasonably available in connection therewith.

### **5.12 Investment Canada Act**

Each Purchaser is a "trade agreement investor" within the meaning of the Investment Canada Act.

## **ARTICLE 6 CONDITIONS**

### **6.1 Conditions for the Benefit of the Purchaser and the Company**

The respective obligations of each Purchaser and the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the purchase of the Purchased Interests or any of the other transactions pursuant to this Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Just Energy Entity, shall be in effect;

- (b) *Final Orders* – each of the SISP Order and the Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *Final U.S. Orders* – the Claims Procedure Recognition Order (as defined in the Support Agreement), SISP Recognition Order and Vesting Recognition Order shall have been issued and entered by the U.S. Bankruptcy Court and shall be Final Orders;
- (d) *Support Agreement* – the Support Agreement shall not have been terminated by any party thereto;
- (e) *Transaction Regulatory Approvals* – the Just Energy Entities and the Purchaser shall have received all required Transaction Regulatory Approvals and provided the Energy Regulator Notices set forth on Schedule 6.1(e), and all required Transaction Regulatory Approvals shall be in full force and effect, except for Transaction Regulatory Approvals that need not be in full force and effect prior to Closing; and
- (f) *New Credit Agreement; New Intercreditor Agreement* – each of the New Credit Agreement and the New Intercreditor Agreement shall have been entered into by and among the parties thereto.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Company and each Purchaser. Any condition in this Section 6.1 may be waived by the Company and by any Purchaser, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Company or the Purchaser, as applicable, only if made in writing.

## **6.2 Conditions for the Benefit of the Purchaser**

The obligation of any Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by any Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of each Purchaser):

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed or complied with by the Company at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – (i) the Fundamental Representations and Warranties of the Company shall be true and correct in all respects as of the Closing Date, as if made at and as of such date and (ii) all other representations and warranties of the Company contained in Article 4 shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not, in the aggregate, have a Material Adverse Effect (and, for

this purpose, any reference to “material”, “Material Adverse Effect” or other concepts of materiality in such representation and warranties shall be ignored);

- (c) *Officer’s Certificates* – the Purchaser shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Performance of Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Company without personal liability by an executive officer of Just Energy or other Persons acceptable to the Purchaser, in each case in form and substance reasonably satisfactory to the Purchaser;
- (d) *No Material Adverse Effect* – since the date hereof, no change effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
- (e) *Company’s Deliverables* – the Company shall have delivered to the Purchaser all of the deliverables contained in Section 10.2 in form and substance reasonably satisfactory to the Purchaser;
- (f) *Vesting Order Approval* – the Vesting Order shall have been granted by October 15, 2022;
- (g) *Implementation Steps* – the Just Energy Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably acceptable to the Purchaser, acting reasonably;
- (h) *Cash on Hand* – the aggregate amount of cash held by the Just Energy Entities immediately after giving effect to the payment of all amounts provided for in this Agreement and in the Vesting Order shall be equal to or greater than \$C0;
- (i) *Continuing Contracts* – Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, “**Shell**”) shall have confirmed in writing, to the Company and each Purchaser that (i) it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated hereby, and (ii) all existing and any potential future trades will be transacted in accordance with the Continuing Contracts (as may be amended, restated, supplemented and/or replaced by the Just Energy Entities and Shell from time to time following the Closing Date) or new arrangements, in each case, in accordance with the terms thereof and subject to the terms of the New Intercreditor Agreement;
- (j) *Termination of Securities Reporting Obligations* – As of the Closing and upon the consummation of the transactions contemplated in the Support Agreement, none of the Just Energy Entities shall be a reporting issuer (or equivalent thereof) under any U.S. securities laws or Canadian securities laws; and
- (k) *Sufficient Funds* – As of immediately prior to the Closing, the Cash Purchase Price, plus the aggregate amount of cash held by the Just Energy Entities, plus the Credit



Facility Remaining Debt, shall be sufficient to pay all amounts to be paid by the Just Energy Entities pursuant to this Agreement and the Vesting Order.

### **6.3 Conditions for the Benefit of the Company**

The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Company of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Company):

- (a) *Truth of Representations and Warranties* – the representations and warranties of each Purchaser contained in Article 5 will be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on each Purchaser’s ability to consummate the transactions contemplated by this Agreement;
- (b) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Purchaser at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) *Officer’s Certificate* – the Company shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) and 6.3(b) signed for and on behalf of each Purchaser without personal liability by an executive officer of each Purchaser or other Persons acceptable to the Company, acting in a commercially reasonable manner, in each case, in form and substance satisfactory to the Company, acting in a commercially reasonable manner;
- (d) *Purchaser Deliverables* – each Purchaser shall have delivered to the Company all of the deliverables contained in Section 10.3 in form and substance satisfactory to the Company, acting in a commercially reasonable manner;
- (e) *Management Incentive Plan* – the management incentive plan shall have been executed on terms consistent in all respects with the terms set forth in the MIP Term Sheet, attached as Exhibit 5 of the Stalking Horse Term Sheet (as such term is defined in the Support Agreement); and
- (f) *Employment Agreements* – the Employment Agreements shall not have been disclaimed and shall be in place on and as of the Closing Date.

**ARTICLE 7**  
**ADDITIONAL AGREEMENTS OF THE PARTIES**

**7.1 Access to Information**

- (a) Until the Closing Time, the Company shall give to the Purchaser's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Business, the Just Energy Entities, the Assumed Liabilities and the employees, and shall furnish them with all such information relating to the Business, the Just Energy Entities, the Assumed Liabilities and the employees as the Purchaser may reasonably request in connection with the transactions contemplated by this Agreement; provided that such access shall be conducted at the Purchaser's expense, in accordance with Applicable Law and under supervision of the Company's personnel and in such a manner as to maintain confidentiality, and the Company will not be required to provide access to or copies of any such books and records if (a) the provision thereof would cause the Company to be in contravention of any Applicable Law or (b) making such information available would (1) result in the loss of any lawyer-client or other legal privilege, or (2) cause the Company to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Company or any of its Affiliates are a party). Such access shall include access for such environmental investigations deemed appropriate by the Purchaser, acting reasonably, provided that any intrusive environmental investigation shall be subject to the prior approval of the Company, acting reasonably. Notwithstanding anything in this Section 7.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person. The Company shall use commercially reasonable efforts to also deliver to the Purchaser authorizations to Governmental Authorities necessary to permit the Purchaser to obtain information in respect of the Just Energy Entities from the files of such Governmental Authorities.
- (b) Following the Closing, the Just Energy Entities shall make all books and records of the Just Energy Entities reasonably available to the Monitor and any trustee in bankruptcy of any of the Just Energy Entities upon at least five (5) Business Days prior notice, for a period of seven (7) years after Closing, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that the Purchaser shall not be obligated to make such books and records available to the extent that doing so would (a) violate Applicable Law, (b) jeopardize the protection of a solicitor-client privilege, or (c) unreasonably interfere with the ongoing business and operations of the Just Energy Entities and their Affiliates, as determined by the Just Energy Entities, acting reasonably.

## 7.2 Approvals and Consents

- (a) With regard to the Competition Act Approval and/or Investment Canada Act Approval:
  - (i) if Competition Act Approval is required, the Parties shall, as soon as reasonably practicable, and in no event more than ten (10) Business Days after the date hereof, submit a request to the Commissioner for an Advance Ruling Certificate or, in the alternative, a No Action Letter in respect of the transaction contemplated by this Agreement;
  - (ii) if Competition Act Approval is required, the Parties shall submit, at the Parties' joint election and within ten (10) Business Days of such mutually agreed election, notification filings in accordance with Part IX of the Competition Act in respect of the transactions contemplated by this Agreement; and
  - (iii) if the Purchaser, acting reasonably, determines that Investment Canada Act Approval should be obtained, the Purchaser shall, as soon as reasonably practicable and in no event more than ten (10) Business Days after the date hereof, submit the notification for the Investment Canada Act Approval.
- (b) The Company shall be responsible for the payment of any filing fees required to be paid in connection with any filing made in respect of the Competition Act Approval and the Antitrust Approvals, as applicable.
- (c) The Parties shall use commercially reasonable efforts to apply for and obtain any Transaction Regulatory Approvals and to file any Energy Regulator Notices as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in accordance with Section 7.2(d), in each case at the sole cost and expense of the Company.
- (d) The Parties shall use commercially reasonable efforts to apply for and obtain the Transaction Regulatory Approvals and to file the Energy Regulator Notices and shall co-operate with one another in connection with obtaining such approvals. Without limiting the generality of the foregoing, the Parties shall: (i) give each other reasonable advance notice of all meetings or other oral communications with any Governmental Authority relating to the Transaction Regulatory Approvals or Energy Regulator Notices, as applicable, and provide as soon as practicable but in any case, if any, within the required time, any additional submissions, information and/or documents requested by any Governmental Authority necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (ii) not participate independently in any such meeting or other oral communication without first giving the other Party (or their outside counsel) an opportunity to attend and participate in such meeting or other oral communication, unless otherwise required or requested by such Governmental Authority; (iii) if any Governmental Authority initiates an oral communication regarding the Transaction Regulatory Approvals or Energy

Regulator Notices, promptly notify the other Party of the substance of such communication; (iv) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals) made or submitted by or on behalf of a Party with a Governmental Authority regarding the Transaction Regulatory Approvals or Energy Regulator Notices as applicable; and (v) promptly provide each other with copies of all written communications to or from any Governmental Authority relating to the Transaction Regulatory Approvals and Energy Regulator Notices as applicable.

- (e) Each of the Parties may, as advisable and necessary, reasonably designate any competitively or commercially sensitive material provided to the other under this Section 7.2 as “Outside Counsel Only Material”, provided that the disclosing Party also provides a redacted version to the receiving Party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Parties, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.
- (f) The obligations of either Party to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require either Party (or any Affiliate thereof) to undertake any divestiture of any business or business segment of such Party, to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Parties. In connection with obtaining the Transaction Regulatory Approvals, no Just Energy Entity shall agree to any of the foregoing items without the prior written consent of the Purchaser.

### **7.3 Covenants Relating to this Agreement**

- (a) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, from the date hereof until the Closing Date, each Party shall and, where appropriate, shall cause each of its Affiliates to:
  - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment

at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and

- (ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) From the date hereof until the Closing Date, the Purchaser hereby agrees, and hereby agrees to cause its representatives to, keep the Company informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Company or the Monitor, as to the Purchaser's progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) From the date hereof until the Closing Date, the Company hereby agrees, and hereby agrees to cause its representatives to, keep the Purchaser informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Purchaser or the Monitor, as to the Company's progress in terms of the satisfaction of the conditions precedent contained herein.
- (d) The Company and the Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.
- (e) From the date hereof until the Closing Date, the Company hereby agrees, and hereby agrees to cause its representatives to, promptly notify the Purchaser of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Agreement, or (ii) any Material Adverse Effect occurring from and after the date hereof prior to the Closing Date.
- (f) The Company and Purchaser agree to use commercial reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the transaction contemplated by this Agreement.

#### **7.4 Tax Matters**

- (a) The Purchaser and the Company agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Interests and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other

proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. The Purchaser and the Company also agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Just Energy Entities, the Purchased Interests and the Assumed Liabilities as is reasonably necessary for the Purchaser to acquire them in a tax efficient manner for both the Company and the Just Energy Entities.

- (b) The Purchaser and the Company shall each be responsible for the preparation of their own statements required to be filed under the Tax Act, the ETA and the Code and other similar forms and returns in accordance with Applicable Law.
- (c) For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Closing Date or Filing Date, as applicable (a “**Straddle Period**”), all real property Taxes, personal property Taxes and similar ad valorem obligations for shall be apportioned between the taxable period up to and including the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the “**Pre-Closing Straddle Tax Period**”) and the taxable period after the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the “**Post-Closing Straddle Tax Period**”), on a per diem basis. Except as otherwise provided herein, with respect to the Purchased Interests, the Company shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar *ad valorem* obligations that are attributable to the Pre-Closing Straddle Tax Period, and the Purchaser shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Post-Closing Straddle Tax Period. For all purposes under this Agreement, in the case of any Tax based upon or related to income, receipts, sales, use, payroll, or withholding, in respect of any Straddle Period, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if the relevant Straddle Period ended on and included the Closing Date or Filing Date, as applicable. To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.
- (d) The Purchaser shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the purchase and sale of the Purchased Interests under this Agreement (including for greater certainty, any Transfer Tax related with the importation, or change of importation classification, of the Purchased Interests) and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under Applicable Law (except any Transfer Tax which, under Applicable Law, is collectible by the Company or applicable Just Energy Entity, in which case such Transfer Tax shall be collected by the Company or Just Energy Entity, as the case may be, and remitted by the Company or Just Energy Entity to the appropriate Governmental Authority as provided for under the Applicable Law but, for the avoidance of doubt, the Purchaser shall remain economically

responsible for and shall pay to or reimburse, or cause to be paid or reimbursed, as the case may be, the Company or the applicable Just Energy Entity for any such Transfer Tax). The Company and the Purchaser shall reasonably cooperate to mitigate and/or eliminate the amount of Transfer Taxes resulting from the transactions contemplated herein (provided, for the avoidance of doubt, this shall not require the parties to structure the transactions in a manner eligible for the benefits of Section 1146(a) of the United States Bankruptcy Code). The Purchaser shall be responsible for preparing and filing all necessary Tax Returns or other documents with respect to such Transfer Taxes (other than any GST/HST returns required to be filed by any Just Energy Entity set forth on Schedule 2.2(f)); provided, however, that in the event any such Tax Return requires execution by any Just Energy Entity, the Purchaser shall deliver it to such Just Energy Entity not less than ten (10) Business Days before the due date thereof, and the Company shall reasonably promptly execute such Tax Return and return it to the Purchaser.

## **7.5 Employee Matters**

Unless otherwise expressly provided for by the management incentive plan, or agreed to in writing by and among any of the Just Energy Entities, the Purchaser, and the applicable employee (or employees) affected by any change or modification, each of the Employment Agreements will not be disclaimed and will remain in place as of, and as a condition to the occurrence of, the Closing pursuant to Section 6.3(f).

## **7.6 Administrative Expense Amount**

- (a) On the Closing Date, the Just Energy Entities shall pay to the Monitor the Administrative Expense Amount, which the Monitor shall hold in trust for the benefit of Persons entitled to be paid the Administrative Expense Costs.
- (b) From time to time after the Closing Date, the Monitor may pay from the Administrative Expense Amount the Administrative Expense Costs at its sole discretion and without further authorization from the Company or Purchaser. Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to the Company.
- (c) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Company and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 7.6; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the CCAA Court-appointed Monitor of the Applicants pursuant to the Initial CCAA Order and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise, save and except for and only to the extent of the Monitor's gross negligence or intentional fault.

- (d) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 7.6 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 7.6 shall survive the termination or non-completion of the transactions contemplated by this Agreement.

## **7.7 Certain Payments or Instruments Received from Third Persons**

- (a) To the extent that, after the Closing Date: (a) the Purchaser or any of its Affiliates receives any payment or instrument that is for the account of the Company according to the terms of any Closing Document, the Purchaser shall, and shall cause its Affiliates to, promptly deliver such amount or instrument to the Company; or (b) any of the Just Energy Entities or any of their controlled Affiliates receives any payment or instrument that is for the account of the Purchaser according to the terms of any Closing Document or that relates to the Business, including any governmental assistance refunds received by any Just Energy Entity after the Closing Date, the Just Energy Entities shall promptly deliver such amount or instrument to the Purchaser.
- (b) All amounts due and payable under this Section 7.7 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use its commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

## **7.8 Bulk Sales**

The Vesting Order and the Vesting Recognition Order, as applicable, shall provide either that (i) the Just Energy Entities have complied with the requirements of any Applicable Law relating to bulk sales and transfer or (ii) compliance with the Applicable Law relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

## **7.9 Release by the Purchaser**

Except in connection with any obligations of the Company or the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, each Purchaser hereby releases and forever discharges the Company, the Monitor and their respective Affiliates, and each of their respective successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the Purchased Interests or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

At the Closing Time, the Purchaser shall cause the Just Energy Entities to release and forever discharge all officers, directors, partners, limited partners, employees, agents, financial and legal advisors of each of the Just Energy Entities and their respective successors and assigns from any and all actual or potential Causes of Action against such Persons, except for Causes of Action



related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence (provided that in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their applicable duties and responsibilities), and such release to be in the form attached as Exhibit B to this Agreement.

#### **7.10 Release by the Company**

Except in connection with any obligations of each Purchaser and the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, the Company hereby release and forever discharge each Purchaser, the Monitor and their respective Affiliates, and each of their respective successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to (i) the Purchased Interests, (ii) the Assumed Liabilities, (iii) the Excluded Assets or (iv) the Excluded Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

### **ARTICLE 8 INSOLVENCY PROVISIONS**

#### **8.1 Court Orders and Related Matters**

- (a) From and after the date of this Agreement and until the Closing Date, the Company shall deliver to the Purchaser drafts of any and all pleadings, motions, notices, statements, applications, schedules, reports, and other papers to be filed or submitted by any Just Energy Entity in connection with or related to this Agreement, including with respect to the SISP Order, the Vesting Order, the Vesting Recognition Order and the SISP Recognition Order, for the Purchaser's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). The Company acknowledges and agrees (i) that any such pleadings, motions, notices, statements, applications, schedules, reports, or other papers shall be in form and substance satisfactory to the Purchaser, acting reasonably, and (ii) to consult and cooperate with the Purchaser regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses testimony, in connection with such hearing.
- (b) Notice of the motions seeking the issuance of the Vesting Order, the Vesting Recognition Order, the SISP Order, and the SISP Recognition Order shall be served by the Company on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the U.S. Bankruptcy Code, the U.S. Bankruptcy Court and any other Person determined necessary by the Company or the Purchaser, acting reasonably.

- (c) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that (i) the SISP Order has not been issued and entered by the CCAA Court by August 17, 2022 or such later date agreed to in writing by the Purchaser in its sole discretion; (ii) the SISP Recognition Order, if any, has not been issued and entered by the U.S. Bankruptcy Court within sixteen (16) Business Days of the SISP Order being entered by the CCAA Court or such later date agreed to in writing by the Purchaser in its sole discretion; (iii) the Vesting Order has not been issued and entered by the CCAA Court by October 15, 2022 or such later date agreed to in writing by the Purchaser in its sole discretion; (iv) or the Vesting Recognition Order has not been issued and entered by the U.S. Bankruptcy Court within fourteen (14) Business Days of the Vesting Order being entered by the CCAA Court or such later date agreed to in writing by the Purchaser in its sole discretion, the Purchaser may terminate this Agreement.
- (d) If the Vesting Order, the Vesting Recognition Order as applicable, relating to this Agreement is appealed or a motion for leave to appeal, rehearing, reargument or reconsideration is filed with respect thereto, the Company agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion.
- (e) The Company acknowledges and agrees, that the Vesting Order, and the Vesting Recognition Order shall provide that, on the Closing Date and concurrently with the Closing, the Purchased Interests shall be transferred to the Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

## ARTICLE 9 TERMINATION

### 9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Company and the Purchaser;
- (b) by the Purchaser or the Company, if this Agreement is not the Successful Bid (as determined pursuant to, the SISP);
- (c) by the Purchaser or the Company, if Closing has not occurred on or before November 30, 2022 or such later date agreed to by both the Company and the Purchaser in writing in consultation with the Monitor (the “**Outside Date**”), provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in Article 6 by the Outside Date; provided, further, to the extent the only condition to the Closing that remains outstanding is the receipt of Transaction Regulatory Approvals and the filing of Energy Regulator Notices pursuant to Section 6.1(e), the Outside Date shall be automatically extended for another sixty (60) days, and thereafter, the Purchaser shall have the right to further extend the Outside Date in its sole discretion on written notice to the Company.

- (d) by the Purchaser or the Company, if at any time after the date hereof any of the conditions in Article 6 is not capable of being satisfied by the applicable dates required in Article 6 of this Agreement or if not otherwise required, by the Outside Date;
- (e) by the Purchaser, upon the appointment of a receiver, trustee in bankruptcy or similar official in respect of any Just Energy Entity or any of the property of any Just Energy Entity, other than with the prior written consent of the Purchaser;
- (f) by the Purchaser, pursuant to Section 8.1(c);
- (g) by the Purchaser or the Company, upon the termination, dismissal or conversion of the CCAA Proceedings or the U.S. Proceedings;
- (h) by the Purchaser or the Company, upon denial of the SISP Order, the Vesting Order, the SISP Recognition Order or the Vesting Recognition Order (or if any such order is stayed, vacated or varied without the consent of the Purchaser);
- (i) by the Purchaser or the Company, if a court of competent jurisdiction, including the CCAA Court or the U.S. Bankruptcy Court, or other Governmental Authority has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such Order or action has become a Final Order;
- (j) by the Company, if there has been a material violation or breach by the Purchaser of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Outside Date and such violation or breach has not been waived by the Company or cured within ten (10) Business Days after written notice thereof from the Company, unless the Company is in material breach of their obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Outside Date;
- (k) by the Purchaser, if there has been a material violation or breach by the Company of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Outside Date and such violation or breach has not been waived by the Company or cured within ten (10) Business Days after written notice thereof from the Purchaser, unless the Purchaser is in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Outside Date; and
- (l) by the Purchaser or the Company, if the Support Agreement is terminated pursuant to the terms thereof.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give written notice of such termination to the other Party or

Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

## **9.2 Effect of Termination**

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) Article 1, this Section 9.2, Section 9.3, Section 11.1, Section 11.3, Section 11.5, Section 11.6, Section 11.7 and Section 11.8 shall survive and (b) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement, or impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement in accordance with Section 11.3.

## **9.3 Termination Fee**

- (a) Upon CCAA Court approval of an Alternative Restructuring Proposal that is not provided by the Purchaser or any of its Affiliates in accordance with the terms of the SISP Order, or upon the Company's termination of the Support Agreement pursuant to Section 10(b)(iv) thereof, a fee in cash equal to, in the aggregate, \$14,660,000.00 (such amount, the "**Break-Up Fee**") shall be payable concurrently with the consummation of an Alternative Restructuring Proposal to the Purchaser, in the same allocation among such Purchaser as contained in Schedule 3.1(a)(i), by a Just Energy Entity organized in the United States (the identity of which shall be subject to the approval of the Purchaser (not to be unreasonably withheld, conditioned or delayed)).
- (b) The Company shall obtain within the SISP Order a court-ordered charge in favor of the Purchaser in the full amount of the Break-Up Fee to secure the payment of the Break-Up Fee, which charge shall have the priority given to it pursuant to the SISP Order.
- (c) For the avoidance of doubt, and notwithstanding anything to the contrary set forth in this Section 9.3, (x) under no circumstances shall the Company be obligated to pay the Break-Up Fee more than once and (y) in no event shall the Company (or any other Person) be required to pay all or any portion of the Break-Up Fee to the Purchaser if the Company has terminated this Agreement or the Support Agreement other than in connection with CCAA Court approval of an Alternative Restructuring Proposal in accordance with the terms of the SISP Order, or upon the Company's termination of the Support Agreement pursuant to Section 10(b)(iv) thereof.
- (d) The Company acknowledges (i) that the Purchaser has made a substantial investment of management time and incurred substantial out-of-pocket expenses in connection with the negotiation and execution of this Agreement, its due diligence of the Business and the Just Energy Entities, and its effort to consummate the transactions contemplated hereby, and (ii) that the Parties' efforts have substantially benefited the Company and the bankruptcy estates of the Just Energy

Entities through the submission of the offer that is reflected in this Agreement, that will serve as a minimum bid on which other potential interested bidders can rely, thus increasing the likelihood that the price at which the Just Energy Entities are sold will reflect their true worth. The Parties hereby acknowledge that the amounts payable pursuant to this Section 9.3 are commercially reasonable and necessary to induce the Purchaser to enter into this Agreement and consummate the transactions contemplated hereby. For the avoidance of doubt, the covenants set forth in this Section 9.3 are continuing obligations and survive termination of this Agreement.

## **ARTICLE 10 CLOSING**

### **10.1 Location and Time of the Closing**

The Closing shall take place at the Closing Time on the Closing Date at the offices of Cassels Brock & Blackwell LLP, Scotia Plaza, Suite 2100, 40 King St. W, Toronto, ON M5H 3C2, or at such other location as may be agreed upon by the Parties.

### **10.2 The Company's Deliveries at Closing**

At Closing, the Company shall deliver to the Purchaser the following:

- (a) a true copy of each of the Vesting Order, the SISP Order, the Vesting Recognition Order, the SISP Recognition Order, each of which shall be final;
- (b) executed copy of the Monitor's Certificate;
- (c) a certificate of a senior officer or director of the Company in form and substance reasonably satisfactory to the Purchaser: (a) certifying that the board of directors of the Company, has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (b) certifying as to the incumbency and signatures of the officers and directors of the Company;
- (d) the certificates contemplated by Section 6.2(c);
- (e) evidence of the filing of the Articles of Reorganization;
- (f) an affidavit, signed under penalties of perjury, stating that the applicable company is not and has not been at any time during the period specified in Section 897(c)(1)(A)(ii) of the Code a United States real property holding corporation, dated as of the Closing Date and in form and substance reasonably satisfactory to the Purchaser and as required under Treasury Regulation Section 1.897-2(h) so that the Purchaser is exempt from withholding any portion of the Purchase Price thereunder, together with proof reasonably satisfactory to the Purchaser that the Company or the applicable Just Energy Entity or Just Energy Entities have provided

notice of such affidavit to the IRS in accordance with Treasury Regulation Section 1.897-2(h)(2); and

- (g) in the case of a partnership, the appropriate certificate under Treasury Regulation Section 1.1445-11T(d)(1) that the partnership interest is not a U.S. real property interest and the partnership is not described in Section 1.1445-11T(d)(1) of the Treasury Regulations, and that it is in compliance with Treasury Regulation Section 1.1446(f)-2(b)(4).

### **10.3 Purchaser's Deliveries at Closing**

At Closing, the Purchaser shall deliver to the Company:

- (a) the payment contemplated by Section 3.1;
- (b) a certificate of an authorized signatory of each Purchaser's manager (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Company: (a) certifying that the manager has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (b) certifying as to the incumbency and signature of the authorized signatory of Purchaser executing this Agreement and the other transaction documents contemplated herein, as applicable;
- (c) the certificate contemplated by Section 6.3(c);
- (d) the release contemplated by Section 7.9; and
- (e) all other documents required to be delivered by the Purchaser on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Company in good faith.

### **10.4 Monitor**

When the conditions to Closing set out in Article 6 have been satisfied and/or waived by the Company or the Purchaser, as applicable, the Company and the Purchaser, or their respective counsel, shall each deliver to the Monitor written confirmation that all conditions to Closing have been satisfied or waived. Upon receipt of such written confirmation, the Monitor shall: (i) issue forthwith its Monitor's Certificate in accordance with the Vesting Order; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to the Company and the Purchaser). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Company and the Purchaser that all conditions to Closing have been satisfied or waived, and the Monitor will have no liability to the Company or the Purchaser or any other Person as a result of filing the Monitor's Certificate.

## **10.5 Simultaneous Transactions**

All actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

## **10.6 Further Assurances**

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, the Purchaser and the Company shall execute and deliver at (and after) the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.

# **ARTICLE 11 GENERAL MATTERS**

## **11.1 Confidentiality**

After the Closing Time, the Company shall maintain the confidentiality of all confidential information relating to the Business and the Just Energy Entities (but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Purchaser or its representatives in breach of this Agreement or that is received by the Purchaser from an independent third party that, to the knowledge of the Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Purchaser or its representatives without reference to any Confidential Information), including the Confidential Information, except any disclosure of such information and records as may be required by Applicable Law. If the Company or any Just Energy Entity, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall, or shall cause the Company or its representative to, provide the Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with the Purchaser, at the Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, the Company shall, or shall cause the applicable Just Energy Entity or representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such Affiliate or representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. The Company shall instruct each Just Energy Entity and representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 11.1 by any of the Just Energy Entities or representatives.

## 11.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Company or the Purchaser without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings and the U.S. Proceedings) or by any stock exchange on which any of the securities of such Party or any of its Affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Company (A) with the CCAA Court and the U.S. Bankruptcy Court; and (B) on its profile on [www.sedar.com](http://www.sedar.com) and on the U.S. Securities and Exchange Commission's website at [www.sec.gov](http://www.sec.gov); and (ii) the transactions contemplated in this Agreement may be disclosed by the Company to the CCAA Court and the U.S. Bankruptcy Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Company, the Purchaser and their respective professional advisors may prepare and file such reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

The Purchaser shall be afforded an opportunity to review and comment on such materials prior to their filing. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to them.

## 11.3 Injunctive Relief

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or



other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.

- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 11.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.
- (c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

#### **11.4 Survival**

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 11 and Sections 7.1(b), 7.4, 7.7, 7.9 and 7.10, to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

#### **11.5 Non-Recourse**

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, Affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Purchaser or the Company, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the transactions contemplated hereby.

#### **11.6 Assignment; Binding Effect**

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent the Purchaser may, upon prior notice to the Company: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its Affiliates; or (b) direct that title to all or some of the Purchased Interests be transferred to, and the corresponding Assumed Liabilities be assumed by, one or more of its Affiliates; provided that no such assignment or direction shall relieve the Purchaser of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

## 11.7 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (a) the date of personal delivery; (b) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (c) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (d) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to the Purchaser at:

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036-6745

Attention: David Botter  
Sarah Link Schultz  
Zachary Wittenberg

Email: [Redacted]  
[Redacted]  
[Redacted]

and to:

Cassels Brock & Blackwell LLP  
Scotia Plaza, Suite 2100  
40 King St. W  
Toronto, ON M5H 3C2

Attention Ryan Jacobs  
Jane Dietrich  
Joseph Bellissimo

Email: [Redacted]  
[Redacted]  
[Redacted]

(b) If to the Company at:

Just Energy Group Inc.  
100 King Street West, Suite 2630  
Toronto, Ontario M5X 1E1

Attention: Jonah Davids  
Email: [Redacted]

and to:

Osler, Hoskin & Harcourt LLP  
100 King Street West, Suite 6200  
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman  
Michael De Lellis  
Jeremy Dacks  
Dave Rosenblat  
Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

and to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022

Attention: Brian Schartz  
Neil Herman  
Allyson B. Smith  
Email: [Redacted]  
[Redacted]  
[Redacted]

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

### **11.8 Counterparts; Electronic Signatures**

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

### **11.9 Language**

The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

*[Signature pages to follow]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.

**JUST ENERGY GROUP INC.**

By: (signed) "Michael Carter"  
Name: Michael Carter  
Title: Chief Financial Officer

By: (signed) "Jonah Davids"  
Name: Jonah Davids  
Title: Executive Vice President,  
General Counsel and Corporate  
Secretary

We have the authority to bind the Corporation

**LVS III SPE XV LP**

By: LVS III GP LLC, its general partner

By: [Redacted]  
Name:  
Title:

**TOCU XVII LLC**

By: [Redacted]  
Name:  
Title:

**HVS XVI LLC**

By: [Redacted]  
Name:  
Title:

**OC II LVS XIV LP**

By: OC II GPI LLC, its general partner

By: [Redacted]  
Name:  
Title:

**OC III LFE I LP**

By: OC II GP LLC, its general partner

By: [Redacted]  
Name:  
Title:

**CBHT Energy I LLC**

By: [Redacted]\_\_\_\_\_

Name:

Title:

**Disclosure Letter**

**DISCLOSURE LETTER**  
**to**  
**TRANSACTION AGREEMENT**

**by and among**

**JUST ENERGY GROUP INC.**

**as the Company**

**-and-**

**LVS III SPE XV LP,**

**TOCU XVII LLC,**

**HVS XVI LLC,**

**OC II LVS XIV LP,**

**OC III LFE I LP,**

**CBHT ENERGY I LLC**

**each as a Purchaser and collectively, as the Purchaser**



Schedule 1.1(a)  
Additional Applicants

None.

Schedule 1.1(b)  
Permitted Encumbrances

- Encumbrances securing Assumed Liabilities to the extent that such Assumed Liabilities are secured by Encumbrances as of the Closing Time
- Encumbrances securing obligations under the New Credit Agreement
- Encumbrances which are the subject of the New Intercreditor Agreement
- “Permitted Encumbrances” as defined in the Credit Agreement, subject to those amendments to such definition provided for in Exhibit 1 of the Stalking Horse Term Sheet, except to the extent that they relate to an Excluded Liability or Excluded Asset

Schedule 2.1(a)

Equity Interest Allocation Percentages

**[Redacted]**

Schedule 2.2(c)  
Excluded Contracts

None.

Schedule 2.2  
Excluded Assets

None.

Schedule 2.2(f)  
Excluded Equity Interests

Schedule 3.1(a)(i)

Cash Purchase Price Allocation

**[Redacted]**

Schedule 4.7  
Subsidiaries

	<b>Name</b>	<b>Jurisdiction of Incorporation</b>
1.	Just Energy Group Inc.	Canada
2.	Just Energy Corp.	Ontario
3.	Ontario Energy Commodities Inc.	Ontario
4.	Universal Energy Corporation	Ontario
5.	Just Energy Finance Canada ULC	Nova Scotia
6.	Hudson Energy Canada Corp.	Canada
7.	11929747 Canada Inc.	Canada
8.	12175592 Canada Inc.	Canada
9.	JE Services Holdco I Inc.	Canada
10.	JE Services Holdco II Inc.	Canada
11.	8704104 Canada Inc.	Canada
12.	Just Energy Advanced Solutions Corp.	Ontario
13.	Just Energy (U.S.) Corp.	Delaware
14.	Just Energy Illinois Corp.	Delaware
15.	Just Energy Indiana Corp.	Delaware
16.	Just Energy Massachusetts Corp.	Delaware
17.	Just Energy New York Corp.	Delaware
18.	Just Energy Texas I Corp.	Delaware
19.	Just Energy, LLC	Texas
20.	Just Energy Pennsylvania Corp.	Delaware
21.	Just Energy Michigan Corp.	Delaware
22.	Just Energy Solutions Inc.	California



23.	Hudson Energy Services LLC	New Jersey
24.	Hudson Energy Corp.	Delaware
25.	Interactive Energy Group LLC	Delaware
26.	Hudson Parent Holdings LLC	Delaware
27.	Drag Marketing LLC	Delaware
28.	Just Energy Advanced Solutions LLC	Delaware
29.	Fulcrum Retail Energy LLC	Texas
30.	Fulcrum Retail Holdings LLC	Texas
31.	Tara Energy, LLC	Texas
32.	Just Energy Marketing Corp.	Delaware
33.	Just Energy Connecticut Corp.	Delaware
34.	Just Energy Limited	Delaware
35.	Just Solar Holdings Corp.	Delaware
36.	Just Energy (Finance) Hungary Zrt.	Hungary
37.	Just Energy Ontario L.P.	Ontario
38.	Just Energy Manitoba L.P.	Manitoba
39.	Just Energy (B.C.) Limited Partnership	British Columbia
40.	Just Energy Québec L.P.	Quebec
41.	Just Energy Trading L.P.	Ontario
42.	Just Energy Alberta L.P.	Alberta
43.	Just Green L.P.	Alberta
44.	Just Energy Prairies L.P.	Manitoba
45.	JEBPO Services LLP	India
46.	Just Energy Texas LP	Texas

Schedule 6.1(e)

Transaction Regulatory Approvals to be Obtained and Energy Regulator Notices to be Provided  
Prior to the Closing Time

1. Authorization from the Federal Energy Regulatory Commission under Section 203 of the Federal Power Act
2. Competition Act Approval, if required
3. Investment Canada Act Approval
4. Energy Regulator Notices to
  - a. the Registrar under *The Direct Sellers Act*, RSS 1978, c D-28, to the extent there is a change in membership of the licensee;
  - b. the Connecticut Public Utilities Regulatory Authority; and,
  - c. the applicable Energy Regulator, to the extent there is a change in the officers, directors or members of the licensee or a change in control of the licensee, and such change requires notification to such Energy Regulator.
5. Hart-Scott-Rodino Approval, if required in the reasonable judgment of Purchaser

## Exhibit A

### Terms of the New Preferred Equity

On the Closing Date, Just Energy (U.S.) Corp. (or its successor if converted into another entity prior to the Closing in accordance with the Implementation Steps) will issue a new class of preferred equity on the following terms and conditions and, to the extent applicable, subject to the terms and conditions set out in the New Credit Agreement:

- (a) Amount: The amount of the BP Commodity / ISO Services Claim as of the Closing Date, all converted into United States currency, as applicable
- (b) Maturity:
  - 1. Perpetual
  - 2. Repayment in full upon a change of control transaction
  - 3. Right to force sale in year six (6)
- (c) Dividends: 12.50% accreting yield with dividends as and when declared by the board of directors for the first four (4) years, increasing 1% annually thereafter
- (d) Fees: Exit fee of 5.00%
- (e) ECF Sweep: The ECF Sweep is as permitted pursuant to the terms of the New Credit Agreement

**Exhibit B**

Form of Release

(see attached)

## RELEASE AGREEMENT

This Release Agreement (this “Release Agreement”) is made and entered into as of [●], 2022 (the “Effective Date”) by each of the Releasing Parties (as defined herein) in favor of the Released Parties (as defined herein).

WHEREAS, on [●], 2022 (the “Closing Date”), pursuant to that certain Transaction Agreement, dated as of August 4, 2022 (together with all exhibits and schedules attached thereto, and as amended, supplemented, or otherwise modified from time to time, the “Transaction Agreement”),<sup>1</sup> by and between Just Energy Group Inc. (“JEGI”) and the Purchaser, upon the consummation of the Closing, concurrently with the effectiveness of this Release Agreement and after the completion of the Implementation Steps, all of the Releasing Parties are now owned, directly or indirectly, by Just Energy (U.S.) Corp; and

WHEREAS, the Releasing Parties desire to effectuate the release provision set forth in Article 7.9 of the Transaction Agreement, all as more fully set forth herein.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Releasing Parties hereby agree as follows:

### 1. Defined Terms.

(a) The terms defined in the recitals hereto shall have the meanings set forth therein.

(b) The following terms have the following meanings:

“Causes of Action” means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of the Just Energy Entities against any Person, in each case based in whole or in part on any act or omission, transaction, dealing, or other occurrence existing or taking place on or prior to the Closing Time.

“Final Order” means with respect to any order or judgment of the CCAA Court or the U.S. Bankruptcy Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the Chapter 15 Cases or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified, or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing, has expired and no appeal, leave to appeal, or

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Transaction Agreement.

petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Company and the Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such order shall not cause such order to not be a Final Order.

“Released Causes of Action” means the Causes of Action irrevocably and unconditionally waived, released, and discharged by the Releasing Parties pursuant to Section 2 of this Release Agreement.

“Released Parties” means, collectively, (a) all current and former officers, directors, partners, limited partners, employees, agents, financial and legal advisors of each of the Releasing Parties and (b) the respective successors and assigns of each individual or entity in clause (a).

“Releasing Parties” means, collectively, (a) JEGI, Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada 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., 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 and (b) the respective successors and assigns of each entity in clause (a).

## 2. Releases.

(a) Each Releasing Party hereby irrevocably and unconditionally waives, releases, and discharges each Released Party from any and all actual or potential Causes of Action against the Released Parties; *provided, however*, that, with respect to each Released Party, the foregoing provision shall not waive or release Causes of Action related to any act or omission by such Released Party that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence; *provided, further*, that in all respects such Released Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their applicable duties and responsibilities.

(b) Each Releasing Party understands, acknowledges, and agrees that the releases provided for herein are full and final general releases of all Released Causes of Action, including those that could have been asserted in any legal or equitable proceeding against the Released Parties. Each Releasing Party hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Released Cause of Action, or commencing, instituting, or causing to be commenced any action, suit, or proceeding of any kind, against any Released Party, or against any other person, corporation, or entity which might claim over or against any Released Party, based upon any Released Cause of Action. Each Releasing Party further agrees that in the event such Releasing Party should bring a Released Cause of Action against any Released Party or any such other person, corporation, or entity, this Release Agreement shall serve as a complete defense to such Cause of Action.

(c) Each Releasing Party has read Section 1542 of the Civil Code of the State of California (“Section 1542”), which provides as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. Each Releasing Party understands that Section 1542, or a comparable statute, rule, regulation, or order of another jurisdiction, gives such Releasing Party the right not to release existing Causes of Action of which such Releasing Party is not aware, unless such Releasing Party voluntarily chooses to waive this right. Having been so apprised, each Releasing Party nevertheless hereby voluntarily elects to and does waive the rights described in Section 1542, and all such other comparable statutes, rules, regulations, or orders, and elects to assume all risks for Causes of Action that exist, existed, or may hereafter exist in its favor, known or unknown, suspected or unsuspected, arising out of or related to Causes of Action or other matters purported to be released pursuant to this Release Agreement.

3. Severability. Any term or provision of this Release Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

4. Waivers. No waiver of any of the terms or provisions of this Release Agreement shall be binding against any Released Party hereto unless such waiver is in a writing signed by such Released Party.

5. No Assignment. This Release Agreement shall be binding upon the Releasing Parties and inure to the sole benefit of the Released Parties. No Releasing Party hereto may assign any of its obligations under this Release Agreement. Any assignment in violation of this Section 5 shall be null and void *ab initio*.

6. Governing Law. This Release Agreement shall be governed by and construed in accordance with the laws of [●], without giving effect to principles of choice of law. Any action, suit, or proceeding arising out of or related to this Release Agreement shall be brought and maintained exclusively in the state and federal courts in [●], and each Releasing Party irrevocably and unconditionally: (a) submits to the personal jurisdiction of those courts for purposes of, and waives any defense of venue or inconvenient forum in, any such action, suit, or proceeding in those

courts; (b) expressly waives any requirement for the posting of a bond by a party bringing such action, suit, or proceeding; (c) consents to process being served in any such action, suit, or proceeding by mailing, certified mail, return receipt requested, a copy thereof to such party at the address in effect for notices set forth on the signature pages hereto, and agrees that such service shall constitute good and sufficient service of process and notice thereof; *provided* that nothing in clause (c) hereof shall affect or limit any right to serve process in any other manner permitted by law, and (d) WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION, SUIT, OR PROCEEDING.

7. Counterparts. This Release Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Release Agreement, each individual executing this Release Agreement on behalf of a Releasing Party has been duly authorized and empowered to execute and deliver this Release Agreement on behalf of said Releasing Party.

*[Remainder of page intentionally left blank.]*



IN WITNESS WHEREOF, the Releasing Parties have executed this Release Agreement on the day and year first above written.

**[Just Energy (U.S.) Corp., on behalf itself and each other Releasing Party]**

By: \_\_\_\_\_  
Name: [●]  
Title: [●]

**EXHIBIT C**

**Stalking Horse Term Sheet**

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**JUST ENERGY GROUP INC., ET AL.**  
**STALKING HORSE TRANSACTION TERM SHEET**

**August 4, 2022**

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This stalking horse transaction term sheet (this “**Term Sheet**”) presents the principal terms of proposed transactions (collectively, the “**Transaction**”) concerning Just Energy Group Inc. (“**Just Energy**”) and the other entities composing the “Just Energy Entities” (as defined below). The Transaction shall serve as a stalking-horse bid in a sale and investment solicitation process to be commenced in the Just Energy Entities’ CCAA (as defined below) proceedings, as described herein. The Transaction will be implemented pursuant to: (i) a transaction agreement (the “**Transaction Agreement**”) to be approved pursuant to an approval and vesting order (the “**Vesting Order**”) granted by the Ontario Superior Court of Justice (Commercial List) in the proceedings commenced by Just Energy and certain of the Just Energy Entities under the *Companies’ Creditors Arrangement Act* (as amended, the “**CCAA**”) on March 9, 2021 (the “**Filing Date**”), with such Vesting Order to be recognized and enforced by the United States Bankruptcy Court for the Southern District of Texas, Houston Division in the cases commenced by the foreign representative for certain of the Just Energy Entities under chapter 15 of title 11 of the United States Code on the Filing Date; and (ii) the Support Agreement dated August 4, 2022, by and among the Just Energy Entities, the Sponsor, and the other parties signatory thereto (as amended, supplemented, or otherwise modified from time to time, the “**Support Agreement**”). Capitalized terms used but not otherwise defined herein will have the meanings ascribed to such terms in the Support Agreement.

**THIS TERM SHEET DOES NOT CONSTITUTE (NOR WILL IT BE CONSTRUED AS) AN OFFER WITH RESPECT TO ANY SECURITIES, IT BEING UNDERSTOOD THAT SUCH AN OFFER, IF ANY, ONLY WILL BE MADE IN COMPLIANCE WITH APPLICABLE PROVISIONS OF SECURITIES, BANKRUPTCY, AND/OR OTHER APPLICABLE LAWS.**

**THIS TERM SHEET DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS CONSISTENT WITH THE TERMS SET FORTH HEREIN. THE CLOSING OF ANY TRANSACTION WILL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS. EXCEPT AS SET FORTH IN THE SUPPORT AGREEMENT AND THE TRANSACTION AGREEMENT, NO BINDING OBLIGATIONS WILL BE CREATED BY THIS TERM SHEET UNLESS AND UNTIL BINDING DEFINITIVE DOCUMENTS ARE EXECUTED AND DELIVERED BY ALL APPLICABLE PARTIES.**

**TERM SHEET**

<b>Just Energy Entities:</b>	Just Energy, 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., 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 (collectively, the “ <b>Just Energy Entities</b> ”).
<b>Sponsor Parties:</b>	LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP and CBHT Energy I LLC (collectively, the “ <b>Sponsor</b> ”). The Sponsor shall provide a guarantee in substantially the same form as provided in connection with the Backstop Commitment Letter from the same affiliates of the Sponsor. <sup>1</sup>

**TRANSACTION OVERVIEW**

<b>The Transaction:</b>	<p>The Transaction shall include, as set forth below, among other things:</p> <ul style="list-style-type: none"><li>• The Sponsor shall acquire newly issued common and preferred shares of Just Energy (U.S.) Corp. (“<b>JEUS</b>”); JEUS shall then acquire newly issued common shares of Just Energy, with the existing common shares and all other equity interests in Just Energy being cancelled immediately following such issuance pursuant to the Vesting Order, pursuant to steps to be set forth in the Implementation Steps (as defined below);</li><li>• For the avoidance of doubt, upon the Closing and after the completion of the Implementation Steps, each other Just Energy Entity (including the Company) and Filter Group Inc. shall be owned, directly or indirectly, by JEUS.</li><li>• At Closing (as defined below), no Just Energy Entity shall be a reporting issuer (or equivalent) under any Canadian securities laws;</li><li>• Entry into the New Credit Agreement;</li></ul>
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<sup>1</sup> The Sponsor reserves rights to form an entity taxed as partnership to be the counterparty under the Transaction Agreement.

	<ul style="list-style-type: none"> <li>• Entry into the New Intercreditor Agreement;</li> <li>• Subject to the Implementation Steps and the terms of the Transaction Agreement and the Vesting Order, Just Energy Entities shall retain all of the assets owned by those entities as of the date of this Term Sheet and any assets acquired up to and including the date of the closing (the “<b>Closing</b>” and such date, the “<b>Closing Date</b>”) of the transactions contemplated by the Transaction Agreement other than the Excluded Assets and Excluded Liabilities (each as defined below);</li> <li>• The Just Energy Entities shall assign and transfer the Excluded Liabilities and Excluded Assets to one or more entities (each, a “<b>Residual Co.</b>”) to be organized by Just Energy prior to Closing, each of which shall have no issued and outstanding shares and which shall become an applicant in the CCAA proceedings as of the Closing, and pursuant to the Transaction Agreement and the Vesting Order (i) none of Sponsor, nor any of the Just Energy Entities shall have any liability with respect to any of the Excluded Liabilities from and after Closing and (ii) the Excluded Liabilities and Excluded Assets shall be vested in the applicable Residual Co. as of the Closing; and</li> <li>• The applicable Just Energy Entities shall continue to be liable for the Assumed Liabilities (as defined below) from and after Closing.</li> </ul>
<b>Purchase Price</b>	<p>The consideration to be paid by the Sponsor under the Transaction Agreement for the newly issued shares of JEUS shall consist of the following (collectively, the “<b>Purchase Price</b>”):</p> <p>(i) USD\$184,857,692.31 in cash, plus up to an additional CAD\$10 million solely in the event and to the extent additional funds (taking into account the Cash Purchase Price, the aggregate amount of cash held by the Just Energy Entities as of the Closing Date and the Credit Facility Remaining Debt) are required to pay all amounts to be paid by the Just Energy Entities pursuant to the Transaction Agreement and the Vesting Order;</p> <p>(ii) A credit bid of the BP Commodity/ISO Services Claim (including interest thereon through the Closing); and</p> <p>(iii) The retention of the Assumed Liabilities pursuant to the terms of the Transaction Agreement.</p>
<b>New Credit Facility:</b>	<p>On the Closing Date, the Credit Facility Lenders, the Credit Facility Agent, and Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, will enter into a tenth amended and restated credit agreement (the “<b>New Credit Agreement</b>”), which will amend and restate the existing ninth amended and restated credit agreement on the terms and conditions set forth in <u>Exhibit 1</u> hereto (the “<b>New Credit Facility Term Sheet</b>”).</p>
<b>Assumed Liabilities</b>	<p>“<b>Assumed Liabilities</b>” shall include only the following liabilities: (a) all Post-Filing Claims; (b) liabilities of each Just Energy Entity arising from and after Closing (which in each case shall remain liabilities of such Just Energy Entity); (c) all Credit</p>

	<p>Facility LC Claims, all Credit Facility Claims that are not repaid in full in cash on Closing in accordance with the New Credit Agreement (the “<b>Credit Facility Remaining Debt</b>”), and all Cash Management Obligations (as defined in the Initial Order); (d) Energy Regulator Claims relating to the Just Energy Entities; (e) any and all indemnification obligations of Just Energy to current and former directors, officers, and employees; (f) Employee Priority Claims; (g) Intercompany Claims between Just Energy Entities to the extent that the Implementation Steps contemplate such claims continuing as Assumed Liabilities and (h) all transfer and other similar taxes payable with respect to the transactions contemplated by the Transaction Agreement and (i) (1) tax liabilities of the Just Energy Entities for any tax period or the portion thereof beginning on or after the Filing Date and (2) any sales, use or other Taxes for any period by a Taxing Authority 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; excluding from both (1) and (2), for the avoidance of doubt, any tax or similar liability directly and solely related to the Excluded Assets, other than, Taxes with respect to which any current or former employee, officer, director, or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes. Notwithstanding the foregoing, nothing in the Transaction Agreement shall be read to extend or shall be interpreted as extending or amending the Claims Bar Date or give or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order.</p>
<p><b>Excluded Liabilities</b></p>	<p>All liabilities, other than Assumed Liabilities, shall be “<b>Excluded Liabilities</b>”.</p> <p>On the Closing Date, pursuant to the terms of the Transaction Agreement and the Vesting Order, the Just Energy Entities shall assign and transfer the Excluded Liabilities to the applicable Residual Co. and each Residual Co. shall assume the applicable Excluded Liabilities. All claims in respect of the Excluded Liabilities will continue to exist against the applicable Residual Co. and none of the Sponsor nor the Just Energy Entities shall have any liability for any of the Excluded Liabilities and all of the Excluded Liabilities shall be discharged from the Just Energy Entities as of the Closing, pursuant to the Vesting Order.</p>

<b>Excluded Assets</b>	On the Closing Date, the Just Energy Entities shall transfer CAD\$1,900,000 (the “ <b>Administrative Expense Amount</b> ”) from the Just Energy Entities’ cash on hand, which will be paid to the Monitor, in trust pursuant to the Vesting Order (the “ <b>Excluded Assets</b> ”). Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs (as defined below), as determined by the Monitor, shall be transferred by the Monitor to Just Energy. “ <b>Administrative Expense Costs</b> ” means the reasonable and documented fees and costs of (i) the Monitor and its professional advisors and (ii) professional advisors of the Just Energy Entities for services performed prior to and, other than in respect of the Acquired Entities, after the Closing Date, in each case, relating directly or indirectly to the CCAA proceedings, the U.S. Chapter 15 proceedings, and the Transaction Agreement and including without limitation (y) costs required to wind down and/or dissolve and/or bankrupt the Residual Co. and any Just Energy Entity that is not an Acquired Entity and (z) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and Residual Co.
<b>Employees</b>	Unless otherwise expressly provided for by the MIP, or agreed to in writing by and among the Just Energy Entities, the Sponsor, and the applicable employee (or employees) affected by any change or modification, each of the Employment Agreements will not be disclaimed and will remain in place as of, and as a condition to the occurrence of, the Closing. “ <b>Employment Agreements</b> ” shall mean, collectively, the employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the Directors, Officers, and employees of any of the Just Energy Entities that, on or prior to Closing, have not resigned, in each case in existence on the effective date of the Support Agreement; provided, however, that Employment Agreements shall not include employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the Directors, Officers, and employees of any of the Just Energy Entities that have been terminated or disclaimed without the consent of the Sponsor.
<b>Representations and Warranties</b>	Representations and warranties to be consistent with those included in the Backstop Commitment Letter.
<b>Covenants of the Just Energy Entities</b>	Covenants to be consistent with those included in the Backstop Commitment Letter.
<b>Regulatory Approvals</b>	In accordance with the terms of the Support Agreement and the Transaction Agreement, the Just Energy Entities and the Sponsor will work together to obtain the necessary regulatory approvals that may be required in connection with the transactions contemplated by this Term Sheet, including without limitation to the extent applicable, the approval of FERC, US HSR approval, Investment Canada Act and Competition Act approvals and certain Canadian regulatory approvals (collectively, the “ <b>Regulatory Approvals</b> ”).
<b>Bid Protections</b>	<u>Break-Up Fee</u> : JEUS (or another entity organized in the United States acceptable to the Sponsor) will pay to Sponsor a break-up fee in cash equal to USD\$14.66 million upon the consummation of an Alternative Restructuring Proposal (as defined in the Support Agreement) as provided in the Transaction Agreement (the “ <b>Break-Up Fee</b> ”).

	<p>Just Energy Entities shall obtain within the SISP Order a court-ordered charge in favor of the Sponsor in the full amount of the Break-Up Fee to secure the payment of the Break-Up Fee, which charge shall have the priority given to it in the SISP Order.</p>
<p><b>Closing Conditions</b></p>	<p>The Transaction Agreement shall contain the following closing conditions for the benefit of the Sponsor:</p> <ul style="list-style-type: none"> <li>• entry by the CCAA Court of an order approving the Sale and Investment Solicitation Process (the “SISP”) and related matters (the “SISP Order”) in the form attached hereto as <b>Exhibit 2</b> (or as otherwise acceptable to the Sponsor, acting reasonably), and such order shall be a Final Order;</li> <li>• entry by the U.S. Bankruptcy Court of the SISP Recognition Order and such order shall be a Final Order;</li> <li>• entry by the CCAA Court of the Vesting Order in the form attached hereto as <b>Exhibit 3</b> (or as otherwise acceptable to the Sponsor, acting reasonably), and such order shall be a Final Order;</li> <li>• entry by the U.S. Bankruptcy Court of the Vesting Recognition Order in form and substance acceptable to the Sponsor, acting reasonably and such order shall be a Final Order;</li> <li>• the Support Agreement shall not have been terminated by any party thereto;</li> <li>• no law, injunctions or other order or similar ruling or determination of any governmental authority preventing, delaying or otherwise frustrating the consummation of the Transaction;</li> <li>• the Just Energy Entities and Sponsor, as applicable, shall have received all required Regulatory Approvals, which will be identified in the Transaction Agreement;</li> <li>• the Just Energy Entities shall have completed the Implementation Steps in a manner reasonably acceptable to the Sponsor;</li> <li>• accuracy of the Just Energy Entities’ representations and warranties under the Transaction Agreement (to the same standards as included in the Backstop Commitment Letter);</li> <li>• no material breach of the Just Energy Entities’ covenants;</li> <li>• no material adverse effect with respect to the business shall have occurred;</li> <li>• New Credit Agreement and New Intercreditor Agreement shall have been entered into among the parties thereto;</li> <li>• As of immediately prior to the closing, the Cash Purchase Price, plus the aggregate amount of cash held by the Just Energy Entities, plus the Credit Facility Remaining Debt, shall be sufficient to pay all amounts to be paid by the Just Energy Entities pursuant to the Transaction Agreement and the Vesting Order; and</li> </ul>



	<ul style="list-style-type: none"> <li>• the receipt of customary closing deliverables.</li> </ul> <p>The Transaction Agreement shall contain the following closing conditions to the obligations of the Just Energy Entities to close the Transaction:</p> <ul style="list-style-type: none"> <li>• entry by the CCAA Court of the SISP Order in the form attached hereto as <b><u>Exhibit 2</u></b> (or as otherwise acceptable to Just Energy, acting reasonably), and such order shall be a Final Order;</li> <li>• entry by the U.S. Bankruptcy Court of the SISP Recognition Order in form and substance acceptable to Just Energy, and such order shall be a Final Order;</li> <li>• entry by the CCAA Court of the Vesting Order in the form attached hereto as <b><u>Exhibit 3</u></b> (or as otherwise acceptable to the Just Energy, acting reasonably), and such order shall be a Final Order;</li> <li>• entry by the U.S. Bankruptcy Court of the Vesting Recognition Order in form and substance acceptable to Just Energy, acting reasonably and such order shall be a Final Order;</li> <li>• the Support Agreement shall not have been terminated by any party thereto;</li> <li>• the MIP shall have been executed on terms consistent in all respects with the MIP Term Sheet;</li> <li>• no law, injunctions or other order or similar ruling or determination of any governmental authority preventing, delaying or otherwise frustrating the consummation of the transactions contemplated by the Transaction Agreement;</li> <li>• Just Energy Entities and the Sponsor, as applicable, shall have received all required Regulatory Approvals;</li> <li>• New Credit Agreement and New Intercreditor Agreement shall have been entered into among the parties thereto;</li> <li>• satisfaction of the conditions set forth under “<i>Employees</i>”;</li> <li>• accuracy of the Sponsor’s representations and warranties under the Transaction Agreement (to the same standards as included in the Backstop Commitment Letter);</li> <li>• no material breach of Sponsor’s covenants; and</li> <li>• the receipt of customary closing deliverables.</li> </ul>
<p><b>Termination</b></p>	<p>The Transaction Agreement will be terminable by either party in the event the Support Agreement is terminated in accordance with the terms thereof.</p> <p>The Transaction Agreement will also be terminable (by the applicable party or parties) in the following circumstances:</p>

	<ul style="list-style-type: none"> <li>• by mutual written consent of the parties;</li> <li>• Just Energy Entities breach the terms of the Transaction Agreement and fail to cure such breach in accordance with the terms of the Transaction Agreement; or</li> <li>• The Sponsor breaches the terms of the Transaction Agreement and fails to cure such breach in accordance with the terms of the Transaction Agreement.</li> </ul> <p>Provided the Transaction Agreement has not been terminated in accordance with its terms, each party will be entitled to specific performance to enforce the other parties' obligations thereunder, including the obligation to consummate the closing thereunder, subject to the satisfaction of the closing conditions, and to enforce Sponsor's obligations under the guarantee.</p>
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**PAYMENT OF CERTAIN EXCLUDED LIABILITIES ON CLOSING**

<b>Charge Beneficiaries:</b>	On the Closing Date, the Just Energy Entities shall have provided for the payment or satisfaction in cash in full of all amounts secured by Charges (as defined in the Initial Order granted in the Just Energy Entities' CCAA proceedings on March 9, 2021, as amended and restated on March 19, 2021 and May 26, 2021 and as may be further amended, restated, varied and/or supplemented from time to time), other than Cash Management Obligations and amounts secured by the Priority Commodities/ISO Charge (which in both cases are continuing as Assumed Liabilities).
<b>Commodity Supplier Claims:</b>	On the Closing Date, the Just Energy Entities shall pay each Commodity Supplier an amount equal to such Commodity Supplier's Commodity Supplier Claim that is an Accepted Claim in full satisfaction of such claims.
<b>Credit Facility Claims:</b>	<p>On the Closing Date, in full and final satisfaction of the Credit Facility Claim (less the Credit Facility Remaining Debt, if any), the Just Energy Entities shall pay, or shall cause to be paid, to the Credit Facility Agent, an amount equal to the Credit Facility Claim (less the Credit Facility Remaining Debt, if any), in full in cash in the currency that such Credit Facility Claim was originally denominated in full and final satisfaction of the Credit Facility Claim (less the Credit Facility Remaining Debt, if any), but in all cases in accordance with the New Credit Agreement.</p> <p>Any letters of credit issued by a Credit Facility Lender pursuant to the Credit Agreement shall continue under the New Credit Agreement or be discharged and, if required, replaced with new letters of credit issued under the New Credit Agreement, unless otherwise agreed to by the applicable Credit Facility Lender and the Just Energy Entities, with the consent of the Sponsor.</p> <p>The Cash Management Obligations will continue after Closing as Assumed Liabilities.</p>

<b>Government Priority Claims</b>	On the Closing Date, the applicable Just Energy Entities shall pay or cause to be paid in full all Government Priority Claims, if any, outstanding as at the Filing Date or related to the period ending on the Filing Date, to the applicable Governmental Entity.
<b><u>OTHER PROVISIONS</u></b>	
<b>Management Incentive Plan:</b>	The material terms in respect of a post-Closing management incentive plan (the “MIP”) of the Sponsor will be as set forth in the management incentive plan term sheet (the “MIP Term Sheet”) attached hereto as <b>Exhibit 5</b> . The MIP shall be executed on terms consistent in all respects with the MIP Term Sheet on Closing.
<b>New Intercreditor Agreement:</b>	A seventh amended and restated intercreditor agreement (the “ <b>New Intercreditor Agreement</b> ”) by, among others, the Acquired Entities, the Credit Facility Agent, and the applicable Commodity Suppliers, shall be entered into, which New Intercreditor Agreement shall provide for the same relative supplier and lender priorities as contemplated in the existing sixth amended and restated intercreditor agreement subject to modifications set forth in the New Intercreditor Agreement Term Sheet attached hereto as <b>Exhibit 4</b> .
<b>Shell:</b>	Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, “ <b>Shell</b> ”) shall have confirmed, in writing, to the Acquired Entities and the Sponsor that (i) it will not exercise any termination rights under its Continuing Contracts (as defined in the Support Agreement) solely as a result of the Transaction, and (ii) all existing and any potential future trades will be transacted in accordance with the Continuing Contracts (as may be amended, restated, supplemented and/or replaced by the Acquired Entities and Shell from time to time following the Closing Date) or new arrangements, in each case in accordance with the terms thereof and subject to the terms of the New Intercreditor Agreement. The Continuing Contracts with respect to Shell shall not include the Third Amended and Restated Scheduling Coordinator Agreement dated December 1, 2014 between Shell Energy North America (US), L.P., Just Energy New York Corp., Just Energy (U.S.) Corp. and Just Energy Solutions Inc. (formerly Commerce Energy, Inc.) or any other agreement whereby Shell performs ISO or scheduling services on behalf of any Applicant whereby an Applicant has reimbursement obligations to Shell for payments made by Shell on behalf of an Applicant to an ISO.
<b>Releases</b>	Release provisions shall be as provided for in the Vesting Order and the Transaction Agreement.

<p><b>Tax Structure:</b></p>	<p>The Transaction, including the treatment of Intercompany Claims, shall be structured in a tax efficient manner as agreed upon by, and acceptable to, the Just Energy Entities and the Sponsor, each acting reasonably.</p> <p>The specific transaction steps and pre-closing reorganization of the Just Energy Entities to effect the Transaction (collectively, the “<b>Implementation Steps</b>”) shall be set out in an appendix to the Transaction Agreement (which appendix, for the avoidance of doubt, will be completed following the execution of the Transaction Agreement but at least 7 days prior to the hearing of the Just Energy Entities’ motion to the CCAA Court seeking the Vesting Order) and shall be in form and substance acceptable to the Just Energy Entities, the Credit Facility Lenders and the Sponsor, each acting reasonably.</p>
<p><b>Definitive Documents:</b></p>	<p>Each of the Definitive Documents (as defined in the Support Agreement) shall be agreed upon by, and in form and substance acceptable to each of the Just Energy Entities, the Sponsor and the Credit Facility Lenders, each acting reasonably and consistent with the terms in this Term Sheet.</p>
<p><b>Transaction Timeline:</b></p>	<p>The Transaction shall occur on the timeline set forth in the Support Agreement.</p>

**EXHIBIT 1**

**New Credit Facility Term Sheet**

**NEW CREDIT AGREEMENT  
SUMMARY OF TERMS AND CONDITIONS**

August 4, 2022

*This Summary of Terms and Conditions (this “**Summary**”) is intended for discussion purposes only and cannot be construed as creating an obligation to advance funds or to reach an agreement on definitive terms and conditions. This Summary does not include descriptions of all of the terms, conditions and other provisions that are to be contained in the definitive documentation relating to the Credit Facilities, including, without limitation, a tenth amended and restated credit agreement (the “**Tenth Amended and Restated Credit Agreement**”) between the Borrowers, the Agent and the Lenders. This Summary represents an outline of the basis on which the Lenders are prepared to provide their commitment to provide the Credit Facilities subject to each Lender’s receipt of its requisite internal credit and underwriting approvals, satisfactory results of due diligence and documentation in form and substance satisfactory to the Lenders, the Obligors and the Purchaser Sponsor.*

Reference is made to (i) the ninth amended and restated 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 Agent, and the Lenders party thereto, as amended, supplemented or otherwise modified from time to time to the date hereof (the “**Existing Credit Agreement**”), (ii) the sixth amended and restated intercreditor agreement dated as of September 1, 2015 between the Collateral Agent, the Agent, Shell Energy, the Other Commodity Suppliers (as defined therein), the Borrowers, the Restricted Subsidiaries and other Persons from time to time party thereto (as amended, supplemented or otherwise modified from time to time to the date hereof (the “**Existing Intercreditor Agreement**”), and (iii) the support agreement dated as of August 4, 2022 between, among others, the Obligors, LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP and OC III LFE I LP, as purchase sponsors, and the Lenders party thereto (as amended, supplemented or otherwise modified from time to time to the date hereof (the “**Support Agreement**”). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in Exhibit A attached hereto or the Existing Credit Agreement, as the case may be.

*Borrowers:* As per the Existing Credit Agreement.

*New Parent:* Just Energy (U.S.) Corp. (the “**New Parent**”).

*Guarantors:* As per the Existing Credit Agreement with the addition of (a) any Subsidiary of the New Parent that directly or indirectly owns the equity interests in the Canadian Borrower on the Closing Date and any other Subsidiary of the New Parent that is not an Unrestricted Subsidiary (collectively, the “**New Obligor**”), and (b) Filter Group Inc. (“**Filter Parent**”) and Filter Group USA Inc. (together with Filter Parent, collectively, the “**Filter Entities**”; the Filter Entities, together with the New Obligor, if any, collectively, the “**Additional Guarantors**”). For the avoidance of doubt, no Person

that directly owns any equity interest in the New Parent shall be required to be a Guarantor or provide Security.

<i>Administrative Agent:</i>	National Bank of Canada, as administrative agent (in such capacity, the “ <b>Agent</b> ”).
<i>Lenders:</i>	As per the Existing Credit Agreement.
<i>Maximum Facility Amount:</i>	Cdn.\$250,000,000 (inclusive of the LC Facility Amount (as defined below)) on the Closing Date (as defined below) as such amount is reduced from time to time pursuant to the “Prepayments and Repayments” described below (the “ <b>Maximum Facility Amount</b> ”).
<i>Credit Facility Remaining Debt:</i>	Pursuant to the Transaction Agreement, the principal amount of up to Cdn.\$10,000,000 of the amounts owed to the Lenders under the Existing Credit Agreement (in addition to the Letters of Credit issued under the Existing Credit Agreement which are outstanding on the Closing Date) may remain outstanding as an initial outstanding principal amount under the New Credit Agreement upon the closing (“ <b>Closing</b> ”) of the transaction (the “ <b>Transaction</b> ”) contemplated in the Transaction Agreement.
<i>Letters of Credit Sublimit under Revolving Facilities:</i>	Remove the existing sublimit of Cdn.\$125,000,000 for the Letters of Credit issued under the Revolving Facilities in Section 2.08(3) of the Existing Credit Agreement.
<i>LC Facility:</i>	LC Facility in the amount of Cdn.\$45,000,000 (the “ <b>LC Facility Amount</b> ”).
<i>Borrowing Base:</i>	As per the Existing Credit Agreement.
<i>Prepayments and Repayments:</i>	As per the Existing Credit Agreement, subject to the following:  (i) If at any time the aggregate amount of unrestricted cash and Cash Equivalents held by the Obligors exceeds Cdn.\$35,000,000, save and except for any amounts which directly relate to and are required to fund pending normal course commodity supplier payments and ISO payments on each Commodity Supplier/ISO Payment Date (as defined below), the Borrowers will repay the Advances outstanding under the Revolving Facilities in an amount equal to such excess. For certainty, (a) any repayment made pursuant to this clause (i) will not permanently reduce the Commitments of the Lenders under the Revolving Facilities or the Maximum Facility Amount; and (b) to the extent there are no Advances outstanding under the Revolving

Facilities (other than the Letters of Credit) at such time, the Obligors may maintain aggregate cash and Cash Equivalents in excess of Cdn.\$35,000,000 for general corporate purposes.

- (ii) The requirement for commitment reductions on asset dispositions contained in Section 6.07 of the Existing Credit Agreement will be revised to provide for mandatory reductions of the Maximum Facility Amount by an amount equal to the net after-tax proceeds of a Disposition of any Property made by an Obligor or Unrestricted Subsidiary on a dollar-for-dollar basis to the extent such proceeds are not used by the Obligors for reinvestment pursuant to one or more Permitted Acquisitions within 180 days of such Disposition; provided that, for greater certainty, any such Disposition made by an Obligor shall be a Permitted Asset Disposition.
- (iii) Sections 6.06 and 6.08 will be removed in its entirety.
- (iv) The requirement for scheduled mandatory commitment reductions contained in Section 6.09 of the Existing Credit Agreement will be revised to remove in their entirety any scheduled commitment reductions set forth therein and to provide instead for the following mandatory reductions of the Maximum Facility Amount:
  - (a) On June 30, 2023, the Maximum Facility Amount in effect at such time will be permanently reduced by an amount equal to the Excess Liquidity Amount as at March 31, 2023 (which, for the avoidance of doubt and notwithstanding anything to the contrary herein, shall include the proceeds of any Equity Cure received by the Obligors during the Fiscal Quarter ended June 30, 2023 (the “**June 2023 Equity Cure**”), up to the first Cdn.\$45,000,000 (the “**June 2023 Facility Reduction**”).
  - (b) On September 30, 2023, the Maximum Facility Amount in effect at such time will be permanently reduced by an amount equal to the sum of (A) the Excess Liquidity Amount as at June 30, 2023 (which, for the avoidance of doubt and notwithstanding anything to the contrary herein, shall include the proceeds of any Equity Cure received by the Obligors during the Fiscal Quarter



ended September 30, 2023 (the “**September 2023 Equity Cure**” and collectively with the June 2023 Equity Cure, the “**Specified Equity Cures**”), up to Initial 2023 Lender Shortfall Amount, and (B) to the extent such Excess Liquidity Amount exceeds the sum of (I) the Initial 2023 Lender Shortfall Amount and (II) Cdn.\$60,000,000, 50% of such excess.

- (c) On June 30, 2024, the Maximum Facility Amount in effect at such time will be permanently reduced by an amount equal to the Excess Liquidity Amount as at March 31, 2024 (which, for the avoidance of doubt and notwithstanding anything to the contrary herein, shall include the proceeds of any Equity Cure received by the Obligors during the Fiscal Quarter ended June 30, 2024), up to the Total 2024 Lender Commitment Reduction Amount (the “**June 2024 Facility Reduction**”).
- (d) On September 30, 2024, the Maximum Facility Amount in effect at such time will be permanently reduced by an amount equal to the sum of (A) the Excess Liquidity Amount as at June 30, 2024 (which, for the avoidance of doubt and notwithstanding anything to the contrary herein, shall include the proceeds of any Equity Cure received by the Obligors during the Fiscal Quarter ended September 30, 2024), up to the Initial 2024 Lender Shortfall Amount; (B) to the extent such Excess Liquidity Amount exceeds the sum of (I) the Initial 2024 Lender Shortfall Amount, and (II) the Total 2024 Preferred Equity Payment Amount, 50% of such excess.

For the avoidance of doubt, the amount of the Specified Equity Cures will not be included in the calculation of the Excess Liquidity Amount for purposes of clauses (c) and (d) above.

- (v) For greater certainty, (a) if at any time the aggregate amount of the Letters of Credit outstanding under the Revolving Facilities or the LC Facility<sup>1</sup>, as the case may be, exceeds the Commitments of the Lenders under the applicable Credit Facility in effect at such time (including as a result

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<sup>1</sup> Subject to confirmation that EDC will continue to backstop the LC Facility.

of the reductions in the Maximum Facility Amount made in accordance with this Section titled “Prepayments and Repayments”), the Borrower will promptly provide to the Agent, for the benefit of the Lenders or the LC Lender, as applicable, cash collateral in the amount of such excess and the Lenders and the LC Lender will have priority over such cash collateral under the terms of the Seventh Amended and Restated Intercreditor Agreement, and (b) if, subsequent to the provision by the Borrowers of the cash collateral in accordance with the foregoing clause (a), one or more Letters of Credit issued under the Credit Facilities are expired, terminated, reduced or returned to the Lenders or the LC Lender, as applicable, such that the aggregate amount of the Letters of Credit outstanding under the applicable Credit Facility is less than the Commitments of the Lenders under such Credit Facility, the Agent, on behalf of the Lenders and the LC Lender, will promptly release, discharge and return such cash collateral to the Borrowers and, if applicable, the Borrowers shall provide to the Agent such replacement cash collateral as necessary to continue to comply with the foregoing clause (a).

- (vi) For greater certainty, unless expressly provided for herein, any reduction of the Maximum Facility Amount made in accordance with this Section titled “Prepayments and Repayments” will permanently reduce the Commitments of the Lenders under the Revolving Facilities and the Commitment of the LC Lender under the LC Facility on a pro rata basis.

*Maturity:* The earlier to occur of (i) June 15, 2025, and (ii) the date on which any Credit Facility is terminated pursuant to the terms of the Tenth Amended and Restated Credit Agreement (the “**Maturity Date**”).

*Purpose:* As per Existing Credit Agreement.

*Availability:* As per Existing Credit Agreement, subject to replacing LIBO Rate with Term SOFR. Customary benchmark replacement provisions to be included.

*Restructuring/Commitment Fee:* A restructuring/commitment fee will be paid in cash in the following manner:

- (i) an amount equal to 0.50% of the Maximum Facility Amount in effect on the Closing Date will be due and

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payable on the Closing Date (the “**Initial Commitment Fee**”); and

- (ii) if the Credit Facilities are not fully repaid in cash by June 30, 2024, an amount equal to 0.75% of the Maximum Facility Amount in effect on the Closing Date will be due and payable on June 30, 2024.

*Agency Fee:* As per an agency fee letter to be entered into by the Borrowers and the Agent.

*Closing Date:* The date upon which the “Conditions Precedent” described below have been satisfied or waived by the Lenders in their sole discretion (the “**Closing Date**”).

**General Terms and Conditions**

*Credit, Usage and Stand-by Margins:* Pricing grid to be updated as follows:

Level	Senior Debt to EBITDA Ratio	Prime Rate Margin, US Base Rate Margin and US Prime Rate Margin	BA Stamping Fee Rate, SOFR Margin and Letter of Credit Fee Rate	Standby Fee Rate
I	> 2.00x	375.0 bps	475.0 bps	118.75 bps
II	> 1.50x ≤ 2.00x	325.0 bps	425.0 bps	106.25 bps
III	> 1.00x ≤ 1.50x	300.0 bps	400.0 bps	100.00 bps
IV	≤ 1.00x	275.0 bps	375.0 bps	93.75 bps

- (i) SOFR Margin (to be defined in the Tenth Amended and Restated Credit Agreement) will be subject to the following credit spread adjustments:
  - (a) 0.11448% (11.448 basis points) for an available tenor of one-month’s duration;
  - (b) 0.26161% (26.161 basis points) for an available tenor of three-months’ duration; and

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- (c) 0.42826% (42.826 basis points) for an available tenor of six-months' duration.
- (ii) For greater certainty, all amounts of the Letters of Credit issued under the Credit Facilities will be included in the calculation of Senior Debt to EBITDA Ratio for purposes of determining the Applicable Margins.
- (iii) On the Closing Date and until such time as the Borrowers deliver to the Agent a Compliance Certificate concurrently with the delivery of the first set of quarterly financial statements after the Closing Date in accordance with the Tenth Amended and Restated Credit Agreement, the Applicable Margins will remain at Level III as set out in the new pricing grid above.

*Documentation:*

Credit Facilities to be documented as an amendment and restatement of the Existing Credit Agreement pursuant to the Tenth Amended and Restated Credit Agreement on terms satisfactory to the Lenders, the Agent, the Collateral Agent, the Obligors and the Purchaser Sponsor.

*Security:*

As per Existing Credit Agreement, subject to the following, each in form and substance and on terms satisfactory to the Lenders, the Agent and the Collateral Agent, the Obligors and the Purchaser Sponsor (collectively, the “**Additional Security**”):

- (i) general security agreement, share pledge agreement (as applicable), guarantee and blocked account agreement or deposit account control agreement (as applicable) from each of the Additional Guarantors; provided that, for greater certainty, if the Filter Group Debt has not been repaid in full on or prior to the Closing Date, the Filter Entities will be required to deliver guarantee, general security agreement and blocked account agreement or deposit account control agreement (as applicable) only after the Filter Group Debt has been repaid in full;
- (ii) amendment to the securities pledge agreement made as of August 28, 2020 between 8704104 Canada Inc. (“**8704104**”) and the Collateral Agent pursuant to which 8704104 will pledge the equity interests owned by 8704104 in the capital stock of Filter Group Inc. in favour of the Collateral Agent;

- (iii) confirmations of all of the other existing guarantees, security and subordination agreements from Borrowers and Guarantors;
- (iv) blocked account agreements or deposit account control agreements, cash collateral agreements and such other agreements as may be required by the Lenders, in each case, in connection with the cash collateral provided from time to time by the Borrowers to the Agent, for the benefit of the Lenders and the LC Lender, in accordance with clause (v) of the Section titled “Prepayments and Repayments” above;
- (v) to the extent not previously delivered to the Collateral Agent, delivery of the certificates representing the equity interests pledged to the Collateral Agent pursuant to the Security, together with related stock powers duly endorsed in blank; and
- (vi) registration of financing statements or other appropriate filings or notices in respect of the foregoing in all relevant jurisdictions.

*Intercreditor Agreement:*

An amended and restated intercreditor agreement (the “**Seventh Amended and Restated Intercreditor Agreement**”) will be entered into by the Obligors, the Collateral Agent, the Agent and the Persons who are commodity suppliers of the Obligors as of the Closing Date (the “**Closing Date Commodity Suppliers**”) to amend and restate the Existing Intercreditor Agreement on the terms and conditions set forth in the term sheet attached hereto as Exhibit B.

*Conditions Precedent:*

As per the Existing Credit Agreement, subject to the following, each in form and substance and on terms satisfactory to the Lenders, acting reasonably:

- (i) negotiation, execution and delivery of definitive credit documents (including the Tenth Amended and Restated Credit Agreement, the Seventh Amended and Restated Intercreditor Agreement and the Additional Security);
- (ii) JustEnergy shall have received (a) an order of the Ontario Superior Court of Justice (Commercial List) (the “**Reverse Vesting Order**”) in substantially the form appended as Exhibit “3” to the Stalking Horse Transaction Term Sheet attached as Exhibit “C” to the

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Support Agreement, and (b) an order of the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**Recognition Order**”) recognizing and enforcing the Reverse Vesting Order in the cases commenced by JustEnergy and certain of its Subsidiaries under Chapter 15 of title 11 of United States Code (the “**Chapter 15 Cases**”, and together with the CCAA Proceedings, collectively, the “**Proceedings**”);

- (iii) the Reverse Vesting Order and the Recognition Order shall have become Final Orders;
- (iv) the transactions contemplated under the Transaction Agreement shall have been consummated by the parties thereto in accordance with the terms thereof;
- (v) the Lenders’ receipt of certified copies of (a) the corporate governance documents for the reorganized Obligors, including, but not limited to, any documents concerning preferred or common equity of the reorganized Obligors, (b) the management incentive plan for the reorganized Obligors, and (c) the limited guarantee granted by PIMCO Horseshoe Fund, LP in favour of Just Energy Group Inc. on or about the date hereof;
- (vi) the Lenders’ receipt of a sources and uses of funds statement of the New Parent to complete the implementation of the Transaction;
- (vii) the New Parent maintaining Liquidity in an amount not less than Cdn.\$75,000,000 as at the time of its emergence from the Proceedings; *provided*, that, to the extent the aggregate amount of the cash collateral provided by Obligors to ISOs, commodity suppliers and other counterparties of the Obligors at such time exceed \$20,000,000 as a result of short-term increases in requirements (which cash collateral is expected to be returned), such excess shall be added back in determining the Liquidity for purposes of this clause (vii);
- (viii) confirmation from EDC that EDC will continue to provide the EDC Guarantee in respect of each Letter of Credit issued under the LC Facility and the Lenders’ receipt of EDC Documents in respect of the Letters of

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Credit issued under the Existing Credit Agreement which are outstanding on the Closing Date;

- (ix) the aggregate principal amount outstanding under the Credit Facilities on the Closing Date (other than the Letters of Credit issued under the Existing Credit Agreement which are outstanding on the Closing Date) shall not exceed Cdn.\$10,000,000;
- (x) evidence satisfactory to the Lenders that, to the extent the Obligors have any cash shortfall as of the Closing Date, PIMCO has made corresponding additional equity investments in the New Parent in an aggregate amount up to Cdn.\$10,000,000;
- (xi) payment of all applicable fees and expenses due and owing to the Agent and the Lenders (including reasonable and documented fees and expenses of Lenders' Counsel) on or before the Closing Date in accordance with the Tenth Amended and Restated Credit Agreement (including, without limitation, the Initial Commitment Fee);
- (xii) receipt of customary legal opinions from the Obligors' counsel in form and substance reasonably satisfactory to Lenders' Counsel, together with supporting officer's certificates and resolutions; and
- (xiii) receipt of all relevant information to complete all know your customer and anti-money laundering due diligence.

*Representations &  
Warranties:*

As per the Existing Credit Agreement, subject to the following:

- (i) adding a new representation and warranty that the equity interests of the New Parent are not subject to any Encumbrance;
- (ii) adding a new representation and warranty that the New Parent does not (a) own any intellectual property, permit, quota, retail energy licence or any other material Property other than (i) the equity interests in its Subsidiaries and (ii) any intercompany debt made by the New Parent to another Obligor or (b) own any Customer Contract or otherwise generate material revenue; and
- (iii) removing the reporting issuer representation contained in Section 8.01(43) of the Existing Credit Agreement.

For greater certainty, the Borrowers shall provide and deliver an updated set of disclosure schedules to the Existing Credit Agreement.

*Reporting Requirements:*

As per the Existing Credit Agreement, subject to the following:

- (i) delivery of the first set of quarterly financial statements to be postponed until 90 days (or such longer period as may be approved by the Lenders) after the New Parent has completed a full Fiscal Quarter following the Closing Date;
- (ii) Section 9.03(13) of the Existing Credit Agreement will be removed in its entirety; and
- (iii) detailed reporting of (a) supplier priority payables and their aging, (b) amounts payable and their aging under the ISO services agreements; and (c) mark-to-market position of contracts entered into with commodity suppliers and under ISO service agreements (to the extent applicable).

*Affirmative Covenants:*

As per the Existing Credit Agreement, subject to the following:

- (i) delete the covenant to initiate a process for refinancing of the Credit Facilities satisfactory to the Lenders by June 30, 2022 contained in Section 9.01(30) of the Existing Credit Agreement;
- (ii) if no Obligor is or continues to be a reporting issuer under the applicable securities laws, delete the public company



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covenants and related provisions contained in the Existing Credit Agreement;

- (iii) align the minimum Supplier Credit Rating covenant contained in Section 9.01(25) of the Existing Credit Agreement with the corresponding covenant under the Seventh Amended and Restated Intercreditor Agreement;
- (iv) delete the covenant regarding Alberta Utilities Commission Debt contained in Section 9.01(31) of the Existing Credit Agreement; and
- (v) add an affirmative covenant to require the New Parent to use commercially reasonable efforts to assign and transfer all of its material Supplier Contracts and other Material Contracts to one or more other Obligor; provided that the New Parent shall not be required to transfer any material Supplier Contract or other Material Contract to the extent that such transfer would require the New Parent to pay any consent or transfer fee to the applicable counterparty under any material Supplier Contract or other Material Contract.

*Financial Covenants:*

As per the Existing Credit Agreement subject to the following:

- (i) revising the maximum consolidated Senior Debt to EBITDA Ratio requirements as follows:

<b>Fiscal Ending</b>	<b>Quarter</b>	<b>Senior Debt to EBITDA Ratio</b>
December 31, 2022 and thereafter until March 31, 2023		2.50:1.00
June 30, 2023 and thereafter until the Maturity Date		2.25:1.00

- (ii) revising the minimum Four Fiscal Quarter EBITDA requirement under Section 9.02(2) of the Existing Credit Agreement such that EBITDA determined as at the last day of each Fiscal Quarter in respect of the immediately preceding Four Quarter Period is not less than \$90,000,000 at March 31, 2023 and thereafter until the Maturity Date;

- (iii) definition of EBITDA to be agreed between the Borrowers and the Lenders in the definitive documentation;
- (iv) EBITDA numbers calculated and reported under the Existing Credit Agreement for any Fiscal Quarter prior to the Closing Date to be used for purposes of determining compliance with the financial covenants for any period including such Fiscal Quarter; and
- (v) for greater certainty, all amounts of Letters of Credit issued under the Credit Facilities will be included in the calculation of Senior Debt for purposes of determining the Senior Debt to EBITDA Ratio.

*Equity Cures:*

Customary equity cure provisions to be included; provided that, for greater certainty, (i) the cash proceeds from any equity cure (an “**Equity Cure**”) will be no more than the amount required to cause the Borrowers to be in compliance with the financial covenants; (ii) only one Equity Cure may be exercised in any Fiscal Year; (iii) there will not be Equity Cures in two consecutive Fiscal Quarters; (iv) the aggregate amount of Equity Cures used during the term of the Credit Facilities will not exceed Cdn.\$25,000,000; and (v) the amount of each Equity Cure and the use of proceeds therefrom will be disregarded for all purposes under the Loan Documents (including for purposes of calculating financial covenant ratios to determine the Applicable Margins) other than solely to determine compliance with the financial covenants for any relevant covenant test period.

*Negative Covenants*

As per the Existing Credit Agreement, subject to the following:

- (i) no share buy-backs or distributions to the holders of the common shares of the New Parent;
- (ii) restrict the incurrence of any priority Debt other than the Debt owing to the commodity suppliers, ISOs, utilities and storage providers, environmental trade counterparties and regulatory authorities incurred the ordinary course of business of the Obligors;
- (iii) no ability to incur any Subordinated Debt;
- (iv) permit Filter Group Debt;
- (v) revise clauses (n) and (q) of the definition of “Permitted Encumbrances” as follows to remove the dollar limit on each of them:

“(n) any Encumbrance granted by any Obligor to LDCs in respect of Cash Security Deposits in accordance with Collection Service Agreements”; and

“(q) Encumbrances over any and all cash, monies and interest bearing instruments delivered to, deposited with or held by an exchange for natural gas, ISO, utilities, storage providers, environmental trade counterparties, commodity suppliers that are not party to the Seventh Amended and Restated Intercreditor Agreement and regulatory authorities in the ordinary course of business of the Obligors, subject to permitted use, and any rights to payment or performance owing from an exchange for natural gas including, without limitation, accounts payable owed by the exchange to an Obligor to the extent that such proceeds are to be used as security for future transactions and all proceeds of any of the foregoing”.

- (vi) revise clause (p) of the definition of “Permitted Encumbrances” as follows to include a permitted amount of cash collateral to secure credit card obligations of the Obligors:

“(p) Encumbrances, including cash collateral, in an aggregate amount not to exceed US\$500,000, to secure credit card obligations of the Obligors owed to any Person who is not a Lender”.

- (vii) permit an Acquisition subject to the following conditions:
  - (a) the purchased assets or entity relate to a business that is substantially similar to the Business;
  - (b) Liquidity shall be equal to or greater than the Liquidity Threshold Amount immediately prior to and after the consummation of such Acquisition;
  - (c) the aggregate consideration paid for such Acquisition shall not exceed Cdn.\$3,000,000,
  - (d) the aggregate considerations paid for all such Acquisitions during the term of the Credit Facilities shall not exceed Cdn.\$10,000,000,
  - (e) the cash consideration of such Acquisition shall be funded by (I) first, the proceeds from any Permitted Asset Disposition that the Obligors are permitted to use to finance such Acquisition, and (II) second, Excess Liquidity Amount,
  - (f) such Acquisition may not be funded by an incremental equity investment without the prior written consent of the Lenders,
  - (g) if such Acquisition is an Acquisition of a new Subsidiary that would, under the terms of the Existing Credit Agreement, be required to guarantee and provide Security in favour of the Agent and the Collateral Agent, as applicable, concurrently with such Acquisition, such Subsidiary shall become a Restricted Subsidiary and an Obligor for purposes of the Loan Documents and deliver to the Agent and the Collateral Agent, as applicable, all such guarantees and security documents as may be required under the Loan Documents, and
  - (h) no Pending Event of Default or Event of Default immediately prior to or after the consummation of such Acquisition;
  
- (viii) permit the following Distributions:
  - (a) repayment of Filter Group Debt after the Closing Date;
  
  - (b) permit the Preferred Equity ECF Payments, subject to the following conditions: (A) delivery to the Agent of a certificate of an officer of the Borrowers confirming that no Event of Default or Pending Event of Default will have occurred on (I) June 30, 2023 or September 30, 2023 for the 2023 Preferred Equity ECF Payment and (II) June 30, 2024 or September 30, 2024 for the 2024 Preferred Equity ECF Payment; (B) minimum pro forma Liquidity of Cdn.\$90,000,000 as at June 30, 2023 and September 30, 2023 for the 2023 Preferred Equity ECF Payment; (C) minimum pro forma Liquidity of

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Cdn.\$75,000,000 as at June 30, 2024 and September 30, 2024 for the 2024 Preferred Equity ECF Payment; and (D) the proceeds of the Credit Facilities will not be used to make such payments; and

- (c) permit redemptions of the Class A Preferred Equity using the proceeds received by the New Parent from the issuance of preferred or common equity of the New Parent (the “**Preferred Equity Refinancing**”); provided that (i) the Preferred Equity Refinancing shall not, whether directly or indirectly, result in a decrease in the Liquidity after giving effect to the Preferred Equity Refinancing (other than on account of reasonable and documented legal and other advisory fees and expenses in an aggregate amount not to exceed \$1,000,000), as reasonably determined by the Majority Lenders in good faith in consultation with the Borrowers (for greater certainty, there shall be no cash cost or adverse cash consequences at the time of the Preferred Equity Refinancing or thereafter to the Obligors or expense payable by the Obligors arising from the Preferred Equity Refinancing (other than on account of reasonable and documented legal and other advisory fees and expenses in an aggregate amount not to exceed \$1,000,000)), (ii) the terms of such preferred equity shall not be less favourable to the Lenders and the Obligors than the terms of the Class A Preferred Equity, as reasonably determined by the Borrowers in good faith in consultation with the Lenders, and (iii) no Pending Event of Default or Event of Default shall have occurred at the time of such redemptions or arise as result of such redemptions;
- (ix) impose 30-day maximum limit on payment of any post-filing commodity trade supplier payable from the date of the relevant invoice;
- (x) restrict any Drawdown under the Credit Facilities if, prior to or after such Drawdown, the aggregate amount of cash or Cash Equivalents held by the Obligors would exceed Cdn.\$35,000,000; provided that, notwithstanding the foregoing, the Borrowers will be permitted to make a Drawdown under the Revolving Facilities on the date that is one business day prior to each Commodity Supplier/ISO

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Payment Date (as defined below) for the purpose of making normal course commodity supplier payments and ISO payments (the date on which each such payment is due and payable, a “**Commodity Supplier/ISO Payment Date**”);

- (xi) limit Financial Assistance provided to Unrestricted Subsidiaries and Permitted Unrestricted Subsidiary Debt at any time to a maximum aggregate amount of Cdn.\$5,000,000;
- (xii) revise the definition of “Permitted Asset Disposition” to permit individual asset sales at or below \$3,000,000 and cumulative asset sales of \$10,000,000 during the term of the Tenth Amended and Restated Credit Agreement; and
- (xiii) add a new negative covenant that the New Parent will not (a) own any intellectual property, permit, quota, retail energy licence or any other material Property other than (i) the equity interests in its Subsidiaries and (ii) any intercompany debt made by the New Parent to another Obligor, or (b) own any Customer Contract or otherwise generate material revenue.

*Events of Default:*

As per the Existing Credit Agreement, subject to revising Section 11.01(26) of the Existing Credit Agreement to further exclude the impact of any goodwill impairments.

*Change of Control:*

As per the Existing Credit Agreement, subject to the following:

- (i) clause (d) of the definition of Change of Control in the Existing Credit Agreement will be removed in its entirety;
- (ii) clause (a)(i) of the definition of Change of Control in the Existing Credit Agreement will be removed in its entirety and replaced with PIMCO ceasing to own, directly or indirectly, at least 75% common voting equity interests of the New Parent; and
- (iii) appropriate adjustments will be made if no Obligor is or continues to be a reporting issuer under the applicable securities laws.

*GAAP:*

US GAAP.

<i>Assignments &amp; Participations:</i>	As per the Existing Credit Agreement.
<i>General Indemnities:</i>	As per the Existing Credit Agreement.
<i>Environmental Indemnities:</i>	As per the Existing Credit Agreement.
<i>Costs:</i>	As per the Existing Credit Agreement.
<i>Increased Costs:</i>	As per the Existing Credit Agreement.
<i>Majority Lenders:</i>	As per the Existing Credit Agreement.
<i>Governing Law:</i>	As per the Existing Credit Agreement.

## Exhibit A

### Defined Terms

“**2023 Preferred Equity ECF Payment**” has the meaning given to it in the definition of “Preferred Equity ECF Payments” contained in this Exhibit A.

“**2023 Preferred Equity Shortfall Amount**” means an amount, if any, by which (i) the 2023 Preferred Equity ECF Payment is less than (ii) Cdn.\$45,000,000.

“**2024 Preferred Equity ECF Payment**” has the meaning given to it in the definition of “Preferred Equity ECF Payments” contained in this Exhibit A.

“**Excess Liquidity Amount**” means, at any time, an amount, if any, by which (i) the Liquidity at such time exceeds (ii) the Liquidity Threshold Amount in effect at such time.

“**Filter Group Debt**” means the senior secured Debt of the Filter Entities existing on the date of this Summary.

“**Final Order**” has the meaning given to such term in the Support Agreement in effect on the date hereof.

“**Initial 2023 Lender Shortfall Amount**” means an amount, if any, by which (i) the Excess Liquidity Amount as at March 31, 2023 is less than (ii) Cdn.\$45,000,000.

“**Initial 2024 Lender Shortfall Amount**” means an amount, if any, by which (i) the Excess Liquidity Amount as at March 31, 2024 is less than (ii) Total 2024 Lender Commitment Reduction Amount.

“**ISO**” mean an independent system operator that coordinates, controls and monitors the operation of the electrical power system in a jurisdiction.

“**Liquidity**” means (i) cash or Cash Equivalents of the New Parent that (a) are subject to the Security, and (b) would not appear “restricted” on the consolidated balance sheet of the New Parent, plus (ii) the undrawn portion of the Credit Facilities (the amount of which, for the avoidance of doubt, shall reflect any voluntary or mandatory commitment reduction under the Credit Facilities required to be made in accordance with the terms hereof on or prior to the relevant date of the determination of Liquidity); provided that, for the avoidance of doubt, (x) the proceeds received by any Obligor from a Disposition of any Property or issuance of its common equity interests or preferred equity interests (other than in connection with any Equity Cure) will not be included in the calculation of Liquidity, (y) the amount of any cash collateral posted for the benefit of any Obligor will not be included in the calculation of Liquidity, and (z) the proceeds of an

Equity Cure received by the Obligors will be included in the calculation of Liquidity; provided further that, Liquidity may be adjusted from time to time by such amount as may be reasonably agreed to between the Borrowers and the Majority Lenders taking into account short term increases in need (which are expected to reverse) for the Obligors to satisfy cash collateral requirements of



the ISO in each key market identified by the Obligors (which amounts will be included in calculating Liquidity).

“**Liquidity Threshold Amount**” means (i) solely for purposes of determining the 2023 Preferred Equity ECF Payment and the 2023 Preferred Equity Shortfall Amount, Cdn.\$90,000,000, and (ii) for all other purposes, Cdn.\$75,000,000.

“**Preferred Equity ECF Payments**” means, collectively, the following payments to the holders of the Class A Preferred Equity:

- (i) on September 30, 2023, payment to the holders of the Class A Preferred Equity in an amount equal to the sum of (A) the Excess Liquidity Amount as at June 30, 2023<sup>2</sup> in excess of the Initial 2023 Lender Shortfall Amount; provided that such excess shall not exceed Cdn.\$45,000,000 and (B) to the extent such excess exceeds \$45,000,000 (the “**2023 Excess Amount**”), 50% of the 2023 Excess Amount<sup>4</sup> (the “**2023 Preferred Equity ECF Payment**”), *provided that* the 2023 Preferred Equity ECF Payment will be subject to and limited by a requirement of pro-forma minimum Liquidity of \$90,000,000 as at June 30, 2023<sup>4,5</sup> and as at September 30, 2023<sup>3</sup>; and
- (ii) on September 30, 2024, payment to the holders of the Class A Preferred Equity in an amount equal to the sum of (A) the Excess Liquidity Amount as at June 30, 2024<sup>4</sup> in excess of the Initial 2024 Lender Shortfall Amount; provided that such excess shall not exceed the Total 2024 Preferred Equity Payment Amount and (B) to the extent such Excess Liquidity Amount exceeds the sum of (I) the Initial 2024 Lender Shortfall Amount, and (II) the Total 2024 Preferred Equity Payment Amount (the “**2024 Excess Amount**”), 50% of the 2024 Excess Amount<sup>6</sup> (the “**2024 Preferred Equity ECF Payment**”), *provided that* the 2024 Preferred Equity ECF Payment will be subject to and limited by a requirement of pro-forma minimum Liquidity of \$75,000,000 as at June 30, 2024<sup>5,6</sup> and as at September 30, 2024<sup>5</sup>.

“**Purchaser Sponsor**” has the meaning given to such term in the Support Agreement in effect on the date hereof.

“**Total 2023 Lender Shortfall Amount**” means an amount, if any, by which (i) the sum of (a) the Excess Liquidity Amount as at March 31, 2023 and (b) the Excess Liquidity Amount as at June 30, 2023 is less than (ii) Cdn.\$45,000,000.

“**Total 2024 Lender Commitment Reduction Amount**” means an amount equal to the sum of (i) the Total 2023 Lender Shortfall Amount, and (ii) Cdn.\$35,000,000.

“**Total 2024 Preferred Equity Payment Amount**” means an amount equal to the sum of (i) the 2023 Preferred Equity Shortfall Amount and (ii) Cdn.\$35,000,000.

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<sup>2</sup> After reducing the Lender Facility Commitment by the June 2023 Facility Reduction.

<sup>3</sup> And other restrictions set out in *Negative Covenants* section (viii)(b).

<sup>4</sup> After reducing the Lender Facility Commitment Amount by the June 2024 Facility Reduction.

“**Transaction Agreement**” has the meaning given to such term in the Support Agreement.

**Exhibit B**

Intercreditor Agreement Term Sheet

(See Exhibit 4 to Stalking Horse Transaction Term Sheet)

**EXHIBIT 2**

**Form of SISP Order**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 17 <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF AUGUST, 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 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**”)

**SISP APPROVAL ORDER**

**THIS MOTION**, made by the Applicants (together, the Applicants and the partnerships listed on **Schedule “A”** hereto, the “**Just Energy Entities**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*, approving the Sale and Investment Solicitation Process in respect of the Just Energy Entities attached hereto as **Schedule “B”** (the “**SISP**”) and certain related relief, 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 August 4, 2022 and the Exhibits thereto (the “**Carter Affidavit**”), the Eleventh Report of FTI Consulting Canada Inc. (the “**Eleventh Report**”), in its capacity as monitor (the “**Monitor**”), dated August ●, 2022, and on hearing the submissions of counsel for the Just Energy Entities, the Monitor, the Sponsor (as hereinafter defined), and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn August ●, 2022.

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP, the Second Amended and Restated Initial Order of this Court dated May 26, 2021 (the “**Second ARIO**”), or the Support Agreement attached as Exhibit “●” to the Carter Affidavit (the “**Support Agreement**”), as applicable.

### **SALES AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Just Energy Entities are hereby authorized to implement the SISP pursuant to the terms thereof. The Just Energy Entities, the Monitor and the Financial Advisor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder.

4. **THIS COURT ORDERS** that the Monitor and the Financial Advisor, and their respective affiliates, partners, directors, employees, and agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person

in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Monitor or Financial Advisor, as applicable, in performing their obligations under the SISP, as determined by this Court.

### **SUPPORT AGREEMENT**

5. **THIS COURT ORDERS** that the Support Agreement is hereby approved and the Just Energy Entities are authorized and empowered to enter into the Support Agreement, *nunc pro tunc*, subject to such minor amendments as may be consented to by the Monitor and as may be acceptable to each of the parties thereto, and are authorized, empowered and directed to take all steps and actions in respect of, and to comply with all of their obligations pursuant to, the Support Agreement.

6. **THIS COURT ORDERS** that, notwithstanding the stay of proceedings imposed by the Second ARIO, a counterparty to the Support Agreement may exercise any termination right that may become available to such counterparty pursuant to the Support Agreement, provided that such termination right must be exercised pursuant to and in accordance with the Support Agreement.

### **STALKING HORSE TRANSACTION AGREEMENT**

7. **THIS COURT ORDERS** that Just Energy Group Inc. (“**Just Energy**”) is hereby authorized and empowered to enter into the stalking horse transaction agreement (the “**Stalking Horse Transaction Agreement**”) dated as of August 4, 2022, between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP, and CBHT Energy I LLC (collectively, the “**Sponsor**”) and attached as Exhibit “●” to the Carter Affidavit, *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto,

with the approval of the Monitor and subject to the terms of the Support Agreement; provided that, nothing herein approves the sale and the vesting of any Property to the Sponsor (or any of its designees) pursuant to the Stalking Horse Transaction Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Transaction is the Successful Bid pursuant to the SISP.

8. **THIS COURT ORDERS** that, as soon as reasonably practicable following Just Energy (a) entering into any amendment to the Stalking Horse Transaction Agreement permitted pursuant to the terms of this Order; or (b) agreeing upon the final Implementation Steps (as defined in the Stalking Horse Transaction Agreement), the Just Energy Entities shall, in each such case, (i) file a copy thereof with this Court, (ii) serve a copy thereof on the Service List, and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that Just Energy and the Sponsor, with the consent of the Monitor, agree should be redacted.

#### **BID PROTECTIONS**

9. **THIS COURT ORDERS** that the Break-Up Fee is hereby approved and Just Energy is hereby authorized and directed to pay the Break-Up Fee to the Sponsor (or as it may direct) in the manner and circumstances described in the Stalking Horse Transaction Agreement.

10. **THIS COURT ORDERS** that the Sponsor shall be entitled to the benefit of and is hereby granted a charge (the “**Bid Protections Charge**”) on the Property, which charge shall not exceed US\$14,660,000, as security for payment of the Break-Up Fee in the manner and circumstances described in the Stalking Horse Transaction Agreement.



11. **THIS COURT ORDERS** that Paragraphs 53, 54 and 56 of the Second ARIO shall be, and are hereby, amended in the manner detailed below:

(a) Paragraph 53 of the Second ARIO shall be amended as follows:

**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, the Cash Management Charge and the Bid Protections Charge (as defined in the Order in these proceedings dated August 17, 2022), 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; and-

Sixth – Bid Protections Charge (in the amount of US\$14,660,000).

(b) Paragraph 54 of the Second ARIO shall be amended as follows:

**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 the Cash Management Charge, or the Bid Protections 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.

- (c) Paragraph 56 of the Second ARIO shall be amended as follows:

**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, the Cash Management Charge and the Bid Protections Charge or further Order of this Court.

## **PIPEDA**

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor, the Just Energy Entities and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a “**SISP Participant**”) and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a “**Transaction**”). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor or the Just Energy Entities, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor or the Just Energy Entities. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Just Energy Entities, and shall return all other personal information to the Monitor or the Just Energy Entities, or ensure

that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor or the Just Energy Entities.

### **THIRD KEY EMPLOYEE RETENTION PLAN**

13. **THIS COURT ORDERS** that the Third KERP, as described in the Carter Affidavit and attached as Confidential Exhibit “●” 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 Third KERP.

14. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, are authorized and empowered to reallocate funds under the Third KERP originally allocated to Key Employees who have resigned, or will resign, from their employment with the Just Energy Entities, or who have declined, or will decline, to receive payments(s) under the Third KERP, to remaining Key Employees or other employees of the Just Energy Entities that the Just Energy Entities, in consultation with the Monitor, identify as critical to their ongoing business.

15. **THIS COURT ORDERS** that the KERP Charge established at paragraph 24 of the Second ARIO shall apply equally to, and secure, any remaining payments under the KERP and the Second KERP (as defined in the Order of this Court dated November 10, 2021) to the Key Employees and the payments contemplated to the Key Employees referred to in the Third KERP.

### **STAY EXTENSION**

16. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including October 31, 2022.

**APPROVAL OF MONITOR'S REPORTS**

17. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the Just Energy Entities and these CCAA proceedings are hereby ratified and approved.

18. **THIS COURT ORDERS** that each of the Tenth Report of the Monitor dated May 18, 2022, the Supplement to the Tenth Report of the Monitor dated June 1, 2022, and the Eleventh Report be and are hereby approved.

19. **THIS COURT ORDERS** that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 17 and 18 of this Order.

**GENERAL**

20. **THIS COURT ORDERS** that Confidential Exhibits “●” and “●” to the Carter Affidavit shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

21. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Southern District of Texas overseeing the Just Energy Entities’ proceedings under Chapter 15 of the Bankruptcy Code in Case No. 21-30823 (MI), 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 in carrying out the terms of this

Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and 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.

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## SCHEDULE "A"

### 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"**  
**SALE AND INVESTMENT SOLICITATION PROCESS**

# Sale and Investment Solicitation Process

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1. On August 17, 2022, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**SISP Order**”) that, among other things, (a) authorized Just Energy (as defined below) to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof, (b) approved the Support Agreement, (c) authorized and directed Just Energy Group Inc. to enter into the Stalking Horse Transaction Agreement, (d) approved the Break-Up Fee, and (e) granted the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Second Amended & Restated Initial Order granted by the Court in Just Energy’s proceedings under the *Companies’ Creditors Arrangement Act* on May 26, 2021, as amended, restated or supplemented from time to time or the SISP Order, as applicable.
2. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives that are superior to the sale transaction to be provided for in the Stalking Horse Transaction Agreement involving the shares and/or the business and assets of Just Energy Group Inc. and its direct and indirect subsidiaries (collectively, “**Just Energy**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court (as defined below) approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of Just Energy’s shares, assets and/or business and/or an investment in Just Energy, each of which shall be subject to all terms set forth in this SISP.
3. The SISP shall be conducted by Just Energy under the oversight of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the “**Monitor**”), with the assistance of BMO Capital Markets (the “**Financial Advisor**”).
4. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by Just Energy and the Financial Advisor.
5. The SISP will be conducted such that Just Energy and the Financial Advisor will (under the oversight of the Monitor):
  - a) prepare marketing materials and a process letter;
  - b) prepare and provide applicable parties with access to a data room containing diligence information;
  - c) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to Just Energy); and
  - d) request that such parties (other than the Sponsor or its designee) submit (i) a notice of intent to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Just Energy Entities that would be the subject of the bid and that reflects a reasonably likely prospect of culminating in a Qualified Bid (as defined below), as determined by the Just Energy Entities in consultation with the Monitor and the Credit Facility Agent (subject to the confidentiality requirements set forth in Section 15 below) (a “**NOI**”) by the NOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 7 below, as determined by the Just Energy Entities in consultation with the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).



6. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- a) Just Energy to commence solicitation process on the date of service of the motion for approval of the SISP – August 4, 2022;<sup>1</sup>
  - b) Court approval of SISP and authorizing Just Energy to enter into the Stalking Horse Transaction Agreement – August 17, 2022;
  - c) Deadline to submit NOI – 11:59 p.m. Eastern Daylight Time on August 25, 2022 (the “**NOI Deadline**”);
  - d) Deadline to submit a Qualified Bid – 11:59 p.m. Eastern Daylight Time on September 29, 2022 (the “**Qualified Bid Deadline**”);
  - e) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. Eastern Daylight Time on October 6, 2022;
  - f) Just Energy to hold Auction (if applicable) – 10:00 a.m. Eastern Daylight Time on October 8, 2022; and
  - g) Implementation Order (as defined below) hearing:
    - o (if no NOI is submitted) – by no later than September 2, 2022, subject to Court availability.
    - o (if there is no Auction) – by no later than October 15, 2022, subject to Court availability.
    - o (if there is an Auction) – by no later than twelve (12) days after completion of the Auction, subject to Court availability.
7. In order to constitute a Qualified Bid, a bid must comply with the following:
- a. it provides for (i) the payment in full in cash on closing of the BP Commodity/ISO Services Claim (as defined in the Support Agreement), unless otherwise agreed to by the holder of such claim in its sole discretion; (ii) the payment in full in cash on closing of the Credit Facility Claims, unless otherwise agreed to by the Credit Facility Agent in its sole discretion; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) or (ii) including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion (iv) the return of all outstanding letters of credit and release of all Credit Facility LC Claims or arrangements satisfactory to the applicable Credit Facility Lenders in their discretion to secure with cash collateral or otherwise any Credit Facility LC Claims not released, and (v) the payment in full in cash on closing of any outstanding Cash Management Obligations or arrangements satisfactory to the applicable Credit Facility Lenders or their affiliates to secure with cash collateral or otherwise any outstanding Cash Management Obligations.
  - b. it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus Just Energy’s cash on hand must be sufficient for payment in full of the items contemplated in Sections 7(a)(i) and 7(a)(ii) herein, 3.2 of the Stalking Horse Transaction Agreement and the Break-Up Fee, plus USD\$1,000,000, on closing, which Cash Consideration Value is estimated to be USD\$460,000,000 as of December 31, 2022.

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<sup>1</sup> To the extent any dates would fall on a non-business day, to be the first business day thereafter.

- c. it is reasonably capable of being consummated by 90 days after completion of the Auction if selected as the Successful Bid;
- d. it contains:
  - i. duly executed binding transaction document(s);
  - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
  - iii. a redline to the form of transaction document(s) provided by Just Energy, if applicable;
  - iv. evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
  - v. disclosure of any connections or agreements with Just Energy or any of its affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of Just Energy or any of its affiliates; and
  - vi. such other information reasonably requested by Just Energy or the Monitor;
- e. it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- f. it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the Purchaser in connection with the Transaction Agreement;
- g. it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h. it is not conditional upon:
  - i. approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
  - ii. the outcome of any due diligence by the bidder; or
  - iii. the bidder obtaining financing;
- i. it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- j. it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the energy sector, including an electric utility, retail service provider, a company with a tariff on file with the Federal Energy Regulatory Commission, or any intermediate holding company;
- k. it includes full details of the bidder's intended treatment of Just Energy's employees under the proposed bid;
- l. it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with this SISP;
- m. a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
- n. it is received by the Qualified Bid Deadline.

8. The Qualified Bid Deadline may be extended by (i) Just Energy for up to no longer than seven days with the consent of the Monitor, the Credit Facility Agent and the Sponsor, acting reasonably, or (ii) further order of the Court. In such circumstances, the milestones contained in Subsections 6(f) and (g) shall be extended by the same amount of time.
9. Just Energy, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified in Section 7 above and deem a non-compliant bid to be a Qualified Bid, provided that Just Energy shall not waive compliance with the requirements specified in Subsections 7(a), (b), (e), (e), (g), (h), (j) or (l) without the prior written consent of the Sponsor and Credit Facility Agent, each acting reasonably.
10. Notwithstanding the requirements specified in Section 7 above, the transactions contemplated by the Stalking Horse Transaction Agreement (the “**Stalking Horse Transaction**”), is deemed to be a Qualified Bid, provided that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
11. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, Just Energy shall proceed with an auction process to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, Just Energy shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by Just Energy specifying which Qualified Bid is the leading bid.
12. If, by the NOI Deadline no NOI has been received, then the SISP shall be deemed to be terminated and the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement. If no Qualified Bid (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, then the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement.
13. Following selection of a Successful Bid, Just Energy, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 6. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by Just Energy, in consultation with the Monitor, Just Energy shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize Just Energy to complete the transactions contemplated thereby, as applicable, and authorizing Just Energy to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
14. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid,

will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to an Implementation Order or such earlier date as may be determined by Just Energy, in consultation with the Monitor.

15. Just Energy shall provide information in respect of the SISP to the DIP Lenders, the holder of the BP Commodity/ISO Services Claim and the Supporting Secured CF Lenders on a confidential basis, including (A) copies (or if not provided to the Just Energy Entities in writing, a detailed description) of any NOI and any bid received, including any Qualified Bid, no later than one (1) calendar day following receipt thereof by the Just Energy Entities or their advisors and (B) such other information as reasonably requested by the DIP Lenders', the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders' respective legal counsel or financial advisors or as necessary to keep the DIP Lenders, the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders informed no later than one (1) calendar day after any such request or any material change to the proposed terms of any bid received, including any Qualified Bid, as to the terms of any bid, including any Qualified Bid, (including any changes to the proposed terms thereof) and the status and substance of discussions related thereto. Just Energy shall be permitted, in its discretion, to provide general updates and information in respect of the SISP to counsel to any unsecured creditor of Just Energy (a "**General Unsecured Creditor**") on a confidential basis, upon: (i) the irrevocable confirmation in writing from such counsel that the applicable General Unsecured Creditor will not submit any NOI or bid in the SISP, and (ii) counsel to such General Unsecured Creditor executing confidentiality agreements with Just Energy, in form and substance satisfactory to Just Energy and the Monitor.
16. Any amendments to this SISP may only be made by Just Energy with the written consent of the Monitor and after consultation with the Credit Facility Agent, or by further order of the Court, provided that Just Energy shall not amend Subsections 7(a), (b), (e), (f), (g), (h), (j) or (l) or Section 15 without the prior written consent of the Sponsor and the Credit Facility Agent.

## SCHEDULE "A": AUCTION PROCEDURES

1. **Auction.** If Just Energy receives at least one Qualified Bid (other than the Stalking Horse Transaction), Just Energy will conduct and administer the Auction in accordance with the terms of the SISIP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction (collectively, the "**Qualified Parties**"), shall be eligible to participate in the Auction. No later than 5:00 p.m. Eastern Daylight Time on the day prior to the Auction, each Qualified Party (other than the Sponsor) must inform Just Energy whether it intends to participate in the Auction. Just Energy will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only Just Energy, the other counterparties to the Support Agreement, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by Just Energy, in consultation with the Monitor (the "**Initial Bid**"), and any bid made at the Auction by a Qualified Party subsequent to Just Energy's announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of USD\$1,000,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that Just Energy, in its discretion, may establish separate video conference rooms to permit interim discussions between Just Energy and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and

- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.

#### **Selection of Successful Bid**

4. **Selection.** Before the conclusion of the Auction, Just Energy, in consultation with the Monitor, will: (a) review each Qualified Bid, considering the factors set out in Section 7 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by 90 days after completion of the Auction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, (v) the net benefit to Just Energy and (vi) any other factors Just Energy may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by Just Energy in its sole discretion, subject to the milestones set forth in Section 6 of the SISP.

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.

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*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**SISP APPROVAL ORDER**

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**OSLER, HOSKIN & HARCOURT, LLP**

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Toronto, ON M5X 1B8

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Fax: (416) 862-6666

Lawyers for the Just Energy Entities

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**EXHIBIT 3**

**Form of Vesting Order**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) ●, THE ●  
 )  
JUSTICE MCEWEN ) DAY OF ●  
 )

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**”)

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by the Applicants (together, the Applicants and the partnerships listed on **Schedule “A”** hereto, the “**Just Energy Entities**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order, *inter alia*, (i) approving the Transaction Agreement (the “**Transaction Agreement**”) between Just Energy Group Inc. (“**Just Energy**”) and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP, and CBHT Energy I LLC (collectively, the “**Sponsor**”) dated

August 4, 2022 and attached as Exhibit “●” to the affidavit of Michael Carter sworn ●, 2022 (the “● **Carter Affidavit**”) and the transactions contemplated therein (collectively, the “**Transactions**”), including the Implementation Steps (as defined in the Transaction Agreement), (ii) adding ● (“**Residual Co. 1**”) and ● (“**Residual Co. 2**”) as Applicants to these CCAA proceedings, (iii) vesting in and to Residual Co. 1 and/or Residual Co. 2, as applicable, absolutely and exclusively, all of the right, title and interest of the Just Energy Entities not listed on Schedule 2.2(f) of the Transaction Agreement (the “**Acquired Entities**”) in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities (each as defined in the Transaction Agreement), (iv) discharging Claims and Encumbrances, other than the Permitted Encumbrances, against the Acquired Entities and the Retained Assets (as hereinafter defined), (v) authorizing and directing Just Energy (U.S.) Corp. (“**JEUS**”) to issue the Purchased Interests (as defined in the Transaction Agreement), and vesting all of the right, title and interest in and to the Purchased Interests absolutely and exclusively in and to the Sponsor, free and clear of any Encumbrances, (vi) authorizing and directing Just Energy to file the Articles of Reorganization (as defined in the Transaction Agreement), (vii) terminating and cancelling or redeeming the Subject Interests (as hereinafter defined) for no consideration (as provided for in the Implementation Steps), and (viii) granting certain related relief, was heard this day by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the Notice of Motion of the Applicants, the ● Carter Affidavit, the ● report of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as monitor (the “**Monitor**”), dated ●, 2022, and on hearing the submissions of counsel for the Just Energy Entities, the Monitor, the Sponsor, the Credit Facility Agent, as administrative agent for the Credit Facility Lenders, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2022:

## **SERVICE AND DEFINITIONS**

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.

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Second Amended and Restated Initial Order of this Court dated May 26, 2021 (the “**Initial Order**”), the support agreement attached as Exhibit “●” to the ● Carter Affidavit (the “**Support Agreement**”), or the Transaction Agreement, as applicable.

#### **APPROVAL AND VESTING**

3. **THIS COURT ORDERS AND DECLARES** that, without derogating in any way from the relief contained in the SISP Approval Order of this Court dated ●, 2022 (the “**SISP Approval Order**”), the Transaction Agreement and the Transactions (including the Implementation Steps) are hereby approved and the execution of the Transaction Agreement by Just Energy is hereby authorized and approved, with such minor amendments as Just Energy and the Sponsor may deem necessary, with the approval of the Monitor and subject to the terms of the Support Agreement. The Just Energy Entities are hereby authorized and directed to perform their obligations under the Transaction Agreement, including the filing of the Articles of Reorganization, the issuance of the Purchased Interests and the termination and cancellation or redemption of the Subject Interests (as provided for in the Implementation Steps), and to take such additional steps and execute such additional documents (including the Closing Documents) as may be necessary or desirable for the completion of the Transactions.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Just Energy Entities to proceed with the Transactions and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of the Monitor’s certificate (the “**Monitor’s Certificate**”) to the Sponsor, substantially in the form attached as

**Schedule “B”** hereto, the following shall occur and shall be deemed to have occurred in the sequence set out in the Implementation Steps:<sup>1</sup>

- (a) the Just Energy Entities shall be and are hereby forever released and discharged from the BP Commodity/ISO Services Claim, including all amounts and obligations owing by the Just Energy Entities in connection therewith, and all related Claims and Encumbrances are hereby expunged and discharged;
- (b) (i) with respect to the Acquired Entities not formed or incorporated under the laws of the United States (the “**Non-US Acquired Entities**”), all of the Non-US Acquired Entities’ right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and (ii) with respect to the Acquired Entities formed or incorporated under the laws of the United States (the “**US Acquired Entities**”), all of the US Acquired Entities’ right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and, in each case, all applicable Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer;
- (c) all Excluded Contracts and Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or

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<sup>1</sup> This paragraph including the order of sequencing will be updated as applicable to reflect the agreed upon Implementation Steps.

unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of the Non-US Acquired Entities and the US Acquired Entities (in each case, other than the Assumed Liabilities) shall be transferred to, assumed by and vest absolutely and exclusively in, Residual Co. 1 and Residual Co. 2, respectively, such that all Excluded Contracts and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, as applicable, and shall no longer be obligations of any of the Acquired Entities, and the Acquired Entities and all of their remaining assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (collectively, the “**Retained Assets**”) shall be and are hereby forever released and discharged from all Excluded Contracts and Excluded Liabilities, and all related Claims and Encumbrances, other than the permitted encumbrances, easements and restrictive covenants affecting or relating to the Retained Assets listed on **Schedule “C”** (the “**Permitted Encumbrances**”), are hereby expunged and discharged as against the Retained Assets;

- (d) (i) all right, title and interest in and to the Purchased Interests issued by JEUS to the Sponsor shall vest absolutely and exclusively in the Sponsor free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (x) any encumbrances

or charges created by the Initial Order, the SISP Approval Order, or any other Order of this Court, and (y) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Interests are hereby expunged and discharged as against the Purchased Interests, and (ii) all Assumed Liabilities which are to be assumed by the Sponsor pursuant to the Transaction Agreement shall be and are hereby assigned to, assumed by and shall vest absolutely and exclusively in the Sponsor;

- (e) all equity interests of Just Energy and JEUS existing prior to the commencement of the Implementation Steps (for greater certainty, other than the Purchased Interests), as well as all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as hereinafter defined) and are convertible or exchangeable for any securities of Just Energy or JEUS or which require the issuance, sale or transfer by Just Energy or JEUS, of any shares or other securities of Just Energy or JEUS, as applicable, or otherwise evidencing a right to acquire the Purchased Interests and/or the share capital of Just Energy or JEUS, or otherwise relating thereto (collectively, the “**Subject Interests**”), shall be deemed terminated and cancelled or redeemed as provided in the Implementation Steps; and
- (f) the Acquired Entities shall and shall be deemed to cease to be Applicants in these CCAA proceedings, and the Acquired Entities shall be deemed to be released from

the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order the provisions of which (as they relate to the Acquired Entities) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to (a) provide a copy of the Monitor's Certificate to the parties to the Support Agreement at the same time as its delivery to the Sponsor; and (b) file with this Court a copy of the Monitor's Certificate forthwith after delivery thereof in connection with the Transactions.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from Just Energy and the Sponsor regarding the satisfaction or waiver of conditions to closing under the Transaction Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Effective Time (as defined in the Monitor's Certificate), subject to the payment of the Priority Payments (as hereinafter defined) and the funding of the Administrative Expense Amount, all Claims and Encumbrances released, expunged and discharged pursuant to paragraph 5 hereof, including as against the Acquired Entities, the Retained Assets and the Purchased Interests, shall attach to (a) the net proceeds remaining (the "**Remaining Proceeds**"), if any, realized from the Cash Purchase Price and transferred to Residual Co. 1 or Residual Co. 2 and (b) the Excluded Assets, in each case, with the same nature and priority as they had immediately prior to the Transactions, as if the Transactions had not occurred.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Just Energy Entities or the Monitor, as the case may be, are authorized, permitted and directed to, at the Effective Time, disclose to the

Sponsor all human resources and payroll information in the Acquired Entities' records pertaining to past and current employees of the Acquired Entities. The Sponsor shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Just Energy Entities prior to the Effective Time.

10. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Sponsor and the Acquired Entities shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, the Just Energy Entities (provided, as it relates to the Sponsor and the Acquired Entities, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the Acquired Entities after the Effective Time; or (b) Taxes expressly assumed as Assumed Liabilities pursuant to the Transaction Agreement), including, without limiting the generality of the foregoing, all Taxes that could be assessed against the Sponsor or the Acquired Entities (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act* (Canada) (the "**Tax Act**"), or proposed section 160.01 of the Tax Act, including as a result of any future amendments or proposed amendments to such provisions or related provisions, or any provincial equivalent, in connection with the Just Energy Entities.

11. **THIS COURT ORDERS** that, except to the extent expressly contemplated by the Transaction Agreement (and, for greater clarity, excluding Contracts relating to Assumed Liabilities, including the Credit Facility Documents), all Contracts to which any of the Acquired Entities are a party upon delivery of the Monitor's Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm,



corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Effective Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any Just Energy Entity);
- (b) the insolvency of any Just Energy Entity or the fact that the Just Energy Entities sought or obtained relief under the CCAA;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Transaction Agreement, the Transactions or the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or
- (d) any transfer or assignment, or any change of control of the Acquired Entities arising from the implementation of the Transaction Agreement, the Transactions or the provisions of this Order.

12. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 11 hereof shall waive, compromise or discharge any obligations of the Acquired Entities or the Sponsor in

respect of any Assumed Liabilities; (b) the designation of any Claim as an Assumed Liability is without prejudice to the Acquired Entities' and the Sponsor's right to dispute the existence, validity or quantum of any such Assumed Liability; and (c) nothing in this Order or the Transaction Agreement shall affect or waive the Acquired Entities' or Sponsor's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

13. **THIS COURT ORDERS** that, from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Just Energy Entity then existing or previously committed by any Just Energy Entity, or caused by any Just Energy Entity, directly or indirectly, or noncompliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Contract, existing between such Person and any Acquired Entity directly or indirectly from the filing by the Applicants under the CCAA and the implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 11 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Contract shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to excuse the Sponsor or the Just Energy Entities from performing their obligations under, or be a waiver of defaults by the Sponsor or Just Energy under, the Transaction Agreement and the related agreements and documents, or affect the validity of the Implementation Steps.

14. **THIS COURT ORDERS** that, from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly,

derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Sponsor or the Acquired Entities relating in any way to or in respect of any Excluded Assets, Excluded Contracts or Excluded Liabilities and any other claims, obligations and other matters which are waived, released, expunged or discharged pursuant to this Order.

15. **THIS COURT ORDERS** that, from and after the Effective Time:

- (a) the nature of the Assumed Liabilities assumed by the Sponsor or retained by the Acquired Entities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co. 1 and Residual Co. 2, as applicable;
- (c) any Person that prior to the Effective Time had a valid right or claim against the Acquired Entities under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Acquired Entities but will have an equivalent Excluded Liability Claim against Residual Co. 1 or Residual Co. 2, as applicable, in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the

Excluded Liability Claim of any Person as against Residual Co. 1 and/or Residual Co. 2; and

- (d) the Excluded Liability Claim of any Person against Residual Co. 1 and/or Residual Co. 2 following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the applicable Acquired Entities prior to the Effective Time.

16. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

- (a) Residual Co. 1 and Residual Co. 2 shall be companies to which the CCAA applies; and
- (b) Residual Co. 1 and Residual Co. 2 shall be added as Applicants in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an “Applicant” or the “Applicants” shall refer to and include Residual Co. 1 and Residual Co. 2, *mutatis mutandis*, and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Residual Co. 1 and Residual Co. 2, including the Remaining Proceeds (the “**Residual Co. Property**”), and, for greater certainty, each of the Charges, shall constitute charges on the Residual Co. Property.

#### **PRIORITY PAYMENTS**

17. **THIS COURT ORDERS AND DIRECTS** that the Priority Payments Amount and the Cash Purchase Price, as necessary and as permitted by the Transaction Agreement, shall be

distributed by Just Energy, on behalf of one or more of the Just Energy Entities, on the Closing Date consistent with the Implementation Steps, to satisfy the following obligations (collectively, the “**Priority Payments**”):

- (a) first, to the beneficiaries of the Administration Charge and the FA Charge, the amounts necessary to satisfy the Just Energy Entities’ obligations secured thereby up to the maximum respective amounts secured by such charges, in full and final satisfaction thereof;
- (b) second, to the beneficiaries of the KERP Charge, the amounts necessary to satisfy the Just Energy Entities’ obligations secured thereby (if any) up to the maximum amount secured by such charge, in full and final satisfaction thereof;
- (c) third, on a *pari passu* basis:
  - (i) to the DIP Agent, for the benefit of the beneficiaries of the DIP Lenders’ Charge, an amount necessary to satisfy the Just Energy Entities’ obligations secured by such charge, in full and final satisfaction thereof, and
  - (ii) to each Commodity Supplier, an amount necessary to satisfy such Commodity Supplier’s Commodity Supplier Claim that is an Accepted Claim (as defined in the Claims Procedure Order), in full and final satisfaction thereof;
- (d) fourth, to each Governmental Entity, an amount necessary to satisfy such Governmental Entity’s Government Priority Claim, in full and final satisfaction thereof; and
- (e) fifth, to the Credit Facility Agent, in the currency that such Credit Facility Claim was originally denominated, an amount equal to the Credit Facility Claim (less the Credit Facility Remaining Debt, if any), in full and final satisfaction thereof.

18. **THIS COURT ORDERS** that, subject to completion of the Priority Payments set out in paragraph 17 hereof, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge and the Cash Management Charge shall be and are hereby terminated, released and discharged.

19. **THIS COURT ORDERS** that the Administrative Expense Amount held by the Monitor shall be subject to the Administration Charge, and any remaining portion thereof after payment of the Administrative Expense Costs shall be paid to Just Energy in accordance with the terms of the Transaction Agreement.

#### **RELEASES AND OTHER PROTECTIONS**

20. **THIS COURT ORDERS** that, effective as of the Effective Time, (a) the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities (or any of them); (b) the Monitor and its legal counsel; (c) the Sponsor and their respective current and former directors, officers, employees, legal counsel and advisors; and (d) the Credit Facility Agent and the Credit Facility Lenders, and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released by the Releasing Parties (as hereinafter defined) and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and

whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the Just Energy Entities, the business, operations, assets, property and affairs of the Just Energy Entities wherever or however conducted or governed, the administration and/or management of the Just Energy Entities, these CCAA proceedings and/or the Chapter 15 Cases, or (ii) the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents, any agreement, document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, subject to the excluded matters below, the “**Released Claims**”), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (y) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents, and/or any agreement, document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing. “**Releasing Parties**” means any and all Persons (besides the Just Energy Entities and their respective current and former affiliates), and their current and former affiliates’ current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed

accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

21. **THIS COURT ORDERS** that, effective as of the Effective Time, the Released Parties shall be deemed to be forever irrevocably released by each of the Just Energy Entities and their respective current and former affiliates, and discharged from, any and all Released Claims held by the Just Energy Entities and such current and former affiliates as of the Effective Time, which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or (b) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents, and/or any agreement, document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing; provided further that, the releases set forth in this paragraph shall not include, nor limit or modify in any way, any claim (or any defenses) which any of the Just Energy Entities may hold or be entitled to assert against any Released Party as of the Effective Time relating to any contracts, leases, agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices, or other ordinary course obligations which are remaining in effect following the Effective Time.



22. **THIS COURT ORDERS** that, without affecting or limiting the releases set forth in paragraphs 20 and 21 hereof, effective as of the Effective Time, none of (a) the current and former directors, officers, employees, legal counsel and advisors of the Just Energy Entities (or any of them); (b) the Monitor and its legal counsel; (c) the Sponsor and their respective current and former directors, officers, employees, legal counsel and advisors; and (d) the Credit Facility Agent and the Credit Facility Lenders, and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the “**Exculpated Parties**”), shall have or incur, and each Exculpated Party is released and exculpated from, any Causes of Action (as hereinafter defined) against such Exculpated Party for any act or omission in respect of, relating to, or arising out of the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents and/or the consummation of the Transactions, these CCAA proceedings, the Chapter 15 Cases, the formulation, preparation, dissemination, negotiation, filing or consummation of the Transaction Agreement, the Closing Documents, the Support Agreement, the Definitive Documents and all related agreements and documents, any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Transactions, the pursuit of approval and consummation of the Transactions or the recognition thereof in the United States, and/or the transfer of assets and liabilities pursuant to this Order, except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their applicable duties and responsibilities. “**Causes of Action**” means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power,

privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise.

23. **THIS COURT ORDERS** that all Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all claims or Cause of Actions released pursuant to this Order (including but not limited to the Released Claims), from (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties or Exculpated Parties; (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the Exculpated Parties, or their respective property; (c) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties or the Exculpated Parties; (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the Exculpated Parties, or their respective property; or (e) taking any actions to interfere with the consummation of the

Transactions; and any such proceedings will be deemed to have no further effect against such parties and will be released, discharged or vacated without cost.

24. **THIS COURT ORDERS** that, without affecting or limiting the releases set forth in paragraphs 20 and 21 hereof, effective as of the Effective Time, each Consenting Party (as hereinafter defined) shall be deemed to have consented and agreed to paragraphs 20 through 24 hereof. “**Consenting Parties**” means any Person who is, at the Effective Time, a party to the Support Agreement.

25. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these CCAA proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Just Energy Entities, Residual Co. 1 or Residual Co. 2, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Just Energy Entities, Residual Co. 1 or Residual Co. 2; or
- (d) any foreign law equivalent of (b) or (c).

the Transaction Agreement, the Closing Documents, the consummation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities in and to Residual Co. 1 and Residual Co. 2, as applicable, the transfer and vesting of the Purchased Interests in and to the Sponsor, the payment of the Priority Payments, and any payments by or to the Sponsor, the Just Energy Entities or the Monitor

authorized herein or pursuant to the Transaction Agreement and the Closing Documents) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Just Energy Entities, Residual Co. 1 and/or Residual Co. 2, and shall not be void or voidable by creditors of the Just Energy Entities, Residual Co. 1 or Residual Co. 2, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

26. **THIS COURT ORDERS** that nothing in this Order, including the release of the Acquired Entities from the purview of these CCAA proceedings pursuant to paragraph 5(f) hereof and the addition of Residual Co. 1 and Residual Co. 2 as Applicants in these CCAA proceedings, shall affect, vary, derogate from, limit or amend, and FTI shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, this Order, any other Orders in these CCAA proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Monitor, all of which are expressly continued and confirmed.

## **GENERAL**

27. **THIS COURT ORDERS** that, having been advised of the provisions of Multilateral Instrument 61-101 “Protection of Minority Security Holders in Special Transactions” relating to the requirement for “minority” shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Claims (as defined in the CCAA) in the Just Energy Entities

is required to be held in respect of the Transactions and accordingly, there is no requirement to send any disclosure document related to the Transactions to such holders.

28. **THIS COURT ORDERS** that, following the Effective Time, the Sponsor shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances (other than the Permitted Encumbrances) as against the Purchased Interests, the Acquired Entities and the Retained Assets.

29. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to:

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 ● AND ●

30. **THIS COURT DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

31. **THIS COURT DECLARES** that the Just Energy Entities shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and the Monitor as may be deemed necessary or appropriate for that purpose.

32. **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 of

America, including the United States Bankruptcy Court for the Southern District of Texas overseeing the Just Energy Entities' proceedings under Chapter 15 of the Bankruptcy Code in Case No. 21-30823 (MI), 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 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 the Monitor 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.

33. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof; provided that, the transaction steps set out in paragraph 5 hereof shall be deemed to have occurred sequentially, one after the other, in the order set out in paragraph 5 hereof.

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**SCHEDULE "A"**  
**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”  
FORM OF MONITOR’S CERTIFICATE**

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**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

1. Pursuant to the Initial Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021, the Applicants were granted protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and FTI Consulting Canada Inc. was appointed as the monitor (the “**Monitor**”).



2. Pursuant to an Approval and Vesting Order of the Court dated ●, 2022 (the “**Order**”), the Court approved the transactions (the “**Transactions**”) contemplated by the Transaction Agreement (the “**Transaction Agreement**”) between Just Energy Group Inc. (“**Just Energy**”) and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP, and CBHT Energy I LLC (collectively, the “**Sponsor**”) dated ●, 2022, and ordered, *inter alia*, (a) that all of the Acquired Entities’ right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall vest absolutely and exclusively in and to Residual Co. 1 and/or Residual Co. 2, as applicable; (b) Just Energy (U.S.) Corp. to issue the Purchased Interests, and the vesting of all of the right, title and interest in and to the Purchased Interests absolutely and exclusively in and to the Sponsor, free and clear of any Encumbrances; (c) Just Energy to file the Articles of Reorganization; and (d) the termination and cancellation or redemption of the Subject Interests for no consideration (as provided for in the Implementation Steps).

3. Capitalized terms used but not defined herein have the meanings ascribed to them in the Order.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received written confirmation from Just Energy, in form and substance satisfactory to the Monitor, that it has received the Cash Purchase Price from the Sponsor.

2. The Monitor has received written confirmation from the Sponsor and Just Energy, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the Transaction Agreement.

3. This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ on \_\_\_\_\_, 2022  
(the "Effective Time").

**FTI Consulting Canada Inc., in its capacity as  
Monitor of the Just Energy Entities, and not in  
its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE “C”**  
**PERMITTED ENCUMBRANCES**

- Encumbrances securing Assumed Liabilities to the extent that such Assumed Liabilities are secured by Encumbrances as of the Closing Time
- Encumbrances securing obligations under the New Credit Agreement
- Encumbrances which are the subject of the New Intercreditor Agreement
- “Permitted Encumbrances” as defined in the Credit Agreement, subject to those amendments to such definition provided for in Exhibit 1 of the Stalking Horse Term Sheet, except to the extent that they relate to an Excluded Liability or Excluded Asset

*Capitalized terms in this Schedule “C” shall have the meanings ascribed thereto in the Transaction Agreement or, where expressly indicated, the Credit 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.

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*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**APPROVAL AND VESTING ORDER**

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**OSLER, HOSKIN & HARCOURT, LLP**

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Fax: (416) 862-6666

Lawyers for the Just Energy Entities

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**EXHIBIT 4**

**New Intercreditor Agreement Term Sheet**

**SEVENTH AMENDED AND RESTATED INTERCREDITOR AGREEMENT**  
**SUMMARY OF TERMS AND CONDITIONS**

**August 4, 2022**

*This Summary of Terms and Conditions (this "Summary") is intended for discussion purposes only and cannot be construed as creating an obligation to reach an agreement on definitive terms and conditions. This Summary does not include descriptions of all of the terms, conditions and other provisions that are to be contained in the definitive documentation relating to the seventh amended and restated intercreditor agreement (the "**Intercreditor Agreement**") to be entered into between the Borrowers, the other Obligors, the Collateral Agent, the Agent (for and on behalf of the Lenders) and the Commodity Suppliers party thereto from time to time.*

*Reference is made to the sixth amended and restated intercreditor agreement dated as of September 1, 2015 (as amended, supplemented or otherwise modified from time to time to the date hereof, the "**Existing Intercreditor Agreement**") between National Bank of Canada, as Collateral Agent, National Bank of Canada, as the Agent (for and on behalf of the Lenders), Shell Energy, the Other Commodity Suppliers (as defined therein), the Borrowers, the Restricted Subsidiaries and other Persons from time to time party thereto. Unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Existing Intercreditor Agreement.*

<b><u>Term</u></b>	<b><u>Change</u></b>	<b><u>Notes</u></b>
Collateral Agent	National Bank of Canada to reflect collateral agency succession which occurred on March 1, 2019	
Commodity Suppliers	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, <sup>1</sup> MacQuarie Bank Limited, MacQuarie Energy Canada Ltd. and MacQuarie Energy LLC <sup>2</sup>	Permit the addition of any or all of (i) Mercuria Energy America, LLC and its Affiliates, (ii) Hartree Partners, LP and its Affiliates and (iii) EDF Trading North America, LLC and its Affiliates (the " <b>Agreed Additional Suppliers</b> "), so long as each such Agreed Additional Supplier satisfies the Minimum Credit Criteria (as defined herein).

<sup>1</sup> At this time it is not known if BP and Macquarie will remain as parties and Suppliers under the Intercreditor Agreement.

<sup>2</sup> Exelon Generation Company, LLC, Nextera Energy Power Marketing LLC and Morgan Stanley Capital Group Inc. may be removed as parties and Suppliers under the Intercreditor Agreement.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
Obligors	All Obligors under the tenth amended and restated credit agreement (the “ <b>Tenth ARCA</b> ”) to be entered into among the Borrowers, the Agent and the lenders party thereto from time to time, which Obligors shall include Just Energy Group Inc. and all of its North American operating subsidiaries. <sup>3</sup>	
Definitions	<p>– Definition of “ISO Services Agreement” to be replaced with the following definition:</p> <p><b>“ISO Services Agreement”</b> means an agreement pursuant to which (i) an Obligor has reimbursement obligations to a Senior Creditor for payments made by such Senior Creditor on behalf of such Obligor to an ISO, or (ii) a Senior Creditor agrees to deal directly with an ISO on an Obligor’s behalf to schedule the delivery of electricity, bid into the day-ahead market, purchase in the real-time market, post collateral therefor and pay the purchase price of such electricity and attendant services, in each case regardless of any term of such agreement that states that title to such electricity has been transferred to the applicable Senior Creditor during such transactions. For the avoidance of doubt, net settlement</p>	

<sup>3</sup> Obligors will not include JEAS Holdings LP, Just Ventures GP Corp., Just Ventures L.P., Just Energy Services Limited, Just Holdings L.P., American Home Energy Services Corp., Just Ventures LLC, Momentis U.S. Corp.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>instructions registered with the Alberta Electric System Operator (“AESO”) by agreement with an Obligor relating to the bilateral purchase of power between an Obligor and a Senior Creditor shall not constitute an ISO Services Agreement.</p> <p>– Definition of “ISO Services Obligations” to be replaced with the following definition:</p> <p><b>“ISO Services Obligations”</b> means the reimbursement obligations of an Obligor to a Senior Creditor under an ISO Services Agreement, including without limitation, the Shell Energy ISO Reimbursement Obligations and the BP ISO Services Obligations. Without limitation to the foregoing, any obligation arising in respect of the supply of electricity or services purchased, arranged or scheduled for or on behalf of an Obligor through an ISO and delivered to the Obligor or its customers pursuant to an ISO Services Agreement shall be an ISO Services Obligation for the purposes of Sections [2.02(e)] and [3.04(e)] of this Agreement, regardless of any provision of the ISO Services Agreement that directly or indirectly provides otherwise (including any term of such agreement that states that title to such electricity has been transferred to the applicable Senior Creditor during such transactions or that the physical or financial</p>	



<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>purchase or sale of such electricity is to be governed by a separate agreement). Notwithstanding the foregoing, any bilateral purchase of electricity between an Obligor and a Senior Creditor for which net settlement instructions are registered with the AESO by agreement with an Obligor shall not constitute ISO Services Obligations.</p> <ul style="list-style-type: none"> <li>- consolidate separate treatment of Shell Energy versus “Other Commodity Supplier” to include only “Commodity Suppliers”<sup>4</sup></li> <li>- add Montreal to definition of “Business Day”</li> <li>- update all references to CIBC to NBC to reflect the collateral agency succession which occurred on March 1, 2019</li> <li>- increase “Deposit Threshold” from US\$10MM to align with the “Permitted Encumbrance” limit in respect of Cash under the Tenth ARCA</li> <li>- delete definition of “Energy Management Agreement” and related reference in “Shell Energy Agreement”</li> <li>- delete definition of “Distributable Free Cash Flow”</li> <li>- delete Exgen and Constellation related defined terms</li> </ul>	

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<sup>4</sup> Historical references in the security to these terms to be addressed in a reaffirmation agreement of the security.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<ul style="list-style-type: none"> <li>- align definition of “Fiscal Year” with Tenth ARCA definition</li> <li>- align definition of GAAP with Tenth ARCA definition</li> <li>- delete references to “UK Obligors”</li> <li>- delete references to “High Yield Debt”</li> <li>- delete definition of “Modified Consolidated Basis”</li> <li>- align definitions of “Permitted Asset Dispositions” and “Permitted Encumbrances” with Credit Agreement definitions</li> <li>- increase \$5MM threshold in definition of “Significant Creditor” to \$20MM</li> </ul>	
Sections 1.02-1.08	No Change	
Add a new Section 1.09	Amounts paid in the 2021-2022 CCAA proceedings and the Chapter 15 proceedings will not constitute “Proceeds of Realization” for purposes of the Intercreditor Agreement.	
Article 2 Collections	No Change aside from consolidation of references to only Commodity Suppliers	
Article 3 Security Sharing	<ul style="list-style-type: none"> <li>- Consolidation of references to only Commodity Suppliers</li> <li>- Provide the Commodity Suppliers with the same priorities given to the</li> </ul>	

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>commodity suppliers under the Existing Intercreditor Agreement</p> <p>– If the Tenth ARCA requires mandatory reductions in the commitments thereunder (other than in the case of the termination of the commitments as a result of an Event of Default)<sup>5</sup>, and as a result of such commitment reductions (i) the aggregate face amount of the letters of credit then outstanding under the credit facilities exceeds the reduced commitments of the Lenders under such credit facilities (such excess, the “<b>LC Deficiency Amount</b>”), and (ii) as a consequence the Obligors are required to provide cash collateral to the Agent (for the benefit of the Lenders) to secure the obligations of the Obligors relating to such letters of credit in the amount of the LC Deficiency Amount, then the Agent and the Lenders shall have priority in such cash collateral (unless and until such collateral is returned to the Obligors in accordance with the Tenth ARCA) in an amount not to exceed such LC Deficiency Amount. For the avoidance of doubt, the foregoing provision shall apply only for so long as the Tenth ARCA is in effect, and</p>	

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<sup>5</sup> The Tenth ARCA will have two categories of mandatory commitment reduction: (i) commitment reductions based on excess cash flow, and (ii) commitment reductions using proceeds from asset dispositions. The definitive Intercreditor Agreement will make reference to specific sections of the Tenth ARCA relating to those commitment reduction requirements.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	shall not apply to any refinancing of the Tenth ARCA.	
Article 4 Enforcement and Remedies	No Change aside from consolidation of references to only Commodity Suppliers	
Article 5 Assignment of Agreements	No Change aside from consolidation of references to only Commodity Suppliers	
Article 6 Collateral Agent	<ul style="list-style-type: none"> <li>- Update references from CIBC to NBC, consolidation of references to only Commodity Suppliers and operational changes required by the Collateral Agent and as reasonably agreed by Shell.</li> <li>- Section 6.04(3) of the Intercreditor Agreement to be aligned with Tenth ARCA.</li> </ul>	
Article 7 General Powers	No Change aside from consolidation of references to only Commodity Suppliers	
Article 8 Miscellaneous	No Change aside from (i) consolidation of references to only Commodity Suppliers and (ii) to continue the existing provision in Section 8.13 of the Existing Intercreditor Agreement requiring consent of the Required Secured Creditors in order to admit a new Commodity Supplier (other than the Agreed Additional Suppliers), but Section 8.13 of the Existing Intercreditor Agreement will be modified to state that no more than 6 total Commodity Suppliers will be party to the Intercreditor Agreement (and for purposes of the foregoing a Commodity Supplier	

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	and its Affiliates shall be treated as a single Commodity Supplier).	
Article 9 Restrictive Covenants, Reporting Covenants and Events of Default	<p>Substantially the same with the following changes:</p> <ul style="list-style-type: none"><li>- Existing restrictive covenants (in Section 9.01) and reporting covenants (in Section 9.02) to be aligned with corresponding covenants in the Tenth ARCA, including changing Section 9.01(6) to be consistent with the Tenth ARCA (prohibition on Distributions).</li><li>- New covenant in Section 9.01 to provide that Just Energy will only enter into or renew or permit the assignment of Supplier Contracts where, in any case, the supplier thereunder and any new supplier satisfy the following criteria (the “<b>Minimum Credit Criteria</b>”):<ul style="list-style-type: none"><li>(i) has a minimum credit rating of (A) BBB- or higher by S&amp;P, (B) Baa3 or higher by Moody’s, (C) BBB- or higher by Fitch, or (D) BBB- or higher by DBRS (the “<b>Minimum Supplier Rating</b>”), (ii) has its obligations backed by a guarantee from a Person with a credit rating meeting the requirements of (i) hereof or by a letter of credit issued by a bank whose long term debt is rated at least “A” by S&amp;P, or (iii) is not rated or does not have its obligations backed by a guarantee or letter of credit as described in (i) or (ii) hereof provided that all such suppliers do not exceed 7.5% of the total supply under all Supplier</li></ul></li></ul>	

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>Contracts. Notwithstanding the foregoing covenant, a Commodity Supplier that has its obligations backed by a letter of credit pursuant to (ii) above, is permitted to have a credit limit of up to USD\$15,000,000 of obligations unsupported by a letter of credit (each, an “<b>Unsecured Credit Limit</b>”), so long as all such Unsecured Credit Limits of all Commodity Suppliers does not exceed USD\$50,000,000 in the aggregate at any time.</p> <ul style="list-style-type: none"> <li>– The covenant in Section 9.01(25) of the Credit Agreement will have to be amended to be consistent with the language noted-above.</li> <li>– No additional reporting covenants, existing reporting covenants to be aligned with corresponding reporting requirements in the Tenth ARCA.</li> </ul>	
<p>Definition by Reference</p>	<p>For purposes of the Intercreditor Agreement, (i) any capitalized terms defined in the Intercreditor Agreement by reference to the Tenth ARCA as of the date of the Intercreditor Agreement shall be subject to Shell’s approval and any other references to the Tenth ARCA that affect Shell shall be subject to Shell’s approval (acting reasonably), and (ii) any capitalized terms defined in the Intercreditor Agreement by reference to the Shell Energy Agreements as of the date of the</p>	

<b><u>Term</u></b>	<b><u>Change</u></b>	<b><u>Notes</u></b>
	Intercreditor Agreement shall be subject to the Agent's approval.	

**EXHIBIT 5**

**Management Incentive Plan**



## MANAGEMENT COMPENSATION ARRANGEMENTS<sup>1</sup>

The following summarizes the principal post-Closing related management compensation arrangements for Just Energy (U.S.) Corp. (the “Company”).

<p>Overview:</p>	<p><u>General.</u> The Company (or its successor if converted into another entity prior to the Closing in accordance with the Implementation Steps) (the “<u>Issuer</u>”) will adopt a Management Incentive Plan (the “<u>MIP</u>”) in connection with the transactions contemplated in the Support Agreement and the Stalking Horse Transaction Term Sheet to which this term sheet is attached as an exhibit on the terms and conditions set forth herein on the Closing Date. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Support Agreement and Stalking Horse Transaction Term Sheet.</p> <p><u>Incentive Equity Pool.</u> The Issuer will reserve exclusively for employees of the Company and its subsidiaries and members of the Board of Directors (such reserve, the “<u>MIP Pool</u>”) a pool of shares of common equity (“<u>Common Stock</u>”) of Issuer representing 10% of Issuer’s Common Stock, determined on a fully diluted and fully distributed basis (i.e., assuming conversion of all outstanding convertible securities and full distribution of the MIP Pool).</p> <p><u>Closing Date Grants.</u> Closing Date Grants equal to 50% of the MIP Pool will be granted to management employees upon the Closing Date in the form of restricted stock units (“<u>RSUs</u>”) and performance stock units (“<u>PSUs</u>”) in accordance with this Term Sheet and the allocations indicated in Exhibit A (“<u>Closing Date Grants</u>”). Closing Date Grants will be made 40% in the form of RSUs and 60% in the form of PSUs and will have customary dividend equivalent rights.</p> <p><u>Future Grants.</u> The Company will make future equity grants as determined by the post-Closing Board of Directors.</p>
<p>RSUs</p>	<p><u>Normal Vesting.</u> Subject to an Executive’s continued employment, the RSU component of the Closing Date Grants will vest ratably on each of the first four (4) anniversaries of the Closing Date.</p> <p><u>Accelerated Vesting Upon Termination.</u> If an Executive is terminated without “cause” (as defined below) or terminates for “good reason” (as defined below) or due to death or disability, the Executive will be credited with vesting service to the next normal vesting date.</p> <p><u>Accelerated Vesting Upon a Change in Control or Public Listing.</u> Upon a Change of Control<sup>2</sup> or Public Listing<sup>3</sup> of the Company, 100% of an Executive’s unvested RSU component of the Closing Date Grants will accelerate and vest.</p> <p><u>Accelerated Vesting Upon a Sale of Common Shares by the Sponsor.</u> If any affiliated entities of the Sponsor (a “Sponsor Entity”) sell any common equity in an amount that does not trigger a Change of Control at any time that exceeds an aggregate of 20% of the fully diluted outstanding common equity in one or a series of related transactions, an amount, if any, of the Executive’s RSUs shall vest at the closing of the sale by the Sponsor Entity to bring the aggregate percentage of the Executive’s RSUs that have vested to be the same as the same</p>

<sup>1</sup> To participate in the MIP, each executive listed in Exhibit A will agree to waive their change of control provisions in their respective agreements with respect to and only in relation to the transactions being contemplated by the Support Agreement.

<sup>2</sup> “Change of Control” definition will be a customary incentive plan definition with greater than 50% stock acquisition, merger with greater than 50% ownership change and sale of all/substantially all asset.

<sup>3</sup> Public Listing will be defined to mean an IPO, direct listing, or de-SPAC transaction.

	percentage of common shares that have been sold, in aggregate, by the Sponsor Entity.																																
PSUs	<p><u>Vesting.</u> PSUs will be subject to both time and performance vesting. PSUs will time vest on the same basis as RSUs, including upon a Change of Control or Public Listing, or sale of common shares by the Sponsor Entities. PSUs will performance vest in accordance with the following table, with linear interpolation applied for performance between MoM tiers:</p> <table border="1"> <thead> <tr> <th>MoM</th> <th>Month 0 to 15</th> <th>Month 15 to 36</th> <th>Month 36+</th> </tr> </thead> <tbody> <tr> <td>1.00x</td> <td>0%</td> <td>0%</td> <td>0%</td> </tr> <tr> <td>1.25x</td> <td>50%</td> <td>50%</td> <td>33%</td> </tr> <tr> <td>1.33x</td> <td>75%</td> <td>63%</td> <td>50%</td> </tr> <tr> <td>1.50x</td> <td>100%</td> <td>88%</td> <td>75%</td> </tr> <tr> <td>1.75x</td> <td>125%</td> <td>113%</td> <td>100%</td> </tr> <tr> <td>2.00x</td> <td>133%</td> <td>125%</td> <td>125%</td> </tr> <tr> <td>2.25x</td> <td>133%</td> <td>133%</td> <td>133%</td> </tr> </tbody> </table> <p><u>Determination of MoM.</u> The MoM is determined at the first to occur of a Change of Control or Public Listing by dividing the Per Share Transaction Value<sup>4</sup> by the Per Share Closing Date Value.<sup>5</sup></p> <p><u>Certain Terminations.</u> Upon a termination of employment: (i) for any reason (including due to Executive’s disability) other than by the Company for Cause, (ii) by the Executive for Good Reason, or (iii) due to the Executive’s death, the Executive will be credited with vesting service to the next normal vesting date and PSUs that have time vested (the “<u>Contingent PSUs</u>”) shall remain outstanding and eligible to vest upon achievement of the applicable performance conditions until the first anniversary of such termination. Upon a termination for Cause or a material violation of a restrictive covenant to which an Executive has agreed to be subject that is not cured within 30 days of written notice from the Company, all PSUs and RSUs, whether or not vested, shall terminate without consideration.</p> <p><u>Distributions.</u> PSUs will be settled within 10 business days after vesting. Vested RSUs will be settled upon the first to occur of (i) an Executive’s separation from service (ii) a Change of Control., or (iii) the fifth anniversary of the Closing Date.</p>	MoM	Month 0 to 15	Month 15 to 36	Month 36+	1.00x	0%	0%	0%	1.25x	50%	50%	33%	1.33x	75%	63%	50%	1.50x	100%	88%	75%	1.75x	125%	113%	100%	2.00x	133%	125%	125%	2.25x	133%	133%	133%
MoM	Month 0 to 15	Month 15 to 36	Month 36+																														
1.00x	0%	0%	0%																														
1.25x	50%	50%	33%																														
1.33x	75%	63%	50%																														
1.50x	100%	88%	75%																														
1.75x	125%	113%	100%																														
2.00x	133%	125%	125%																														
2.25x	133%	133%	133%																														
Taxes:	Participants may satisfy applicable withholdings for taxes and other amounts incurred in connection with settlement either through net share settlement or by voluntarily surrendering a portion of the Award equivalent in value to the amount to be withheld.																																

<sup>4</sup> The fair market value of a share of common stock based (i) on the per share transaction price in a Change of Control, subject to any holdbacks and other contingent consideration or (ii) the 10-day VWAP immediately following an initial public listing, in each case taking into account any post-Closing Date prior dividends and distributions.

<sup>5</sup> The common equity value of the Company expressed on a per common share basis taking into account outstanding common shares, Closing Date Grants and other instruments, if any, convertible into common stock and stock splits, consolidations and other similar events. The final documents will include customary dispute resolutions procedures regarding equity valuations. The Per Share Closing Date Value will be determined promptly after the Vesting Order is obtained.

Severance:	<p>The executives listed on Exhibit A will be provided cash severance benefits upon a termination (i) for a reason other than “cause”<sup>6</sup> or (ii) due to “good reason”<sup>6</sup> as follows:</p> <ul style="list-style-type: none"><li>• On or before the first anniversary of the Closing Date: 1.5 x the Executive’s existing severance payment in their respective employment agreement.</li><li>• After the first anniversary of the Closing Date and before a Change of Control: as per the terms of the Constructive Dismissal or Termination by the Company without Good Cause language in the executive’s respective employment agreement.</li><li>• Within 24 months after a post-Closing Date Change of Control: as per the terms of the Change of Control language in the executive’s respective employment agreement.</li></ul> <p>Executives’ employment agreements will be amended to reflect the foregoing effective as of the Closing Date.</p>
Indemnity	<p>On or before Closing, Issuer shall enter into a new indemnity agreement, with each member of management having substantially similar terms to the existing agreement.<sup>7</sup></p>
Final Documentation	<p>The final documentation related to the forgoing matters will not contain any covenants that impose material restrictions, limitations or additional obligations on an Executive that are not set forth herein.</p>

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<sup>6</sup> As defined in the Employment Agreement.

<sup>7</sup> Current Indemnity Agreements are provided by Just Energy Group Inc. (“JEGI”) on its and its subsidiaries behalf. As of closing, JEGI will be a subsidiary of the Company and its subsidiaries will only be the Canadian subsidiaries. Accordingly, the Company needs to provide indemnity agreements on its behalf and on behalf of all its subsidiaries.

Exhibit A

*(Redacted.)*

**EXHIBIT D**

**SISP**

# Sale and Investment Solicitation Process

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1. On August 17, 2022, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**SISP Order**”) that, among other things, (a) authorized Just Energy (as defined below) to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof, (b) approved the Support Agreement, (c) authorized and directed Just Energy Group Inc. to enter into the Stalking Horse Transaction Agreement, (d) approved the Break-Up Fee, and (e) granted the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Second Amended & Restated Initial Order granted by the Court in Just Energy’s proceedings under the *Companies’ Creditors Arrangement Act* on May 26, 2021, as amended, restated or supplemented from time to time or the SISP Order, as applicable.
2. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives that are superior to the sale transaction to be provided for in the Stalking Horse Transaction Agreement involving the shares and/or the business and assets of Just Energy Group Inc. and its direct and indirect subsidiaries (collectively, “**Just Energy**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court (as defined below) approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of Just Energy’s shares, assets and/or business and/or an investment in Just Energy, each of which shall be subject to all terms set forth in this SISP.
3. The SISP shall be conducted by Just Energy under the oversight of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the “**Monitor**”), with the assistance of BMO Capital Markets (the “**Financial Advisor**”).
4. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by Just Energy and the Financial Advisor.
5. The SISP will be conducted such that Just Energy and the Financial Advisor will (under the oversight of the Monitor):
  - a) prepare marketing materials and a process letter;
  - b) prepare and provide applicable parties with access to a data room containing diligence information;
  - c) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to Just Energy); and
  - d) request that such parties (other than the Sponsor or its designee) submit (i) a notice of intent to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Just Energy Entities that would be the subject of the bid and that reflects a reasonably likely prospect of culminating in a Qualified Bid (as defined below), as determined by the Just Energy Entities in consultation with the Monitor and the Credit Facility Agent (subject to the confidentiality requirements set forth in Section 15 below) (a “**NOI**”) by the NOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 7 below, as determined by the Just Energy Entities in consultation with the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).

6. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- a) Just Energy to commence solicitation process on the date of service of the motion for approval of the SISP – August 4, 2022;<sup>1</sup>
  - b) Court approval of SISP and authorizing Just Energy to enter into the Stalking Horse Transaction Agreement – August 17, 2022;
  - c) Deadline to submit NOI – 11:59 p.m. Eastern Daylight Time on August 25, 2022 (the “**NOI Deadline**”);
  - d) Deadline to submit a Qualified Bid – 11:59 p.m. Eastern Daylight Time on September 29, 2022 (the “**Qualified Bid Deadline**”);
  - e) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. Eastern Daylight Time on October 6, 2022;
  - f) Just Energy to hold Auction (if applicable) – 10:00 a.m. Eastern Daylight Time on October 8, 2022; and
  - g) Implementation Order (as defined below) hearing:
    - o (if no NOI is submitted) – by no later than September 2, 2022, subject to Court availability.
    - o (if there is no Auction) – by no later than October 15, 2022, subject to Court availability.
    - o (if there is an Auction) – by no later than twelve (12) days after completion of the Auction, subject to Court availability.
7. In order to constitute a Qualified Bid, a bid must comply with the following:
- a. it provides for (i) the payment in full in cash on closing of the BP Commodity/ISO Services Claim (as defined in the Support Agreement), unless otherwise agreed to by the holder of such claim in its sole discretion; (ii) the payment in full in cash on closing of the Credit Facility Claims, unless otherwise agreed to by the Credit Facility Agent in its sole discretion; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) or (ii) including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion (iv) the return of all outstanding letters of credit and release of all Credit Facility LC Claims or arrangements satisfactory to the applicable Credit Facility Lenders in their discretion to secure with cash collateral or otherwise any Credit Facility LC Claims not released, and (v) the payment in full in cash on closing of any outstanding Cash Management Obligations or arrangements satisfactory to the applicable Credit Facility Lenders or their affiliates to secure with cash collateral or otherwise any outstanding Cash Management Obligations.
  - b. it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus Just Energy’s cash on hand must be sufficient for payment in full of the items contemplated in Sections 7(a)(i) and 7(a)(ii) herein, 3.2 of the Stalking Horse Transaction Agreement and the Break-Up Fee, plus USD\$1,000,000, on closing, which Cash Consideration Value is estimated to be USD\$460,000,000 as of December 31, 2022.

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<sup>1</sup> To the extent any dates would fall on a non-business day, to be the first business day thereafter.

- c. it is reasonably capable of being consummated by 90 days after completion of the Auction if selected as the Successful Bid;
- d. it contains:
  - i. duly executed binding transaction document(s);
  - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
  - iii. a redline to the form of transaction document(s) provided by Just Energy, if applicable;
  - iv. evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
  - v. disclosure of any connections or agreements with Just Energy or any of its affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of Just Energy or any of its affiliates; and
  - vi. such other information reasonably requested by Just Energy or the Monitor;
- e. it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- f. it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the Purchaser in connection with the Transaction Agreement;
- g. it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h. it is not conditional upon:
  - i. approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
  - ii. the outcome of any due diligence by the bidder; or
  - iii. the bidder obtaining financing;
- i. it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- j. it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the energy sector, including an electric utility, retail service provider, a company with a tariff on file with the Federal Energy Regulatory Commission, or any intermediate holding company;
- k. it includes full details of the bidder's intended treatment of Just Energy's employees under the proposed bid;
- l. it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with this SISP;
- m. a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
- n. it is received by the Qualified Bid Deadline.



8. The Qualified Bid Deadline may be extended by (i) Just Energy for up to no longer than seven days with the consent of the Monitor, the Credit Facility Agent and the Sponsor, acting reasonably, or (ii) further order of the Court. In such circumstances, the milestones contained in Subsections 6(f) and (g) shall be extended by the same amount of time.
9. Just Energy, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified in Section 7 above and deem a non-compliant bid to be a Qualified Bid, provided that Just Energy shall not waive compliance with the requirements specified in Subsections 7(a), (b), (e), (e), (g), (h), (j) or (l) without the prior written consent of the Sponsor and Credit Facility Agent, each acting reasonably.
10. Notwithstanding the requirements specified in Section 7 above, the transactions contemplated by the Stalking Horse Transaction Agreement (the “**Stalking Horse Transaction**”), is deemed to be a Qualified Bid, provided that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
11. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, Just Energy shall proceed with an auction process to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, Just Energy shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by Just Energy specifying which Qualified Bid is the leading bid.
12. If, by the NOI Deadline no NOI has been received, then the SISP shall be deemed to be terminated and the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement. If no Qualified Bid (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, then the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement.
13. Following selection of a Successful Bid, Just Energy, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 6. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by Just Energy, in consultation with the Monitor, Just Energy shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize Just Energy to complete the transactions contemplated thereby, as applicable, and authorizing Just Energy to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
14. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid,

will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to an Implementation Order or such earlier date as may be determined by Just Energy, in consultation with the Monitor.

15. Just Energy shall provide information in respect of the SISP to the DIP Lenders, the holder of the BP Commodity/ISO Services Claim and the Supporting Secured CF Lenders on a confidential basis, including (A) copies (or if not provided to the Just Energy Entities in writing, a detailed description) of any NOI and any bid received, including any Qualified Bid, no later than one (1) calendar day following receipt thereof by the Just Energy Entities or their advisors and (B) such other information as reasonably requested by the DIP Lenders', the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders' respective legal counsel or financial advisors or as necessary to keep the DIP Lenders, the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders informed no later than one (1) calendar day after any such request or any material change to the proposed terms of any bid received, including any Qualified Bid, as to the terms of any bid, including any Qualified Bid, (including any changes to the proposed terms thereof) and the status and substance of discussions related thereto. Just Energy shall be permitted, in its discretion, to provide general updates and information in respect of the SISP to counsel to any unsecured creditor of Just Energy (a "**General Unsecured Creditor**") on a confidential basis, upon: (i) the irrevocable confirmation in writing from such counsel that the applicable General Unsecured Creditor will not submit any NOI or bid in the SISP, and (ii) counsel to such General Unsecured Creditor executing confidentiality agreements with Just Energy, in form and substance satisfactory to Just Energy and the Monitor.
16. Any amendments to this SISP may only be made by Just Energy with the written consent of the Monitor and after consultation with the Credit Facility Agent, or by further order of the Court, provided that Just Energy shall not amend Subsections 7(a), (b), (e), (f), (g), (h), (j) or (l) or Section 15 without the prior written consent of the Sponsor and the Credit Facility Agent.

**SCHEDULE “A”: AUCTION PROCEDURES**

1. **Auction.** If Just Energy receives at least one Qualified Bid (other than the Stalking Horse Transaction), Just Energy will conduct and administer the Auction in accordance with the terms of the SISIP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. Eastern Daylight Time on the day prior to the Auction, each Qualified Party (other than the Sponsor) must inform Just Energy whether it intends to participate in the Auction. Just Energy will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only Just Energy, the other counterparties to the Support Agreement, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by Just Energy, in consultation with the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to Just Energy’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of USD\$1,000,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that Just Energy, in its discretion, may establish separate video conference rooms to permit interim discussions between Just Energy and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and

- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.

#### **Selection of Successful Bid**

4. **Selection.** Before the conclusion of the Auction, Just Energy, in consultation with the Monitor, will: (a) review each Qualified Bid, considering the factors set out in Section 7 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by 90 days after completion of the Auction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, (v) the net benefit to Just Energy and (vi) any other factors Just Energy may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by Just Energy in its sole discretion, subject to the milestones set forth in Section 6 of the SISP.

**EXHIBIT E**

**Term Sheet for Material Updates to Intercreditor Agreement**

**SEVENTH AMENDED AND RESTATED INTERCREDITOR AGREEMENT**  
**SUMMARY OF TERMS AND CONDITIONS**

**August 4, 2022**

*This Summary of Terms and Conditions (this "Summary") is intended for discussion purposes only and cannot be construed as creating an obligation to reach an agreement on definitive terms and conditions. This Summary does not include descriptions of all of the terms, conditions and other provisions that are to be contained in the definitive documentation relating to the seventh amended and restated intercreditor agreement (the "**Intercreditor Agreement**") to be entered into between the Borrowers, the other Obligors, the Collateral Agent, the Agent (for and on behalf of the Lenders) and the Commodity Suppliers party thereto from time to time.*

*Reference is made to the sixth amended and restated intercreditor agreement dated as of September 1, 2015 (as amended, supplemented or otherwise modified from time to time to the date hereof, the "**Existing Intercreditor Agreement**") between National Bank of Canada, as Collateral Agent, National Bank of Canada, as the Agent (for and on behalf of the Lenders), Shell Energy, the Other Commodity Suppliers (as defined therein), the Borrowers, the Restricted Subsidiaries and other Persons from time to time party thereto. Unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Existing Intercreditor Agreement.*

<b><u>Term</u></b>	<b><u>Change</u></b>	<b><u>Notes</u></b>
Collateral Agent	National Bank of Canada to reflect collateral agency succession which occurred on March 1, 2019	
Commodity Suppliers	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, <sup>1</sup> MacQuarie Bank Limited, MacQuarie Energy Canada Ltd. and MacQuarie Energy LLC <sup>2</sup>	Permit the addition of any or all of (i) Mercuria Energy America, LLC and its Affiliates, (ii) Hartree Partners, LP and its Affiliates and (iii) EDF Trading North America, LLC and its Affiliates (the " <b>Agreed Additional Suppliers</b> "), so long as each such Agreed Additional Supplier satisfies the Minimum Credit Criteria (as defined herein).

<sup>1</sup> At this time it is not known if BP and Macquarie will remain as parties and Suppliers under the Intercreditor Agreement.

<sup>2</sup> Exelon Generation Company, LLC, Nextera Energy Power Marketing LLC and Morgan Stanley Capital Group Inc. may be removed as parties and Suppliers under the Intercreditor Agreement.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
Obligors	All Obligors under the tenth amended and restated credit agreement (the “ <b>Tenth ARCA</b> ”) to be entered into among the Borrowers, the Agent and the lenders party thereto from time to time, which Obligors shall include Just Energy Group Inc. and all of its North American operating subsidiaries. <sup>3</sup>	
Definitions	<p>– Definition of “ISO Services Agreement” to be replaced with the following definition:</p> <p><b>“ISO Services Agreement”</b> means an agreement pursuant to which (i) an Obligor has reimbursement obligations to a Senior Creditor for payments made by such Senior Creditor on behalf of such Obligor to an ISO, or (ii) a Senior Creditor agrees to deal directly with an ISO on an Obligor’s behalf to schedule the delivery of electricity, bid into the day-ahead market, purchase in the real-time market, post collateral therefor and pay the purchase price of such electricity and attendant services, in each case regardless of any term of such agreement that states that title to such electricity has been transferred to the applicable Senior Creditor during such transactions. For the avoidance of doubt, net settlement</p>	

<sup>3</sup> Obligors will not include JEAS Holdings LP, Just Ventures GP Corp., Just Ventures L.P., Just Energy Services Limited, Just Holdings L.P., American Home Energy Services Corp., Just Ventures LLC, Momentis U.S. Corp.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>instructions registered with the Alberta Electric System Operator (“AESO”) by agreement with an Obligor relating to the bilateral purchase of power between an Obligor and a Senior Creditor shall not constitute an ISO Services Agreement.</p> <p>– Definition of “ISO Services Obligations” to be replaced with the following definition:</p> <p><b>“ISO Services Obligations”</b> means the reimbursement obligations of an Obligor to a Senior Creditor under an ISO Services Agreement, including without limitation, the Shell Energy ISO Reimbursement Obligations and the BP ISO Services Obligations. Without limitation to the foregoing, any obligation arising in respect of the supply of electricity or services purchased, arranged or scheduled for or on behalf of an Obligor through an ISO and delivered to the Obligor or its customers pursuant to an ISO Services Agreement shall be an ISO Services Obligation for the purposes of Sections [2.02(e)] and [3.04(e)] of this Agreement, regardless of any provision of the ISO Services Agreement that directly or indirectly provides otherwise (including any term of such agreement that states that title to such electricity has been transferred to the applicable Senior Creditor during such transactions or that the physical or financial</p>	



<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>purchase or sale of such electricity is to be governed by a separate agreement). Notwithstanding the foregoing, any bilateral purchase of electricity between an Obligor and a Senior Creditor for which net settlement instructions are registered with the AESO by agreement with an Obligor shall not constitute ISO Services Obligations.</p> <ul style="list-style-type: none"> <li>- consolidate separate treatment of Shell Energy versus “Other Commodity Supplier” to include only “Commodity Suppliers”<sup>4</sup></li> <li>- add Montreal to definition of “Business Day”</li> <li>- update all references to CIBC to NBC to reflect the collateral agency succession which occurred on March 1, 2019</li> <li>- increase “Deposit Threshold” from US\$10MM to align with the “Permitted Encumbrance” limit in respect of Cash under the Tenth ARCA</li> <li>- delete definition of “Energy Management Agreement” and related reference in “Shell Energy Agreement”</li> <li>- delete definition of “Distributable Free Cash Flow”</li> <li>- delete Exgen and Constellation related defined terms</li> </ul>	

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<sup>4</sup> Historical references in the security to these terms to be addressed in a reaffirmation agreement of the security.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<ul style="list-style-type: none"> <li>- align definition of “Fiscal Year” with Tenth ARCA definition</li> <li>- align definition of GAAP with Tenth ARCA definition</li> <li>- delete references to “UK Obligors”</li> <li>- delete references to “High Yield Debt”</li> <li>- delete definition of “Modified Consolidated Basis”</li> <li>- align definitions of “Permitted Asset Dispositions” and “Permitted Encumbrances” with Credit Agreement definitions</li> <li>- increase \$5MM threshold in definition of “Significant Creditor” to \$20MM</li> </ul>	
Sections 1.02-1.08	No Change	
Add a new Section 1.09	Amounts paid in the 2021-2022 CCAA proceedings and the Chapter 15 proceedings will not constitute “Proceeds of Realization” for purposes of the Intercreditor Agreement.	
Article 2 Collections	No Change aside from consolidation of references to only Commodity Suppliers	
Article 3 Security Sharing	<ul style="list-style-type: none"> <li>- Consolidation of references to only Commodity Suppliers</li> <li>- Provide the Commodity Suppliers with the same priorities given to the</li> </ul>	

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>commodity suppliers under the Existing Intercreditor Agreement</p> <p>– If the Tenth ARCA requires mandatory reductions in the commitments thereunder (other than in the case of the termination of the commitments as a result of an Event of Default)<sup>5</sup>, and as a result of such commitment reductions (i) the aggregate face amount of the letters of credit then outstanding under the credit facilities exceeds the reduced commitments of the Lenders under such credit facilities (such excess, the “<b>LC Deficiency Amount</b>”), and (ii) as a consequence the Obligors are required to provide cash collateral to the Agent (for the benefit of the Lenders) to secure the obligations of the Obligors relating to such letters of credit in the amount of the LC Deficiency Amount, then the Agent and the Lenders shall have priority in such cash collateral (unless and until such collateral is returned to the Obligors in accordance with the Tenth ARCA) in an amount not to exceed such LC Deficiency Amount. For the avoidance of doubt, the foregoing provision shall apply only for so long as the Tenth ARCA is in effect, and</p>	

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<sup>5</sup> The Tenth ARCA will have two categories of mandatory commitment reduction: (i) commitment reductions based on excess cash flow, and (ii) commitment reductions using proceeds from asset dispositions. The definitive Intercreditor Agreement will make reference to specific sections of the Tenth ARCA relating to those commitment reduction requirements.

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	shall not apply to any refinancing of the Tenth ARCA.	
Article 4 Enforcement and Remedies	No Change aside from consolidation of references to only Commodity Suppliers	
Article 5 Assignment of Agreements	No Change aside from consolidation of references to only Commodity Suppliers	
Article 6 Collateral Agent	<ul style="list-style-type: none"> <li>- Update references from CIBC to NBC, consolidation of references to only Commodity Suppliers and operational changes required by the Collateral Agent and as reasonably agreed by Shell.</li> <li>- Section 6.04(3) of the Intercreditor Agreement to be aligned with Tenth ARCA.</li> </ul>	
Article 7 General Powers	No Change aside from consolidation of references to only Commodity Suppliers	
Article 8 Miscellaneous	No Change aside from (i) consolidation of references to only Commodity Suppliers and (ii) to continue the existing provision in Section 8.13 of the Existing Intercreditor Agreement requiring consent of the Required Secured Creditors in order to admit a new Commodity Supplier (other than the Agreed Additional Suppliers), but Section 8.13 of the Existing Intercreditor Agreement will be modified to state that no more than 6 total Commodity Suppliers will be party to the Intercreditor Agreement (and for purposes of the foregoing a Commodity Supplier	

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	and its Affiliates shall be treated as a single Commodity Supplier).	
Article 9 Restrictive Covenants, Reporting Covenants and Events of Default	<p>Substantially the same with the following changes:</p> <ul style="list-style-type: none"><li>- Existing restrictive covenants (in Section 9.01) and reporting covenants (in Section 9.02) to be aligned with corresponding covenants in the Tenth ARCA, including changing Section 9.01(6) to be consistent with the Tenth ARCA (prohibition on Distributions).</li><li>- New covenant in Section 9.01 to provide that Just Energy will only enter into or renew or permit the assignment of Supplier Contracts where, in any case, the supplier thereunder and any new supplier satisfy the following criteria (the “<b>Minimum Credit Criteria</b>”):<ul style="list-style-type: none"><li>(i) has a minimum credit rating of (A) BBB- or higher by S&amp;P, (B) Baa3 or higher by Moody’s, (C) BBB- or higher by Fitch, or (D) BBB- or higher by DBRS (the “<b>Minimum Supplier Rating</b>”), (ii) has its obligations backed by a guarantee from a Person with a credit rating meeting the requirements of (i) hereof or by a letter of credit issued by a bank whose long term debt is rated at least “A” by S&amp;P, or (iii) is not rated or does not have its obligations backed by a guarantee or letter of credit as described in (i) or (ii) hereof provided that all such suppliers do not exceed 7.5% of the total supply under all Supplier</li></ul></li></ul>	

<u>Term</u>	<u>Change</u>	<u>Notes</u>
	<p>Contracts. Notwithstanding the foregoing covenant, a Commodity Supplier that has its obligations backed by a letter of credit pursuant to (ii) above, is permitted to have a credit limit of up to USD\$15,000,000 of obligations unsupported by a letter of credit (each, an “<b>Unsecured Credit Limit</b>”), so long as all such Unsecured Credit Limits of all Commodity Suppliers does not exceed USD\$50,000,000 in the aggregate at any time.</p> <ul style="list-style-type: none"> <li>- The covenant in Section 9.01(25) of the Credit Agreement will have to be amended to be consistent with the language noted-above.</li> <li>- No additional reporting covenants, existing reporting covenants to be aligned with corresponding reporting requirements in the Tenth ARCA.</li> </ul>	
<p>Definition by Reference</p>	<p>For purposes of the Intercreditor Agreement, (i) any capitalized terms defined in the Intercreditor Agreement by reference to the Tenth ARCA as of the date of the Intercreditor Agreement shall be subject to Shell’s approval and any other references to the Tenth ARCA that affect Shell shall be subject to Shell’s approval (acting reasonably), and (ii) any capitalized terms defined in the Intercreditor Agreement by reference to the Shell Energy Agreements as of the date of the</p>	

<b><u>Term</u></b>	<b><u>Change</u></b>	<b><u>Notes</u></b>
	Intercreditor Agreement shall be subject to the Agent's approval.	

## **EXHIBIT F**

### **Form of Joinder Agreement**

This Joinder Agreement to the Support Agreement, dated as of August 4, 2022 (as amended, supplemented, or otherwise modified from time to time, the “**Agreement**”), between (i) 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., 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 and (ii) the Sponsor is executed and delivered by \_\_\_\_\_ (the “**Joining Party**”) as of \_\_\_\_\_, 2022. Each capitalized term used herein but not otherwise defined shall have the meaning set forth in the Agreement.

1. **Agreement to Be Bound.** The Joining Party hereby agrees to be bound by all of the terms of the Agreement, a copy of which is attached to this Joinder Agreement as Exhibit 1 (as the same has been or may be hereafter amended, restated, or otherwise modified from time to time in accordance with the provisions hereof). The Joining Party shall hereafter be deemed to be a “Supporting Creditor,” and “Party” for all purposes under the Agreement and with respect to any and all Claims held by such Joining Party.

2. **Representations and Warranties.** With respect to the aggregate principal amount of the Claims set forth below its name on the signature page hereto, the Joining Party hereby makes the representations and warranties of a Supporting Creditor, as applicable, as set forth in Section 13 of the Agreement to each other Party to the Agreement.

3. **Governing Law.** This Joinder Agreement shall be governed by and construed in accordance with the internal laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provisions which would require the application of the law of any other jurisdiction.

*[Signature page follows.]*



**[JOINING PARTY]**

By: \_\_\_\_\_

Name:

Title:

Notice Address:

Principal Amount of Credit Facility Claims: \$ \_\_\_\_\_

Principal Amount and Type of Other Claims: \$ \_\_\_\_\_

Interests: \_\_\_\_\_

Acknowledged:

**COMPANY**

\_\_\_\_\_  
Name:

Title:

THIS IS **EXHIBIT “J”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**CONFIDENTIAL EXHIBIT “J”**

THIS IS **EXHIBIT “K”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

## Just Energy Announces Execution of Stalking Horse Transaction Agreement and SISP Support Agreement and Filing of Motion for Approval of SISP

TORONTO, August 4, 2022 -- Just Energy Group Inc. (“**Just Energy**” or the “**Company**”) (NEX:JE.H; OTC:JENGQ), a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions and renewable energy options to customers, today announced that it has entered into a stalking horse transaction agreement (the “**Stalking Horse Transaction Agreement**”) and a support agreement (the “**SISP Support Agreement**”) (both subject to Court (as defined below) approval and each as described further below) in connection with a proposed sale and investment solicitation process (“**SISP**”) that is intended to facilitate its exit from the company’s ongoing insolvency proceedings as a going concern. Upon execution of the SISP Support Agreement, Just Energy and the other parties thereto terminated the previously announced plan support agreement and backstop commitment letter that was entered into in connection with the previously announced proposed plan of compromise and arrangement (the “**Plan**”).

Just Energy and certain of its affiliates (collectively, the “**Just Energy Entities**”) filed a motion in its proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on August 4, 2022 for an Order (the “**SISP Order**”) that, among other things: (i) authorizes the Company to conduct the SISP with the assistance of BMO Nesbitt Burns Inc., as financial advisor, and FTI Consulting Canada Inc., as Court-appointed monitor (the “**Monitor**”), in accordance with the terms therein (the “**SISP Procedures**”), and (ii) approves the execution by the applicable Just Energy Entities of the Stalking Horse Transaction Agreement and the SISP Support Agreement, each of which are described further below. The Just Energy Entities also intend to seek recognition in the U.S. of the SISP Order in their Chapter 15 cases.

Subject to the granting of the SISP Order at the motion scheduled for August 17, 2022:

- If one or more qualified bids (other than the transaction contemplated by the Stalking Horse Transaction Agreement) are received by September 29, 2022, then Just Energy intends to proceed with an auction to determine the successful bid(s), subject to the terms of the SISP Procedures. The qualified bid criteria under the terms of the SISP Procedures include, among other things, that bids:
  - provide the necessary Cash Consideration Value (as defined in the SISP Procedures) to be used together with the Just Energy Entities’ cash on hand for the payment of all secured claims and all claims ranking in priority, the Break-Up Fee (as defined below) and a bid increment of no less than \$1,000,000, which Cash Consideration Value is estimated to be approximately USD\$460,000,000, assuming a closing date of December 31, 2022;
  - do not contain any board or equity holder approval, financing or due diligence conditions; and
  - are accompanied by a cash deposit equal to 10% of the Cash Consideration Value.
- If the Stalking Horse Purchaser (as defined below) is determined to be the successful bidder at the conclusion of the SISP and the transaction contemplated in the Stalking Horse Transaction Agreement (the “**Stalking Horse Transaction**”) is subsequently approved by the Court, the Stalking Horse Purchaser will own all of the outstanding equity of Just Energy (U.S.) Corp., which will be the new parent company of all of the Just Energy Entities, including the Company, and the Just Energy Entities will continue their business and operations as a going concern. All currently outstanding shares, options and other equity of Just Energy will be cancelled or redeemed for no consideration and without any vote of the existing shareholders.

Interested parties are invited to participate in the SISP in accordance with the SISP Procedures. In order to participate in the SISP and obtain access to a virtual data room, all interested parties must comply with the terms and conditions set forth in the SISP Procedures, a copy of which will be attached to the SISP Order and available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy>. Parties interested in participating in the SISP should contact the Monitor at [justenergy@fticonsulting.com](mailto:justenergy@fticonsulting.com).

A copy of the Stalking Horse Transaction Agreement and SISP Support Agreement will be made available on the SEDAR website at [www.sedar.com](http://www.sedar.com), on the U.S. Securities and Exchange Commission's website at [www.sec.gov](http://www.sec.gov) and on Just Energy's website at [www.investors.justenergy.com](http://www.investors.justenergy.com).

Further information regarding the CCAA proceedings is available at the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy> and at the Omni Agent Solutions case website at <https://cases.omniagentsolutions.com/?clientId=3600>.

Information about the CCAA proceedings generally can also be obtained by contacting the Monitor by phone at 416-649-8127 or 1-844-669-6340, or by email at [justenergy@fticonsulting.com](mailto:justenergy@fticonsulting.com).

## **STALKING HORSE TRANSACTION AGREEMENT**

Just Energy has entered into the Stalking Horse Transaction Agreement with the lenders under the Company's debtor-in-possession financing facility, one of their affiliates and the holder of certain assigned secured claims (collectively, the "**Stalking Horse Purchaser**"). Key terms of the Stalking Horse Transaction include:

- The purchase price payable pursuant to the Stalking Horse Transaction is (i) cash in the amount of US\$184,857,692.31, plus up to an additional \$10 million solely in the event that additional amounts are required to make applicable payments pursuant to the Stalking Horse Transaction Agreement; plus (ii) a credit bid of approximately US\$230 million plus accrued interest of secured claims assigned to the Stalking Horse Purchaser; plus (iii) the assumption of Assumed Liabilities (as defined below), including up to CAD\$10 million owing under the Company's first lien credit facility (the "**Credit Facility Remaining Debt**") to remain outstanding under an amended and restated credit agreement.
- Post-filing claims, the Credit Facility Remaining Debt, claims by energy regulators, and certain other liabilities enumerated in the Stalking Horse Transaction Agreement ("**Assumed Liabilities**") will continue to be liabilities of the Just Energy Entities following consummation of the Stalking Horse Transaction. Excluded liabilities and excluded assets of the Just Energy Entities will be discharged from the Just Energy Entities pursuant to an Approval and Vesting Order to be sought subject to the Stalking Horse Transaction being the successful bid in the SISP.

The consummation of the Stalking Horse Transaction is subject to satisfaction or waiver of a number of conditions precedent set forth in the Stalking Horse Transaction Agreement including, among other things, receipt of all required regulatory approvals and the Court granting an Approval and Vesting Order by October 15, 2022 and the recognition of such Approval and Vesting Order by the U.S. Court under Chapter 15 by November 16, 2022. The outside date for completion of the Stalking Horse Transaction is November 30, 2022, subject to extension in certain circumstances described in the Stalking Horse Transaction Agreement.

In the event the Stalking Horse Transaction Agreement is terminated in accordance with applicable terms, payment of a Break-Up Fee as described below is required.

Under the Stalking Horse Transaction, no amounts will be available for distribution to the Just Energy Entities' general unsecured creditors, including the Term Loan Lenders.

## **SISP SUPPORT AGREEMENT**

In connection with the Stalking Horse Transaction Agreement, the Just Energy Entities have entered into the SISP Support Agreement with: (a) the Stalking Horse Purchaser, (b) the Company's credit facility lenders, and (c) the Company's largest commodity supplier. Pursuant to the SISP Support Agreement, among other things, the Just Energy Entities have agreed to use commercially reasonable efforts to complete the Stalking Horse Transaction (subject to carrying out the SISP in accordance with the SISP

Order), and the other counterparties have agreed to take actions to support the Stalking Horse Transaction, in each case on the terms and conditions set forth in the SISP Support Agreement.

The SISP Support Agreement may be terminated in certain circumstances, including by any of the Just Energy Entities in the event that the board of directors or similar governing body of such entity determines, upon the advice of outside legal counsel and financial advisors, that proceeding with the Stalking Horse Transaction would be inconsistent with the exercise of its fiduciary duties or applicable law; provided that the Just Energy Entities do not have this right to terminate the SISP Support Agreement if no qualified bids are received under the SISP by the applicable deadline or the Stalking Horse Transaction is declared the successful bid in accordance with the SISP Procedures.

In the foregoing termination scenario or in the event of Court approval of an alternative transaction, the Just Energy Entities would be required to pay a termination fee to the Stalking Horse Purchaser in the amount of US\$14.66 million (the “**Break-Up Fee**”) on closing of an alternative transaction, subject to the granting of the SISP Order.

## **FURTHER INFORMATION**

The Company has been advised by OC II VS XIV LP (“OC II”), a Delaware limited partnership, and certain other funds under common management with OC II (collectively, the “Funds”), who own approximately 29% of the issued and outstanding common shares of the Company, that OC II has filed an amended early warning report pursuant to Canadian securities laws to provide updated disclosure relating to the Funds’ participation in the Stalking Horse Transaction, which is available at [www.sedar.com](http://www.sedar.com) under the Company’s issuer profile.

The above descriptions are summaries only and are subject to the terms of the Stalking Horse Transaction Agreement and SISP Support Agreement, copies of which are available on the Monitor’s website and will be made available on the SEDAR website at [www.sedar.com](http://www.sedar.com), on the U.S. Securities and Exchange Commission’s website at [www.sec.gov](http://www.sec.gov) and on Just Energy’s website at <https://investors.justenergy.com/>.

Just Energy’s legal advisors in connection with the CCAA and Chapter 15 proceedings and proposed SISP are Osler, Hoskin & Harcourt LLP and Kirkland & Ellis LLP. The Company’s financial advisor is BMO Nesbit Burns Capital Markets.

### **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, expectations regarding: the pursuit of a SISP by the Just Energy Entities and the anticipated results thereof; consummation of the Stalking Horse Transaction and the anticipated results thereof; the ability of the Just Energy Entities to continue as a going concern following consummation of the Stalking Horse Transaction; and timing for applications to the Court for required approvals. 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: granting of the SISP Order and recognition thereof by the U.S. Court; satisfaction of the conditions precedent to consummation of the Stalking Horse Transaction, including approval thereof by the Court and the U.S. Court and receipt of all required regulatory approvals; the ability of the Just Energy Entities to continue as a going concern; the outcome of proceedings under the CCAA and similar legislation in the United States; the outcome of*

*any potential litigation with respect to the February 2021 extreme weather event in Texas, the outcome of any invoice dispute with the Electric Reliability Council of Texas; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; 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](http://www.sedar.com) and on the U.S. Securities and Exchange Commission's website at [www.sec.gov](http://www.sec.gov) or through Just Energy's website at [investors.justenergy.com](http://investors.justenergy.com).*

**FOR FURTHER INFORMATION PLEASE CONTACT:**

**Investors**

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Michael Carter  
Just Energy, Chief Financial Officer  
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**Court-appointed Monitor**

FTI Consulting Canada Inc.  
Phone: 416-649-8127 or 1-844-669-6340  
[justenergy@fticonsulting.com](mailto:justenergy@fticonsulting.com)

**Media**

Holly Winter  
Longview Communications  
Phone: 416-454-7595  
[hwinter@longviewcomms.ca](mailto:hwinter@longviewcomms.ca)

**Source:** Just Energy Group Inc



THIS IS **EXHIBIT “L”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**CONFIDENTIAL EXHIBIT “L”**

THIS IS **EXHIBIT “M”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

June 17, 2022

**VIA EMAIL**

The Honourable Justice McEwen  
Ontario Superior Court of Justice  
330 University Avenue  
Toronto, ON  
M5G 1R7

Your Honour:

**Re: In the Matter of the CCAA proceedings of Just Energy Group Inc. et. al. (the “Just Energy Entities”) - Court File No.: CV-21-00658423-00CL**

We act as counsel for FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor in these proceedings.

In the Endorsement dated June 10, 2022 (the “**Endorsement**”), Your Honour ordered a summary litigation process at paragraph 2(vi) therein:

Summary proceedings will be conducted on an expedited basis as soon as reasonably possible, in an effort to determine the validity and value of the claims of the plaintiff class in the U.S. class actions, the Omarali class action, the Texas Power Interruption Claimants and Pariveda Solutions Inc.

At paragraph 2(vii) of the Endorsement, Your Honour ordered the Monitor to forthwith liaise with the relevant parties to determine such process.

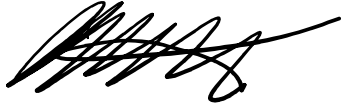
The Monitor has consulted with counsel to the four aforementioned plaintiff groups, the Just Energy Entities and the Plan Sponsor with respect to a potential summary process. However, given the status of the negotiations relating to the structure of the Just Energy Entities’ restructuring in these proceedings, the parties have all agreed that the directed process should be temporarily postponed, pending a determination on the Just Energy Entities’ proposed path forward.

The parties hereby request Your Honour’s indulgence that compliance with the directed process set out in the Endorsement be put in abeyance pending further developments in these proceedings.

Should circumstances change and the directed process be required, we shall forthwith advise Your Honour.

Yours truly,

**Thornton Grout Finnigan LLP**



Robert I. Thornton

cc: Paul Bishop, Jim Robinson, FTI Consulting Canada Inc.  
Marc Wasserman, Michael De Lellis, Jeremy Dacks, Shawn Irving, Osler, Hoskin & Harcourt LLP  
Alan Merskey, Ryan Jacobs, Jane Dietrich, Cassels Brock & Blackwell LLP  
Ken Rosenberg, Jeffrey Larry, Danielle Glatt, Paliare Roland Rosenberg Rothstein LLP  
David Rosenfeld, James Harnum, Koskie Minsky LLP  
Harvey Chaiton, Chaitons LLP  
Jason Wadden, Tyr LLP

THIS IS **EXHIBIT “N”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

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Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**CITATION:** Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022  
ONSC 2697  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220505

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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 ARRANGMENT OF  
JUST ENERGY GROUP INC., JUST  
ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSALE  
ENERGY CORPORATION, JUST  
ENERGY FINANCE CANADA ULC,  
HUDSONENERGY 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

)  
)  
) *Jeremy Dacks Shawn Irving, Marc*  
) *Wasserman and Michael De Lellis, for the*  
) *Applicants*  
)

) *Ryan Jacobs and Jane Dietrich, Canadian*  
) *Counsel to LVS III SPE XV LP, TOCU*  
) *XVII LLC, HVS XVI LLC, and OC II LVS*  
) *XIV LP in their capacity as the DIP Lenders*  
)

) *David Botter, Sarah Schultz and Abid*  
) *Quereshi, US Counsel to LVS III SPE XV*  
) *LP, TOCU XVII LLC, HVS XVI LLC, and*  
) *OC II LVS XIV LP in their capacity as the*  
) *DIP Lenders*  
)

) *Heather Meredith and James Gage,*  
) *Canadian Counsel to the Agent and the*  
) *Credit Facility Lenders*  
)

) *Ken Rosenberg and Danielle Glatt, 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.*  
)

) *Steven Wittels and Susan Russell, US*  
) *Counsel for the Respondent Fira Donin and*  
) *Inna Golovan, in their capacity as proposed*  
) *class representatives in Donin et al. v. Just*  
) *Energy Group Inc. et al.; US Counsel for*  
) *Trevor Jordet, in his capacity as proposed*  
)

MARKETING LLS, JUST ENERGY	)	class representative in <i>Jordet v. Just Energy</i>
ADVANCED SOLUTIONS LLC,	)	<i>Solutions Inc.</i>
FULCRUM RETAIL ENERGY LLC,	)	
FULCRUM RETAIL HOLDINGS LLC,	)	<i>Howard Gorman and Ryan Manns</i> , for Shell
TARA ENERGY, LLC, JUST ENERGY	)	Energy North American (Canada) Inc. and
MARKETING CORP., JUST ENERGY	)	Shell Energy North America (US)
CONNECTICUT CORP., JUST ENERGY	)	
LIMITED, JUST SOLAR HOLDINGS	)	<i>Alexandra McCawley</i> , for FortisBC Energy
CORP. and JUST ENERGY (FINANCE)	)	Inc.
HUNGARY ZRT.	)	
	)	<i>Mike Weinczok</i> , for Computershare Trust
	)	Company of Canada
	)	
<b>– and –</b>	)	<i>Robert Thornton, Rebecca Kennedy, Rachel</i>
	)	<i>Nicholson and Puya Fesharaki</i> , for FTI
MORGAN STANLEY CAPITAL GROUP	)	Consulting Canada Inc., as Monitor
INC.	)	
	)	<i>John F. Higgins and Megan Young-John</i> ,
	)	U.S. Counsel to FTI Consulting Canada Inc.,
	)	as Monitor
	)	
	)	
	)	
	)	<b>HEARD:</b> April 21, 2022

**ENDORSEMENT**

**MCEWEN, J.**

[1] The Applicant Just Energy Group, Inc. (“Just Energy”), in its capacity as the foreign representative (the “Foreign Representative”)<sup>1</sup> of the Applicants and the partnerships listed in Schedule “A” of the Initial Order (collectively, the “Just Energy Entities”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “CCAA”) brings this motion seeking an order that the Foreign Representative and other Just Energy Entities, as the case may be, are authorized and empowered to pursue claims pursuant to s. 36.1 of the CCAA (the “Section 36.1 Claims”) in the proceedings commenced in the United States Bankruptcy Court for

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<sup>1</sup> For ease of reference I will hereinafter refer to the moving party as the “Foreign Representative”.



the South District of Texas (the “U.S. Bankruptcy Court”) bearing case no. 21-04399 (the “Adversary Proceeding”) *nunc pro tunc*.

[2] The Foreign Representative further seeks an order that FTI Consulting Canada Inc. (the “Monitor”) be authorized to take whatever actions or steps it deems advisable to assist and supervise the Foreign Representative (and the other Just Energy Entities, as the case may be) with respect to the prosecution of the Section 36.1 Claims in the Adversary Proceeding.

[3] Last, in the alternative, the Foreign Representative submits that the Monitor ought to be authorized to jointly serve as the foreign representative in the matters before the U.S. Bankruptcy Court (the “Chapter 15 Cases”) to jointly prosecute the Section 36.1 Claims in the Adversary Proceeding, *nunc pro tunc*.

[4] For the reasons that follow I grant the relief sought. I therefore do not need to deal with the alternative relief sought by the Foreign Representative.

## **BACKGROUND**

[5] In March 2021 the Applicants obtained protection under the CCAA pursuant to the issuance of the Initial Order of this Court. The Initial Order granted protections and authorizations to the partnerships listed in Schedule “A” to the Initial Order and also, amongst other things, appointed the Monitor.

[6] Just Energy was further appointed in the Initial Order as the Foreign Representative in connection with the proposed recognition of the CCAA proceeding under Chapter 15 of the U.S. Bankruptcy Code. The CCAA proceeding was thereafter formally recognized by the U.S. Bankruptcy Court by way of an order dated April 2, 2021.

[7] In November 2021, the Foreign Representative, along with Just Energy Texas LP, Fulcrum Retail Energy LLC and Hudson Energy Services LLC (the “Plaintiffs”) commenced the Adversary Proceeding against the Electricity Reliability Council of Texas (“ERCOT”) and the Texas Public Utilities Commission (“PUCT”) in the U.S. Bankruptcy Court. The Plaintiffs challenge the approximately USD \$274 million paid under protest by or on behalf of the Just Energy Entities in respect of invoice obligations incurred with respect to ERCOT and payments made (collectively, the “Transfers”) for electricity purchased by the Just Energy Entities in connection with the winter storm event that occurred in Texas in February 2021.

[8] Subsequently, in January 2022 ERCOT and PUCT moved to dismiss the Initial Complaint filed in the Adversary Proceeding. PUCT was successful. The Court also dismissed some of the claims against ERCOT and directed the Plaintiffs to file an amended complaint with respect to certain claims in the Initial Complaint. The Plaintiffs filed an amended complaint (the “First Amended Complaint”).

[9] In March 2022 ERCOT filed a motion to dismiss the First Amended Complaint on the basis that, amongst other things, the Foreign Representative did not have standing to advance the Section 36.1 Claims.

[10] The motion proceeded before Judge David R. Jones on April 4, 2022. At the hearing Judge Jones requested that the Foreign Representative seek direction from this Court with respect to the question of the proper party to advance the Section 36.1 Claims. Thereafter Judge Jones stayed the Adversary Proceeding pending further order so that the parties could seek direction from this Court.

[11] This led to the motion before me.

### SECTION 36.1 CLAIMS

[12] Section 36.1 was added to the CCAA in 2009. It is intended to allow fraudulent preferences and transfers undervalue (“TUVs”) to be investigated and clawed back for the benefit of the debtor’s estate in the CCAA proceeding. The relevant provisions of s. 36.1 read as follows:

36.1 (1) Sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act apply, **with any modifications that the circumstances require**, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

#### Interpretation

(2) For the purposes of subsection (1), a reference in sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

(a) to “date of the bankruptcy” is to be read as a reference to “day on which proceedings commence under this Act”;

(b) to “trustee” is to be read as a reference to “monitor”; and

(c) to “bankrupt”, “insolvent person” or “debtor” is to be read as a reference to “debtor company”. (emphasis added)

[13] As can be seen, s. 36.1 incorporates ss. 38 and 95-101 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) to ensure consistency with the BIA. Section 36.1(2) was inserted for clarity to assist with the interpretation of the terminology contained in the BIA in the context of a CCAA proceeding: see Industry Canada, *Bill C-12: Clause by Clause Analysis*, which describes the government’s rationale for the addition of section 36. 1.

[14] In its motion to dismiss the Adversary Proceeding, ERCOT relied upon s. 36.1(2)(b) to argue that only the Monitor has standing to pursue Section 36.1 Claims. As noted, Judge Jones referred the issue to this Court.

## **THE MOTION**

### **Standing**

[15] ERCOT refused to attorn to the jurisdiction of this Court. It therefore did not make submissions. ERCOT did provide a letter outlining its position to the Monitor.

[16] The Monitor advised at the motion that the letter from ERCOT did not raise any cases or points of law that were not included in the Applicant's factum. The Monitor took the position that the letter should not be placed in the court file since it would place the Monitor in a position where it was advocating for a party that did not wish to attorn to this Court's jurisdiction. I agreed with the argument and the letter was not placed before me.

### **Position of ERCOT in Adversary Proceeding**

[17] As I understand it, from reviewing the Applicants' materials which include ERCOT's Motion to Dismiss First Amended Complaint and For Abstention, ERCOT relied upon s. 36.1(2)(b) of the CCAA to argue that only the Monitor has standing to pursue Section 36.1 Claims in the Adversary Proceeding.

[18] Sections 95-101 of the BIA are available to a trustee in bankruptcy to pursue certain transactions that are considered to be a preference. Section 96(1) also provides, in certain circumstances, for the trustee to pursue TUVs. The trustee steps into the shoes of the bankrupt by the operation of law so that the bankrupt cannot maintain control over its own property. As noted above, s. 36.1(2)(2) notes that in the CCAA a reference to the provisions of the BIA is to be read as a reference to the monitor.

[19] Based on the foregoing, ERCOT took the position that only the Monitor, pursuant to s. 36.1(2)(b) could bring Section 36.1 Claims in the CCAA proceeding and s. 36.1 does not provide that a foreign representative can bring such a claim.

[20] In this regard, ERCOT relied up on four CCAA cases.

[21] Two of the cases simply involved cases where the Monitor pursued the claims under s. 36.1: see *Ernst & Young Inc. v. Aquino*, 2021 ONSC 527, aff'd 2022 ONCA 202 and *Urbancorp Cumberland 2 GP Inc.*, 2017 ONSC 7156.

[22] In two other cases the Court refused to grant standing to third parties to pursue Section 36.1 Claims: see *Cash Store Financial Services, Re*, 2014 ONSC 4326, aff'd 2014 ONCA 834 and *Verdellen v. Monaghan Mushrooms Ltd.*, 2011 ONSC 5820.

### **Position of the Foreign Representative**

[23] I begin by noting that the Court-appointed Monitor supports the Foreign Representative's position.

[24] The Just Energy Entities have kept the Monitor apprised of the steps taken in the Adversary Proceeding and representatives of the Monitor have attended all relevant hearings before the U.S. Bankruptcy Court. The Monitor is of the view that the Plaintiffs' claim has merit and that there may be recoveries from the Adversary Proceeding.

[25] Insofar as the Foreign Representative's position is concerned, it submits that ERCOT's submission is purely technical in nature. It further submits that in cross-border CCAA proceedings in which Canada is the main centre of interest there is no requirement under the CCAA that the Monitor act as foreign representative in foreign proceedings. It points to a number of cases where an applicant company has acted as the foreign representative: *Xerium Technologies (Re)*, 2010 ONSC 3974; *Cinram International (Re)*, 2012 ONSC 3767.

[26] Insofar as s. 36.1 and its interplay with BIA is concerned, the Foreign Representative submits that it generally makes sense under the BIA to have the trustee step into the shoes of the bankrupt so as to deprive the bankrupt of control over its property during the duration of the bankruptcy. The Foreign Representative, however, submits that the same rationale does not apply to CCAA proceedings where the debtor remains in possession.

[27] The Foreign Representative also stresses that it is well established in Canadian case law that the CCAA is to be read broadly and liberally with a view to facilitating its objectives – namely, to allow the debtor to restructure its affairs to the benefit of its stakeholders: see *Century Services Canada Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70. In this regard it points to s. 11 of the CCAA which provides this Court with the jurisdiction to “make any order that it considers appropriate in the circumstances” and that the broad language of s. 11 “should not be read as being restricted by the availability of more specific orders”: see *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014 at para. 118 citing *US Steel Canada (Re)*, 2016 ONCA 662 at para. 79; *Century Services Canada Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.

[28] The Foreign Representative further submits that it is important to note that s. 36.1(2) was inserted to assist in transplanting the BIA provisions into the CCAA and that s. 36.1(1) of the CCAA contemplates that the application of the BIA provisions in a CCAA proceeding will be subject to “any modification that the circumstances require” (as emphasized above in para. 12).

[29] The Foreign Representative therefore submits that a reasonable modification should be made to allow it to pursue the Section 36.1 Complaints. Otherwise, it would be inconsistent with CCAA principles to read s. 36.1(2)(b) as a prohibition against the prosecution of Section 36.1 Claims by the Foreign Representative simply because it is not the Monitor. It stresses that this would be particularly perverse since the Monitor has expressly supported its position and the Foreign Representative's position is to the benefit of the Applicants and all stakeholders.

[30] I pause to note that the Monitor, in support of the Foreign Representative's position, also points to s. 101.1(1) of the BIA which states:

Sections 95 to 101 apply, with any **modifications that the circumstances require**, to a proposal made under Division I of Part III unless the proposal provides otherwise. (emphasis added)

[31] The Monitor submits that s. 101.1(1) deals with the incorporation of these sections into a proposal and allows for “any modifications that the circumstances require.” The Monitor therefore argues that it is contemplated that modifications can be made where there is a debtor in possession such as is the case in this matter. This allows the debtor, such as Just Energy as Foreign Representative, to pursue claims where it remains in possession. This is particularly sensible, submits the Monitor, where a claim is being pursued for the benefit of the debtor and the stakeholders, which is the case here.

[32] The Monitor points out that there are instances where the Monitor should pursue a claim, for example where the debtor company may be uninterested, but in the circumstances of this case the Foreign Representative, supported by the Monitor, is fully engaged in pursuing the Adversary Proceeding for the benefit of its estate and all stakeholders. It should not be defeated by a narrow and restrictive reading of s. 36.1 and the relevant provisions of the BIA. This would run contrary to a broad and liberal reading that the case law endorses.

[33] The Foreign Representative submits that all of the cases relied on by ERCOT in its motion to dismiss are distinguishable.

[34] First, the Foreign Representative submits that *Ernst & Young Inc. v. Aquino* and *Urbancorp Cumberland 2 GP Inc* are cases in which the Monitor did act as a party in pursuing a s. 36 claim. However, the issue of standing was not addressed in either case as it did not arise on the facts and therefore did not have to be considered by the court.

[35] In the latter two cases, *Cash Store* and *Verdellen*, the Foreign Representative does not dispute that the courts refused standing to a third party to pursue claims under s. 36.1 but both are distinguishable from this case in that they did not address the issue of standing of a foreign representative.

[36] For example, in *Cash Store*, the DIP lender sought to pursue Section 36.1 Claims before the monitor had completed its review of the purported preferences. The court held that the DIP lender could not proceed because the monitor had not yet refused to pursue Section 36.1 claims, and thus the provisions of s. 36.1 could not be utilized. The Foreign Representative therefore submits that *Cash Store* is entirely distinguishable. It also submits that the *Verdellen* case is distinguishable as the Court simply determined that a person who is not a creditor could not apply under s. 36 of the CCAA. The Foreign Representative therefore submits that neither of these cases address the issue of its standing but simply make general statements of law concerning a monitor’s right to advance Section 36.1 Claims.

[37] Last, the Foreign Representative submits that allowing it to pursue the Section 36.1 Claims is the most cost efficient and economical way to proceed. If the Monitor were to proceed with this claim instead, it would require an extensive and duplicative documentary review which would not assist in obtaining a maximum recovery. The Monitor agrees.

## ANALYSIS

[38] I accept the submissions of the Foreign Representative.

[39] The law is settled that the provisions of the CCAA are to be read broadly and liberally with a view to allow the debtor to restructure its affairs to the benefit of its stakeholders. When one considers the intersection of Section 36.1 Claims and the relevant provisions of the BIA it is entirely consistent with the provisions of the BIA and CCAA to allow a foreign representative to pursue Section 36.1 Claims. Both s. 101.1(1) of the BIA and s. 36.1(1) of the CCAA allow for modifications as circumstances require. I pause here to note that, although I am not being asked to determine the issue of whether only a trustee is able to bring a s. 95 action, I can see no provisions in the BIA that state that a trustee is the only party that can bring such an action. This seems to run contrary to the provisions of s. 101.1(1) of the BIA. Further, under s. 38 a creditor can take an assignment from a trustee. In my view this demonstrates the harmony between the BIA and the CCAA in which both are trying to achieve fairness in recovering assets for the benefit of the debtor and all stakeholders.

[40] In this case, where the Foreign Representative seeks to pursue the claim on behalf of the Just Energy Entities, with the support of the Monitor and for the benefit of all stakeholders, it is fair and reasonable to allow the necessary modification to allow the Foreign Representative to pursue the Adversary Proceeding. It further makes sense, as requested by the Foreign Representative, to have the Monitor take whatever actions or steps it deems advisable to assist and, importantly, supervise the Foreign Representative with respect to the prosecution of Section 36.1 Claims in the Adversary Proceeding. This allows the court-appointed Monitor to be kept abreast of all developments in the Adversary Proceeding, supervise the Foreign Representative as necessary and report to this Court. In my view, this undoubtedly benefits the Applicants and all stakeholders.

[41] The position advanced by ERCOT runs contrary to the spirit of the CCAA as well as the wording of the relevant provisions of the BIA and CCAA which allow for, as noted, modifications which ought to be allowed in this case for the reasons noted above.

[42] I further accept the submissions of the Foreign Representative that the case law relied upon by ERCOT in the Adversary Proceeding is entirely distinguishable and not of assistance in this case.

[43] Given the fact that I am allowing the Foreign Representative to pursue the Section 36.1 Claims in the Adversary Proceeding, it is likely unnecessary to determine whether the order should be made *nunc pro tunc*. I am prepared to grant the order, however, since the Foreign

Representative has acted in this capacity throughout the Adversary Proceeding and the Section 36.1 Claims. It would be sensible, therefore, for this to be recognized by way of a *nunc pro tunc* order to avoid any uncertainty.

[44] In conclusion, I see no mischief in allowing the Foreign Representative to pursue the Section 36.1 Claims in the Adversary Proceeding. It is consistent with the broad and liberal reading that should be afforded to the CCAA. This is provided for in the relevant wording of the BIA and CCAA and is to the benefit of the Applicants and stakeholders. For the reasons above, the Monitor will maintain its supervisory capacity. The Monitor's assistance would also be useful to the Foreign Representative as it maintains its duties as a court-appointed officer.

#### **DISPOSITION**

[45] The order shall therefore go allowing the Foreign Representative and other Just Energy Entities, as the case may be, to pursue the Section 36.1 Claims in the Adversary Proceeding, *nunc pro tunc*, with the Monitor being authorized and directed to take whatever actions and steps it deems advisable to assist and supervise the Just Energy Entities with respect to the prosecution of the Section 36.1 Claims in the Adversary Proceeding.

[46] I have reviewed the draft order provided to me by the Foreign Representative. The terms of the order are fair and reasonable. I have signed the order and will provide it to counsel. I attach a copy of the order to this Endorsement as Schedule "A".



---

McEwen, J.

**Released:** May 5, 2022

Schedule "A"

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) THURSDAY THE 5th  
 )  
JUSTICE MCEWEN ) DAY OF MAY, 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 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**

**(Motion re Authorization to Pursue Section 36.1 Claims in Adversary Proceeding)**

**THIS MOTION**, made by Just Energy Group, Inc. ("**Just Energy**"), in its capacity as the foreign representative (the "**Foreign Representative**") of the Applicants and the partnerships listed on Schedule "A" of the Initial Order (collectively, the "**Just Energy Entities**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for various relief was heard this day by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.



ON READING the Notice of Motion of the Foreign Representative, the Affidavit of James Tecce affirmed April 14, 2022, including the exhibits thereto (the “Tecce Affidavit”) and the Ninth Report of FTI Consulting Canada Inc., in its capacity as monitor (the “Monitor”), dated April 18, 2022 (the “Ninth Report”), and on hearing the submissions of respective counsel for the Foreign Representative, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Emily Paplawski, affirmed April 14, 2022, 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.

**STANDING TO PURSUE ADVERSARY PROCEEDING**

2. **THIS COURT ORDERS** that:
- (a) the Foreign Representative and other Just Energy Entities, as the case may be, are hereby authorized and empowered to pursue the Section 36.1 Claims (as defined in the Tecce Affidavit) in the adversary proceeding commenced in the United States Bankruptcy Court for the Southern District of Texas (the “U.S. Bankruptcy Court”) bearing adversary proceeding no. 21-4399 (MI) (the “Adversary Proceeding”), *nunc pro tunc*; and
  - (b) the Monitor is hereby authorized and directed to take whatever actions or steps it deems advisable to assist and supervise the Just Energy Entities with respect to the prosecution of the Section 36.1 Claims in the Adversary Proceeding.

**GENERAL**

3. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces

and territories in Canada.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of the U.S. Bankruptcy Court, and any other court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America 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.

McE T.

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.

Applicants

5 May 22

Order to go as per the draft filed and signed.



*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

(Motion re Authorization to Pursue Section 36.1 Claims  
in Adversary Proceeding)

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Counsel for the Applicants

**CITATION:** Just Energy Group Inc. et. al., 2022 ONSC 2697  
**COURT FILE NO.:** CV-21-00658423-00CL  
**DATE:** 20220505

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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 ARRANGMENT OF JUST ENERGY GROUP  
INC., JUST ENERGY CORP., ONTARIO ENERGY  
COMMODITIES INC., UNIVERSALE ENERGY  
CORPORATION, JUST ENERGY FINANCE CANADA  
ULC, HUDSONENERGY 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 LLS, 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

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**ENDORSEMENT**

---

McEwen, J.

**Released:** May 5, 2022





**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY THE 5th  
 )  
JUSTICE MCEWEN ) DAY OF MAY, 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 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**

**(Motion re Authorization to Pursue Section 36.1 Claims in Adversary Proceeding)**

**THIS MOTION**, made by Just Energy Group, Inc. (“**Just Energy**”), in its capacity as the foreign representative (the “**Foreign Representative**”) of the Applicants and the partnerships listed on Schedule “A” of the Initial Order (collectively, the “**Just Energy Entities**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for various relief was heard this day by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the Notice of Motion of the Foreign Representative, the Affidavit of James Tecce affirmed April 14, 2022, including the exhibits thereto (the “**Tecce Affidavit**”) and the Ninth Report of FTI Consulting Canada Inc., in its capacity as monitor (the “**Monitor**”), dated April 18, 2022 (the “**Ninth Report**”), and on hearing the submissions of respective counsel for the Foreign Representative, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Emily Paplawski, affirmed April 14, 2022, 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.

### **STANDING TO PURSUE ADVERSARY PROCEEDING**

2. **THIS COURT ORDERS** that:

- (a) the Foreign Representative and other Just Energy Entities, as the case may be, are hereby authorized and empowered to pursue the Section 36.1 Claims (as defined in the Tecce Affidavit) in the adversary proceeding commenced in the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Bankruptcy Court**”) bearing adversary proceeding no. 21-4399 (MI) (the “**Adversary Proceeding**”), *nunc pro tunc*; and
- (b) the Monitor is hereby authorized and directed to take whatever actions or steps it deems advisable to assist and supervise the Just Energy Entities with respect to the prosecution of the Section 36.1 Claims in the Adversary Proceeding.

### **GENERAL**

3. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces



and territories in Canada.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of the U.S. Bankruptcy Court, and any other court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America 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.

  
\_\_\_\_\_

**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.***

Applicants

5 May 22

Order to go as per the draft filed and signed.



***Ontario***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**  
**(Motion re Authorization to Pursue Section 36.1 Claims  
in Adversary Proceeding)**

**OSLER, HOSKIN & HARCOURT LLP**  
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Tel: 416.362.2111  
Fax: 416.862.6666

Counsel for the Applicants

THIS IS **EXHIBIT “O”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

---

Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)

**ENTERED**

July 19, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

JUST ENERGY GROUP INC., et al.,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 21-30823 (MI)

JUST ENERGY TEXAS LP, FULCRUM RETAIL  
ENERGY LLC, HUDSON ENERGY SERVICES  
LLC, JUST ENERGY GROUP, INC., and  
LUMINANT ENERGY COMPANY LLC,

Plaintiffs and Plaintiff-Intervenor,

v.

ELECTRIC RELIABILITY COUNCIL OF TEXAS,  
INC., NRG ENERGY INC. and CALPINE  
CORPORATION,

Defendant and Defendant-Intervenors.

Adv. Pro. 21-04399 (DRJ)

**ORDER GRANTING THE MOTION OF FOREIGN REPRESENTATIVE, PURSUANT  
TO 11 U.S.C. §§ 105(a), 1501(a), 1507(a), AND 1521(a), FOR ENTRY OF AN  
ORDER RECOGNIZING AND ENFORCING CANADIAN COURT  
DECISION CONCERNING CANADIAN LAW CLAIMS<sup>2</sup>**

(Relates to ECF No. 175)

CAME ON FOR CONSIDERATION, the Motion to the Foreign Representative, Pursuant to 11 U.S.C. §§ 105(a), 1501(a), 1507(a), and 1521(a), for Entry of an Order Recognizing and Enforcing Canadian Court Decision Concerning Canadian Law Claims (the “**Motion**”) and this

<sup>1</sup> The identifying four digits of Just Energy Group Inc.’s local Canada tax identification number are 0469. A complete list of debtor entities in these chapter 15 cases may be obtained at [www.omniagentsolutions.com/justenergy](http://www.omniagentsolutions.com/justenergy).

<sup>2</sup> Capitalized terms not defined herein have the meanings ascribed to them in the Motion to the Foreign Representative, Pursuant to 11 U.S.C. §§ 105(a), 1501(a), 1507(a), and 1521(a), for Entry of an Order Recognizing and Enforcing Canadian Court Decision Concerning Canadian Law Claims.

Court having reviewed the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and due and proper notice of the Motion having been provided; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

1. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1410.

5. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15 of the Bankruptcy Code to protect the Debtors and the interests of their creditors and other parties in interest, is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted.

6. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on (to the extent necessary), the Motion was given, which notice is adequate for all purposes, and no further notice need be given.

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

7. The Motion is GRANTED.

8. Upon entry of this Order, the Canadian Decision (composed of the Canadian Court Order, attached as Exhibit A to the Motion, and the Canadian Court's Endorsement, attached as Exhibit B to the Motion) shall be and hereby is granted comity and given full force and effect in the United States.

9. This Order is without prejudice to the Foreign Representative requesting any additional relief, including seeking recognition and enforcement by this Court of any further orders issued by the Canadian Court.

10. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

11. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

**Signed: July 19, 2022.**

  
\_\_\_\_\_  
**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**

Order submitted by:

James C. Tecce  
Quinn Emanuel Urquhart & Sullivan, LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Telephone: 212-849-7000

THIS IS **EXHIBIT “P”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL CARTER SWORN BEFORE ME over video teleconference  
this 4<sup>th</sup> day of August, 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 of Toronto, in the Province of Ontario.

*MC*

---

Commissioner for Taking Affidavits  
Matthew Cressatti (LSO No. 77944T)



**ENTERED**

July 19, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<p>In re:</p> <p>JUST ENERGY GROUP INC., <u>et al.</u>,</p> <p style="text-align: center;">Debtors in a Foreign Proceeding.<sup>1</sup></p> <hr/> <p>JUST ENERGY TEXAS LP, FULCRUM RETAIL ENERGY LLC, HUDSON SERVICES LLC, JUST ENERGY TEXAS I CORP., JUST ENERGY GROUP, INC., and LUMINANT ENERGY COMPANY LLC,</p> <p style="text-align: center;">Plaintiffs and Plaintiff-Intervenor,</p> <p style="text-align: center;">v.</p> <p>ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., NRG ENERGY INC., and CALPINE CORPORATION,</p> <p style="text-align: center;">Defendant and Defendant-Intervenors.</p>
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Chapter 15

Case No. 21-30823 (MI)

Adv. Pro. 21-04399 (DRJ)

**ORDER CERTIFYING DIRECT INTERLOCUTORY APPEAL**

1. At a hearing dated June 27, 2022 [ECF No. 195, 198] (the “**June 27 Hearing**”), the Court announced its decision granting in part and denying in part Electric Reliability Council of Texas, Inc.’s (“**ERCOT**”) *Motion to Dismiss Second Amended Complaint and for Abstention* [ECF No. 190] (“**Motion to Dismiss**”).

2. As relevant here, ERCOT moved to dismiss Plaintiffs’<sup>2</sup> Second Amended Complaint [ECF No. 184 (sealed) No. 185 (redacted)] based on the grounds that (1) ERCOT is immune from suit (the “**Immunity Issue**”); (2) the Court should abstain under *Burford* (the

<sup>1</sup> The identifying four digits of Just Energy Group Inc.’s local Canada tax identification number are 0469. A complete list of debtor entities in these chapter 15 cases may be obtained at [www.omniagentsolutions.com/justenergy](http://www.omniagentsolutions.com/justenergy).

<sup>2</sup> “**Plaintiffs**” or “**Just Energy**” are Just Energy Texas LP, Fulcrum Retail Energy LLC, Hudson Services LLC, Just Energy Texas I Corp. and Just Energy Group, Inc.

“**Burford Issue**”); (3) the filed-rate doctrine bars Just Energy’s claims (the “**Filed-Rate Issue**”); and (4) Just Energy failed to join an indispensable party, that is, the Public Utility Commission of Texas (“**Indispensable-Party Issue**”). For the reasons announced on the record at the June 27 Hearing, the Court denied ERCOT’s Motion to Dismiss with respect to each of these four grounds and entered the *Order Granting in Part and Denying in Part Motion to Dismiss Second Amended Complaint* [ECF No. 209] on July 6, 2022 (the “**MTD Order**”).

3. At the June 27 Hearing and during a subsequent status conference held on July 7, 2022 [ECF Nos. 210, 211], ERCOT informed the Court of its intent to appeal immediately certain portions of the MTD Order, specifically of ERCOT’s intent to appeal (1) the Immunity Issue, which ERCOT contends constitutes an appeal as of right pursuant to either the collateral order doctrine or 28 U.S.C. § 158(a)(1), and of ERCOT’s intent to seek leave to appeal under 28 U.S.C. § 158(a)(3) of the other three interlocutory decisions relating to (2) the *Burford Issue*,<sup>3</sup> (3) the Filed-Rate Issue, and (4) the Indispensable-Party Issue. The Immunity Issue, the *Burford Issue*, the Filed-Rate Issue, and the Indispensable Party Issue shall be referred to collectively as the “**Appellate Issues**.”

4. On July 19, 2022, ERCOT and Defendant-Intervenors Calpine Corporation and NRG Energy, Inc. (the “**Defendant-Intervenors**”) timely filed their notice of appeal from the MTD Order. The Court finds, and the parties agree, that immediate appeal of the Appellate Issues

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<sup>3</sup> By agreeing to certify the *Burford Issue* so that as a procedural matter ERCOT can raise it with the appellate court, Just Energy is not waiving its substantive rights to argue on appeal that the *Burford Issue* is not reviewable pursuant to 28 U.S.C. § 1334(d) (“Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable on appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.”). For the avoidance of doubt, Just Energy reserves all rights, claims, and defenses with respect to the *Burford Issue*.

will materially advance the process of this adversary proceeding.<sup>4</sup> The parties filed their joint certification to the court of appeals on July 19, 2022.

5. Accordingly, the Court hereby certifies the MTD Order for direct appeal to the Fifth Circuit pursuant to 28 U.S.C. § 158(d)(2)(A)(iii) as well as Federal Rule of Bankruptcy Procedure 8006(c).

6. The Court recommends that the appeal be heard on an expedited basis.

7. Just Energy, ERCOT, and the Defendant-Intervenors agree that the appeal should be heard on an expedited basis. To that end, the parties have stipulated to the following:

- (a) within seven days of the entry of this Order,
  - (i) ERCOT and the Defendant-Intervenors will file their unopposed, combined petition for direct review with the Fifth Circuit pursuant to 28 U.S.C. 158(d)(2)(A)(iii) reflecting the Parties' joint certification that an immediate appeal of the Appellate Issues will materially advance the progress of the proceeding (the "**Petition**") and that states Just Energy does not oppose the Petition but does not concur in all arguments set forth in the Petition; and
  - (ii) Just Energy will file its unopposed motion to expedite appeal (the "**Motion to Expedite Appeal**") that requests that the Fifth Circuit expedite the appeal and that states ERCOT and the Defendant-Intervenors do not oppose the request for expedition but do not concur in all arguments set out in the Motion to Expedite Appeal;
- (b) within seven days of the entry of this Order, ERCOT and the Defendant-Intervenors will file their combined "designation of the items to be included in the record on appeal and a statement of the issues to be presented" pursuant to Bankruptcy Rule 8009(a)(1)(A) (the "**Record Designation**");
- (c) within seven days of the Record Designation being filed, Just Energy will file its "designation of additional items to be included in the record" pursuant to Bankruptcy Rule 8009(a)(2) (the "**Counter-Designation**");

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<sup>4</sup> See 28 U.S.C. § 158(d)(2)(iii). Plaintiffs do not agree certification is appropriate pursuant to either 28 U.S.C. § 158(d)(2)(A)(i) (i.e., that the MTD Order "involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or the Supreme Court of the United States, or involves a matter of public importance") or 28 U.S.C. § 158(d)(2)(A)(ii) (i.e., that the MTD Order "involves a question of law requiring resolution of conflicting decisions").

- (d) when *both* (i) the Fifth Circuit enters an Order granting the Petition and (ii) the Appellate Record is filed with the Fifth Circuit (collectively, the “**Acceptance Date**”), the appellate briefs will be filed as follows (hereinafter, the “**Briefing Schedule**”):
- (i) ERCOT and the Defendant-Intervenors (hereinafter, “**Appellants**”) will file their combined principal brief within 28 days of the Acceptance Date;
  - (ii) Just Energy (hereinafter, “**Appellees**”) will file their response brief within 21 days of the filing of Appellants’ brief;
  - (iii) Appellants will file their combined reply brief within 14 days of the filing of Appellees’ brief; and
  - (iv) Appellants and Appellees agree to comply with the Briefing Schedule regardless of whether the Fifth Circuit grants the Motion To Expedite Appeal.

8. The Clerk’s office shall promptly transmit the Record on Appeal, *see* Fed. R. Bankr.

P. 8009(a)(4) to the Fifth Circuit after Plaintiffs’ filing of the Counter-Designation.

So Ordered.

**Signed: July 19, 2022.**

  
\_\_\_\_\_  
DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

AGREED BY:

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***Counsel for NRG Energy, Inc.***

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C- 36, AS AMENDED;** Court File No: CV-21-00658423-00CL

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

Applicants

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*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at: TORONTO

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**AFFIDAVIT OF MICHAEL CARTER**

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Counsel for the Applicants



## **TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 17 <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF AUGUST, 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 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**”)

**SISP APPROVAL ORDER**

**THIS MOTION**, made by the Applicants (together, the Applicants and the partnerships listed on **Schedule “A”** hereto, the “**Just Energy Entities**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*, approving the Sale and Investment Solicitation Process in respect of the Just Energy Entities attached hereto as **Schedule “B”** (the “**SISP**”) and certain related relief, 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 August 4, 2022 and the Exhibits thereto (the “**Carter Affidavit**”), the Eleventh Report of FTI Consulting Canada Inc. (the “**Eleventh Report**”), in its capacity as monitor (the “**Monitor**”), dated August ●, 2022, and on hearing the submissions of counsel for the Just Energy Entities, the Monitor, the Sponsor (as hereinafter defined), and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn August ●, 2022.

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP, the Second Amended and Restated Initial Order of this Court dated May 26, 2021 (the “**Second ARIO**”), or the Support Agreement attached as Exhibit “I” to the Carter Affidavit (the “**Support Agreement**”), as applicable.

### **SALES AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Just Energy Entities are hereby authorized to implement the SISP pursuant to the terms thereof. The Just Energy Entities, the Monitor and the Financial Advisor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder.

4. **THIS COURT ORDERS** that the Monitor and the Financial Advisor, and their respective affiliates, partners, directors, employees, and agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person

in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Monitor or Financial Advisor, as applicable, in performing their obligations under the SISP, as determined by this Court.

### **SUPPORT AGREEMENT**

5. **THIS COURT ORDERS** that the Support Agreement is hereby approved and the Just Energy Entities are authorized and empowered to enter into the Support Agreement, *nunc pro tunc*, subject to such minor amendments as may be consented to by the Monitor and as may be acceptable to each of the parties thereto, and are authorized, empowered and directed to take all steps and actions in respect of, and to comply with all of their obligations pursuant to, the Support Agreement.

6. **THIS COURT ORDERS** that, notwithstanding the stay of proceedings imposed by the Second ARIO, a counterparty to the Support Agreement may exercise any termination right that may become available to such counterparty pursuant to the Support Agreement, provided that such termination right must be exercised pursuant to and in accordance with the Support Agreement.

### **STALKING HORSE TRANSACTION AGREEMENT**

7. **THIS COURT ORDERS** that Just Energy Group Inc. ("**Just Energy**") is hereby authorized and empowered to enter into the stalking horse transaction agreement (the "**Stalking Horse Transaction Agreement**") dated as of August 4, 2022, between Just Energy and LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, OC II LVS XIV LP, OC III LFE I LP, and CBHT Energy I LLC (collectively, the "**Sponsor**") and attached as Exhibit "A" to the Carter Affidavit, *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto,

with the approval of the Monitor and subject to the terms of the Support Agreement; provided that, nothing herein approves the sale and the vesting of any Property to the Sponsor (or any of its designees) pursuant to the Stalking Horse Transaction Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Transaction is the Successful Bid pursuant to the SISP.

8. **THIS COURT ORDERS** that, as soon as reasonably practicable following Just Energy (a) entering into any amendment to the Stalking Horse Transaction Agreement permitted pursuant to the terms of this Order; or (b) agreeing upon the final Implementation Steps (as defined in the Stalking Horse Transaction Agreement), the Just Energy Entities shall, in each such case, (i) file a copy thereof with this Court, (ii) serve a copy thereof on the Service List, and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that Just Energy and the Sponsor, with the consent of the Monitor, agree should be redacted.

#### **BID PROTECTIONS**

9. **THIS COURT ORDERS** that the Break-Up Fee is hereby approved and Just Energy is hereby authorized and directed to pay the Break-Up Fee to the Sponsor (or as it may direct) in the manner and circumstances described in the Stalking Horse Transaction Agreement.

10. **THIS COURT ORDERS** that the Sponsor shall be entitled to the benefit of and is hereby granted a charge (the “**Bid Protections Charge**”) on the Property, which charge shall not exceed US\$14,660,000, as security for payment of the Break-Up Fee in the manner and circumstances described in the Stalking Horse Transaction Agreement.

11. **THIS COURT ORDERS** that Paragraphs 53, 54 and 56 of the Second ARIO shall be, and are hereby, amended in the manner detailed below:

(a) Paragraph 53 of the Second ARIO shall be amended as follows:

**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, the Cash Management Charge and the Bid Protections Charge (as defined in the Order in these proceedings dated August 17, 2022), 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; and-

Sixth – Bid Protections Charge (in the amount of US\$14,660,000).

(b) Paragraph 54 of the Second ARIO shall be amended as follows:

**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 the Cash Management Charge, or the Bid Protections 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.

- (c) Paragraph 56 of the Second ARIO shall be amended as follows:

**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, the Cash Management Charge and the Bid Protections Charge or further Order of this Court.

## **PIPEDA**

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor, the Just Energy Entities and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a “**SISP Participant**”) and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a “**Transaction**”). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor or the Just Energy Entities, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor or the Just Energy Entities. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Just Energy Entities, and shall return all other personal information to the Monitor or the Just Energy Entities, or ensure

that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor or the Just Energy Entities.

### **THIRD KEY EMPLOYEE RETENTION PLAN**

13. **THIS COURT ORDERS** that the Third KERP, as described in the Carter Affidavit and attached as Confidential Exhibit “L” 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 Third KERP.

14. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, are authorized and empowered to reallocate funds under the Third KERP originally allocated to Key Employees who have resigned, or will resign, from their employment with the Just Energy Entities, or who have declined, or will decline, to receive payments(s) under the Third KERP, to remaining Key Employees or other employees of the Just Energy Entities that the Just Energy Entities, in consultation with the Monitor, identify as critical to their ongoing business.

15. **THIS COURT ORDERS** that the KERP Charge established at paragraph 24 of the Second ARIO shall apply equally to, and secure, any remaining payments under the KERP and the Second KERP (as defined in the Order of this Court dated November 10, 2021) to the Key Employees and the payments contemplated to the Key Employees referred to in the Third KERP.

### **STAY EXTENSION**

16. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including October 31, 2022.



## **APPROVAL OF MONITOR'S REPORTS**

17. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the Just Energy Entities and these CCAA proceedings are hereby ratified and approved.

18. **THIS COURT ORDERS** that each of the Tenth Report of the Monitor dated May 18, 2022, the Supplement to the Tenth Report of the Monitor dated June 1, 2022, and the Eleventh Report be and are hereby approved.

19. **THIS COURT ORDERS** that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 17 and 18 of this Order.

## **GENERAL**

20. **THIS COURT ORDERS** that Confidential Exhibits "J" and "L" to the Carter Affidavit shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

21. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Southern District of Texas overseeing the Just Energy Entities' proceedings under Chapter 15 of the Bankruptcy Code in Case No. 21-30823 (MI), 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 in carrying out the terms of this

Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and 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.

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## SCHEDULE "A"

### 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"**  
**SALE AND INVESTMENT SOLICITATION PROCESS**

# Sale and Investment Solicitation Process

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1. On August 17, 2022, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**SISP Order**”) that, among other things, (a) authorized Just Energy (as defined below) to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof, (b) approved the Support Agreement, (c) authorized and directed Just Energy Group Inc. to enter into the Stalking Horse Transaction Agreement, (d) approved the Break-Up Fee, and (e) granted the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Second Amended & Restated Initial Order granted by the Court in Just Energy’s proceedings under the *Companies’ Creditors Arrangement Act* on May 26, 2021, as amended, restated or supplemented from time to time or the SISP Order, as applicable.
2. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives that are superior to the sale transaction to be provided for in the Stalking Horse Transaction Agreement involving the shares and/or the business and assets of Just Energy Group Inc. and its direct and indirect subsidiaries (collectively, “**Just Energy**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court (as defined below) approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of Just Energy’s shares, assets and/or business and/or an investment in Just Energy, each of which shall be subject to all terms set forth in this SISP.
3. The SISP shall be conducted by Just Energy under the oversight of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the “**Monitor**”), with the assistance of BMO Capital Markets (the “**Financial Advisor**”).
4. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by Just Energy and the Financial Advisor.
5. The SISP will be conducted such that Just Energy and the Financial Advisor will (under the oversight of the Monitor):
  - a) prepare marketing materials and a process letter;
  - b) prepare and provide applicable parties with access to a data room containing diligence information;
  - c) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to Just Energy); and
  - d) request that such parties (other than the Sponsor or its designee) submit (i) a notice of intent to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Just Energy Entities that would be the subject of the bid and that reflects a reasonably likely prospect of culminating in a Qualified Bid (as defined below), as determined by the Just Energy Entities in consultation with the Monitor and the Credit Facility Agent (subject to the confidentiality requirements set forth in Section 15 below) (a “**NOI**”) by the NOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 7 below, as determined by the Just Energy Entities in consultation with the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).

6. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- a) Just Energy to commence solicitation process on the date of service of the motion for approval of the SISP – August 4, 2022;<sup>1</sup>
  - b) Court approval of SISP and authorizing Just Energy to enter into the Stalking Horse Transaction Agreement – August 17, 2022;
  - c) Deadline to submit NOI – 11:59 p.m. Eastern Daylight Time on August 25, 2022 (the “**NOI Deadline**”);
  - d) Deadline to submit a Qualified Bid – 11:59 p.m. Eastern Daylight Time on September 29, 2022 (the “**Qualified Bid Deadline**”);
  - e) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. Eastern Daylight Time on October 6, 2022;
  - f) Just Energy to hold Auction (if applicable) – 10:00 a.m. Eastern Daylight Time on October 8, 2022; and
  - g) Implementation Order (as defined below) hearing:
    - o (if no NOI is submitted) – by no later than September 2, 2022, subject to Court availability.
    - o (if there is no Auction) – by no later than October 15, 2022, subject to Court availability.
    - o (if there is an Auction) – by no later than twelve (12) days after completion of the Auction, subject to Court availability.
7. In order to constitute a Qualified Bid, a bid must comply with the following:
- a. it provides for (i) the payment in full in cash on closing of the BP Commodity/ISO Services Claim (as defined in the Support Agreement), unless otherwise agreed to by the holder of such claim in its sole discretion; (ii) the payment in full in cash on closing of the Credit Facility Claims, unless otherwise agreed to by the Credit Facility Agent in its sole discretion; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) or (ii) including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion (iv) the return of all outstanding letters of credit and release of all Credit Facility LC Claims or arrangements satisfactory to the applicable Credit Facility Lenders in their discretion to secure with cash collateral or otherwise any Credit Facility LC Claims not released, and (v) the payment in full in cash on closing of any outstanding Cash Management Obligations or arrangements satisfactory to the applicable Credit Facility Lenders or their affiliates to secure with cash collateral or otherwise any outstanding Cash Management Obligations.
  - b. it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus Just Energy’s cash on hand must be sufficient for payment in full of the items contemplated in Sections 7(a)(i) and 7(a)(ii) herein, 3.2 of the Stalking Horse Transaction Agreement and the Break-Up Fee, plus USD\$1,000,000, on closing, which Cash Consideration Value is estimated to be USD\$460,000,000 as of December 31, 2022.

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<sup>1</sup> To the extent any dates would fall on a non-business day, to be the first business day thereafter.

- c. it is reasonably capable of being consummated by 90 days after completion of the Auction if selected as the Successful Bid;
- d. it contains:
  - i. duly executed binding transaction document(s);
  - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
  - iii. a redline to the form of transaction document(s) provided by Just Energy, if applicable;
  - iv. evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
  - v. disclosure of any connections or agreements with Just Energy or any of its affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of Just Energy or any of its affiliates; and
  - vi. such other information reasonably requested by Just Energy or the Monitor;
- e. it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- f. it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the Purchaser in connection with the Transaction Agreement;
- g. it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h. it is not conditional upon:
  - i. approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
  - ii. the outcome of any due diligence by the bidder; or
  - iii. the bidder obtaining financing;
- i. it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- j. it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the energy sector, including an electric utility, retail service provider, a company with a tariff on file with the Federal Energy Regulatory Commission, or any intermediate holding company;
- k. it includes full details of the bidder's intended treatment of Just Energy's employees under the proposed bid;
- l. it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with this SISP;
- m. a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
- n. it is received by the Qualified Bid Deadline.

8. The Qualified Bid Deadline may be extended by (i) Just Energy for up to no longer than seven days with the consent of the Monitor, the Credit Facility Agent and the Sponsor, acting reasonably, or (ii) further order of the Court. In such circumstances, the milestones contained in Subsections 6(f) and (g) shall be extended by the same amount of time.
9. Just Energy, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified in Section 7 above and deem a non-compliant bid to be a Qualified Bid, provided that Just Energy shall not waive compliance with the requirements specified in Subsections 7(a), (b), (e), (e), (g), (h), (j) or (l) without the prior written consent of the Sponsor and Credit Facility Agent, each acting reasonably.
10. Notwithstanding the requirements specified in Section 7 above, the transactions contemplated by the Stalking Horse Transaction Agreement (the “**Stalking Horse Transaction**”), is deemed to be a Qualified Bid, provided that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
11. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, Just Energy shall proceed with an auction process to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, Just Energy shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by Just Energy specifying which Qualified Bid is the leading bid.
12. If, by the NOI Deadline no NOI has been received, then the SISP shall be deemed to be terminated and the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement. If no Qualified Bid (other than the Stalking Horse Transaction) has been received by Just Energy on or before the Qualified Bid Deadline, then the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Transaction Agreement.
13. Following selection of a Successful Bid, Just Energy, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 6. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by Just Energy, in consultation with the Monitor, Just Energy shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize Just Energy to complete the transactions contemplated thereby, as applicable, and authorizing Just Energy to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
14. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid,



will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to an Implementation Order or such earlier date as may be determined by Just Energy, in consultation with the Monitor.

15. Just Energy shall provide information in respect of the SISP to the DIP Lenders, the holder of the BP Commodity/ISO Services Claim and the Supporting Secured CF Lenders on a confidential basis, including (A) copies (or if not provided to the Just Energy Entities in writing, a detailed description) of any NOI and any bid received, including any Qualified Bid, no later than one (1) calendar day following receipt thereof by the Just Energy Entities or their advisors and (B) such other information as reasonably requested by the DIP Lenders', the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders' respective legal counsel or financial advisors or as necessary to keep the DIP Lenders, the holder of the BP Commodity/ISO Services Claim or the Supporting Secured CF Lenders informed no later than one (1) calendar day after any such request or any material change to the proposed terms of any bid received, including any Qualified Bid, as to the terms of any bid, including any Qualified Bid, (including any changes to the proposed terms thereof) and the status and substance of discussions related thereto. Just Energy shall be permitted, in its discretion, to provide general updates and information in respect of the SISP to counsel to any unsecured creditor of Just Energy (a "**General Unsecured Creditor**") on a confidential basis, upon: (i) the irrevocable confirmation in writing from such counsel that the applicable General Unsecured Creditor will not submit any NOI or bid in the SISP, and (ii) counsel to such General Unsecured Creditor executing confidentiality agreements with Just Energy, in form and substance satisfactory to Just Energy and the Monitor.
16. Any amendments to this SISP may only be made by Just Energy with the written consent of the Monitor and after consultation with the Credit Facility Agent, or by further order of the Court, provided that Just Energy shall not amend Subsections 7(a), (b), (e), (f), (g), (h), (j) or (l) or Section 15 without the prior written consent of the Sponsor and the Credit Facility Agent.

## SCHEDULE “A”: AUCTION PROCEDURES

1. **Auction.** If Just Energy receives at least one Qualified Bid (other than the Stalking Horse Transaction), Just Energy will conduct and administer the Auction in accordance with the terms of the SISIP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. Eastern Daylight Time on the day prior to the Auction, each Qualified Party (other than the Sponsor) must inform Just Energy whether it intends to participate in the Auction. Just Energy will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only Just Energy, the other counterparties to the Support Agreement, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by Just Energy, in consultation with the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to Just Energy’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of USD\$1,000,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that Just Energy, in its discretion, may establish separate video conference rooms to permit interim discussions between Just Energy and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and

- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.

#### **Selection of Successful Bid**

4. **Selection.** Before the conclusion of the Auction, Just Energy, in consultation with the Monitor, will: (a) review each Qualified Bid, considering the factors set out in Section 7 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by 90 days after completion of the Auction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, (v) the net benefit to Just Energy and (vi) any other factors Just Energy may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by Just Energy in its sole discretion, subject to the milestones set forth in Section 6 of the SISP.

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.

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*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**SISP APPROVAL ORDER**

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Lawyers for the Just Energy Entities

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
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Applicants

***Ontario***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS**  
**(Motion for Approval of SISP, SISP Support**  
**Agreement, Stay Extension, and other relief)**

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